The Upper Doab Sugar Mills Ltd. vs The Shahadara (Delhi), Saharanpur ... on 18 February, 1969

Equivalent citations: 1969(1)UJ249(SC)

JUDGMENT

Grover, J.

1. This is an appeal by special leave from an order dated December 31, 1963 of the Railway Rates Tribunal functioning at Madras in Complain: No. 1 of 1960 instituted by the appellant under Section 14(1)(b) and (c) of the Indian Railways Act 1890, hereinafter called the "Act".

2. The appellant manufactures sugar at its mills and the principal raw material used is sugarcane which is carried to the mill premises at Shamli by rail from stations on the respondent's Light Railway running between Shahadara-Delhi and Saharanpur. The milling process is stated to be practically continuous from the month of November of one year to the month of May in the following year during which period the Railway carries to Shamli in full train loads an average of approximately 150 wagons per day. The mill also imports through the Railway large quantities of coal, oil, gunny bags mill stores, molasses and machinery and exports considerable quantity of sugar and spirits. The mill is stated to have a number of private sidings, wharves and warehouses. It is claimed by the appellant that all major terminal facilities at Shamli are provided for by it and all major terminal services are rendered at its own cost.

3. Between January 15, 1944 and September 30, 1953, the rates for carriage of sugarcane to Shamli were as follows, (vide Table AJ:

"To Shamli from Ailum Rs. 3-8-0 per 4 wheeler OR:L ....."

By Local Rates Advice No. 8 of 1953 the rates were enhanced as set out in Table B. It is necessary to refer only to the rates relating to one station namely Ailum for the sake of illustration.

"To Shamli from Ailum Rate Rs. 2-6-0+Rs. 9-6-0 term Rs. 11-12-0 ....."

The appellant instituted a complaint on January 8, 1954 before the Railway Rates Tribunal at Madras under Section 41(1) of the Act. This complaint was directed against the rates fixed by the Local Rates Advice No. 8 of 1953. The Tribunal by a majority (the President dissenting) held that it had jurisdiction to go into the reasonableness of the terminal charges and that as the terminal services were being rendered only at the loading station and not at Shamli the charge of Rs. 9-6-0 per 4-wheeled wagon should be reduced to one half of that amount. The respondent Railway came up in appeal by special leave to this Court against the majority decision of the Tribunal. Pending

disposal of the appeal the respondent gave effect to the Tribunal's decision; the rates being those given in Table C. It may be mentioned that from or about August 1, 1956 the respondent levied a supplementary charge of one anna in the rupee (i.e. 6 3/1%) on the charges given in Table C but from or about July 1, 1957 this supplementary charge was enhanced to two annas in a rupee. On February 9, 1960 this court disposed of the appeal holding that the levy challenged by the appellant was one of standardised terminal charges and the same was excluded from the jurisdiction of the Tribunal under Section 41(1) of the Act as it then stood.

4. Certain provisions of the Act were amended by the Indian Railways Amendment Act 1957 with effect from July 27, 1958 and by the Indian Railways Amendment Act 1961 with effect from Jan, 1, 1962. These amendments will be presently noticed. By Local Rates Advice 2A of 1960 which was introduced from Feb. 10, 1960 a new Table of rates was provided. These rates as given in Table E are as follows; (They are the same as in Table D which became effective from July 1, 1957 after enhancement of the supplementary charge). "From To Condition Rate per 4-wheeler Ailum Shamli P/O in wagon Load Rs. 13.22 np. OR :

> ....." On May 6, 1960 the appellant instituted a complaint, out of which the present appeal has arisen, before the Tribunal. In the complaint as originally filed the grievances were still directed against the rates contained in Local Rate Advice No. 8 of 1953. The appellant, however, obtained leave of the Tribunal to amend the complaint when it was realized that Local Rate Advice No. 2A of 1960 had come into force with effect from February 10, 1960. The main reliefs which were claimed by the appellant were for a declaration that the rates charged under the Local Rate Advice No. 8 of 1953 and the Local Rate Advice No. 2A of 1960 were unreasonable. A direction was also sought for refunding to the appellant the excess amount charged.
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> The respondent filed a reply- traversing most of the allegations made in the complaint. The position taken up by the respondent was that the rates levied were based on the minimum rates fixed by the Central Government under Section 29(1) and Section 29(2) of the Act.
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> It was asserted that the rates and charges levied by the respondent were resonable and that the Tribunal had no jurisdiction to go into the question of the reasonableness of the terminal charges standardised under Section 32 of the Act prior to the amendment made by the Amending Act of 1957. It was pleaded that the respondent had provided several terminal facilities and was per forming terminal services at Shamli station. As regards the rates introduced by the Local Rate Advice No. 2A of 1960 it was stated that these rates had been fixed on the basis of rates and charges notified by the Central Government under Section 29 of the Act. It is unnecessary to give the other details contained in the reply of the respondent relating to the services rendered and the manner in which the rates were fixed because the controversy before us is confined only to a few matters.

5. On the pleadings as many as 10 issues were framed by the Tribunal Some of these issues were decided as preliminary issues. Issue Nos. 6 and 9A were in these words :

"6. Has the Tribunal jurisdiction to entertain or try the present complaint regarding reasonableness or otherwise of rates and/or charges prior to the institution of this complaint, or, at any rate, prior to 27-7-1958. 9A. Has this Tribunal jurisdiction to grant a refund."

6. The Tribunal held on these issues that it had no jurisdiction to try the complaint, as regards the reasonable-ness or otherwise of rates and charges prior to the institution of the complaint on May 6, 1960, nor it had any jurisdiction to grant refund. The appellant came up to this court against the Tribunal's decision on the aforesaid issues by special leave. This court upheld the Tribunal's decision. (See.). It was decided that the Tribunal had no jurisdiction to consider the reasonableness or otherwise of any charges made prior to the institution of the complaint and it followed necessarily that it could have no occasion to order any refund.

7. After the above decision the Tribunal proceeded to dispose of the complaint on the issues which according to it survived for decision. In its opinion the findings on issues Nos. 6 and 9A as also the consequential findings on issues Nos. 1, 7 and 9B had become final. Issues Nos. 2, 3, 5A and 5B, 8 and 10 were the only remaining issues which had to be disposed of. These issues may now be set out.

> "(2) Is the complaint barred on the principles of waiver acquiescence or estoppel ?
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> (3) Is the complaint barred on the principles of res-judicata ?
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> (5a) Has this Tribunal jurisdiction, in view of amendments made to the Indian Railways Act, 1890, by the Indian Railways (Amendment) Act 53 of 1957 to examine the reasonableness of the levy of standardised terminal charges for sugarcane ? If so, from what date ?
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> (5b) If the Tribunal has the jurisdiction, are the terminal charges levied on sugarcane illegal or unreasonable and should they be set aside or reduced ? If so, from what date ?
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> (8) Whether the rates and/or charges introduced by the respondent by means of the Rate Circular No. 2A of 1960 are unreasonable ?
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> (10) To what station to station rates, or to any other, if so what relief is the complainant entitled ?"

On issue No. 2 the Tribunal held that the present complaint was not barred on account of any waiver, acquiescence or estoppel. On issue No. 3 the Tribunal was of the opinion that the decision of the earlier complaint No. 2 of 1954 could not operate as res- judicata with regard to the question raised in the present complaint about the rates levied under the Local Rate Advice No. 2A of 1960 being unreasonable. It was, however, held that the finding in the earlier decision that the respondent

was rendering terminal services and that terminal charges could be levied for such services would bar the investigation of the allegation in the present complaint that the respondent was not rendering any terminal services. On issue Nos. 5 (a) and (b) the conclusion of the tribunal was as follows: (i) After the amendments made in the Act with effect from July 27, 1958 the Tribunal had jurisdiction to go into the question of reasonableness or otherwise of any charge including standardised terminal charges, (ii) The levy of standardised terminal charges, however, as a separate item had come to an end before the filing of the present complaint. Even if terminal charges had been merged in the integrated rates which had been levied under the Local Rate Advice No. 2A of 1960 there was no question of examining the reasonableness of terminal charges because no such charges were being levied as such. On issue No. 8 the Tribunal was of the view that owing to the amendments made in the Act the Railway Administration was not bound to specify in the account to be rendered to the consignor under Section 61 of the Act how much of the total charge levied came under the head "terminal'' After referring to the Report of the Railway Freight Structure Enquiry Committee and the previous decision of this Court it was held that the impugned levy of charges was made not merely for the carriage of the commodity to the station platform at Shamli but it also included the carriage of commodity right upto the appellant's sugar mill upto the point of the siding. The Tribunal went into the entire evidence produced, by the parties and held that the integrated rates provided by the Local Rate Advice No. 2A of 1960 were quite reasonable. On issue No. 10 it was held that the complainant was not entitled to any relief owing to the above findings.

8. The only points which have been pressed before us by Mr. S.T. Desai counsel for the appellant are (1) After the amendments made by the Amending Act of 1957 the respondent was not entitled to recover terminal charges directly or indirectly. In fact and in substance the station to station rates as fixed by the Local Rate Advice No. 2A of 1960 comprised not only the haulage charges but also the standardised terminal charges. (2) Alternatively the standardised terminal charges were unreasonable and should have been so found by the Tribunal.

9. In order to dispose of the contention raised on behalf of the appellant it is necessary to refer to the relevant sections of the Act and the amendments made by the two Amending Acts of 1957 and 1961. Before the amendments the words "rate" and "terminals" were defined by Clauses 13 and 14 of Section 3 of the Act. These were:

> "rate" includes any fare, charge or other payment for the carriage of any passenger, animal or goods;
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> "terminal" includes charges in respect of stations, sidings, wharves depots, warehouses, cranes and other similar matters, and of any services rendered thereat;"

Section 29 conferred power on the Central Government to fix maximum and minimum rates. Under Sub-section (1) the Central Government could, by general or special order, fix maximum and mini-

mum rates other than a minor railway. By Sub-section (2) any complaint that a railway administration was contravening any order issued by the Central Government had to be determined by that Government. Under Section 32 the Central Government could, by general or special order,

fix the rate of terminal and other charges for the whole or any part of a railway and prescribe the conditions in which such rates would apply. Section 34 provided for the Constitution of the Tribunal and Section 41 for the complaints which could be made against the railway administration. Clauses (b) and (c) of Sub-section (1) of that section were in the following terms:--

> "Section 41(1) Any complaint that a railway administration-
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> (b) is charging station to station rates or wagon load rates which are unreasonable owing to any condition attached to them regarding minimum weight, packing, assumption of risk or any other matter, or
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> (c) is levying charges (other than standardised terminal charges) which are 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."

Section 46 empowered the railway administration interalia to quote a new station to station rate or to increase or reduce an existing station to station rate not being a rate introduced in compliance with an order made by the Tribunal. Section 61 enabled a person on whose behalf a charge had been paid to the railway administration in respect of the carriage of goods to apply for being supplied an account showing how much of the charge came under the various heads mentioned in the section which included the carriage of the goods on the railway and the terminals.

10. The amendments made by the Amending Acts, to the extent necessary for our purposes, may next he noticed. Clause 14 of Section 3 defining the word "terminals" was omitted by the Amending Act of 1961. The amendments made in Section 29 by Section 4 of the Amending Act 1957 need not be mentioned, as Sub-section (1) with which we are concerned was not amended. Section 32 which gave power to the Central Government to fix terminal and other rates was omitted by the Amending Act of 1957. Section 41(1) was substituted by the new sub-section by the Amending Act of 1957. It may be reproduced;

> "Section 41(1) Any complaint that a railway administration-
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> (a) is contravening the provisions of Section 28, or
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> (b) is charging for the carriage of any commodity between two stations a rate which is unreasonable, or
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> (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."

In Section 61 the head "terminals" was omitted by the Amending Act of 1961.

11. As has been rightly pointed out by the Tribunal, by the deletion of Section 32 the Central Government's power to fix rate of terminal charges was taken away. The effect of the omission of the words "other than standardised terminal charges" from Clause (c) of Sub-section (1) of Section 41 of the Act as it stood before the amendments was to enlarge the Tribunal's jurisdiction to examine the reasonableness of any charge inclusive of charges for terminal services. There could, however, be no separate levy of terminal charges. It seems that the legislature was anxious to implement the recommendations made by the Railway Freight Structure Enquiry Committee in its report made on April 14, 1957. Before it the consensus of opinion was in favour of abolition of terminal charges and of their being merged into the haulage charge. The Committee found that on most of the foreign railways there was no separate terminal charge but the freight rate included the cost of all the services rendered by the railway and the haulage service was taken in continuation of the terminal services performed before the journey commenced and was completed at the destination. Both haulage and terminal services were thus considered as inseparable parts of the total transportation services. The Committee made a recommendation that the terminal charges as such should be abolished but that that fact should be taken into consideration, in evolving the revised rates structure. According to the Tribunal the fresh rates which were fixed under the new freight structure represented integrated charges. In other words the terminal charges became merged in the new rates.

12. Mr. Desai has assailed the view of the Tribunal that after the amendments made in the Act by the Amending Act of 1957 it was open to the respondent to fix rates which would include charges for terminal services. It is contended by him that the intention of the legislature as disclosed by the amendments, particularly, in the background of the report made by the Railway Freight structure Enquiry Committee for abolishing the charge for terminal services was to take away the power to make any charge whatsoever within the meaning of the word "terminals" as defined by Section 3(14) of the Act before its omission by the Amending Act of 1961. It is suggested that the respondent was not entitled to include in what may be called integrated or consolidated rates the charges covered by the word "terminals" as that would merely amount to making a charge for terminal services indirectly instead of doing so directly. By way of illustration it is pointed out that under Table D, the rate from Shamli to Ailum was only Rs. 2-6 As., whereas the standardised terminal charge was Rs. 9-6-0. 121/2% supplementary charge was made amounting to Rs. 1.47 np. The total came to Rs. 13.22 np. By Local Rate Advice 2A of 1960 all that was done was that a consolidated rate was shown (vide Table E) but this rate came exactly to the same figure as under Table D, namely. Rs. 13.22 np. per four wheeler. The figures, it is said, are tell-tale and clearly demonstrate that the rate of Rs. 13.22 np. included the terminal charges which were standardised at Rs. 9-6As. as shown in Table D.

13. It is true that the rate as shown in Table E is the same as was being charged under Table D but the question is whether by the amendments made in the Act the power of the respondent was completely taken away to make any charge of the nature denned by the word "terminals" and only rates or charges for haulage could be fixed. The provisions of the Act as amended do not justify the conclusion that any such result was intended, Section 3(13) defines the word "rate" as including any fare, charge or other payment for the carriage of any passenger, animal or goods. Under Clause (g) of Section 46(C) "station to station rates" means special reduced rates applicable to specific commodity booked between two specified stations. The Tribunal was right in saying that the

definition of the word "rate" in Clause 13 of Section 3 must govern the word "rate" in the expression "station to station rate" in Clause (g) of Section 46C. As the word "rate" can include any charge or other payment for the carriage of goods it is not possible to agree with Mr. Desai that it should be taken to mean charge for haulage only It is difficult to understand how any charge levied not only for the carriage of goods upto the station platform but also upto the point where the private sidings begin would not fall within the meaning of the word "rate" as defined in the Act. It may be that any charge made or levied for the services beyond the carriage upto the station platform would have fallen within the definition of the word "terminals" as it existed before the omission of Clause (14) of Section 3 but that cannot and does not mean that in fixing the rates payable for the carriage upto the private sidings the railway administration would not be justified in taking that fact into consideration while evolving the revised rates structure, (borrowing from the report of the Railway Freight Structure Enquiry Committee). Even the amendment of Section 61 having the effect of deletion of Clause (b) namely, "terminals" shows that the administration was no longer required to render an account giving the charges under that head. All this indicates that the legislature considered it proper that the railway administration should levy a rate which would include all the charges made in connection with the carriage of goods without in any manner having separate charges for haulage or in the nature of terminals That apparently was the reason why the bar which existed previously to rhe Tribunal examining the reasonableness of standardised terminal charges was removed. In other words when the railway administration fixed the consolidated rates which take in all charges it has been left to the Tribunal to examine the reasonableness of such rates which undeniably confers a benefit on consignors who may have any grievance in the matter of fixation and charge of these rates.

14. As pointed out at an earlier stage the Tribunal has examined the entire evidence relating to the reasonableness of the rates fixed by the Local Rate Advice No. 2A of 1960 Apart from the oral and documentary evidence the Tribunal applied the test of comparison with rates charged for sugarcane traffic on Government railways. It has been pointed out that the rate for 150 mds. for a distance of 20 miles on the Northern Railway came to .Rs 16.74 np which was definitely higher than the rate of Rs 13.22np. fixed for transport from Ailum to Shamli by the resppondent. The average rates were also worked out for the years 1959-60 and 1960-61. This is what the Tribunal has said on this aspect oi the matter:

> "In Ex.R. 134 Shri Diwan Chand has worked on the average rate levied on the broad gauge section of the Northern Railway for the transport of one maund of sugarcane. This has been worked out by dividing the total revenue on account of the freight rate on sugarcane for one year by the total quantity of sugarcane transported. On this basis the average rate is seen to be 11 6 np. per maund for the year 1959-60, & 11.4 np. per maund for the year 1960-61. In Ex. R. 135 this witness has similarly worked out the average rate per maund levied by the respondent railway also for the years 1957-58, 1958-59, 1959-60 and 1960-61. The average rate on the respondent railway for the years 1959-60 is seen to be 7.34 np. per maund and the average rate for 1960-61 is seen to be 6.73 np. per maund. These rates are considerably lower than the rates of 11.6 np and 11 4 np per maund realised by the Northern Railway for the corresponding periods. Thus, it has been clearly established by the evidence of R.W I.

> Sri Diwan Chand supported by the statements Ex.R. 1-33 Ex R.134 & Ex.R.135 that the rates levied by the respondent railway for sugarcane traffic are much lower than the corresponding rates levied by the Northern Railway."

In addition to this it has not been disputed on behalf of the appellant that the maximum and minimum rates fixed by the Central Government are higher than the rates which are being charged by the respondent under the impugned Local Advice. The lowest rate fixed by the Central Government was 11 np. per maund for a distance of 25 miles whereas the rates levied by Local Rate Advice No 2A of 1960 worked out at 9 np. per maund, for the same distance. In this view of the matter Mr. Desai has made no attempt to assail the correctness of the decision of the Tribunal with regard to the reasonableness of the rates fixed by the aforesaid Local Advice of 1960.

15. Finally he prayed for relief only with regard to the period July 27 1958 to February 9, 1960. According to him the Tribunal on its own finding was entitled to examine the reasonableness of the standardised terminal charges which has been recovered along with the rate and supplementary charge as shown in Table D. It is maintained by Mr. Desai that prior to the amendments made by the Amending Act of 1957, which came into effect on July 27,1958, it was not possible for him to obtain any relief as it had been held by this court that the Tribunal had no jurisdiction to determine the reasonableness of standardised terminal charges. But as soon as the relevant provisions of the Act were amended by the Amending Act of 1957 the Tribunal got the jurisdiction to examine the reasonableness of the aforesaid charges and even if it could not order any refund it could certainly grant a declaration that the same were unreasonable.

16. There are numerous hurdles in the way of acceding to the above contention of Mr. Desai. In the first place he is seeking to claim relief for a period which is prior to the date of the complaint. It is not possible to see how he could, in the presence of the previous decision of this court according to which relief can be given only from the date of the complaint, ask the Tribunal to entertain and decide the question of reasonableness for such period. Secondly it was open to the appellant at the time when the appeal was decided by this court on February 9, 1960 to make this prayer as the Amending Act of 1957 had come into force by that date. Mr. Desai says that such a prayer would have been futile because this court could not have given any relief and would have had only to remit the matter to the Tribunal. According to him even otherwise it was not necessary for him to have pressed this matter at that stage because the appeal which had been brought to this court by the respondent involved different points. It is not easy to agree with Mr. Desai that in spite of the change in Jaw it was not open to the present appellant to urge that the Tribunal had jurisdiction to investigate the reasonableness of the terminal charges at least from the date the Amending Act of 1957 came into force. It would appear that on principles of constructive res-judicata the position which has been now taken up by Mr. Desai cannot be sustained. At any rate even on the assumption that it was open to the appellant to ask for a consideration of the reasonableness of the rates by the Tribunal for the period July 27, 1958 to February 9, 1960, it is difficult to see any substance in the point. The charges for terminal services are included in the integrated or consolidated rates which have been fixed by the Local Rate Advice of 1960. The total amount on the showing of Mr. Desai himself come to the same figure of Rs. 13.22 for a four wheeler from Ailum to Shamli. If the rates under that Advice are held to be reasonable it will be futile to investigate into the reasonableness of

the charge under the head "standardised terminal charges" as given in the earlier Local Rate Advice.

We find no merit in this appeal which is dismissed with costs.