

Patna High Court - Orders

Bajaj Hindusthan Ltd. vs East Central Railway & Ors on 1 September, 2010

IN THE HIGH COURT OF JUDICATURE AT PATNA

CWJC No.10840 of 2010

BAJAJ HINDUSTHAN LTD., A PUBLIC LIMITED COMPANY  
INCORPORATED UNDER THE COMPANIES ACT, 1956  
HAVING ITS UNIT AT GOLA GOKARNATH, P.O. & P.S.  
GOLA, DISTT.- LAKHIMPUR KHERI (UTTAR PRADESH)  
THROUGH ITS AUTHORISED AGENT SHREE RAM  
BHALOTIA, S/O SRI S.G. BHALOTIA

Versus

1. EAST CENTRAL RAILWAY HAVING ITS OFFICE AT B-BLOCK DIGHI, HAJIPUR, DISTT.- VAISHALI (BIHAR) THROUGH ITS GENERAL MANAGER
2. THE CHIEF COMMERCIAL MANAGER, EAST CENTRAL RAILWAY B-BLOCK, DIGHI, HAJIPUR, DISTT.- VAISHALI (BIHAR)
3. SENIOR DIVISIONAL COMMERCIAL MANAGER EAST CENTRAL RAILWAY, DANAPUR, P.O. & P.S. DANAPUR, DISTT.- PATNA (BIHAR)
4. CHIEF GOODS SUPERVISOR, EAST CENTRAL RAILWAY FATUHA RAILWAY GOODS YARD, FATUHA, PATNA (BIHAR)
5. GOODS SHED SUPERVISOR, EAST CENTRAL RAILWAY FATUHA RAILWAY GOODS YARD, FATUHA, PATNA (BIHAR)
6. THE STATION HOUSE OFFICER, RAILWAY PROTECTION FORCE, FATUHA STATION FATUHA, DISTT.- PATNA

For the petitioner : Mr. Y.V.Giri, Sr. Advocate.  
Mr. Raju Giri, Advocate.  
For the Respondent no. 7 : Mr. Ravij Kr.Verma, Sr. Advocate.  
Mr. Sanjeev Kumar, Advocate.  
For the Railways : Mr. Anil Kumar Sinha, Advocate.

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O R D E R

5. 01-09-2010 1. This writ petition has been filed by the petitioner (Bajaj Hindusthan Ltd.) challenging the Letter (Annexure-5) of Ex- Goods Shed Supervisor, E.C. Railway, Fatuha written to M/s Pratik Enterprises (Respondent no. 7) detaining 5 wagons (3058.5 quintals) of sugar of the petitioner company kept at open railway yard at Fatuha until he produces railway receipts of 12 wagons sugar, which was released in favour of Respondent No. 7 on earlier consignment. Another relief sought for is for a direction to respondent authorities (Respondent nos. 1 to 6) to immediately release the aforesaid 05 wagons sugar lying in open place which the petitioner company had booked with the railways at Gola Gorakhnath via Gonda to be transported to Fatuha Railway Station so that the same may be delivered to intending purchasers.

2. The claim of the petitioner (Bajaj Hindusthan Ltd.) is that it is a sugar factory which is a public limited company incorporated under the Companies Act, 1956 and it booked 42 wagons of sugar

from Gola Gorakhnath Railway Station for Fatuha vide goods train reaching Fatuha on 27-06-2010. It is further claimed by the petitioner that out of 42 wagons, 33 wagons were for M/s Pratik Enterprises (Respondent no. 7) and the remaining 09 wagons were for other purchasers and hence, when the goods train reached Fatuha Station, 33 wagons of sugar were received by the petitioner's agent who gave it to M/s Pratik Enterprises (Respondent no. 7). Further 04 wagons of sugar were also received by the petitioner's agent who supplied it to the other purchasers, but the remaining 05 wagons of sugar, which were for other purchasers, were not given by the authorities to the petitioner's agent on the ground that on some earlier occasion 12 wagons of sugar were received by M/s Pratik Enterprises (Respondent no. 7) without showing any railway receipts merely on the basis of indemnity bond.

3. Learned counsel for the petitioner (Bajaj Hindusthan Ltd.) submitted that 05 wagons of sugar, which were blocked by the railway authorities (Respondent nos. 1 to 6) were not concerned with M/s Pratik Enterprises (Respondent no. 7) rather they belonged to the petitioner (Bajaj Hindusthan Ltd.), which was intended for other purchasers and hence, the respondents authorities were not justified in blocking 05 wagons of sugar, although the petitioner had produced all the 42 rent receipts for the present consignment. It was also argued that the name of the consignees were not written in the railway receipts and it transpires that the railway authorities had subsequently included the name of M/s Pratik Enterprises (Respondent no. 7) on all those 42 railway receipts, which was obviously for illegal purpose.

4. On the other hand, learned counsel for the respondent Nos. 1 to 6 vehemently opposed the contentions of the learned counsel for the petitioner and submitted that all rights and liabilities of the consignment had passed to M/s Pratik Enterprises (Respondent no. 7), who was the consignee noted in all the 42 railway receipts, which reached Fatuha Station on 27-06-2010. It was further stated that railway is not concerned with the internal arrangement between the petitioner and Respondent no. 7 and it was M/s Pratik Enterprises, who was liable for all the 42 wagons of sugar. It was also averred by learned counsel for the respondent authorities (Respondent no. 1 to 6) that on earlier occasion also 42 wagons of sugar had come in the name of M/s Pratik Enterprises (Respondent no. 7), but it produced only 30 railway receipts and took away all the 42 wagons of sugar producing indemnity bond for the remaining 12 wagons of sugar whereafter Respondent no. 7 had to produce rent receipt for the remaining 12 wagons of sugar, which it never did and hence, the authorities concerned were quite justified in blocking the delivery of 05 wagons of sugar in the present consignment. Learned counsel for the said contesting respondents also relied upon Section 83 of the Railways Act, 1989, which empowered the authorities concerned to detain any subsequent consignment of such person for whose earlier consignment he had failed to pay on demand any freight or other charges due from him and the authorities were even entitled to sell the item if it was perishable in nature.

5. M/s Pratik Enterprises (Respondent no. 7) also appeared in the case and supported the claim of the petitioner (Bajaj Hindusthan Ltd.) stating that earlier consignment was not of the petitioner or of Respondent no. 7 rather it belonged to Prakash Bhalotia & Bros. of Kolkata who was the consignee as would be apparent from Annexure-R/2 of the counter affidavit filed by the respondent authorities. He further submitted that M/s Pratik Enterprises (Respondent no. 7) is of Patna

whereas the said consignee of the earlier consignment was M/s Prakash Bhalotia & Bros. of Kolkata which had no concern with Respondent no. 7 and the said earlier consignment had come from Sangli which was unconnected with the petitioner.

6. From the aforesaid facts and circumstances of the case as well as the pleadings of the parties and the materials on record, it is quite apparent that earlier consignment which is annexed as Annexure-R/2 to the counter affidavit of respondent authorities, was in the name of Prakash Bhalotia & Bros. of Kolkata, which was unconnected with the petitioner (Bajaj Hindusthan Ltd.). The indemnity bond with respect to the earlier consignment was also issued by the said Prakash Bhalotia & Bros. of Kolkata and there is nothing to show from the said indemnity bond that M/s Pratik Enterprises (Respondent no. 7) had any connection with the said indemnity bond with respect to the earlier consignment.

7. So far the present consignment is concerned, admittedly, it was sent by the petitioner (Bajaj Hindusthan Ltd.) from Gola Gorakhnath to Fatuha and all the requisites including the excise duty etc. had already been paid and there were no dues with respect to the entire 42 wagons of sugar of the present consignment. Hence, there was no occasion at all for the Respondent authorities to block 5 wagons of sugar due to non-production of railway receipts of the previous consignment when for the present consignment all the railways receipts including for the 5 blocked wagons were already produced.

8. It is quite strange that the respondent authorities are claiming that M/s Pratik Enterprises (Respondent no. 7) had not produced railways receipts for 12 wagons of the earlier consignment, but in spite of that the railways authorities had blocked only 5 wagons of sugar of the present consignment without giving any reason as to why only 5 wagons of sugar were blocked and not 12 wagons of sugar. No valid explanation has been given by the respondent authorities in the counter affidavit or in any documents annexed therewith.

9. In the said circumstances, 42 railway receipts having already been produced by the petitioner (Bajaj Hindusthan Ltd.) for the present consignment, there was no occasion for the respondent authorities to block 5 wagons of sugar on such frivolous ground. Hence, Section 83 of the Railway Act, 1989 is not attracted to the facts and circumstances of this case.

10. It may be interesting to note that the impugned order has been passed by an Ex-Goods Shed Supervisor of Fatuha about whom Respondent no. 7 had specifically claimed that he had already been suspended earlier. This claim has not been denied by the respondent authorities. Furthermore, from the impugned order, it is also apparent that he had put his signature below which his designation has been mentioned as Ex-Goods Shed Supervisor, Fatuha. This fact not only shows that the order issued and steps taken by such person is absolutely without jurisdiction, but is also very surprising as to how the authorities of the railways are tolerating such illegal activities by such person.

11. In the aforesaid facts and circumstances, it is quite apparent that the entire acts of the authorities concerned, is absolutely illegal, arbitrary and perverse. Accordingly, impugned order/direction

(Annexure-5) issued by the Ex-Goods Shed Supervisor of East Central Railway at Fatuha is hereby quashed and the respondent authorities are directed to immediately release the aforesaid 5 wagons (3058.5 quintals) of sugar in favour of the petitioner (Bajaj Hindusthan Ltd.), who had booked the same with the railways at Gola Gorakhnath and had already produced receipts with respect thereto.

12. However, if the said sugar has been damaged, stolen or has perished due to the latches and negligence of the respondent railways authorities, the petitioner (Bajaj Hindusthan Ltd.) shall be entitled to be adequately compensated by the railways authorities and if the said authorities fail to adequately compensate the same, the petitioner (Bajaj Hindusthan Ltd.) shall be entitled to raise the issue before the appropriate forum, which will decide the matter in accordance with law.

13. However, the relevant authorities shall be entitled to take appropriate steps against concerned persons with respect to 12 wagons of sugar of the earlier consignment for which railway receipts were not produced by the consignee concerned.

14. With the aforesaid observations and directions, this writ petition is allowed.

Sujit

(S.N.Hussain, J.)