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**Dalal and Co. Vs. the Union of India Through General Manager, Western Railway, Bombay and ors.**

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**SooperKanoon Citation : [sooperkanoon.com/734206](http://sooperkanoon.com/734206)**

**Court : Gujarat**

**Decided On : Apr-28-1961**

**Reported in : AIR1962Guj15; (1962)GLR75**

**Judge : V.B. Raju and; R.B. Mehta, JJ.**

**Acts : Railways Act, 1890 - Sections 47; [Constitution of India](#) - Article 226**

**Appeal No. : Special Civil Appln. No. 204 of 1961**

**Appellant : Dalal and Co.**

**Respondent : The Union of India Through General Manager, Western Railway, Bombay and ors.**

**Advocate for Def. : R.H. Daru, Adv.**

**Advocate for Pet/Ap. : M.R. Mehta, Adv.**

**Disposition : Petition dismissed**

**Judgement :**

**Raju, J.**

1. The petitioner has filed this petition under Article 226 of the [Constitution of India](#) against the General Manager, Western Railway, Bombay, the Area Superintendent, Western Railway, Ahmedabad and the Chief Commercial Superintendent, Western Railway, Ahmedabad.

2. The grievance of the petitioner is that until the issue of a notice by the Chief Commercial Superintendent in March, 1961, if goods booked by the Railway were made available after 17 hours or 5 p.m. on any day they were treated as available for delivery on the next day, and under the rules relating to free time, the consignee was allowed free time of two clear days excluding the day on which the goods were placed in position for unloading. Under the Wharfage and Demurrage Rules, when goods consigned are ready for being unloaded and are made available for delivery, certain amount of time is given as free time. The grievance of the petitioner is that after the issue of the notice by the Chief Commercial Superintendent in March 1961, goods made available for delivery upto 20 hours on any day at the three stations mentioned in the notice, namely Ahmedabad, Asarva and Kankaria, would be treated as available for delivery on that day and the free time allowed was only the day following. According to the petitioner, under the previous practice, the goods were treated as available for delivery on the next day and therefore the consignee got not only the next day but the day following that. It is the grievance of the petitioner that as a result of the notice issued by the Chief Commercial Superintendent they are put to great hardship, because in respect of certain consignments they were formerly getting two full days as free time, but after the circular they would get only one day as free time. The petitioner therefore prays for a writ to quash the notice issued by the Chief Commercial Superintendent, which reads as follows:

'It is hereby informed for public information that with effect from 20-3-61 and till further orders the business hours of the goods sheds at the following stations on the Western Railways will be upto 20 hours for the purpose of effecting delivery of goods.

Ahmedabad, Asarwa and Kankaria. With this change in the hours of business all goods which are available for delivery upto 20 hours at the above stations on any

working day will be treated as available for delivery on that day.'

3. The Railway relies on the rules framed under Section 47, of the Indian Railways Act by the Government of India on 28-8-1958, vide Notification No. TC-III/3036-58 dated 28-8-1958. Under these rules, in the case of goods available for delivery, the time allowed free is from the time of arrival till the closing time of the day following that on which consignments are made available for delivery. It is, therefore, the case of the Railway that there has been no curtailment of free time allowed, although instead of making goods available for delivery upto 17 hrs. on any day now the goods may be made available for delivery upto 20 hours.

4. If we look at the notice quoted above, it is clear that it does not infringe the rules framed under Section 47 of the Indian Railways Act by the Government of India on 28-8-1958. Free time, allowed therein is still allowed free, namely from the time the consignments are made available for delivery till the closing time of the day following that on which the consignments are made available for delivery. This is the only thing provided in the rules and this provision is not contravened by the notice impugned. The notice, in fact, is not a rule framed by the Chief Commercial Superintendent. It is a notice issued for the information of the public that with effect from 20-3-1961 goods may be made available for delivery upto 20 hours on any day. It is contended that the Chief Commercial Superintendent has no jurisdiction to issue such a notice. This is merely a notice giving information to the public that with effect from 20-3-61 goods may be made available upto 20 hours on any day. The giving of information to the public can never be a matter outside jurisdiction. The notice as such cannot therefore be quashed, because it is a notice merely notifying certain facts for public information. The notice itself does not purport to alter any rule or to issue any orders. The second paragraph of the notice merely explains to the public the effect on the rules framed under Section 47 of the Indian Railways Act by the Government of India, of the new practice of making goods available for delivery to the public at any time upto 20 hrs. or 8 P.M. The notice does not alter the rules, framed by the Government of India, but merely informs the public of the interpretation of the expression 'the time made available for delivery'.

5. Reliance has been placed by learned counsel for the petitioner on the Special Rates Circular (Goods and Coaching) No. C432/22/3/III of 1958. It is a circular issued by the Chief Commercial Superintendent, and the text of the circular clearly indicates that it is merely an administrative circular, the second paragraph of which reads as follows;

'In supersession of the charges notified at pages 21 to 24 of Western Railway's Supplementary Goods Tariff No. 1, in force from 15 Deo. 1956 and lately notified in Appendix VI to Special Rates Circular (Goods) No. C.432/22/3 of 1958, dated 27 August, 1958, the rules and rates for recovery of wharfage and demurrage charges should be substituted by those indicated in Appendices I to IV to this Circular, as indicated below:- .....

The circular does not purport to be issued under Rule 15 of the rules framed by the Government of India, which reads as follows:--

'If and for so long as the state of traffic or any sudden emergency makes it necessary and after advertisement in local newspapers, the rate of demurrage or wharfage may be increased and free time may be curtailed and Sundays, Republic Day and Independence Day reckoned in charging wharfage by the Railway Administration.' This rule provides that if and for so long as the state of traffic or any sudden emergency makes it necessary, certain changes may be made by the railway administration. 'Railway Administration' is defined in Section 3 (6) of the Indian Railways Act as the manager of the railway or the Government in the case of a railway administered by the Government. The notice issued which is impugned and which is issued by the Chief Commercial Superintendent in March 1961, does not purport to be issued in pursuance of Rule 15 of the rules framed by the Government of India under Section 47 of the Indian Railways Act. Although in their reply to the petition, it is stated on behalf of the railway that they took certain steps due to considerable increase in the traffic and to avoid delay in goods traffic, it is nowhere stated in the notice that it was issued under Rule 15. Under Rule 15 of the Rules it is open to the General Manager to make the changes referred to in R- 15, and, in fact, he can curtail the free time allowed under the rules framed by the Govt. of India. But in this case, the notice issued by the Chief Commercial

Superintendent does not curtail the free time allowed under the rules but it merely informs the public that goods may be made available for delivery at any time upto 20 hours or 8 P. M. That in no way affects the rules. Even the rules framed by the Govt. of India contemplate that goods may be made available at various times of the day. There is nothing in these rules or in the Indian Railways Act prohibiting the railway administration from making goods available for delivery at any time upto 20 hours or even after 20 hours. When the Chief Commercial Superintendent notifies the public that with effect from 20-3-61 goods may be made available for delivery not only upto 17 hours but upto 20 hours on any day, he is not enacting any rules or issuing any order. He is only making his office work longer. Therefore, the contention that the Chief Commercial Superintendent cannot issue such a notice does not survive.

6. The learned counsel for the petitioner relies on Sub-para 2 of para IV of the Special Rates Circular, which reads as follows:-

'Goods available for delivery after 17-00 hours and unloaded after the specified time will be considered for purposes of levying wharfage as available for delivery the next day.'

As already observed, this Special Rates Circular is an administrative circular. It does not purport to be a copy of any rules issued by the railway or by the Govt. of India, and various paragraphs of this circular clearly show that it is an administrative circular. Sub-para 4 of para IV of this circular states that the term 'available for delivery' denotes the time a wagon is actually unloaded at destination. This circular is issued by the Chief Commercial Superintendent, and even according to the petitioner, the Chief Commercial Superintendent has no authority to make any rules having statutory effect and having the force of law. In fact, the circular purports to be a part of Supplementary Goods Tariff No. 1, which is more or less a Departmental Book of Administrative Circulars. Having regard to the fact that when that circular was issued goods were being made available for delivery only upto 17 hours on any day, the administrative circular provided that goods available for delivery after 17-00 hours and unloaded after the specified time would be considered as available for delivery the next day. That circular was

not issued under section 47 of the Indian Railways Act. The effect of the present practice on the rules framed by the Govt. of India under Section 47 of the Railways Act is now notified to the public by the impugned notice. The impugned notice has no statutory force. It is not an executive order but merely an intimation to the public] of the legal position. Nothing has been pointed out to us either in the Act or in the rules or in any enactment prohibiting the Railway from making goods available for delivery upto 20 hours on any day. This they can always do. This is a matter of an administrative nature and what the Railway has done is merely to make goods available for delivery upto 20 hours and to give intimation of this to the public.

7. There is therefore no merits in this petition. The petition is rejected with costs.

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