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October 21

RAICHAND AMULAKH SHAH

v.

UNION OF INDIA

(P. B. GAJENDRAGADKAR, K. SUBBA RAO, K. N. WANCHOO, N. RAJAGOPALA AYYANGAR AND J. R. MUDHOLKAR JJ.)

Indian Railway Act, 1890, *s.* 26—*Construction of—Suit for refund of Wharfage and demurrage charges—If barred—"Wharfage" and "demurrage" meaning of—If terminals.*

Suits were filed against the Union of India representing the Western Railway for the refund of amounts collected by the Western Railway as wharfage and demurrage charges from the appellants. It was alleged in the plaint that Railway notifications and rules under which the Railway had charged the wharfage at two annas to four annas per maund per day were illegal and *ultra vires* and that in any view the railway had no power under the rules to collect charges from appellant-firm for the "free time" under the head of wharfage charges. The respondent pleaded that Civil Court had no jurisdiction to entertain the suits and that rules were not *ultra vires* and money was not collected against the rules. Suits were dismissed by the trial court on the ground that they were barred under s. 26 of the Indian Railways Act. Revisions were also dismissed by the High Court. The appellants came to this Court by Special Leave. Accepting the appeals,

Held, that s. 26 of the Indian Railways Act is not a bar to the maintainability of a suit for the refund of wharfage or demurrage charged in excess. The bar under s. 26 is not comprehensive. It is limited by the opening words "Except as provided in the Act" in the section. Two conditions must be complied with before applying s. 26. The railway administration should have done an act or omitted to do an act in contravention of the provisions of Chapter V of the Indian Railways Act and the Act should provide a remedy in respect of that act or omission. In the present case, the Act does not provide for any remedy for an aggrieved party to approach the Tribunal appointed under s. 34 of the Act for the refund of the amount collected in excess by the Railway Administration by way of wharfage or demurrage. The Tribunal has no jurisdiction to decide whether the rules empowering the administration to collect wharfage or demurrage charges are *ultra vires* or the amounts collected are in excess of what is leviable under the rules.

Wharfage and demurrage are charges in respect of goods unloaded from wagons and kept at the station and also in respect of the goods kept on a platform of the station, beyond the free time allowed for clearance under the rules. The said charges

can certainly be described as charges in respect of the station and are terminals within the meaning of the definition of the term in the Act.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 149 to 154 of 1959.

Appeals by special leave from the judgment and order dated February 25, 1958 of the former Bombay High Court at Rajkot in Civil Revision Applications Nos. 46, 49 ,55, 57, 58 and 59 of 1958.

S.P. Sinha, Shahzadi Mohiuddin and *M.I. Khowaja*, for the appellants.

N.S. Bindra and *R.N. Sachthey*, for the respondents.

October 21, 1963. The Judgment of the Court was delivered by

Subba Rao J.

SUBBA RAO J.—These six appeals filed by special leave raise a common question, namely whether the suits filed against the Western Railway for the refund of amounts collected from the appellant-firm as wharfage or demurrage would lie in a Civil Court.

Civil Appeals Nos. 152 and 153 of 1959 arise out of the suits filed for the recovery of the amounts collected from the appellant-firm by way of demurrage and the other appeals are filed for the recovery of amounts collected from the said firm by way of wharfage charges. It would be enough if we gave the particulars of the claim in one of the suits, for it was stated at the Bar that the claims for refund were similar in all the other suits. Excepting the plaint in Civil Suit No. 109 of 1957, the other plaints are not placed before us. We are, therefore, proceeding on the assumption that the relevant allegations in all the plaints are similar, particularly as the assertion of learned counsel for the appellants to the said effect was not questioned by learned counsel for the respondent.

Civil Suit No. 109 of 1957 was filed by the appellants in Civil Appeal No. 149 of 1959 for recovery of a sum of Rs. 295 from the Union of India representing the Western Railway. The appellants are

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a firm doing business in Surendranagar. The said firm received a consignment of 125 bags of rice booked from Belanganj to Surendranagar railway station. At the time of effecting delivery of the said consignment, the Station Master at Surendranagar recovered a sum of Rs. 275-7-0 from the appellant-firm as wharfage charges. It is alleged in the plaint that the railway notifications and rules under which the railway had charged the wharfage at two annas to four annas per maund per day were illegal and *ultra vires* and that in any view the railway had no power under the rules to collect charges from the appellant-firm under the said rules for the "free time" under the head of wharfage charges. On those allegations the suit was filed for the refund of the amount collected by the said railway. The defendant denied either that the rules were *ultra vires* or that it collected the amount contrary to the rules. It pleaded that the civil court had no jurisdiction to entertain the suit. Similar suits were filed in respect of other amounts and similar contentions were raised. The learned Civil Judge dismissed all the suits on the ground that they were barred under s. 26 of the Indian Railways Act, 1890 (Act IX of 1890), hereinafter called the Act. The said firm in all the suits preferred revisions against the judgment of the Civil Judge to the High Court of Bombay at Rajkot. The High Court agreed with the view of the Civil Judge and dismissed the revisions. Hence the appeals.

The only question raised before us is whether s. 26 of the Act is a bar against the maintainability of the said suits in a civil court for refund of the said amounts collected from the appellant-firm by way of wharfage and demurrage charges.

To appreciate the contentions of the parties it is necessary to notice the relevant sections of the Act. At the outset it may be mentioned that in the present appeals the amounts were collected between the years 1953 and 1955 and, therefore, we will be ignoring the later amendments made in the Act for the purpose of the present enquiry.

Section 3(14) "terminals" includes charges in respect of stations, sidings, wharves, depots, warehouses, cranes and other similar matters, and of any services rendered thereat."

Section 26. "Except as provided in this Act, no suit shall be instituted or proceeding taken for anything done or any omission made by a railway administration in violation or contravention of any provision of this Chapter (Ch. V)."

Section 32. "The Central Government may, by general or special order, fix the rates of terminal and other charges for the whole or any part of a railway, and prescribe the conditions in which such rates will apply.

Section 34. (1) There shall be a Tribunal called the Railway Rates Tribunal, for the purpose of discharging the functions hereinafter specified in this Chapter.

Section 41. (i) Any complaint that a railway administration—

(c) is levying charges (other than standardised terminal charges) which are unreasonable,

may be made to the Tribunal, and the Tribunal shall bear and decide any such complaint in accordance with the provisions of this Chapter.

Section 45. Nothing in this Chapter shall confer jurisdiction on the Tribunal in respect of scales of charges levied by a railway administration for the carriage of passengers and their luggage, parcels, military traffic and traffic in railway materials and stores, and demurrage charges, except on a reference made to the Tribunal by the Central Government.

Section 46A. The decision of the Tribunal shall be by a majority of the members sitting and shall be final.

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Provided that where a single member of the Tribunal has heard and decided any matter, he may, in his discretion, give leave to any party to appeal to the Full Bench; and if an appeal is filed in pursuance of such leave, the decision of the Full Bench or of a majority of the members thereof, as the case may be, shall be final.

Section 46*B*. The Tribunal may transmit any order made by it to a Civil Court having local jurisdiction and such Civil Court shall execute the order as if it were a decree.

Section 46*C*. In this Chapter, unless there is anything repugnant in the subject or context,—

(d) "demurrage" means the charge levied after the expiry of the free time allowed for loading or unloading a wagon.

The scheme of the said provisions is clear. The Central Government fixes the rates of terminal and other charges for the whole or a part of a railway. If a railway administration levies charges other than the standardised terminal charges which are unreasonable, an aggrieved party may file a complaint against the administration before the Railway Rates Tribunal. The decision of the Tribunal is final. In regard to 'demurrage charges mentioned in s. 45 of the Act, the Tribunal has no jurisdiction to entertain a claim in respect thereof, except by a reference made to the Tribunal by the Central Government. Section 26 bars the jurisdiction of ordinary civil courts to entertain a suit or a proceeding for anything done or any omission made by the railway administration in violation or contravention of any of the provisions of Chapter V. In regard to such violation, an aggrieved party can only proceed in the manner provided by the Act.

The short question, therefore, is whether the said claims for refund are covered by the bar imposed by s. 26 of the act. As s. 26 bars the jurisdiction of civil courts, its provisions must be strictly construed. The bar is in respect of anything done or an omission

made by the railway administration in violation or contravention of any provisions of Chapter V of the Act. If the opening words "Except as provided in this Act" in s. 26 of the Act are ignored, the bar appears to be comprehensive, for it may take in its sweep any dereliction of duty by the railway administration in respect of matters covered by the provisions of the said chapter. But such an intention to give a blanket licence to the railway administration to contravene the provisions of Chapter V of the Act shall not be attributed to the Legislature unless the section is very clear to that effect. The opening words "Except as provided in this Act" limit the operation of the bar. It can reasonably be interpreted to mean that the bar of a suit is limited to matters in respect whereof the Act has provided a remedy. So construed, before we apply the provisions of s. 26 of the Act, two conditions shall be complied with, namely, (i) the railway administration shall have done an act or omitted to do an act in contravention of the provisions of Ch. V and (ii) the Act has provided a remedy in respect of that act or omission. It was argued that the charges levied by the railway administration under the heads of "wharfage" and "demurrage" are "trerminals" in regard whereof rules were framed by the Government under s. 32 of the Act, that the complaint of the appellants was that the rates were collected in excess of those prescribed under the rules and that, therefore, s. 26 bars a suit for recovery of the same.

The first question, therefore, is whether wharfage and demurrage charges are "terminals". "Terminals" has been defined by s. 3(14) of the Act to include charges in respect of stations, sidings, wharves, depots, warehouses, cranes and other similar matters, and of any services rendered thereat. Under s.32 of the Act the Central Government may, by general or special order, fix the rates of terminal and other charges for the whole or any part of a railway, and prescribe the conditions in which such rates will apply. In order to find out whether wharfage and

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demurrage charges come under the definition of "terminals", it is necessary to ascertain the meaning of the words "wharfage" and "demurrage" as understood by the Act and the rules made thereunder. There is no definition of "wharfage" in the Act. But s. 46C(d) defines demurrage to mean the charge levied after the expiry of the free time allowed for loading or unloading a wagon. But the rules, presumably made under the Act, give a clear idea of the meaning of these words. The relevant rule is r. 85 and it reads:

> "The actual wharfage and demurrage rules locally in force on different railways are published in each Railway's Tariffs and may be ascertained on application at stations.

The following wharfage and demurrage rules were in force on the B.B. & C.I. Railway, which is now named as the Western Railway. Clauses (A) and (B) thereof give the rates of wharfage and demurrage and clause (C) defines "demurrage" and "wharfage". Clause (C) reads:

> (i) When wagons required to be unloaded by consignees are not unloaded within the free time of six day-light hours, after being placed in position for unloading, demurrage as per clause (B) (ii) above will be charged for such time above six daylight hours, as the goods remain in the wagon, and wharfage at the rate notified as applicable at the station will be charged if the goods are not removed from the railway premises by the end of the day following that on which they are unloaded."
>
> (ii) When wagons requiring to be unloaded by consignees are unloaded within the free time of six daylight hours, after being placed in position for unloading, wharfage at the rate notified as applicable at the station will be charged if the goods are not removed from the railway premises by

the end of the day following that on which the free time of six daylight hours, expires.

Demurrage is therefore a charge levied on the goods not unloaded from the wagons within the free time of six daylight hours and wharfage is the charge levied on goods not removed from the railway premises after the expiry of the free time allowed for that purpose. Indeed s. 46C(d) of the Act, which was inserted by Act 65 of 1945, has practically adopted the definition of the word "demurrage" given in the said rule. Wharfage and demurrage are, therefore, charges levied in respect of goods retained in the wagons or in the railway premises beyond the free time allowed for clearance under the rules.

The question is whether such charges are "terminals" as defined in the Act. The expression "terminal charges" was defined for the first time in the Indian Railways Act, 1890. It was taken from the definition in s. 55 of the English Railway and Canal Traffic Act, 1888. Terminal charges are of two categories: (1) charges for services, and (2) charges for accommodation and appliances which facilitate business. The "service terminals" comprise of remuneration for the handling of goods at the terminal station *i.e.*, where the railway employees are engaged in weighing, loading, unloading, etc. As distinguished from this "service terminals" there are "station terminals" which are charges for providing accommodation incidental to the business of a carrier, such as "working charges, repairs, renewals, insurance of station buildings, sidings, sheds, platforms, warehouses, cranes, hydraulic power, fixed appliances etc." Both demurrage and wharfage would fall within the head of "station terminals", because they are charges levied for the use either of the wagon or of the platform or goods-shed after the transit or conveyance is complete and is not incidental to the conveyance as such. Charges levied in respect of stations are included in the definition of "terminals" under the Act. As the wharfage and demurrage are charges in respect of goods unloaded from wagons and kept at the

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station, and also in respect of goods kept on platforms of the station, the said charges could certainly be described as charges in respect of the station. If so, it follows that the said charges are "terminals" within the meaning of the definition of the said expression in the Act.

Let us now see whether any remedy is provided by the Act for an aggrieved party to ask for a refund of the charges collected on the ground mentioned in the plaint. The Tribunal constituted under s. 34 of the Act has jurisdiction to decide whether the charges levied by the railway administration other than the standardised terminal charges were unreasonable. The Act does not provide for any remedy for an aggrieved party to approach the Tribunal for a refund of the amount collected by the railway administration by way of wharfage or demurrage on the ground that the rules empowering the said administration to do so are *ultra vires* or that the amounts so collected are in excess of wharfage or demurrage leviable under the rules. If the impugned charges are standardised terminal charges, the dispute in regard thereto falls outside s. 41 of the Act. If they are charges other than the standardised terminal charges, the jurisdiction of the Tribunal is confined only to the question of its reasonableness. It 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. If so, it is clear that no provision has been made under the Act giving a remedy to an aggrieved party to ask for a refund of amounts, such as those alleged to have been collected from the appellants. Section 26, therefore, cannot be a bar against the maintainability of the suits filed by the appellants.

We do not propose to express our view in this case, as it has not been argued before us, whether the demurrage charges in question fell within the meaning of the expression "demurrage charges" in

s. 45 of the Act and, if so, whether the jurisdiction of the Tribunal could only be invoked in the manner prescribed thereunder.

For the foregoing reasons we hold that both the High Court and the trial Court went wrong in dismissing the suits on the ground that s. 26 of the Act was a bar against their maintainability. We, therefore, set aside the judgment of the High Court as well as that of the trial Court and remand the suits to the trial Court for disposal in accordance with law. We should not be understood to have expressed any opinion on the other questions raised in the suits. The respondent will pay the costs of the appellants here.

The costs of the courts below will abide the result.

Suits remanded.

VORA ABBASBHAI ALIMAHOMED

v.

HAJI GULAMNABI HAJI SAFIBHAI

(A.K. SARKAR, J.C. SHAH AND RAGHUBAR DAYAL JJ.)

Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947, *s.* 12—*Protection against eviction—Scope of s.* 12 (1)—"*May*" *in* 12(3) (*a*) *whether mandatory—Protection of* 12(3) (*h*) *when available—S.* 12, *Explanation, effect of—"Standard rent"—Meaning of—Revisional Jurisdiction of High Court when exercisable—Code of Civil Procedure* 1908 (*Act* 5 *of* 1908), *s.* 115.

The Appellant was the tenant of the respondent occupying of the latter premises at a monthly rental of Rs. 70. The appellant appealed to the Civil Judge for fixing standard rent under s. 11(1) and for specifying interim rent under s. 11(3) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and deposited a certain amount to the credit of the respondent. Subsequently the respondent filed a suit before the Civil Judge for evicting the appellant on the ground of non-payment of rent. The Civil