

GAHC010003852013



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MFA/21/2013

M/S UNITED COMMERCIAL CO.
KALIBARI ROAD, SILCHAR 788001, ASSAM.

VERSUS

UNION OF INDIA
REPRESENTED BY GENERAL MANAGER, WESTERN RAILWAY, CHURCH
GATE-MUMBAI 20

Advocate for the Petitioner : MR.K P MAHESWARI, MS. C SAHA,DIVYANSH RATHI,MR.B MAHESHWARI,MR.A CHOUDHURY,MR.A GOYAL

Advocate for the Respondent : FOR CAVEATOR, ,MSB DEVI,MR.B SARMAH,MS. M CHATTERJEE,MS. K KALITA,MRS. UMA CHAKRABORTY

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 25.09.2024

- 1.** Heard Mr. D. Rath, learned counsel for the appellant. Also heard Ms. M. Chatterjee, learned counsel for the respondent.
- 2.** This appeal has been filed by the appellant, namely, *M/S United Commercial Company*, under Section 31 of the Railway Claims Tribunal Act, 1987, impugning the judgment and order dated 07.06.2012 passed by the

learned Judicial Member, dissenting with the judgment rendered by the Technical Member on 07.06.2012 as well as the judgment dated 14.08.2012, passed by the Third Member of the Railway Claims Tribunal, Guwahati Bench in Application No. OA-III/GHY/2011/0153 (Old Application No. 152/2011).

3. The facts relevant for consideration of the instant appeal, in brief, are that the appellant had approached the Railway Claims Tribunal, Guwahati, for a refund of Rs.2,66,944/- on account of wrong calculation of distance and tariff rate and illegal collection of terminal charge. The claim was registered as Claim Application No. OA-III/GHY/2011/0153 (Old Application No. 152/2011).

4. As the respondent failed to file a written statement, the Tribunal proceeded to hear the matter *ex-parte* and it was heard by the Division Bench of the Tribunal on 23.04.2012 and the judgment was reserved.

5. On 07.06.2012, the learned Member (Technical) allowed the claim application directing the respondent for payment of a sum of Rs.2,66,944/- along with an interest @ 6% per annum from the date of filing of application till the date of order and 9% per annum from the date of its order to actual payment to the claimant. The claim was allowed with cost. However, disagreeing with the judgment of the learned Member (Technical), the learned Member (Judicial) gave a dissenting judgment on the same day i.e., on 07.06.2012, whereby the claim application of the present appellant was dismissed. In view of the difference of opinion of both the Members of the Division Bench, the matter was referred under Section 21 of the Railway Claims Tribunal Act, 1989 to the third learned Member.

6. By order dated 14.08.2012, the Third learned Member affirmed the view of the Member (Judicial) in dismissing the claim of the present appellant.

7. Learned counsel for the appellant has submitted that in this case no final order has been passed after the opinion was rendered by the third member on 14.08.2012. He submits that after the delivery of judgment by the third Member on 14.08.2012, the matter should have been placed before the Division Bench for passing a final order on the main claim application in conformity with the opinion expressed by the Third Member. After delivery of the opinion by the Third Member, a final order was required to be passed by the Division Bench for disposal of the claim petition. In support of his submission, learned counsel for the appellant has cited a ruling of this Court in the case of “**Union of India (NF Railway) Vs. M/s Mahesh Enterprises (P) Limited**” by order dated 25.02.2014 in MFA No. 145/2013.

8. The learned counsel for the respondent has submitted that in view of the judgment which has been relied upon by the appellant side, the appeal filed by the appellant is premature and is liable to be dismissed.

9. I have considered the submissions made by the learned counsel for both the sides and have gone through the case record of Original Application No. 152/2011 which was requisitioned in connection with the instant case.

10. In the case of “**Union of India (NF Railway) Vs. M/s Mahesh Enterprises (P) Limited**”(supra), this Court has observed as follows:-

“In my considered opinion after the opinion was rendered by the Third Member on 28.6.2013, the matter should have been placed before the Division Bench for passing a final order on the main claim application in conformity with the opinion expressed by the Third

Member. In other words, depending on the majority view of two members out of three members, a final order was required to be passed by the Division Bench for disposal of the claim petition.

In fact, once the third member expressed his opinion on the conflict holding that he has agreed with the member, the Division Bench has to apply their mind by reading the opinion expressed by the Third Member and then pass a final order on the claim application. Since the Third Member expressed his view, the Division Bench got jurisdiction to pass a final order in conformity with the opinion of the Third Member. Such order when passed becomes a final order appealable by the aggrieved party under Section 23 of the Act. So long as final order is not passed by the Division Bench after receipt of opinion of the third Member, no party has a right to file an appeal because till then no legal order comes into existence for disposal of the claim petition.

Since in this case, this exercise was not done because admittedly opinion of third Member was not placed before the Division Bench for their perusal and for passing the final order, the Railways should not have rushed to file the appeal under Section 23 against the so called orders”.

11. In light of the aforesaid discussion, this appeal is disposed of with a direction to place the opinion of the third Member dated 14.08.2012 before the Division Bench of the Railway Claims Tribunal to pass a final order keeping in view the opinion rendered by Member (Judicial), Member (Technical) as well as the Third Member.

12. With above observation, this appeal is accordingly disposed of.

JUDGE

Comparing Assistant