HIGH COURT OF GUJARAT (*D.B.*)

STEEL AUTHORITY OF INDIA LIMITED
Versus
UNION OF INDIA

Date of Decision: 12 February 2002

Citation: 2002 LawSuit(Guj) 116

Hon'ble Judges: B J Shethna, N G Nandi

Eq. Citations: 2002 4 GCD 3068, 2002 2 GHJ 127

Case Type: First Appeal

Case No: 1820 of 1999, 1828 of 1999

Final Decision: Appeal dismissed

Advocates: Nanavati Associates

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[1] All these appeals are disposed of by this common order as they are arising out of the common judgment and order doted 31.12.1998 passed by the Railway claims Tribunal in Claim Application Nos. 399 to 1020 of 1990 (in all 45 applications).

[2] The appellant-Steel Authority of India Limited (SAIL) initially filed 45 suits, but on the establishment of Tribunal in 1989 the same were transferred to the Tribunal as applications. The commodity involved in it was iron goods. The originating stations were Bhilai, Durgpur and Bokaro, whereas, the destination station was Pratapnagar, Baroda. The basis of claiming compensatioin was shortage in the consignment certified by a Private Surveyor.

[3] It may be stated five appeals only in present nine cases and not in remaining 36 cases, where the amount involved was small. Therefore, we are required to decide only present nine appeals on merits.,

[4] Learned counsel Shri Vimal Patel appearing for the appeallant in all these appeals vehemently submitted that the learned Tribunal committed error in not placing reliance upon survey report of a Private Surveyor Mr.Ravindra M. Patel,

[5] Mr.patel further submitted that the learned Tribunal committed grave error in not giving reasonable opportunity to the appellant to lead evidence before it, Therefore,

the matter may be remanded back to the Tribunal to enable the appellant to lead complete evidence before the Tribunal.

[6] From the impugned common judgment of the learned Tribunal it appears that from March, 1998 till the date of judgment i.e. 31.12.1998 the cases were adjourned by the Tribunal at least for 6-7 times, The Additional Registrar of the Tribunal under the instructions also served registered letter involving the appellants- plaintiffs that the cases will be heard. Similarly, Senior Officials of the appellant- SAIL were informed by the Additional Registrar on phone, in spite of that the appellant was not sincere in leading the evidence. It is clearly noted by the learned Tribunal in Para 9 of its judgment that Laearned Counsel Shri D.N. Pandya for the appellants was asking for adjournment since 1999 after resumption of the hearing, but he had not led any evidence in spite of full opportunity is given to him. Under the circumstance, the Tribunal was at pains to observe that evan if some more adjournment was granted then also no evidence would be led by the appellant and the case is an old case of more than 8 years, therefore, the same is required to be decided on merits.

[7] In view of the above, we are not prepared to to remand the matter back to the learned Tribunal for giving any further opportunity to the appellant to led further evidence because it may be an exercise in futility. The appellant was given sufficient opportunities to lead evidence, but it has failed. Therefore, it would not be proper for this court to remand the matter back to the Tribunal with a view to enable the appellant to lead any evidence. Therefore, the second submission made by Mr.Patel has to be rejected.

[8] On merits also there is no substance in the submission made by Mr.Patel that the Tribunal committed any error in not relying upon the report of Private Surveyor, which was not exhibited. It was given mark only. It was not proved in the evidence of Mr.Ravindra M Patel as he has not at all examined before the learned Tribunal, The learned Tribunal has given number of reasons for not placing any reliance on the surveyor report, which are as under : (i) There is nothing to show that who weighed the trucks on the way bridge and the person who weighed it had not put his signature along with other witnesses to corroborate the same. (ii) The weighment has not been witnessed by any independent witness, if surveyors were weighing it, then it was necessary to have two independent witnesses, who should have signed the result of the weighment because surveyor gets particular fees for his survey. (iii) There was no proof regarding all the goods of a particular wagon loaded in the trucks, which were quoted in the report and correctly weighed and the possiblity of the goods of one wagon mixed up with the unloaded goods of other wagons cannot be ruled out. (iv) The officials of the appellant- SAIL has not witnessed any shortage and signed documents to prove it. Whereas, the case of the appellant was that the delivery was

taken under protest. But the Railway Administration has clearly come out with a case that the delivery has been granted under the clear receipt, therefore, shortage cannot be proved.

[9] In view of the aforesaid reasoning of the learned Tribunal, we are not in a position to take any different view of the matter in these appeals, as in our considered opinion, the learned Judge was right in holding that no such reliance can be placed only on the report of a Private Surveyor, which is not at all proved in evidence by the appellant before the learned Tribunal.

[10] Before parting we mus state that the learned Tribunal has rightly observed in its judgement that public sector undertaking should have made genuine attempt to settle the matter with the Railway Administration. In the instant case, two wings of the Central Government were fighting with each other instead of trying to settle the compensation claims departmentally.

[11] In appeal No. 2058-59 of 1988 decided on 11.10.1991 the Hon'ble Supreme Court of India observed that: -

> "Public undertaking of Central Govt, and the Union of India should not fight their litigation in Court by spending money on fees, on counsel, court fee procedural expense and wasting public time. It is in this context that the Cabinet Secretariat has issued instructions from time to time to all the departments of Govt. of india as well as to public undertakings of the Central Govt. to the effect that all disputes regardless of the type, should be resolved amicably by mutual consultation or through arbitration and recourses to litigation should be eliminated."

[12] We are at pains to note that in spite of the observations made by the learned Tribunal, the appellant has thought it fit to challenge the impugned common judgment and order passed by the learned Tribunal by way of first appeals at least in nine appeals out of 45 cases. Be that as it may. According to us, it is nothing but a sheer wastage of public money, but we cannot do anything more than observing this. With these observations, all these appeals are dismised in limine.