

**(2011) 03 CAL CK 0111**

**Calcutta High Court**

**Case No:** Writ Petition No. 281 of 2011

Southern Cargo and Logistics

APPELLANT

Vs

Union of India

RESPONDENT

**Date of Decision:** March 15, 2011

**Citation:** (2011) 3 CHN 721

**Hon'ble Judges:** Soumitra Pal, J

**Bench:** Single Bench

**Advocate:** D.N. Misra, for the Appellant; D.K. Singh, for the Respondent

### **Judgement**

Soumitra Pal, J.

The Court: Let affidavit-of-service filed in Court today be kept on record.

2. In the writ petition, the petitioner, a lease holder, has challenged the imposition of punitive charges of Rs.2,02,100/- since the Railways have allegedly found that the consignment in question had excess weight. It is submitted that though the petitioner by letter dated 2nd March, 2011 had prayed for reweighment, by the impugned intimation dated 4th March, 2011, same was denied by the authorities of the South Eastern Railway (for short "SER") without citing any reason.

3. Submission has been made that though the Circular No.51 of 2006 issued by notification dated 11th December, 2006, issued by the Ministry of Railways (Railway Board), postulates that the Chief Commercial Manager of the Zonal Railway may permit second reweighment of the consignment loaded in parcel vans at the destination station on weighing scale at party's cost, however, it has been ignored. Prayer is since everyday demurrage is being incurred, the authorities of the SER may be directed to carry out reweighment for which the petitioner is ready and willing to pay the charges.

4. Learned Advocate appearing on behalf of the railway authorities submits that since lease agreement was entered into at Chennai, this Court has no jurisdiction. Moreover, as the Railway authorities at Chennai have not been impleaded as

parties, this writ petition is not maintainable for non-joinder of parties. Further, from the language of Circular No.51 of 2006, it is evident that second reweighment is optional. However, if any order is passed, amount demanded, as punitive charges, may be secured.

5. So far as the maintainability of the writ petition is concerned, in my view, as the office of the Chief Commercial Manager, SER, the respondent No.3, who had issued the intimation dated 4th March, 2011 is situated at Kolkata, this Court has jurisdiction to entertain the writ petition. Hence, the writ petition is maintainable.

6. Now the question arises whether the Chief Commercial Manager, SER, was justified in issuing impugned intimation dated 4th March, 2011. In order to answer the question it is appropriate to refer to the Circular No.51 of 2006, which is as under:-

Sub: Delegation of powers to CCMs for joint reweighment of Parcel Vans (VPHs/VPs/VPUs) at party's request.

Some instances of disputes about correctness of weighment done by the Railways on in-motion weighbridge at enroute station for the consignments loaded in Parcel Vans (VPHs/VPs/VPUs) have come to the notice of Railway Board which led to Court interventions.

The matter has been examined and it has been decided that if any party requests for second reweighment at destination station against the result of in-motion weighbridge carried out by railway at enroute station, the Chief Commercial Manager of the zonal railway may permit second reweighment, of consignment loaded in Parcel Vans at destination station on Weighing Scale at party's cost.

Now the impugned intimation, which has been referred to, is as under:-

Sub:- Reweighment, of all the parcels loaded in our leased

VPH No. SR 01838 on Train No. 12659- (Ex NCJ-Shalimar)

Ref:- Your letter Nos. NIL dt. 02/03/2011.

With reference to the letters quoted above, the matter has been examined. The competent authority has decided not to permit second reweighment as requested for.

The inconvenience caused to you is regretted.

7. Looking at the impugned intimation, though the Circular permits such reweighment, I find that no reason has been cited why permission for second reweighment was declined and punitive charges have been imposed. Hence, the intimation impugned, in my view, is illegal and arbitrary. Since excess weight entails imposition of punitive charges and thus the rights of a party are affected, the word "may" in the Circular has to be read as "shall" and it is to be construed that

reweighment is mandatory. Hence, the argument of the respondent that as the Circular contains the word "may", the order to issue reweighment is discretionary, cannot be accepted. Assuming the Circular is not applicable to the facts of the case, as the goods had arrived at Shalimar in Howrah, West Bengal, on 1st March, 2011, and the petitioner, who is incurring demurrages, is ready to bear the cost, the authorities should have directed for second reweighment. The argument on behalf of the Railways that the authorities at Chennai should have been added as party respondent cannot be accepted as the Circular dated 11th February, 2006, permits for second reweighment at the "destination station", that is, Shalimar, which is within the jurisdiction of SER and in this petition the authorities of the SER are party respondents. For the reasons as aforesaid, the intimation dated 4th March, 2011 is set aside and quashed. Hence, the Chief Commercial Manager (FS & FM), the respondent No.3, is directed to reweigh the consignment as indicated in the Circular on the weighing scale within 24 hours from the date of deposit of charges. In the event, after reweighment the goods are found to be within the permissible limit, the said respondent shall withdraw the order directing imposition of punitive charges. However, if after reweighment, the weight of the consignment is found to be in excess, the respondent authorities are at liberty to proceed in accordance with law and shall impose appropriate charges. After reweighment, whatever be the result, the goods shall be released on payment of other charges, if any. The writ petition is allowed.

8. No order as to costs.

9. Learned Advocates for the parties are permitted to take down the gist of this order for communication and the respondents, including the respondent No.3, shall act on the basis of such communication.

10. Urgent photostat certified copy of this order, if applied for, be furnished to the appearing parties on priority basis.