

**Durga Traders Vs. Union of India**

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**SooperKanoon Citation :** [sooperkanoon.com/686028](http://sooperkanoon.com/686028)

**Court :** Delhi

**Decided On :** Oct-10-1985

**Reported in :** 1986RLR138

**Judge :** Rajindar Sachar and; Leila Seth, JJ.

**Appeal No. :** Writ Petition No. 585 of 1985

**Appellant :** Durga Traders

**Respondent :** Union of India

**Advocate for Pet/Ap. :** P.K. Jaitely,; B.S. Mainie and; B.D. Sharma, Advs

**Judgement :**

**Rajindar Sachar, J.**

(1) This writ petition seeks writ of mandamus directing railway to give matching delivery against a consignment of coal booked by the petitioners, and which was instead diverted by the railways.

(2) The petitioners booked a consignment of coal with the railways. It was booked on 23.1.83 from Jogigopha Station to Chandigarh, The consignment was admittedly not delivered to the petitioners. The matter was taken up by the petitioner with the Railways. On 14.7.83 the Area Supdt., Ambala Cantt., Northern Railway informed the Station Supdt, Chandigarh that the petitioners had

approached the Area Office for getting matching delivery of the coal against Bcxt which still had not reached its destination, which request was agreed to, but it was noted, that since no Bcxt, was available it asked the party to take matching delivery of the wagons when available. Evidently, nothing seems to have been done because the petitioner followed it up with further reminder on 4.2.1984, to the Chief Freight & Traffic Supdt, respondent No. 2, requesting him to give matching delivery, which has not been replied to, and pointing out, that he was not interested in damages but in getting the actual coal, quantity and quality, in lieu of their coal utilised by the railways. This was followed with another letter on 24.8.84 complaining that no action has yet been taken and drawing the attention of the railways to the latest circular of 17.12.82 for giving matching delivery.

(3) It transpires and it is so stated in the counter affidavit that the petitioner's wagon got unconnected and unloaded at Saharanpur and as its ultimate destination was not available the same was delivered to M/s Mahabir Traders and justification given is that this was done because the unconnected wagon, i.e. of the Mahabir Traders had reached Nangal Dam and had been delivered to Nangal Fertilizers Ltd.

(4) Now such like situations where the coal of a private party has been diverted by the railways has arisen quite often in various courts. Supreme Court on 14.10.1982 in Writ Nos. 4452 & 4453 of 1982, expressed the opinion that it was wholly improper and illegal on the part of railways to divert to an unauthorised use the coal which was entrusted to them as carrier. It further warned the railways not to indulge in such activity in future. But that if it is done in extreme conditions, then railways must compensate the party by giving back coal, out of their own railway loco shed coal or by diversion of a rake to the parts whose rake was taken earlier. Such was also the circular issued by the railways of February 1981.

(5) This matter was also considered by a D.B. of Gujrat in L.P.A. No. 242/D./12.10.81. It classified broadly four classes of cases of no delivery. The illustration (2) deals with a case where the coal wagons did not reach destination or which was diverted to some other party against its due consignment and where the railway administration through one of its responsible officers had held out a

promise to the petitioner that unconnected wagons would be delivered when received at the destination. In the present case the coal did not reach destination-Chandigarh. It was diverted at the intervening station, i.e. Saharanpur which falls within the jurisdiction of Northern Railways. The respondent admits that it consciously delivered the petitioner's consignment to Mahabir Traders. The Explanationn given is, that earlier, the unconnected wagon of Mahabir Traders had reached Nangal Dam and had been delivered to Nangal Fertilisers Ltd. It is not disputed that this diversion was without the consent of the petitioners. Railways may have to give delivery to Mahabir Traders but it cannot do so at the cost of the petitioners. He is no part of this mutual obligation of the railways. He must be given the coal especially as his delivery request has been conceded by the railways, as far back as on 14.7.1983.

(6) Mr. Sharma refers us to Railway's Circular of 28.3.81, and says that Railway Board had directed the Railways to stop the practice of linking unconnected coal wagons against overdue wagons and had also laid down how unconnected coal wagons were to be disposed of and says that it was provided that that such diversion could only be to its own Railway Workshops and Power Houses. According to Mr. Sharma, if the Local Officers at Saharanpur had diverted the petitioner's wagon to Mahabir Traders, as, undoubtedly was done, it was the individual fault of that officer and request cannot be made to the railways to give a matching delivery. This is a surprising argument. If accepted; it will lead to chaotic functioning. The head of an organisation cannot disown an act done by its subordinate officials in the normal discharge of their duty. It is not even suggested that such an act was unauthorised and any action was taken against any erring official. This plea of an errant official is without any substance.

(7) As a matter of fact, railways itself realised the damage to a private party by such diversion when it directed by its circular of 19.4.83 wherein it is stated that to obviate the problem of the original wagons getting divert- ed indiscriminately. It was streamlining the procedure for dealing with unconnected coal wagons and providing that whenever any coal wagon is received at a station without labels, immediate action would be taken by the Central Office to get its backward passage traced to determine its dispatch particulars at MGS. This procedure was

to act as a break at diversions like the present. It is not even suggested that any effort was made to trace backward the petitioners wagon, assuming the label was not there. The total embargo on diversion of coal consignment from one party to another, whether in private sector or public sector, save in very exceptional cases, and when it is in overall public interest was recognised in a circular of the Railway Board dated 16.8.1984. It also specifically directed that coal consigned to a private party will not be diverted except with the prior written consent of the party concerned. No such consent is even claimed to have been given by the petitioners. The action of the respondents was thus totally unauthorised and unwarranted.

(8) In these circumstances we see no reason why the petitioner should be denied the right to have a matching delivery for the coal wagon which was diverted. We would, in the circumstances, issue a writ directing the respondents-Railways to deliver One Box Wagon of Coal in lieu of the consignment which the respondent had given to M/s Mahabir Traders. This matching delivery should be done within a period of six weeks. The petition is allowed as above with costs which we assess at Rs. 750.00. Mr. Jaitly says that the petitioner does not want the costs to be paid to it and that it may be paid to Legal Aid Fund. Ordered accordingly.