

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. 11801/2013

[From the judgment and order dated 15.06.2012 in CMA No. 2561/2011 of the High Court of Madras]

Shri Ramji Enterprises Rep. by
Managing Partner

... Petitioner (s)

Versus

Union of India and others

... Respondent (s)

J U D G M E N T

KURIAN, J.:

1. Petitioner is the applicant before the Railway Claims Tribunal, Chennai in Case No. O.A.(I) 5/2008. The application was filed claiming compensation to the tune of Rs.13,76,720/- on account of the alleged short delivery of the 264 metric tonnes of charcoal. According to the petitioner, 850 metric tonnes of charcoal in gunny bags weighing around 72 kilograms each were entrusted to the Railways at Koodal Nagar Railway Station, Madurai by the petitioner for safe carriage and delivery to Indian Metals and Ferro Alloys Limited at Therubali Railway Station in Orissa, under railway

receipts issued between 16th and 19th September, 1993. The charcoal was loaded in 28 wagons directly from lorries, as per the receipts of authorized weigh bridge at Madurai. Since there was no weigh bridge at the Koodal Nagar Railway Station, the railway receipts contained following note “No weigh bridge at KON, destination to weigh collect u/c if any”. However, when the goods were delivered at Therubali to the consignee on 25.09.1993, no further weighment was made.

2. It appears, some disputes between the consignee and the petitioner (consignor) arose much later which also included a dispute on the quantum of charcoal delivered. Thus, based only on the plea of short delivery, after around 1½ years, the petitioner filed a complaint before the State Consumer Disputes Redressal Commission on 23.02.1995. Though the same was allowed, the National Consumer Disputes Redressal Commission set it aside on the ground of lack of jurisdiction. Thereafter, the petitioner filed the original application before the Railway Claims Tribunal (hereinafter referred to as ‘the Tribunal’). The Tribunal framed the following issues:

- “1. Whether the petition is barred by limitation under Section 17(a) of the RCT Act as alleged in Para 3 of the reply?
2. Whether a valid notice under Section 106 of the RCT Act, 1989 was served on the respondent railways or not as alleged in Para 2 of the reply?
3. Whether any partial delivery certificate has been issued by the respondent regarding shortage of the consigned goods?
4. Whether the petitioner is liable to get any compensation or not?
5. Whether the petitioner is entitled for any interest as claimed in the petition?
6. To what relief, if any?”

3. The issue no. 1 on limitation was answered in favour of the petitioner. Issue No. 2 was answered against the petitioner holding that no notice under Section 106 of the Railways Act, 1989 was served on the Railways. Issue no. 3 was also answered against the petitioner and in favour of the respondent holding that the consignee had taken delivery of the entire consignment under clear receipt and without any protest and, hence, there was no question of any partial delivery certificate. Issue nos. 4 and 5 were also answered against the petitioner. Thus, the application was dismissed by the Railway Claims Tribunal by judgment dated 14.12.2010.

4. The petitioner pursued its further remedy in Civil Miscellaneous Appeal before the High Court of Madras leading to the impugned judgment dated 15.06.2012. After elaborately considering the factual and legal aspects, the appeal was dismissed and, thus, aggrieved, the present special leave petition has been filed.

5. It has been specifically noted by the High Court as follows:

“11. ... There is no dispute with regard to the loading and unloading of charcoal and the number of gunny bags loaded and unloaded. It is also not the case of the appellant that there was shortage in the number of gunny bags unloaded. However, the shortage is only with regard to the quantity of charcoal unloaded, namely, 264 metric tonnes. Based on this, the claim is made by the appellant. However, the claim of short delivery of charcoal is based on the plea made by the consignee. Initially, the appellant had approached the Consumer Forum even without issuing a notice to the respondent Railways in March, 1995. That is, the goods were taken delivery by the consignee on 25.09.1993; the appellant had approached the Consumer Forum after a period of nearly 1½ years; the proof for short delivery is only the plea made by the consignee and that plea has been made by the consignee on 23.2.1995. If, actually, there had been short delivery of goods, it is not explained as to what prevented the consignee, while taking delivery, from bringing it to the notice of the Railway Authorities or what prevented the appellant from taking immediate steps in regard thereto. ...”

(Emphasis supplied)

6. There is also no case for the petitioner that the alleged short delivery was verified by the petitioner in its presence at the premise of the consignee. In any case, there is no case for the consignee before the Railways that there was short delivery. The goods were taken delivery without any protest and there was never any representation by the consignee before the Railways that there was any short delivery. It was the petitioner (consignor) for the first time which made a claim before the Consumer Commission regarding the alleged short delivery after around 1½ years, based only on the plea of the consignee made after more than one year. Admittedly no notice was sent either by the consignee or by the consignor under Section 106 of the Railways Act, 1989 regarding the alleged short delivery before filing a complaint before the State Consumer Disputes Redressal Commission, after 1½ years of taking delivery. It is also significant to note that the consignee did not have any protest with regard to the number of gunny bags or the alleged weight entered in the railway receipts, at the time of delivery. Certainly the claim suffers from delay and laches.

7. In such circumstances, we do not find any merit in this petition. Both, the Railway Claims Tribunal and the High Court have correctly appreciated the factual and legal position. The special leave petition is accordingly dismissed.

8. There is no order as to costs.

.....J.

MISRA)

.....
(GYAN SUDHA

.....
.....J.
(KURIAN JOSEPH)

**New Delhi;
April 25, 2014.**

JUDGMENT