

(2020) 11 PAT CK 0050

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 8848 Of 2020, Interlocutory Application No. 01 Of 2020

M/S Ganga Carriers Private
Limited

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision: Nov. 10, 2020

Acts Referred:

- Railways Act, 1989 - Section 83

Hon'ble Judges: Ahsanuddin Amanullah, J

Bench: Single Bench

Advocate: Gautam Kumar Kejriwal, Bijoy Kumar Sinha

Final Decision: Allowed

Judgement

1. This matter has been heard via video-conferencing due to circumstances prevailing on account of the COVID-19 pandemic.
2. Heard Mr. Gautam Kumar Kejriwal, learned counsel for the petitioner and Mr. Bijoy Kumar Sinha, learned counsel for the respondents no. 1 to 5 (hereinafter referred to as the "Railways").
3. The matter has been taken up out of turn upon this Court allowing the motion made by learned counsel for the petitioner yesterday (09.11.2020) on the ground of urgency in view of the Railways scheduling the auction of the articles of the petitioner tomorrow for realization of the amount of the impugned demand.
4. At the very outset, learned counsel for the petitioner submitted that the Railways are going to auction his articles tomorrow (11.10.2020) for

realization of the impugned demand and, thus, he has filed Interlocutory Application No. 01 of 2020 for amendment of the writ application, seeking further relief of quashing the notice of auction sale and also restraining the Railways from proceeding with the auction.

5. In view of the amendment sought being integrally connected with the reliefs originally prayed for in the writ application, the prayer is allowed. The reliefs sought in Interlocutory Application No. 01 of 2020 shall form part of the main writ application. Interlocutory Application No. 01 of 2020 stands disposed off.

6. The petitioner has moved the Court for the following reliefs:

â€œ(i) For issuance of a writ in the nature of certiorari for quashing of part of letter number C/ 408/ bakaya/ 2019 dated 15.07.2020 issued by the respondent Divisional Railway Manager (Commercial), Samastipur, whereby a demand of due on account of demurrage charges of the year 2013 has been raised without any jurisdiction and legally valid basis;

(ii) For further issuance of a writ in the nature of certiorari for quashing of paragraph 1 of the letter number C/408/dues/2019 dated 25.09.2020 issued by the respondent Divisional Railway Manager (Commercial), Samastipur whereby the demand of demurrage charges has been repeated and held

justified without any justification in the light of principle of res-judicata and also bar of limitation;

(iii) For holding and a declaration that once the final hearing on point of proposed imposition of liability demurrage charges was concluded by the respondent Goods Superintendent the then in office on 02.09.2014 in light of the direction of this honourable court in C.W.J.C. number 24766 of 2013

and as such Goods Superintendent having formed an opinion of no case for imposition such liability followed by no demand of such demurrage charges for next three years and thereafter would constitute a case of conclusion of the proceeding relating to any such demand and the respondent Divisional Railway Manager (Commercial) Samastipur after lapse of more than six year since 02.09.2014 is not within his jurisdiction to raise any such demand.

(iv) For further issuance of a writ order or direction restraining the respondents specially the respondent Goods Superintendent at Laheriasarai railway

siding from taking any coercive action in terms of Section 83 of the Railways Act, 1989, for recovery of the demand of demurrage charges in light of the aforesaid letters which is not only illegal but also badly barred by limitation;

(v) For grant of any other relief(s) to which the petitioner is found entitled in the facts and circumstances of the present case. Further reliefs sought

in the Interlocutory Application No. 01 of 2020 read as follows:

â€œ(vi) For issuance of a writ in the nature of certiorari for quashing of the auction notice issued by the respondent Divisional Railway Manager

(Commercial) Samastipur whereby auction of 23718 bags of cement belonging to the petitionerâ€™s consignment has been fixed on 11.11.2020 for

recovery of the demurrage charges for a sum of Rs.11,89,117/- which is under challenge in the above-mentioned writ application;

(vii) For issuance of a writ or order or direction restraining the respondents from proceeding with the process of auction in terms of the impugned

auction notice as the same is a consequential step taken as a sequel to the illegal action of the respondents especially the respondent Divisional

Railway Manager (Commercial) Samastipur which is under challenge under the writ application.â€

7. Learned counsel for the petitioner submitted that this is the third round of litigation between the parties, for an issue which arose in the year 2013

and on the previous two occasions, the action of the Railways had been interfered with by the Court. Learned counsel submitted that initially demand

of demurrage and wharfage charges against the petitioner for the so-called delay caused in removing his articles from the Railway Siding at

Laheriasarai in the district of Darbhanga was raised by the Railways amounting to Rs. 11,89,117/- in November, 2013. Learned counsel submitted that

the reasons for such delay were totally attributable to the Railways, as when the rake of the petitioner arrived at the aforesaid Railway Siding, the

same was already filled with goods of other parties and only when space was made available to him by the Railways, the goods were unloaded. Thus,

learned counsel submitted that the petitioner was forced to move the Court in CWJC No.24766 of 2013, wherein, vide order dated 08.08.2014, the

demand was set aside and the matter was remanded specifically to the Goods Superintendent, East Central Railway, Laheriasarai, Darbhanga, who

was directed to fix the date of hearing and dispose of the matter by passing an order applying his independent mind. Learned counsel submitted that pursuant thereto, the petitioner appeared before the Goods Superintendent on 03.08.2014 and the date of hearing was fixed for 02.09.2014. Learned counsel submitted that upon hearing the parties, the Goods Superintendent on 02.09.2014 made a recommendation to the Divisional Railway Manager (Commercial), East Central Railway, Samastipur, that the said charge against the petitioner be waived, finding justification in the contention of the petitioner.

8. It was submitted that after that no communication was received by the petitioner and suddenly on 01.10.2018, a communication was received from the Divisional Railway Manager (Commercial), Samastipur, calling upon the petitioner to pay an amount of Rs.31,73,120/- and Rs.45,36,087/- with regard to the dues against him relating to Darbhanga and Lahiriasarai. Learned counsel submitted that again the petitioner had to move the Court in CWJC No.21861 of 2018 against the said demand and on the short point of violation of the principles of natural justice the matter was disposed off on 22.06.2016, by quashing the demand notice contained in letter dated 01.10.2018, giving liberty to the Railways to take fresh steps for charging demurrage after issuing notice to the petitioner and providing him a reasonable opportunity of filing show cause. Learned counsel submitted that the Railways, pursuant to the liberty given to it by the Court, issued a fresh demand under letter dated 15.07.2020, in which the present demand was included, and called upon him to submit his show cause within 7 days, if he had any objection. It was submitted that in response to the notice, the petitioner filed a detailed representation before the Divisional Railway Manager (Commercial), Samastipur, on 28.08.2020, stating that the earlier demand having been set aside, the petitioner could not have been asked to pay any outstanding demand in the light of order of the Court, as no fresh demand was raised by the Railways thereafter.

9. It was submitted that despite that, by letter dated 25.09.2020, the Divisional Railway Manager (Commercial), Samastipur, rejected the objection of the petitioner and called upon him to pay the demands, including the demand which is subject matter of the present writ application. Learned counsel

drew the attention of the Court to paragraph no. 1 of the aforesaid communication where the present demand has been dealt with. It was submitted

that the same is contemptuous. Learned counsel submitted that though the authority takes note of the judgment in CWJC No.24766 of 2020 dated

08.08.2014, but has taken the stand that no date was fixed by the Court for passing an order and thus, the demand contained in the communication

dated 01.10.2018 was proper having admitted that the hearing was done on 02.09.2014 and also at the same time not controverting the

recommendation of the Goods Superintendent, Laheriasarai, dated 02.09.2014, for waiving the charges.

10. Learned counsel submitted that under similar circumstances, in relation to another demand, where demurrage charges of Rs.8,75,460/- and

wharfage charges of Rs.2,84,770/- was sought to be recovered by the Railways, the petitioner had moved the Court in CWJC No.433 of 2015 and the

Court after going into the facts, which were not denied by the Railways, had directed refund of the money, as during the pendency of that writ

application, the Railways had auction-sold the stock of the cement of the petitioner. Learned counsel submitted that the said order has been affirmed

by the Honorable Division Bench in LPA No.796 of 2016 by order dated 02.05.2018 and challenge to the same before the Honorable Supreme

Court in Special Leave Petition (Civil) Diary No(s). 7718 of 2019 was also dismissed, both on the ground of delay as well as on merits.

11. Per contra, learned counsel for the Railways submitted that the demand raised by the Railways is in accordance with law and once the fact that

there was delay in removing of the articles by the petitioner from the Railway Siding within the time allowed is admitted, the demurrage and wharfage

charges levied cannot be faulted. It was further submitted that as the order of the Divisional Railway Manager (Commercial), Samastipur dated

01.10.2018, was passed after hearing the petitioner, the same is justified and the petitioner is liable to pay the amount.

12. At this juncture, the Court put a direct query to learned counsel for the Railways as to how, when there was specific direction of the Court in

CWJC No.24766 of 2013 to the Goods Superintendent, to pass an order applying his independent mind, he could have made a recommendation to the

superior authority, who happens to be the Appellate Authority against his decision, and more importantly, once he had already opined that the petitioner was entitled to waiver of the charges, and nothing further remained as he was under a judicial direction to pass an order at his level independently and moreover, the fact that such recommendation has not been reviewed, which power also may not be available to the Goods Superintendent. The learned counsel for the Railways very fairly submitted that the specific direction of the Court was to the Goods Superintendent, who had also given his opinion that the said charge was fit to be waived.

13. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the writ petition deserves to be allowed on a very short point.

14. The admitted position is that in terms of the specific direction in order dated 08.08.2014 in CWJC No.24766 of 2013, the Goods Superintendent, East Central Railway, Lahiriasarai, Darbhanga, was required to pass an order by applying his mind independently with regard to the plea of waiver of charges. The Court would pause here. In the order dated 08.08.2014 in CWJC No.24766 of 2013, the Court had noted the contention of the Railways that the petitioner had the option to move the superior authorities and there was alternative remedy available to him, but still had interfered by quashing the order and specifically directing the Goods Superintendent to pass an order independently. Thus, the Goods Superintendent was under legal obligation to pass order upon such remand by the High Court. In such background, the categorical recommendation made by him in his communication dated 02.09.2014, copy of which has been brought on record by way of Annexure-9, giving reasons for proposing such waiver, clearly establishes that the Goods Superintendent, by applying his independent mind, and also referring to the factual aspects, had formed such opinion. Thus, in terms of the specific direction of the Court, nothing further was required and the opinion of the Goods Superintendent had to be in the form of an order putting a lid on the issue, but it appears that the Goods Superintendent erred in recommending such action to the superior-cum-appellate authority i.e. the Divisional Railway Manager (Commercial), East Central Railway, Samastipur.

15. It is worthwhile to note here that the initial order of the Goods Superintendent dated 15.11.2013 imposing graded penal delay fee was an original order by him and not passed as a consequence of any order of a superior authority. Therefore, once when the Court had set aside such order, no order levying such charge existed, and, accordingly, in terms of the order of the Court, the Goods Superintendent was required to consider afresh as to whether such charge was to be levied or not. Once the petitioner had explained before him the reason(s) for such delay in removing its articles and the same was accepted by the Goods Superintendent, he should have closed the matter. Thus, as there would not have been any demand, consequently, there could not have been any reference by the Goods Superintendent to the Divisional Railway Manager (Commercial), East Central Railway, Samastipur, as has been done in the present case. The Court finds that the Goods Superintendent was under an erroneous impression that his original order dated 15.11.2013, was still in existence and thus, there could only have been a waiver by the Appellate Authority, for which he seems to have made a recommendation.

16. In light of the discussions made hereinabove, in the considered opinion of this Court, once the Goods Superintendent, upon hearing the petitioner and also taking into consideration the factual aspects, had arrived at the conclusion that the petitioner was entitled to waiver, the natural and obvious consequence flowing therefrom would be waiver of such charges. Thus, this Court holds that the so-called recommendation of the Goods Superintendent, Laheriasarai, as contained in his communication dated 02.09.2014 to the Divisional Railway Manager (Commercial), East Central Railway, Samastipur, has to be treated as an order in terms of the direction of the Court dated 08.08.2014 in CWJC No.24766 of 2013. Once this is done, the chapter stands closed and nothing further survives.

17. Accordingly, this writ application is allowed. The demand of Rs.11,89,117/-, as raised against the petitioner with regard to demurrage and wharfage charges connected with Railway Siding, Laheriasarai, Darbhanga, is set aside and it is held that the petitioner is not liable to pay such charges. Further, the notice for auction fixed for tomorrow, as far as it relates to the present demand, also stands quashed and the Railways shall not

proceed in the matter.

18. However, before parting with the order, the Court deems it appropriate to highlight the conduct of the Railways. The fact that such

recommendation of the Goods Superintendent has been allowed to remain in the files for four years and then suddenly a fresh communication is made

reiterating the original demand, is clearly inexplicable and nothing short of contempt of Court, broadly for two reasons. Firstly, there was a specific

direction to pass an order, even though silent on the time-frame, but which could not have been construed to be indefinite giving an untrammelled

discretion to the authorities to keep sitting on the issue for four long years. Secondly, and more importantly, there is no explanation as to how the

Divisional Railway Manager (Commercial), East Central Railway, Samastipur, has passed the order when he had absolutely no jurisdiction or authority

to do so as per the clear-cut direction of the Court in order dated 08.08.2014 in CWJC No.24766 of 2013 by which it was only the Goods

Superintendent, who had to act in terms thereof. Thus, this Court seriously contemplated taking judicial notice of such conduct of the Divisional

Railway Manager (Commercial), East Central Railway, Samastipur. However, on prayer made by the learned counsel for the Railways that the

authorities are not very adept with the language they are required to use in matters related to the Courts, the same may be viewed as inadvertent and

unintentional, and also taking note of the fact that the Railways have a fair stand before this Court that as per the specific direction of the Court in

CWJC No.24766 of 2013, it was the Goods Superintendent alone who was to pass an order applying his independent mind, this Court, by way of

indulgence, is not proceeding in the matter against the Divisional Railway Manager (Commercial), East Central Railway, Samastipur and accordingly,

the issue is consigned. However, he is cautioned to be careful in future.