Union Of India vs M/S. Modi Industries Ltd on 30 March, 1973

Equivalent citations: 1973 AIR 1281, 1973 SCR (3) 835, AIR 1973 SUPREME COURT 1281, 1973 (1) SCC 781 1973 3 SCR 835, 1973 3 SCR 835

Author: A.N. Grover

Bench: A.N. Grover, Kuttyil Kurien Mathew

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
M/S. MODI INDUSTRIES LTD.

DATE OF JUDGMENT30/03/1973

BENCH:
GROVER, A.N.
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MATHEW, KUTTYIL KURIEN

CITATION:
1973 AIR 1281 1973 SCR (3) 835
1973 SCC (1) 781

ACT:
Indian Railways Act, 1890 Ss. 26 and 41-Complaint in respect of past dues cannot be made under s. 41 before Railway Rates Tribunal--In such cages. v. 26 of Act is not a bar to a suit in civil court and question of reasonableness of charges can be gone into by civil court.

HEADNOTE:
By agreement dated July 4, 1933 the respondent company was liable to pay charges for a railway siding at agreed rates. Clause 23 of the agreement laid down that it shall be open to the Railway Administration on giving six months notice of sum intent, to revise the said charges.. Clause 24 related to termination of the agreement in the event of nonpayment of dues within one month of demand., On March 26, 1949 the-railway authorities informed the respondent that the rates were proposed to be increased with effect from April 1, 1949. The respondent objected" to the increase as being

against clause 23 of the agreement. By a subsequent letter in September 1951 the Divisional Superintendent of the Rail-way asked the respondent to pay the charges at much higher rates. There was prolonged correspondence between the parties without the respondent agreeing to pay the higher rates demanded. On September 29, 1955 the. Divisional Engineer addressed a letter to the respondent proposing revision of the siding charges with effect from April 1, 1956 after the expiry of six months according to clause 23 of the agreement. These proposed'. charges were much lower than the charges demanded by the earlier letters.. On May 17, 1957 the General Manager of the Railway sent a letter to the plaintiff for payment of Rs. 93,981-8-0 in respect of the period December 1 1949 to March 31, 1956. it was intimated that on failure to make the said payment within one month the supply of wagons would be stopped' and steps to determine the agreement would be taken., In May 1957 the respondent served a notice under s. 80 of the Code of Civil Procedure and' thereafter filed a suit. The trial court partly decreed the suit. The High, Court decreed it in toto. In the appeal by certificate to this Court, filed' on behalf of the Union of India, the questions that fell for consideration were : (i) whether the civil court had jurisdiction in view of Ss. 26 and' 41 of the Indian Railways Act, 1890, to determine the reasonableness; of the charges-, (ii) whether the courts below if they had jurisdiction were justified in holding the charges to be unreasonable.

Dismissing the appeal,

HELD : (i) From the facts it appeared that the rates are being revised and actually enhanced, but then the matter was kept pending and there was exchange of correspondence and discussion between the parties from time to time. No effort was made to enforce the demand made in the various letters and the plaintiff was allowed to make payments according to the rates originally agreed. It was only in May 1957 that the respondent was really threatened to make payment of the outstanding amount calculated at the revised rates on pain of the supply of wagons being stopped and the agreement being determined.

According to the decisions of this Court it was hardly open to the respondent to file a complaint under s. 41 of the Act with regard to the.

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Reasonableness or otherwise of the rates and charges which had already 'become due and payable. The plaintiff had no grievance whatsoever with :regard to the charges which had been fixed with effect from April 1, 1956. By means of the letter dated September 29, 1955, and therefore there was no question of its filings, a complaint with regard to those charges. Its grievance was confined only to the amount which was being demanded on the basis of the revised enhanced rates between the period December 1, 1949 and March

1, 1956. If that amount bad actually been realised by the railway authorities the plaintiff could only file a suit for its refund and could not have laid a complaint under s. 41 of the Act before the Railway Tribunal. By analogy the plaintiff could not have filed a complaint with regard to the past dues as the Railway Tribunal could not have given any relief in respect thereof 'following the law laid down by this ,Court. In this view of the matter apart from other questions involving the validity of clause 23 of the agreement as also of the notice or intimation of rates on the ground on noncompliance with its terms the suit ,could not be held barred under s. 26 of the Act and the civil court could grant the relief claimed. [842H-843P]
Union of India v. The Indian Sugar Mills Association, Calcutta, [1967] 3 S.C.R. 219, Raichand Amulakh Shah v. Union of India, [1964] 5 S.C.R. 148 and Upper Doab Sugar Mills Ltd. v. Shahdara (Delhi) Saharanpur Light Railway Company Ltd., [1963] 2 S.C.R. 333 at p. 342, referred to.
(ii) There was no serious infirmity in the reasoning of the High Court by which it arrived at the conclusion that the question of reasonableness of the charges, keeping in mind the 'facts of this case, was justiciable. Nor bad any justification been shown 'for reopening the concurrent finding of the two Courts below that the rates which were demanded for the period in question were unreasonable. The suit was thus rightly decreed. [843E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1616 of 1967.

Appeal by certificate from the judgment and order dated '- September 30, 1966 of the Allahabad High Court in First Appeal -No. 198 of 1960.

Gobind Das and B. D. Sharma, for the appellant. C. B. Agarwala, Uma Mehta, S. K. Bagga, Swreshta Bagga and Ram Arora, for the respondent.

The Judgment of the Court was delivered by GROVER, J.---This is an appeal by certificate from a judgment ,of the Allahabad High Court in a suit filed by the plaintiff-respondent for an injunction against the defendant-appellant restraining it from realizing the sum, of Rs. 93,981-8-0 on account of the alleged siding charges for the period December 1, 1949 to March 31, 1956 and from stopping the supply of wagons in the railway siding of the plaintiff and further from cancelling the agreement ,dated July 4, 1933 for the aforementioned reason. The facts necessary for deciding the appeal may be stated. By means of an agreement dated July 4, 1933 the plaintiff entered into an agreement with the Secretary of State for India-in-Council through the agent of the North Western Railway (now represented by the Union of India) whereby it was agreed that the former shall Jay a railway siding from Begamabad Station Yard of that railway for enabling the plaintiff to carry on its business at its,

premises. Clause 13 of the agreement was as follows :-

> "Freight for all classes of goods will be charged upto and from Begumabad Station. Railway Receipts and invoices shall be issued to and from the station only and in accordance with the rates from time to time published in the Goods Traffic Books of this Railway Admi- nistration will make the following charges in each direction from every wagon loaded or empty in or removed from the lines A and B mentioned in clause 15 below (1) Per 4 wheeled wagon Re. One.
>
> (2) Per 6 wheeled wagon Re. One and annas eight (3) Per 8 wheeled wagon Re. two."

Clause 23 of the agreement provided "Notwithstanding anything laid down in the foregoing clauses of this Agreement, it shall be open to the Railway Administration on giving six months notice of such intent, to revise the charges laid down in clauses 8, 12, 13 and 19 of this Agreement".

Clause 24 related to termination of the agreement in the event of non payment of dues within one month of demand. On March 26, 1949 the Divisional Superintendent of the E.P. Railway (successor in interest of the North Western Railway) informed the plaintiff that the rates were proposed to be increased with effect from April 1, 1949, the increased charges being mentioned in that letter. As this intimation was not in accordance with clause 23 of the agreement the plaintiff refused to agree to the increase. Other objections were 'also raised, one of the objections being that the charges were excessive. The Divisional Superintendent addressed another letter on May 18, 1949 informing the plaintiff that with effect from December 1, 1949 the charges mentioned therein would be made. A good deal of correspondence and discussions between the representatives of the plaintiff and the railway authorities took place and by a letter dated July 20, 1951 the Divisional Superintendent intimated that the revised siding charges in force from December 1, 1949 were purely pro- visional and were subject to revision. Meanwhile and subsequent to the above date the required tests were made to determine the charges. In September 1951 the Divisional Superintendent wrote to the plaintiff that the siding charges should be, paid with effect from December 1, 1949 to September 30, 1951 at the following rates :-

(i) Per 4 wheeled wagon	Rs.	51-
(ii) Per 6 wheeled wagon	Rs.	7/8/-
(iii) Per 8 wheeled wagon	Rs.	10/-

The plaintiff protested against what was called the exorbitant nature of the charges and made it clear that the letter of September 1951 did not comply with clause 23 of the agreement and that the charges were unreasonable and could not be legitimately made. Another letter dated October 26/November 6, 1951 was sent by the Divisional Superintendent saying that the siding charges to be levied with effect from first October 1951 were being assessed and would be intimated to the plaintiff and meanwhile it should ,continue to pay the charges demanded in the letter of September 1951 provisionally. The Divisional Superintendent addressed another letter dated November 27, 1951 explaining the result of the test and the actual cost of the shunting etc. A demand was made' that the revised siding charges should be paid from December 1949 to September 30, 1951 at Rs. 4/- per 4 wheeler, Rs. 6/per 6 wheeler and Rs. 8/- per 8 wheeler. The plaintiff, however. did not pay the

increased rates demanded. On September 29, 1955 the Divisional Superintendent addressed a letter to the plaintiff proposing revision of the siding charges with effect from April 1, 1956 after the expiry of six months according to clause 23 of the ,agreement. The charges as demanded were as follows:--

(i) 4 wheeled wagon Rs. 1 20/-

(ii) 6 wheeled wagon Rs. 2 -10/-
(iii) 8 wheeled wagon Rs 3 501-

On May 17, 1957 the General Manager of the Railway sent a letter to the plaintiff for payment of the, amount of Rs.

93,981-8-0 representing the difference between the amounts due from December 1, 1949 to March 31, 1956. It was intimated that on failure to make the said payment within one month the supply of wagons would be stopped and steps to determine the agreement would be taken. In May 1957 the plaintiff served a notice under s. 80 of the Civil Procedure Code to be defendant and ,.hereafter in October 1958 the suit out of which the appeal has arisen was filed. Out of the issues framed by the trial court on the pleadings of the parties the following need be mentioned (1) "Whether the enhancement of the siding charges by the defendant is unjustified, exorbitant and illegal ?

8 39 (2) Whether the demand of Rs. 93,981-8-0 by the defendant is illegal ?

(3) Whether the court has no jurisdiction to try the suit ?"

On issue. No. 1 the trial court held that the charges demanded were unjustified and exorbitant. It was held that out of the demand of Rs. 93,981-8-0 the demand for Rs. 22,111-3-0 was illegal. On issue No. 4 the trial court expressed the view that it had jurisdiction to try the suit in respect of that portion of the claim whereby the legality of the enhanced siding charges had been challenged on account of being in violation of clause 23 of the agreement but it had no jurisdiction to try the suit in respect of the second ground whereby the enhanced siding charges had been challenged as unjustified and exorbitant. The plaintiff appealed to the High Court and the defendant filed cross objections. The High Court affirmed the finding of the courts below that the enhancement made by the Railway Administration was highly unjustified and exorbitant. But it did not accept its finding about the legality of the enhancement and also on the question of the jurisdiction of the civil court. The appeal was consequently allowed in toto and the cross objections were dismissed. The principal question which has been agitated before us relates to the jurisdiction of the civil court to determine the reasonableness of the charges. A subsidiary question has been raised that assuming the civil court had the jurisdiction, whether the courts below were justified in holding that to be unreasonable. For the purpose of determining the question of jurisdiction we shall have to examine the relevant provisions of the Indian Railways ,Act, 1890, hereinafter called the 'Act'. Section 3 contains the definitions. Clauses 11 and 13 defining the words "traffic"

and rates" are as follows -

> "(11) "trafic" includes rolling stock of every description as well as passengers, animals and goods;
>
> (13) "rate" includes any fare, charge or other payment for the carriage of any passenger, animal or goods";

Chapter V headed "traffic facilities" commences with S. 26. According to that section except as provided in the Act no suit shall be instituted or proceedings taken for anything done or any omission made by the Railway Administration in violation or contravention of any provision of that Chapter. Section 27 (1) places a duty on every Railway Administration to afford all reasonable facilities for the receiving, forwarding and delivering of traffic upon and from the several railways belonging to or worked by it and for the return of the rolling stock. Section 29 is as follows :-

> S.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.
>
> (3) Any complaint that a railway administration is contravening any order issued by the Central Government under sub-

section (1) shall be determined by the Central Government"..

Section 34 relates to the constitution of the Railway Rates Tribunal for the purpose of discharging functions specified in Chapter V. Sections 39 and 40 give the jurisdiction and powers of the Tribunal, Section 41 to the extent it is material may be reproduced :-

> S.41 (1) "Any complaint that a railway administration-
>
> (a) is contravening the provisions of s. 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".

( ) ..... .

(3) In the case of a complaint under clause

(b) or clause (c) of subsection (1), the Tribunal may fix such rate or charge- as it considers reasonable :

Provided that .....

(4)..... "

on behalf of the appellant the bar created by the s. 26 to the jurisdiction of ordinary courts has been invoked. It has been argued that s. 29(2) postulates the fixation of rates of charges other than those contemplated by sub-s.

(1). If there is any grievance that the railway administration is levying a charge which is unreasonable it will be covered by S. 41 (1) (c) and there-

fore, only a complaint can be made to the railway administration in that matter. The jurisdiction of the civil court will be barred because exclusive jurisdiction has been conferred on the Railway Rates Tribunal for determining whether the charge being levied is unreasonable. According to the High Court Chapter V has nothing to do with charges which are payable under a contract. The validity and interpretation of clause 23 of the agreement between the parties was a matter for the interpretation of the civil court and could not possibly be barred by s. 26 of the Act. Section 41 (1) (c) has no application to an enhancement already made in the purported exercise of the right under a contract.

Now section 26 only bars the institution of a suit or proceedings for anything done or any omission made in violation or contravention of any provision of Chapter V. Section 29(2) empowers the Central Government to fix the rates of any other charges by a general or special order. In view of the language of s. 41 (1) (c) if it is assumed that the rates cannot be unreasonable and if the Central Government fixes unreasonable rates it may be possible to say that there has been a contravention or violation of s. 29(2). But such fixation of rates under that provision has to be by a general or special order. It has been suggested that a communication made under a contract cannot fall within the meaning of the word "order" as contemplated by s.

29. Prima facie, there may be some difficulty in acceding to the contention of the learned counsel for the appellant that any part of s. 29 will cover a revision of rates made by the railway authority in terms of a contract but the matter seems to stand concluded by the decision of this Court in Union of India v. The Indian Sugar Mills- Association, Calcutta() according to which it is immaterial that the charges being levied by the railway administration arise as a result of a voluntary agreement. The real difficulties in the way of the appellant are two fold; firstly, if any question arises about the validity of a clause of a contract that will be entertainable by a civil court. As laid down in Raichand Amulakh Shah v. Union of India (2) the Railways Tribunal has no jurisdiction to decide whether the rules empowering the railway administration to levy a particular charge are ultra vires or whether the railway administration collected amounts in excess of the charges which it can legally levy under a rule. In Upper Doab Sugar Mills Ltd. v. Shahadara (Delhi) Saharanpur Light Railway Company

Ltd.(,') two main points arose; one was whether the Railway ,Tribunal had jurisdiction to entertain the complaint as regards the reasonableness of the rates prior to the institution of the complaint (1) [1967] 3 S. C. R. 219. (2) [1964] 5 S. C. R. 148. (3) [1963] 2 S. C. R. 333 at p. 342.

6-L797SupCT/73 and the other was whether it had jurisdiction to grant refund for the aforesaid period. This is what was said by Das Gupta J.

"The words "charging" in cl. (b) and "levying"

in cl. (c) were used in the one and the same sense. We find it impossible to agree however that they were used to include "collecting". It appears to be clear that if the intention of the legislature was to give the Tribunal jurisdiction over complaints in connection with charges ,already made the legislature would have used the words "has charged and is charging" and would not merely say "is charging". Special jurisdiction of such a nature would be given clearly and the very fact that the words "has charged" have not been used is sufficient ground for ,thinking that it was not the legislature's intention to give the Tribunal jurisdiction over complaints in connection with charges made in the past. In our opinion, the words "is charging" in cl.

(b) and "is levying" in cl. (c) must be construed to mean "is demanding a price at the present time for services to be rendered". Coming to the facts of the present case it is apparent that one of the main questions involved was whether clause 23 of the contract between the parties was not void because it contravened s. 29 of the Indian Contract Act. Another question which had to be investigated was whether a proper notice regarding the enhancement of rates had been given in accordance with the terms of the said agreement. From the facts which have been stated it appears that the rates were being revised and actually enhanced, but then the matter was kept pending and there Was exchange of correspondence and discussion between- the parties from time to time. No effort was made to enforce the demand made in the various letters and the plaintiff was allowed to make payments according to the rates originally agreed. It was only in May 1.957 that the plaintiff was really threatened to make payment of the outstanding amount calculated at the revised rates on pain of the supply of wagons being stopped and the agreement being determined. It is somewhat surprising that in September 1955 the rates which were revised were very much less-than those which were demanded for the prior period. The position thus remained in a flexible state and there is a good deal of substance in the submission on behalf of the plaintiff-respondent that a complaint was not filed under S. 41 of the Act because the rates which ",were being paid and actually accepted were the same as the contractual rates and not the revised or enhanced rates. According to the decisions of this Court referred to before, it was hardly open to the plaintiff to file a complaint with regard to the reasonableness or otherwise of the rates and charges which had already become due and payable. The plaintiff had no grievance whatsoever with regard to the charges which had been fixed with effect from April 1, 1956 by means of the letter dated September 29, 1955 and therefore there was no question of its filing a complaint with regard to those charges. Its grievance was confined only to the amount which was being demanded on the basis of the revised ,enhanced rates between the period December 1, 1949 and March 1, 1956. If that amount had actually been realised by the railway authorities the plaintiff could only file a suit for its refund and could not have laid a complaint under s. 41 of the Act before the Railway Tribunal. By analogy the plaintiff could not have

filed a complaint with regard to past dues as the Railway Tribunal could not have given any relief in respect thereof following the law laid down by this Court. In this view of the matter appart from other questions involving the validity of clause 23 of the agreement ,as also of the notice or intimation of enhancement of rates on the ground of non-compliance with its terms the suit could not be held barred under S. 26 of the Act and the civil court could grant the relief claimed.

We have not been shown any serious infirmity in the reasoning of the High Court by which it arrived at the conclusion that the question of reasonableness of the charges, keeping in mind the facts of this case, was justiciable. Nor has any justification been shown for reopening the concurrent finding of the two courts below that the rates which were demanded for the period in ques- tion were unreasonable. The suit was thus rightly decreed. The appeal fails and it is dismissed; but we make no order as to costs.

G.C. Appeal dismissed.