

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO.14728 of 2022**

M/S HARSH TRANSPORT PRIVATE

Versus

UNION OF INDIA

Appearance:

MANASVI THAPAR(8198) for the Petitioner(s) No. 1  
MS SETU P JOSHI(10849) for the Petitioner(s) No. 1  
for the Respondent(s) No. 1,2

**CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA****Date : 01/08/2022****ORAL ORDER**

1. In the present writ petition, the petitioner has prayed for quashing and setting aside the impugned demand notices dated 24.03.2022, 24.05.2022, 08.06.2022 and 21.06.2022 issued by the respondent No.2 - Senior Divisional Commercial Manager, for demanding the alleged railway dues and illegally evocation of invoking Section 83 of the Railways Act, 1989 (for short, "the Act").

2. It is the case of the petitioner that the respondent No.2, by the notice dated 24.03.2022 had demanded a due freight charge to the tune of Rs.51,14,375/-. The petitioner has accordingly sent replies to the aforesaid notices. Lastly on 21.06.2022, the respondent No.2 has finally issued the demand notice asking the petitioner to pay the due charges to the tune of Rs.51,14,375/-. It is stated that the failure to pay such due charges will result into invoking of Section 83 of the Act.

3. Learned advocate for the petitioner has submitted that the action of the respondent No.2 asking the petitioner to pay the aforesaid freight charge, is illegal and the same is required

to be quashed and set aside. It is submitted that the respondent No.2 has erred in not considering and ignoring the crucial facts that the booking of the vessel for his transport was made by him for the days starting from 27.12.2020 to 30.01.2021 and before this date of booking, no change or extra charge in the freight rate was communicated to the petitioner and hence, the respondents cannot call upon the petitioner to demand the extra dues. It is submitted that undercharge raised and demanded by the railway administration is completely on false basis and is disputed by the petitioner. Learned advocate has further submitted that the petitioner has been valuable customer of the railway authorities and is generating revenue through his transactions and such fact could not have been ignored. It is submitted that seizing of their material will effect their business on day-to-day basis and cause irreparable loss and hence, the impugned notices may be set aside.

4. It appears from the impugned communication dated 24.03.2022 that the freight has been determined by the Railway of Parcel Van by Train No.12833 for operating between Howrah to Shalimar Junctions. It is the case of the petitioner that the undercharge PW Bill, which was generated, had taken into account the distance of SHM (Shalimar) and not HWH (Howrah), which falls under the slab of 2051-2100 kms., which is unrecoverable of Rs.65,590/- has been calculated on the difference of 12.45 kms. The petitioner has placed various money receipts showing the freight paid by it on record.

5. On a specific query raised by this Court with regard to the remedy available to the petitioner of approaching the Claims Tribunal by filing appropriate application under Section 13 of

the Railways Claims Tribunal Act, 1987, the learned advocate for the petitioner has placed reliance on the judgment dated 19.09.2008 passed by the Division Bench in Special Civil Application No.17112 of 2007 and allied matters, and has submitted that the present writ petition would be maintainable before this Court. This Court had apprised the learned Advocate of the judgment of the Apex Court rendered in the case of Shree Shyam Agency Vs. Union of India and Ors., [2013] 1 S.C.C. 283.

6. This Court has considered the aforementioned judgment of the Division Bench, wherein such demand notices were challenged and the Division Bench has rejected the writ petition. However, upon perusal of the judgment of the Division Bench, it reveals that the issue with regard to filing of an application under Section 13 of the Railways Claims Tribunal Act, was neither raised nor decided.

7. I may with profit refer to the judgement of the Apex Court in in the case of **Shree Shyam Agency (supra)** has observed thus :-

*“10. The Tribunal has been established under the Tribunal Act, 1987. Reference to its preamble would indicate the purpose and object of its creation. The Preamble of the Tribunal Act, 1987 reads as follows:-*

*“An Act to provide for establishment of a Railway Claims Tribunal for inquiring into and determining claims against a railway administration for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to it to be carried by railway or for the refund of fares or freight or for compensation for death or injury to passengers occurring as a result of railway accidents or untoward incidents and for matters connected therewith or incidental thereto.”*

*It is evident from the preamble that the Tribunal has been established for inquiring into and determining the claims against the Railway Administration for loss, destruction, damage, deterioration or non-delivery of animals or the goods entrusted to it to be carried by railway and not for adjudication of any claim or dispute against a third party. Chapter III of the Tribunal Act deals with the jurisdiction, powers and authority of the Claims*

*Tribunal. Section 13 of the Tribunal Acts reads as follows:*

*13. Jurisdiction, powers and authority of Claims Tribunal.—*

*(1) The Claims Tribunal shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable immediately before that day by any civil court or a Claims Commissioner appointed under the provisions of the Railways Act,—*

*(a) relating to the responsibility of the railway administrations as carriers under Chapter VII of the Railways Act in respect of claims for—*

*(i) compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to a railway administration for carriage by railway;*

*(ii) compensation payable under section 82A of the Railways Act or the rules made thereunder; and*

*(b) in respect of the claims for refund of fares or part thereof or for refund of any freight paid in respect of animals or goods entrusted to a railway administration to be carried by railway.*

*5 [(1A) The Claims Tribunal shall also exercise, on and from the date of commencement of the provisions of section 124A of the Railways Act, 1989 (24 of 1989), all such jurisdiction, powers and authority as were exercisable immediately before that date by any civil court in respect of claims for compensation now payable by the railway administration under section 124A of the said Act or the rules made thereunder.]*

*(2) The provisions of the 6 [Railways Act, 1989 (24 of 1989)] and the rules made thereunder shall, so far as may be, be applicable to the inquiring into or determining, any claims by the Claims Tribunal under this Act.*

*11. Section 16 of the Tribunal Act deals with the application to Claims Tribunal and reads as follows:*

*“16. Application to Claims Tribunal.- (1) A person seeking any relief in respect of the matters referred to in sub-sections (1) or sub-section (1A) of section 13 may make an application to the Claims Tribunal.*

*(2) Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee in respect of the filing of such application and by such other fees for the service or execution of processes as may be prescribed :*

*Provided that no such fee shall be payable in respect of an application under sub-clause (ii) of clause (a) of sub-section (1) or, as the case may be, sub-section (1A) of section 13.”*

*12. Section 18 of the Tribunal Act deals with the procedure and powers of Claims Tribunal and the same reads as follows:*

*“18. Procedure and powers of Claims Tribunal.- (1) The Claims Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of nature justice and, subject to the other provisions of this Act and of any rules, the Claims Tribunal shall have powers to regulate its own procedure including the fixing of places and times of its enquiry.*



(2) *The Claims Tribunal shall decide every application as expeditiously as possible and ordinarily every application shall be decided on a perusal of documents, written representations and affidavits and after hearing such oral arguments as may be advanced.*

(3) *The Claims Tribunal shall have, for the purposes of discharging its functions under this Act, the same power as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely :*

a) *summoning and enforcing the attendance of any person and examining him on oath;*

b) *requiring the discovery and production of documents;*

c) *receiving evidence on affidavits;*

d) *subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;*

e) *issuing commissions for the examination of witnesses or documents;*

f) *reviewing its decisions;*

g) *dismissing an application for default or deciding it ex parte;*

h) *setting aside any order of dismissal of any application for default or any order passed by it ex parte;*

i) *any other matter which may be prescribed."*

13. *Rule 44 of the Railway Claims Tribunal (Procedure) Rules, 1989 confers inherent powers on the Tribunal to meet the ends of justice.*

14. *On a conjoint reading of the above mentioned provisions, it is clear that the Tribunal has been constituted to adjudicate the claim made against the Railways and not against a third party. The claim petition, it is seen, is based on the contract of carriage entered into between the claimant and the railways.*

15. *The question to be decided by the Tribunal is whether the Railway administration has caused any loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to it to be carried by railway or the refund of fares or freight or for compensation for death or injury to the passengers as a result of railway accidents or untoward incidents etc. Chapter III of the Act deals with the jurisdiction, powers and authority of the Tribunal. Section 13(1)(a) of the Tribunal Act, as already indicated, confers exclusive jurisdiction on the Tribunal to decide the responsibilities of the Railways as carriers under Chapter VII of the Railways Act, 1989 in respect to the above mentioned claims made against the railways. Chapter IX of the Railways Act, 1989 deals with carriage of goods. Section 61 of the Railways Act, 1989 says that every railway administration shall maintain the rate-books etc. for carriage of goods and Section 62 imposes conditions for receiving etc. of goods. Section 65 is also important for the purpose of disposal of this case and hence extracted hereunder:*

*“65. Railway receipt. (1) A railway administration shall,-*

*(a) in a case where the goods are to be loaded by a person entrusting such goods, on the completion of such loading; or*

*(b) in any other case, on the acceptance of the goods by it, issue a railway receipt in such form as may be specified by the Central Government.*

*(2) A railway receipt shall be prima facie evidence of the weight and the number of packages stated therein:*

*Provided that in the case of a consignment in wagon-load or train-load and the weight or the number of packages is not checked by a railway servant authorized in this behalf, and a statement to that effect is recorded in such railway receipt by him, the burden of proving the weight or, as the case may be, the number of packages stated therein, shall lie on the consignor, the consignee or the endorsee.”*

8. I may also with profit refer to section 36 of the Railway Act, 1989. The same reads as under:

**"SECTION 36 : Complaints against a railway administration**

Any complaint that a railway administration-

(a) is contravening the provisions of Sec. 70 : or

(b) is charging for the carriage of any commodity between two stations a rate which is unreasonable: or

(c) is levying any other charge which is unreasonable, may be made to the Tribunal, and the Tribunal shall hear and decide any such complaint in accordance with the provisions of this Chapter."

9. The dispute raised in the writ petition is with regard to freight charge demanded by the Railways from the petitioner between two stations. It is the case of the petitioner that it has paid regular freight charges to the Railway and the same were also accepted, and later on an extra freight charge has been created. The petitioner has annexed various receipts of paying the freight charge. The freight charge between two stations has been disputed by the petitioner. Subsection (c) of section 36 of the Railway Act refers to making of a complaint before a Tribunal with regard to levying of charge. The Apex Court, after considering the provisions of Sections 13, 16 and

18 of the Act has held that the Claims Tribunal has the jurisdiction to adjudicate the claim made against the Railways and not against the third party. It is further held that section 13(1)(a) of the Tribunal Act confers exclusive jurisdiction on the Tribunal to decide the responsibilities of the Railways as carriers under Chapter VII of the Railways Act, 1989. Section 16 of the Tribunal Act refers to filing of an application by any person seeking any relief in respect of the matters referred to in sub-section (1) of sub-section (1-a) of Section 13 before the Claims Tribunal.

10. In the present case, there is a dispute with regard to the freight paid by the present petitioner and determined by the Railways. The case of the petitioner will fall under sub-section (b) of Section 13, which pertains to in respect of claims for refund of fares or part thereof or for refund of any "freight" paid in respect of goods entrusted to Railway Administration to be carried by the Railways.

11. I may also refer to the judgment of the Division Bench dated 25.06.2018 passed in First Appeal No.659 of 2018. The Division Bench has observed thus:

*"In view of such observations of the Supreme Court, it can be seen that the penal charges for overloading the wagons under section 73 would be part and parcel of the freight though charged at a higher rate for meeting with additional costs of wear and tear and also to prevent any breakage or accident. Nevertheless, the same are compensatory in nature. It can be seen that consignor would declare the weight to be loaded in wagons and would pay to the Railway, freight at the prescribed rate on such declared weight. If it is found that whether inadvertently or otherwise, the wagons carried excess weight, Railway administration would even otherwise be entitled to recover freight for such additional material. The Statute authorises the Railway administration to charge such freight at the rates which would be separately prescribed and which understandably be higher than the normal freight. Nevertheless,*

*such punitive charges would be part and parcel of freight for carriage of goods and any dispute with rest to the same would therefore, fall within the exclusive domain of Railway Claims Tribunal constituted under Section 3 of the Act of 1987”*

12. The Division Bench has held that punitive charge would be part and parcel of freight for carriage of goods and any dispute with regard to the same will fall within the domain of the Railway Claims Tribunal.

13. Under the circumstances, since the writ petitioner has an efficacious alternative remedy to approach the Railways Claims Tribunal, the writ petition is rejected summarily.

(A. S. SUPEHIA, J)

MAHESH BHATI/28

