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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

ON THE 9th OF OCTOBER, 2023

WRIT PETITION No. 20036 of 2020

BETWEEN:-

1. SINGHLA TRADING COMPANY/ARD FLOOR NAYA BAZAR DELHI THROUGH ITS AUTHORISED REPRESENTATIVE MANAGER ASHOK KUMAR SINGH S/O SHRI YOGENDRA SINGH, AGED ABOUT 37 YEARS, OCCUPATION: MANAGER KIRARI SULEMAN NAGAR (DELHI)
2. OM SAI AGRO,/, RD FLOOR, NAYA BAZAR, DELHI, THROUGH ITS AUTHORIZED REPRESENTATIVE, MANAGER, ASHOK KUMAR SINGH, S/O YOGENDRA SINGH AGE 37 KIRARI SULEMAN NAGAR, (DELHI)
3. MALTI TRADING COMPANY, FLOOR, TITCO RICE PALACE, NAYA BAZAR, DELHI, THROUGH ITS AUTHORISED REPRESENTATIVE, MANAGER ASHOK KUMAR SINGH S/O YOGENDRA SINGH AGE 37 KIRARI SULEMAN NAGAR, (DELHI)

....PETITIONERS

(BY SHRI MANOJ SHARMA - SENIOR ADVOCATE ASSISTED BY SHRI ABHIRAJ SINGH - ADVOCATE)

AND

1. UNION OF INDIA THR ITS GENERAL MANAGER SOUTH EAST CENTRAL RAILWAY BILASPUR (CHHATTISGARH)
2. CHIEF COMMERCIAL MANAGER SOUTH EAST CENTRAL RAILWAY, SOUTH EAST CENTRAL RAILWAY (CHHATTISGARH)
3. SENIOR DIVISIONAL COMMERCIAL MANAGER SOUTH EAST CENTRAL RAILWAY, SOUTH EAST CENTRAL RAILWAY, (MAHARASHTRA)
4. CHIEF GOODS SUPERVISOR SOUTH EAST

(BY SHRI HARSHWARDHAN SINGH RAJPUT - ADVOCATE)

WRIT PETITION No. 6454 of 2021

BETWEEN:-

1. SHIV SHAKTI TRADERS 2732/6 2ND FLOOR NAYA BAZAR DELHI11006 THR ITS AUTHORISED REPRESENTATIVE MANAGER BRIJ KIISORE AGRAWAL S/O SHRI D.P AGRAWAL, AGED ABOUT 67 YEARS, R/O 442, SCHEME NO. 14, OPP. SWARSWATI SISHU MANDIR, VIJAY NAGAR, SHIV NAGAR, VIJAY NAGAR COLONY, JABALPUR M.P DISTT. (MADHYA PRADESH)
2. SURANA BROTHERS GANDHI GANJ THR. AUTHORISED REPRESENTATIVE MANAGER BRIJ KISHORE AGRAWAL S/O SHRI D.P AGRAWAL R/O 442, SCHEME NO. 14, OPP. SWARSWATI SISHU MANDIR, VIJAY NAGAR, SHIV NAGAR, VIJAY NAGAR COLONY, JABALPUR M.P DISTT. (MADHYA PRADESH)
3. SURYA SALES CORPORATION 2250 G.F GALI RAGHUNANDAN NAYA BAZAR THR. AUTHORISED REPRESENTATIVE MANAGER BRIJ KISHORE AGRAWAL S/O SHRI D.P AGRAWAL R/O 442, SCHEME NO. 14, OPP. SWARSWATI SISHU MANDIR, VIJAY NAGAR, SHIV NAGAR, VIJAY NAGAR COLONY, JABALPUR M.P DISTT. (MADHYA PRADESH)
4. SHIV SHAKTI AGRO INDIA 2733 NAYA BAZAR DELHI THR. AUTHORISED REPRESENTATIVE MANAGER BRIJ KISHORE AGRAWAL S/O SHRI D.P AGRAWAL R/O 442, SCHEME NO. 14, OPP. SWARSWATI SISHU MANDIR, VIJAY NAGAR, SHIV NAGAR, VIJAY NAGAR COLONY, JABALPUR M.P DISTT. (MADHYA PRADESH)
5. SANJAY ENTERPRISES 2250 GROUND FLOOR GALI RAGHUNANDAN NAYA BAZAR DELHI THR. AUTHORISED REPRESENTATIVE MANAGER BRIJ KISHORE AGRAWAL S/O SHRI D.P AGRAWAL R/O 442, SCHEME NO. 14, OPP. SWARSWATI SISHU MANDIR, VIJAY NAGAR, SHIV NAGAR, VIJAY NAGAR COLONY, JABALPUR M.P DISTT.

(MADHYA PRADESH)

.....PETITIONERS

*(BY SHRI MANOJ SHARMA - SENIOR ADVOCATE ASSISTED BY SHRI SIDDHARTH PATEL - ADVOCATE)***AND**

1. UNION OF INDIA THR ITS GENERAL MANAGER SOUTH EAST CENTRAL RAILWAY RTS COLONY, RAILWAY COLONY BILASPUR, CHHTISGARH (CHHATTISGARH)
2. CHIEF COMMERCIAL MANAGER SOUTH EAST CENTRAL RAILWAY BILASPUR (CHHATTISGARH)
3. SENIOR DIVISIONAL COMMERCIAL MANAGER SOUTH EAST CENTRAL RAILWAY NAGPUR (MAHARASHTRA)
4. COMMERCIAL SUPERINTENDENT SOUTH EAST CENTRAL RAILWAY CHHINDWARA (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI HARSHWARDHAN SINGH RAJPUT - ADVOCATE)

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These petitions coming on for admission this day, the court passed the following:

ORDER

These petitions are filed being aggrieved of the action of the Railway authorities in imposing stacking charges by the respondent nos. 3 and 4 upon the petitioners on the count of stocking of goods at platform/Railway siding.

Petitioners' contention is that they are companies and are engaged in the business of transportation of goods and articles through Railway to various destinations. In the course of their business, petitioners are required to handle and transport goods and material and are regularly dealing with Railway authorities which is one of the major agencies involved in the movement of goods throughout the country.

It is submitted that for the aforesaid purposes, Railways have framed certain rules and issued circular from time to time. There are established trade practices. It is submitted that as per established practice, a party requesting the Railways submit indent to allot space along the railway siding/platform for stacking/stocking goods to be loaded in wagons. On such request, Railways provide space at the Railway siding/shed where on the stipulated days and time, stacking of goods takes place.

It is submitted that an option is always available to the party like the petitioners that if it is not possible for them to stock goods for transportation, then request for cancellation can be made and no charges are levied upon the party as the said space and period of time can be utilized and granted by Railway to any other party.

It is submitted that there is a business practice, interchangeability of stacking of goods and loading of wagons amongst similarly placed persons which is an established trade practice.

It is pointed out that vide Annexure P-1, stacking charges have been imposed by the Senior Divisional Commercial Manager, South East Central Railway, Nagpur.

Reading from Annexure P-3 which is an invoice issued by the South East Central Railway, Garha Goods Shed (CGGS), it is pointed out that such practice is unknown to the petitioners, in as much as they are in regular business with the Railway authorities and are long time associates of the Indian Railways.

Reading from guidelines regarding Wharfage and Stacking contained in Annexure R-1, it is pointed out that charges could not have been levied against the petitioner.

Shri Manoj Sharma further referring to Chapter-III of the Master Circular dated 19/05/2016 submits that stacking charges or Wharfage charges are not statutory in nature, in as much as, there are guidelines regarding waiver and write off. The General Manager of the concerned Railway has full power to waive, Demurrage/Wharfage whereas CCM has power upto Rs. 1,00,000/-, DRM upto Rs. 25,000/- and so on upto the level of ACM/ATM/Area Officer in junior scale.

Shri Harshwardhan Singh Rajput, learned counsel for the Railways submits that there is no illegality in the impugned action. Clause 7.3 of the guidelines for advance stacking at Railway premises provides for "Permission for advance stacking can be granted to such rail users who have indented for wagons."

It is submitted that there is a provision contained in Clause 7.8 that "Once advance stacking permission is granted, cancellation of indents will not be permissible upto fifteen days from the 1st day of advance stacking. In case Rail User cancels the indent within the aforesaid period Stacking Charge will be levied for the whole period of stacking."

Thus, reading these clauses, it is submitted that petitioners have since cancelled the booking of wagons before expiry of 15 days of first day of advance stacking permission, therefore, they are liable to pay stacking charges.

It is further submitted that petitioners have a remedy to have approached the appropriate authority for waiver and write off but petitioners did not avail that remedy. It is thus submitted that there is no illegality in the impugned action calling for indulgence. It is also submitted that petitioners have a remedy to approach the Railway Claims Tribunal established for this purpose.

At this stage, Shri Manoj Sharma, learned Senior counsel submits that an alternative remedy of approaching the authorities could not have been availed without making the payment and that would have been extra burden on the petitioners.

After hearing learned counsel for the parties and going through the record, it is evident that the Government of India/Bharat Sarkar Ministry of Railways/Rail Mantralaya (Railway Board) has issued a detailed circular dated 19/05/2016 regarding Demurrage, Wharfage and Waiver bearing No. TC-!/2016/201/1. In this circular, Clause 7.7 provides that "Wagons will be supplied against the registered indent only after expiry of the permitted time for advance stacking or completion of stacking, whichever is earlier. After supply of wagons and expiry of free time for loading, Wharfage charge will be levied on goods/consignment which has not been removed from Railway premises after the expiry of permitted free time."

The procedure given in this behalf is that Clause 7.1 provides that "Advance stacking of goods at Railway premises may be permitted by Zonal Railways without levy of any charge for this purpose." Clause 7.2 provides that "DRMs will notify detailed instructions for advance stacking of goods at stations on their divisions in accordance with the guidelines prescribed herein."

Clause 7.3 provides that "Permission for advance stacking will be granted to such rail users who have indented for the wagons."

Clause 7.4 provides that "Rail users desirous of availing the facility of advance stacking will apply for advance stacking duly furnishing the details of indent and an undertaking that the stacking will be done at their own risk and responsibility."

Clause 7.5 is material for the purpose of the present case, in as much as,

it provides that "Advance stacking will be permitted upto such maximum period as specified in the detailed instructions issued by the Division in terms of para 7.2 above. Divisions may specify different stacking periods for different stations depending upon the number of rakes handled, but in no case the stacking period will exceed five days."

Then Clause 7.7 provides that "Wagons will be supplied against the registered indent only after expiry of the permitted time for advance stacking or completion of stacking, whichever is earlier. After supply of wagons and expiry of free time for loading, Wharfage charge will be levied on goods/consignment which has not been removed from railway premises after the expiry of permitted free time."

Clause 7.8 provides that "once advance stacking permission has been granted, cancellation of indents will not be permissible upto fifteen days from the 1st day of advance stacking. In case, rail user cancels the indent within the aforesaid period, Stacking Charges will be levied for the whole period of stacking."

Circular No. 39 of 2004 in para 7 provides that 'Extant rules for waiver of Wharfage charge will continue to apply in the case of waiver of stacking charges also.

Thus, when the reference is made to Annexures P-3, P-4 etc., it is evident that Stacking Chargesheet reveals that indent was booked on 26/09/2019 to send maize. The stacking was permitted from 27/10/2019 to 29/10/2019. The total time period permitted for stacking was 48 hours. On 29/10/2019 at 14:30 hours, indent was cancelled. Therefore, Stacking Charge has been levied.

This is one simple example which is repeated in different demands giving

different dates and particulars having common thread for permissible time for stacking to be operating from 36 hours to 96 hours depending upon the commodity. Another common thread is in all the cases, the indent was cancelled after stacking permission was granted. Another common factor is that the indent was cancelled prior to expiry of 15 days.

When the scheme of the Railways as contained in Master Circular Annexure R-1 is examined, it consist of following steps namely first of all a person is required to book a wagon by paying the indent charges and generation of indents.

Thereafter, they are required to apply for advance stacking duly furnishing the details of indent and an undertaking that the stacking will be done at their own risk and responsibility (Clause 7.4).

The advance stacking is to be permitted upto such maximum period as specified in the detailed instructions issued by the Division in terms of para 7.2. This period could have been different for different stations but subject to maximum of five days (Clause 7.5 of the Master Circular).

The wagons will be supplied against registered indent after expiry of the permitted time for advance stacking or completion of stacking, whichever is earlier.

Second part of Clause 7.7 says that after supply of wagons and expiry of free time for loading, Wharfage charge will be levied on goods/consignment which has not been removed from railway premises after expiry of permitted free time. (Clause 7.7).

The purpose of this Clause is that for undue period, Stacking cannot be permitted and in no case, it will exceed five days time subject to the circular of the concerned DRM and once stacking is done, then wagons are to be loaded

within the prescribed free time as wagons cannot be made to stand at the Railway siding or platform as the case may be. If that is not done, then Wharfage/stacking charge will be payable.

Clause 7.8 provides that Once advance stacking permission is granted, cancellation of indents will not be permissible upto fifteen days from the 1st day of advance stacking. The purpose is that once wagons are sought to be arranged after granting stacking permission, then unless the Railway authorities fail to provide wagons upto fifteen days of 1st day of permission to start stacking, cancellation will cause loss to the Railways and for that purpose, stacking charge is to be levied for the whole period of stacking.

The purpose of allowing stacking is to allow the consumer to avail facilities of loading their goods in the Railway wagons so provided. Once, goods are stacked in advance, then they can be loaded within the permissible free time.

The whole scheme is part of commercial transaction which accepts time as essence of contract and provides guidelines for adherence of timelines and fixes reciprocal arrangements.

Thus, in the present case, once a demand was made by obtaining indent and then applying for stacking permission for the indented wagons and then after starting stacking in terms of that permission for whatever reason except for force majeure, if stacking could not be completed, then cancellation of indents before expiry of permissible period of fifteen days from the 1st day of advance stacking has to result in action of imposition of stacking charge which is in consonance with the provisions contained in Clause 7.8.

Thus, when examined from this perspective, then there being no

challenge to the policy or Master circular and at this distance of time not relegating the petitioner to avail alternative remedy of Stacking Waiver, there is no illegality in the action of the Railway authorities calling for exercise of writ jurisdiction to set aside the impugned demand.

Thus, there being no illegality in the impugned action and that being in consonance with the notified provisions in the Master Circular does not call for any interference.

Accordingly, the petitions fail and are **dismissed**.

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(VIVEK AGARWAL)
JUDGE