Union Of India (Uoi) vs Motilal Padampat Sugar Mills Co., (P) ... on 13 December, 1968

Equivalent citations: AIR1969SC630, (1969)1SCC320, [1969]3SCR75

Bench: R.S. Bachawat, S.M. Sikri

JUDGMENT

Sikri, J.

1. This appeal by special leave is directed against the order of the Railway Rates Tribunal hereinafter referred to as the Tribunal at Madras, dated March 25, 1965, determining reasonable rates at which siding charges can be recovered from the complaints, Motilal Padampat Sugar Mills Co. (P) Ltd. now respondent before us. The Tribunal determined that the existing charges being recovered by the North-Eastern Railway were unreasonable and unjustified and that the railway was not entitled to recover any charge for the haulage of the wagons over the assisted siding.

2. A similar appeal was decided by this Court in Union of India v. The Indian Sugar Mills Association. It was decided in that case that the complaint to the Tribunal was competent under Section 41(1)(c) of the Indian Railways Act, 1890.

Mr. Bindra, the learned counsel for the appellant, has raised in substance three point before us : (1) that on the pleading the Tribunal was not justified in adjudicating upon the charges levied for the maintenance of the assisted siding; (2) that the Tribunal had no jurisdiction under Section 41(1)(c) of the Act to determine the reasonableness of the charges levied for maintaining the assisted siding; and (3) that the Tribunal has erred in holding that the railway was not entitled to haulage charges for line 3 and 4.

In order to appreciate the points raised by the learned counsel it is necessary to give a few facts, as determined by the Tribunal. The respondent company was incorporated in the year 1932, with its registered officer at Kamla Tower, Kanpur, in the State of Uttar Pradesh. The company erected a Sugar Mill at Majhowlia in the district of Champaran in the State of Bihar, and started manufacturing sugar in the year 1933. The bulk of sugarcane required for the manufacture of sugar was transported to the respondent's mill from the sugarcane-growing areas in the neighbourhood of Majhowlia by the appellant railway. When the respondent started manufacture of sugar in the year 1933 the railway in that region was operated by the Bengal and North-Western Railway Company Limited which was later taken over by the Secretary of State in Council and is now owned an administered by the Government of India as the North-Eastern Railway. By an agreement, dated November 25, 1933, between the respondent and the Bengal and North-Western Railway Company Limited, the railway agreed to provide an assisted siding at the Majhowlia Railway Station to afford

better facilities for the delivery of goods consigned to the mill and for the dispatch goods sent out from the mill through the railway. Under the agreement the respondent had to pay fixed half yearly charge amounting to Rs. 917.20, representing 10% of the capital invested by the railway in the construction of the assisted siding, for its use. This half yearly payment continued till 1958, when the railway gave a notice to the respondent on February 8, 1958, intimating that on the expiry of six months from the date of receipt of the notice revised charges at the following rates would be levied in lieu of the fixed contribution that was being paid to the respondent railway :

> (1) Rs. 779.56 towards interest on the capital and cost of maintenance of the permanent way, points and crossing and interlocking connected therewith; and (2) siding charge at the rate of Re. 1 per four wheeled wagon hauled over the siding subject to a minimum of Rs. 7 per shunt.

These new rates were enforced on the expiry of the six months' notice. In March, 1960, the railway desired that a fresh agreement be entered into with effect from April 1, 1960. As the terms seemed onerous the respondent protested and some correspondence ensued. Ultimately the railway by letter, dated August 21, 1962, intimated to the respondent that with effect from March 1, 1963, the old agreement, dated November 25, 1993, would stand terminated and the siding facilities would be withdrawn. The respondent had no option but to pay the new charges claimed by the railway and the new charges were as follows -

> (1) fixed charges of Rs. 779.56 for each half year; and (2) siding charges at the rate of Rs. 1 per loaded four wheeled wagon subject to a minimum charge per trip arrived at by multiplying the average time taken per shunt by the cost of shunting engine hour.

3. On July 4, 1963, the respondent filed the complaint, dated June 26, 1963, before the tribunal. While the case was pending the railway increased the fixed charge of Rs. 779.56 to Rs. 3, 134.88 per annum with effect from August 17, 1963.

4. The description of the railway station and the line is given by the tribunal thus : Exhibit Rule 2 is the sketch showing the position of the several lines at the Majhowlia Station and also of the station and also of the station building and goods shed. Lines numbers 1 and 2 marked in this sketch are the running lines. Lines numbers 3 and 4 are the transfer line which constitute the assisted siding. Admittedly, lines numbers 3 and 4 are within railway premises and are completely on railway property. From the junction where these two line meet there is another line proceeding to the complaints' factory. This line is entirely within the property owned by the complainants and it is private siding of the complainants.

5. Coming to the first point raised by the learned counsel; this point was debated before the tribunal. The tribunal, after examining the original complaint, the amendments made in it, and the evidence led by the railway, come to the conclusion that the respondent was entitled to raise the question of the revision of hauling charges. The tribunal after reviewing the pleading observed :

> "In seeking for such correction being made in the complaint the complaints were not obliged to attack the increase under the aforesaid item as unreasonable particularly in view of the fact that this increase was notified to the complaints only after the filing of the complaint and also of the fact that there was already the general allegation in the complaint that the increase in the siding charges had been abnormal and unreasonable. Under these circumstances, it cannot be said that the allegation made in the complaint would not cover the increase under the items of interest and maintenance charges also. It has also to be mentioned that the respondent was not, in any way, misled by the allegations contained in the complaint and that no surprise was sprung on the respondent by pressing the complainants' case against the increase on account of interest and maintenance charges. The respondent was fully aware that the increase on account of interest and maintenance charges had also to be justified on the ground of increase in the cost of working the assisted siding. Even before the commencement of the recording of the evidence the respondent was ready with required evidence in that direction and hence it cannot be said that the failure to single out the increase in the maintenance charges and to attack the same in the complaint as an unreasonable levy has caused any prejudice to the respondent ..... Accordingly, I hold that the reasonableness or otherwise of all the charges levied by the respondent in respect of the assisted siding in question can and ought to be considered under issue number 4."

The learned counsel for the appellant has not been able to show that the Tribunal has misdirected itself in any manner in coming to the above conclusion. He drew out attention to a decision of the Privy Council in Siddik Mahomed Shah v. Mst. Saran (AIR 1930 SC 57) where the Privy Council observed that "no amount of evidence can be looked into upon a plea which was never put forward". This court in Nagubai Ammal v. B. Shama Rao ((1956) SCR 451, 461) discussed the scope of this observation and stated the law thus :

> "The true scope of this rule is that evidence let in on issues on which the parties actually went to trial should not be made the foundation for decision of another and different issue, which was not present to the minds of the parties and on which they had no opportunity of adducing evidence. But that rule has no application to a case where parties go to trial with knowledge that a particular question is in issue, though no specific issue has been framed thereon, and adduce evidence relating thereto. The rule applicable to this class of class is that laid down in Rani Chandra Kunwar v. Chaudhri Narpat Singh"

6. In view of this decision we must overruled the contention of learned counsel on this point because the Tribunal has found that the railway was ready with the required evidence and no prejudice had been caused to it.

Section 41(1)(c) of the India Railways Act, 1890, reads as follows :

> "41(1) Any complaint that a railway administration -

(a) is contravening the provisions of Section 28, 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."

Section 29(1) and 29(2), read thus :

"29(1) The Central Government may by general or special order fix maximum and minimum rates for the whole or any part of a railway and prescribe the conditions, in which such rates will apply.

(2) The Central Government may, by a like order, fix the rates of any other charges for the whole or any part of a railway and prescribe the conditions in which such rates of charges shall apply."

The word 'rate' is defined in Section 3(13) thus -

"'rate' includes any fare, charges or other payment for the carriage of any passenger, animal or goods."

7. The learned counsel for the appellant contends that this Court in Union of India v Indian Sugar Mills Association correlated Section 41(1)(c) to "any other charges" mentioned in Section 29(2), and if the definition of the word 'rate' is applied to Section 29(2) it would mean that only charges for carriage of goods and not hauling charges could be complained against under Section 41(1)(c). Bhargave, J., speaking for the Court observed at p. 226 :

"It is clear that a complain under Section 41(1)(b) relates to fixation of a rate relating to charges mentioned in Section 29(1), while Section 41(1)(c) relates to a complaint in respect of any other charge mentioned in Section 29(2). In appears to us, in these circumstances, that the expression "any other charge' used in Section 29(2) and Section 41(1)(c) cannot be given the narrow meaning of covering a charge in respect of the statutory duty of the railway so as to exclude charges made or levied by the railway for all other services".

After giving various reasons, Bhargava, J., concluded :

"It is enough to hold for the purposes of this case that at least the charges for carriage of goods from parts of the railway to points or places not forming part of the railway, will certainly be covered by the expression 'any other charge', used in Section 41(1)(c), so that the complaint in the present case was competently entertained by the

Tribunal."

It is true that the argument sought to be raised now has not been dealt with before, but it seems to us that the answer to this is simple. The definition of 'rate' cannot be applied to the expression 'rates of any other charges'. Here the word 'rates' merely means the scale or amount of any other charges. The definition of the word 'rate' cannot possibly be applied to Section 29(2) of the Act.

Coming to the third point, the Tribunal after reviewing the evidence came to the following conclusion :

> "From the above discussions of the evidence, it is clear that the goods consigned to the complainants' mills and dispatched from the mills cannot be effectively handled at the goods-shed siding without the use of the assisted siding. Under the existing facilities at the station it is practically impossible to deal with the complainants' traffic at the goods shed. Any attempt in that direction would involve very heavy expenditure on the part of the railway and would also involve larger time and works as compared with time and labour involved in handling this traffic at the assisted siding. In other words, by handling complainants' traffic at the assisted siding the railway is really incurring less of cost and less of work than it would have to incur in attempting to deal with the traffic at the goods-shed siding ..... Additional charge can be levied only for any special or extra service that may be rendered in any particular instance. The services rendered by the respondent railway in connection with the handling of complainants' good traffic at the assisted siding cannot be said be any special or extra service because the service rendered in that connection have been found to be definitely less than the services which the respondent railway had to render for handling these goods at the goods-shed siding as a statutory obligation even on the freight levied from the complainants. In view of the conditions prevailing at Majhowlia station the railway is really in an advantageous position, financially and otherwise, in handling the complainants' goods at the assisted siding instead of at the goods-shed siding. It follows, therefore, that the respondent railway is not entitled to levy any charge, in addition to the freight already levied for the handling of the complainants' goods at the assisted siding at this station which involves only a portion of the service which the railway is obliged to render in handling these goods at the goods shed siding. In other words, the claim for the haulage charges for the shunting operation done at the assisted siding is unjustified and unsustainable."

8. This is a finding of fact made by the Tribunal and no reason has been shown for displacing this pure finding of fact. The Tribunal has mentioned ample evidence from which it could reasonably come to the conclusion arrived at by it. It must be remembered that we are not sitting as a regular court of appeal from decisions of the Tribunal, and in such cases we do not ordinarily go into question of fact.

9. In the result the appeal fails and is dismissed with costs.