

रेलदावाअधिकरण, सिंकंदराबादपीठ, सिंकंदराबाद
**RAILWAY CLAIMS TRIBUNAL, SECUNDERABAD BENCH
 AT SECUNDERABAD**

**CORAM : SHRI VINAY GOEL, HON'BLE MEMBER (JUDICIAL)
 RCT, AMARAVATI BENCH**

**SHRI N.MADHUSUDAN RAO, HON'BLE MEMBER (TECHNICAL)
 RCT, SECUNDERABAD BENCH**

(THROUGH HYBRID HEARING)

R.R.T. NO. 2 OF 2017

Date of Filing : 09.12.2016

Date of Decision : 09.05.2022

M/s. MSPL Limited,
 Represented by T.S.Amarnath,
 Senior Manager (Legal),
 Baldota Enclave,
 AbherajBaldota Road,
 Hospet-583 203,
 Bellary District

...Applicant

Versus

1. Govt. of India, Ministryof Railways
 Rail Bhavan, New Delhi-110 001
2. Union of India, owning,
 South Central Railways, represented by
 General Manager, Secunderabad
3. Union of India, owning,
 Southern Railways, rep. by
 General Manager, Chennai.
4. Union of India, owning,
 South Western Railway, rep. by
 General Manager, Hubli, Karnataka
5. Chennai Port Trust,
 Represented by Chairman, Rajaji Salai,
 Chennai

...Respondents

Complaint filed under S.36(c) of the Railways Act, 1989

JUDGMENT

In fact, this application was originally filed before the Railway Rates Tribunal, Chennai, in compliance of orders of Hon'ble High Court of Andhra

Pradesh, and after amendment to Railways Act through Finance Act 2017, this case was transferred to this Tribunal for adjudication.

2. The Applicant has filed this complaint under Section 36 (c) of the Railways Act, 1989 seeking for the following reliefs:

- (a) *To declare that the punitive charges raised by the Respondents vide their demand letter dated 12.8.2002, 14.10.2002, 19.12.2002, and 21.11.2003, demanding payment of Rs.5,35,77,390/- relating to the consignments booked from 22.4.2002 to 31.12.2002 and from 20.9.2003 to 14.11.2003, as unreasonable and unjustified;*
- (b) *To quash the demand notices issued by the respondents towards punitive charges and pass such order as the Tribunal may deem fit and proper.*
- (c) *To order costs of the complaint*

3. The brief averments in the complaint are as under:-

The Applicant's Company is one of the largest private sector Iron Ore producer and exporters from Karnataka. The consignments of Iron Ore mined by the Company are booked from Vysanakere and Hospet Railway sidings to be transported through rail to Chennai Port. According to the Applicant, the loading of Iron Ore on to the wagons is being done on the basis of weight-volume-ratio method, which is approved by the Railway Administration. The 3rd party assayers conduct weight-volume-ratio in presence of consignors and railway officials. The measurement and weight thus taken is standard, scientific and certified by the Railways. The Applicant has loaded several consignments during March to December 2002 and from September to November 2003 and consignments were loaded at the booking point based on weight-volume ratio method, as there was no weighing facility and the weighing was counter checked by the railway authorities. The fact that Respondents-2&3, viz., South Central Railway and Southern Railway are weighing rakes loaded by the Firm at Guntakal and Royapuram electronic-in-motion-weighbridges and that the said bridge do not function with accuracy and there is variation from weigh bridge to weigh bridge, when the same load is weighed on two weigh bridges and that the malfunctioning of in-motion weigh bridge has been confirmed on the earlier occasion

by the South Western Railway Authorities. On the basis of weighment made by the respondent at Guntakal in-motion weigh-bridge, a punitive charge of Rs.5,35,77,390/- has been raised by the respondent without furnishing the details. The matter was taken up at the level of General Manager, South Central Railway on 11.9.2001 to resolve the issue and a decision was taken by the General Manager to depute a team to conduct trial tests and that letter dated 13.9.2001 was written by the Applicant to the Divisional Railway Manager informing that trial tests are likely to be completed in next 20-25 days time and as such not to press for payment of punitive charges till such time a decision was taken based on the trial tests. It is further averred by the Applicant that the trial tests were inclusive and Applicant by letter dated 16.1.2002 addressed to General Manager, South Central Railway requesting to send a team from trial tests and find a solution as the Southern Railway was pressing for payment of punitive charges. It is averred by the Applicant that the weigh bridge at Guntakal was down and as such punitive charges cannot be levied on the basis of erratic in motion weigh-bridge. As the levy of punitive charge was exorbitant and unreasonable and when the respondent ventured to stall the movement of rakes, the complainant moved the Hon'ble High Court of Andhra Pradesh, at Hyderabad with a writ petitions (No.7537/2002& 27119/2003) challenging the punitive charges raised against the Applicant. It is averred by the Applicant that Iron ore, when loaded in the open wagons are exposed to rain in transit, in which case, the weight of the cargo will increase due to moisture and this additional weight is beyond the control of consignors and the respondents are not taking into account these contingencies. It is further averred by the complainant that the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh has disposed their writ petitions vide order dated 2.1.2017 stating that matter is covered by the judgement reported *in Kakatiya Overseas Hyderabad Vs UOI* and directed the Applicant to approach the Railway Rates

Tribunal, Chennai by way of complaint, as provided U/s.36 of the Railways Act. Hence the complaint.

4. Adv. C.M.Basha, the Counsel for the Railways has filed written submissions dated 13.4.2022 on behalf of the Respondents. Respondent No.2, South Central Railway has also filed reply statement dated 28.1.2019. The brief averments of the Reply Statement filed by the Respondents are as under:-

5. That the Applicant has no locus to file this petition as he has not produced any authorisation from the Company before this Tribunal. The writ petitions filed before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, which were disposed by common order in terms of earlier orders passed was based on an observation made by the Hon'ble Supreme Court in *Jagjit Cotton Textile Mills v. Chief Commercial Supdt., NR and others*, vide which the punitive charge now levied cannot be said to be unreasonable and that this Tribunal can only grant relief to the Applicant as stipulated under S.44 of Chapter-VII of the Railways Act, 1989; that as per Goods Tariff No.41, no admission is conveyed by a railway receipt that the weight as shown in the RR is correct. The weighment endorsed after the weight-volume-ratio method is not the final, but weighment becomes final only on weighment conducted on the in-motion weigh bridge available en-route to the destination; that as per Sec.73 of the Railways Act, punitive charge for over loading is leviable and that the Applicant has no case that Railway have contravened any of the provisions of law; that it is an admitted fact that the Applicant had received delivery of the alleged over-loaded goods and used the same for their business and the respondent never requested for weighment of goods at the destination station; that the Applicant has not filed any of his record to establish the actual weight of consignments and that the Applicant did not dislodge his initial burden of proof as to what is the actual weight of the consignments he has loaded and

the different weights shown by the railways for demanding punitive charges are incorrect and the Applicant has not filed the copies of RR. As such, the complaint filed is devoid of merits and liable to be dismissed.

6. Based on the above pleadings, the following issues have been framed:-.
1. *Whether the person who had signed and verified the complaint is authorised to sign and the letter of authority is filed in respect of same?*
 2. *Whether the Applicant has loaded the consignment as per the weight-volume ratio methodology approved by the Railway?*
 3. *Whether the Applicant had installed weigh bridges at the originating station?*
 4. *Whether the respondent's department is justified in imposing punitive charges without following due process of law ?*
 5. *Whether the respondent violated principles of natural justice by weighing wagon in the absence of Applicant?*
 6. *Whether the said consignment loaded by the Applicant is supervised by the railway administration and said to contain railway receipt were issued after completion of loading ?*
 7. *Whether the respondent is empowered to counter check the said consignment iron ore loaded in rakes and weighed in electronic in motion weight bridge at Guntakal West?*
 8. *Whether the respondent is justified in weighing wagons at Gutakal and again at Perambur, apart from considering weight under "weight volume ratio", at the time of booking cargo ?*
 9. *Whether the Applicant has filed the present complaint within 8 weeks from the disposal of the writ petitions by the Hon'ble High Court of Andhra Pradesh?*
 10. *Whether the Applicant is liable to pay a sum of Rs.5,10,75,694/- being the punitive charges as claimed by the Railways ?*
 11. *Whether the Applicant is entitled for the refund of punitive charges levied and collected by the respondent ?*
 12. *To what relief?*

7. Evidence let in by the Applicant was by way of an affidavit of AW-1 Sri Ramakrishna Giyyar, Dy. General Manager (Logistics) and he was cross examined. AW-1 has proved on records Exts.A1 to A19. Whereas the respondent

filed an affidavit of Sri P.Srinivas, Assistant Commercial Manager, South Central Railway, Guntakal as RW-1 and was cross examined and with that the respondents have closed their evidence.

8. We have heard Ld. Counsels for both the parties and also gone through the records. Before proceeding further, we would like to record few facts:-

i) That there was some demand from the respondent to claim certain punitive charges from the Applicant. To question the veracity of said demand notes, Applicant filed two writ petitions(No.5737/2002 and 27119/2003) before the Hon'ble High Court of Andhra Pradesh and ultimately those two writ petitions were disposed of by Hon'ble High Court vide common order dated 2.1.2017, with liberty to the Applicant to approach Railway Rates Tribunal, Chennai by way of complaint as provided under Section-36 of the Railways Act, 1989. The Applicant as per orders passed by the Hon'ble High Court filed the complaint under Section-36(c) of the Railways Act before the Railway Rates Tribunal (RRT), Chennai and after Finance Act 2017 and on amendments made in the Railways Act, 1989, the file has been transferred to this Tribunal and is now under adjudication with this order.

ii) It is worthwhile to mention Section-36 and 44 of the Railways Act, which reads as under :-

“36. Complaint against a railway administration: Any complaint that a railway administration –

(a) is contravening the provisions of S.70; or

(b) is charging for the carriage of any commodity between two stations at a rate which is unreasonable; or

(c) is levying any other charge which is unreasonable,

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

44 Relief which the Tribunal may grant: In the case of any complaint made under clause(b) or (c) of Section 36, the Tribunal may –

- (i) *fix such rate or charge as it considers reasonable from any date as it may deem proper, not being a date earlier to the date of filing of the complaint;*
- (ii) *direct a refund of amount, if any, as being the excess of the rate or charge fixed by the Tribunal under clause(i)."*

iii) Further, this Tribunal after amendment in Railways Act, 1989, in terms of Finance Act 2017, is now exercising power of Railway Rates Tribunal as provided under Chapter-VII of Railways Act while dealing with the present complaint. The scope of complaint filed under Section-36 of Railways Act is restricted qua the ambit of Sec.44 of the Railways Act under Chapter-VII of said Act. But this complaint was filed prior to 26th May 2017, before the Amendment Act came into existence, so the scope of adjudication would be limited in the light of S.36 and 44 of the Railway's Act because there is no amendment in the OA to enlarge the scope of adjudication from the Applicant's side.

iv) Further, we would like to reproduce order dated 11.4.2022, vide which this Tribunal granted opportunity to the parties to list to produce Railway Receipt of consignments which are in dispute before this Tribunal. But despite opportunities given, neither party had produced any RR before this Tribunal.

v) Further we would like to mention that the Ld. Counsel for the Railways submitted that in writ petitions, Hon'ble High Court of Andhra Pradesh, while disposing of relief or interim stay directed the petitioners to deposit 50% of the demanded amount as per impugned notice, but the Applicant has failed to deposit even a single rupee, despite dismissal of SLP to challenge conditional stay order vide order dated 17.7.2005. We have considered the objections so filed. In fact, in terms of interim order passed by the Hon'ble High Court, the Applicant was required to deposit amount, but, said order had merged into the final order dated 2.1.2017 and at the time of final hearing, the respondent Railways had failed to agitate any

such issue before the Hon'ble High Court, Andhra Pradesh. So at this juncture, respondent Railways have no right to agitate such issue i.e., non-compliance of orders in terms of Hon'ble High Court, before this Tribunal.

The issues are decided in the following order for the sake of convenience.

9. **Issue No.11:**

Whether the Applicant is entitled for the refund of punitive charges levied and collected by the respondent?

The issue framed does not require any adjudication because in this case Applicant initially challenged the demand notice before the Hon'ble High Court Andhra Pradesh and thereafter approached the Railway Rates Tribunal, Chennai without making any payment. Till date, Applicant has not made any payment in compliance of demands raised by the respondent railway. So there would not be any question of refund of punitive charges levied and collected by the respondent railway. This issue does not require any adjudication as such. So, this issue is accordingly disposed.

10. **IssueNo.9:**

Whether the Applicant has filed the present complaint within 8 weeks from the disposal of the writ petitions by the Hon'ble High Court of Andhra Pradesh?

The writ petitions were decided by the Hon'ble High Court of Andhra Pradesh vide order dated 2.1.2017 and 8 weeks' time was granted to the Applicant to file complaint before RRT Chennai. Applicant preferred this petition on 28.2.2017, within the time frame so granted. So this issue does not require any adjudication and is answered accordingly.

11. **Issue No.7:**

Whether the respondent is empowered to countercheck the said consignment of iron ore loaded in rakes and weighed in electronic in motion weight bridge at Guntakal West?

Although the original Railway Receipts or copies thereof have not been produced before this Tribunal and it is the case of the Applicant that they loaded the wagons by adopting weight-volume-ratio method and there was no actual measurement of the goods loaded at the originating station. Further, there is no dispute that railway receipts were issued with remarks - “*sender’s weight accepted*”. Once this was the factual position, in view of Section-78 of the Railways Act, read with Rule-115 of IRCA Goods Tariff and Rule-1422,1437, 1737 of IRCM Vol.II, the railway in its discretion had privilege, prerogative and authority to counter check the consignments and weigh in electronic in-motion weigh bridge en-route. So, on this account, it appears that there was no irregularity. However, findings recorded by this Tribunal on this issue would not have any bearings on the merits of the case and adjudication of other issues.

12. **Issue No.-6:**

Whether the said consignment loaded by the Applicant is supervised by the railway administration and said to contain railway receipt were issued after completion of loading?

Although parties to lis have failed to produce copies of Railway Receipts issued by the Railways to the Applicant, at the time of booking of consignments, but somehow there is no dispute that said RRs were issued with stipulations like -“***sender’s weight accepted, loading not supervised by railway staff and said to contain***”. Further, the Applicant itself annexed minutes of the meeting dated 6.12.2003, which reads as under:-

- *they are prepared to install weighbridges at their cost at loading stations, but requested railway to issue “clear” RRs and not to permit any re-weighment later.*
- *they are prepared to pay for additional staff to ensure that weight volume ratio checks are done more regularly, provided re-weighments en-route and detentions to export cargo is stopped.*
- *they also suggested that if re-weighments tests are to be done, it should be done by neutral surveyors, adopting similar mechanism*

as is followed at loading station, in which case the cost will be borne by the exporters.

13. So, to have clear Railway Receipts, the Applicant and on their behalf it was contended that they would install weigh bridge at loading station, as such it is clear that there was no effective and mechanical weighment of the goods loaded at originating station and loading so done by the Applicant were in the absence of any physical weighment from the Railways. The Railway Receipts were issued accordingly and further non production of RRs would go against the Applicant and the Applicant has failed to prove on record any physical supervision by the railways at the time of loading of the goods.

14. If there was no physical supervision and no actual weighment of goods, to our opinion, even in cross examination, AW-1 has admitted as under :-

Question: *Whether RRs have remarks of **said to contain**?*

Answer: It is correct that Railways issued RR at originating station with remarks "**said to contain**".

Question: *Whether the RR has "Sender's weight accepted" remark on it?*

Answer: *I am not aware whether RR contains the remark **Sender's weight accepted**".*

15. Although in cross-examination, AW-1 stated that loading was supervised by the railway staff, but they have failed to specify name of any officer or any acknowledgement or any endorsement regarding such supervision. So, the oral statement made during cross examination would not suffice to establish supervision by the railway staff. Hence, this Issue is found accordingly and there is nothing on record to give answer to the affirmative.

16. **Issue No.3:**

Whether the Applicant had installed weigh bridges at the originating station?

In paragraphs-17 & 18 of the OA, the Applicant submitted as under:-

“17. The Applicant states that due to persistent efforts of the aggrieved exporters, a meeting held between the major iron ore exporters including the MMTC, which is a Government of India enterprise and the South Western Railway officials on 5.12.2003. In the meeting various issues were raised. In particular the unreliability of the in-motion weigh bridge was pointed out. The exporters made various suggestions which were recorded in minutes of meeting in proceedings dated 6.12.2003.

18. The Applicant submits that in this context, the exporters suggested the following:-

(i) They are prepared to install weighbridges at their cost at loading stations, but requested railway to issue “clear” RRs and not to permit any re-weighment later.

(ii) They are prepared to pay for additional staff to ensure that weight volume ratio checks are done more regularly, provided re-weighments en-route and detentions to export cargo is stopped.

(iii) They also suggested that if re-weighments tests are to be done, it should be done by neutral surveyors, adopting similar mechanism as is followed at loading station, in which case the cost will be borne by the exporters.”

17. So until 6.12.2003, as per minutes of the joint meeting there was no weigh bridge at the loading point. Even during cross-examination, witness admitted that they have not installed any weigh-bridge in their premises. Relevant part of cross-examination is reproduced hereunder:-

Question: *Do you know that railways have advised you to install weigh bridge at your cost at loading point or originating station?*

Answer: *It is correct that railways advised us for installation of electronic in motion weigh bridge (EIMWB) in our premises at our siding at our own cost.*

Question: *Have you installed weigh bridge as advised by railways?*

Answer: *It is correct that have installed any weigh bridge in our premises. Witness submitted that there was lot of communication with railways by our company.*

Scrutiny of deposition shows some typographical error while recording answer about this and its correct meaning. It appears that there is some error occurred in recording. However, it has come in evidence that the company has not installed Weigh Bridge at their premises. So, this issue is accordingly answered in favour of the Railways and against the applicant as there was no weigh bridge evidently. The issue is answered accordingly.

18. **Issue No.2:**

Whether the Applicant has loaded the consignment as per the weight-volume ratio methodology approved by the Railway?

It is an admitted case of the Applicant that they loaded wagons with weight-volume-ratio methodology and there was no actual physical weighing of the goods loaded at the originating station. Further, there were no clear RRs and RRs were issued with remarks "*sender's weight accepted, loading not supervised by railways staff and said to contain*". Issuance of conditional RRs have been admitted by the Applicant's witness (AW-1) during cross examination. Further, the Applicant has agreed to install weigh bridge at the originating station, but on stipulation on the railways that in the event of applicant would install weigh bridge at originating station, railway would issue clear RR and this fact has been admitted by the applicant-Applicant in para-18 of the OA reproduced supra.

19. The Applicant has placed on record one document i.e. Annexure-1 along with its OA, which in fact is an incomplete document, but somehow applicants have failed to produce any documentary proof, which may prove such methodology for weighing of goods and had been approved by the Railways at relevant time. At the time of cross-examination, following questions were put to AW-1:

Question: I suggest that weight-volume-ratio methodology is not approved method either by Railways Act or by any Tariff Rules?

Answer: It is an approved method. I can produce relevant circular of the railways for approval of this method. We have annexed Annexure-1 to show that approval of procedure for conducting weight-volume-ratio. It is correct that it bears no seal of railways and no signature of the railway authorities. It is wrong to suggest that no such method was ever approved by the Railways.

20. Once AW-1 during cross examination relied upon Annexure-1 to the OA regarding numerical procedure to justify weight-volume-ratio weighment, it is the duty of Applicant to produce the relevant circular of the Railways to strengthen such method, but somehow, Applicant has failed to produce on record, any circular of Indian Railways or any Tariff Rules, which may approve weight volume ratio. Had there been any sanction to admit measurement by weight volume ratio, railways would not have issued conditional RRs.

21. So, the applicants have failed to place on record any authentic railway instructions or circular to justify approval of weighment by weight-volume-ratio, This issue is accordingly answered in favour of the Railways and against the Applicant.

22. **Issue No.8:**

Whether the respondent is justified in weighing wagons at Guntakal and again at Perambur, apart from considering weight under "weight volume ratio", at the time of booking cargo ?

In view of findings recorded in Issues-2, 7 and 6, the weighment as made by the railways at Guntakal and Perambur en-route through in motion bridges was in accordance with the prerogative, privilege and discretion of the Railways and such acts of weighment are found to be fully justified under the Railways Act and the relevant Rules framed there-under regarding carriage of goods. This issue is accordingly decided in favour of respondent.

23. **Issue No.5:**

Whether the respondent violated principles of natural justice by weighing wagons in the absence of Applicant?

Before proceeding, we would like to quote Section-78 of Railways Act, which reads as under:

“78. Power to measure, weigh, etc. – Notwithstanding anything contained in the railway receipt, the railway administration may, before the delivery of the consignment, have the right to –

- (i) re-measure, re-weigh or re-classify any consignment;*
- (ii) re-calculate the freight and other charges; and*
- (iii) Correct any other error or collect any amount that may have been omitted to be charged.”*

24. So admittedly, in this case there was no physical weighment at the time of loading of goods and it is an admitted case between the parties and Railway Receipts were issued with certain conditions. So, if Railways may on their own discretion made weighment en-route on in-motion weigh bridge in the absence of Applicant, consignor or consignee and whether the respondent infringed principle of natural justice is to be decided in this issue. Section -78 qualifies prerogative for re-weigh or reclassify any consignment notwithstanding anything contained in Railways Act. So even if there was actual physical weighment at originating station that would not snatch away the rights of the Railways' to re-weigh and re-classify any consignment before delivery. Admittedly, in this case the Applicant adopted weight-volume-ratio methodology and have failed to place on record any circular of the Railways, which approves such type of methodology for taking weighment of the goods. Even if for the sake of arguments if we consider that weight volume method as a valid method for taking weighment, even then the Railways have right for re-weighment en-route in the light of S.78 of the Railways Act. In fact, in this case it was not re-weighment, but it was only first weighment en-route because there was no actual weighment done at the originating station. So there was no infringement of principles of any natural justice of Applicant, in any manner, if railways conducted weighment en-route on in motion weigh bridge, even in

absence of Applicant or representative. This issue too is answered in favour of respondent.

25. **Issue No.1:**

Whether the person who had signed and verified the complaint is authorised to sign and the letter of authority is filed in respect of same?

On this aspect, Respondent directed the following cross-examination on

AW-1:-

Question: *Who has signed the complaint filed on 28.2.2017 before the RRT, Chennai?*

Answer: *Mr Amarnath has signed on the complaint.*

Question: *Whether you placed on record any document authorising Mr.Amarnath to sign on behalf of the company ?*

Answer: *I am not aware that Applicant has placed on record any authorisation letter in favour of the Signatory of complaint on record or not ?*

Question: *Please see your complaint copy along with annexure and tell me whether any authorisation has been given to him ?*

Answer: *Opportunity has been given with the witnesses at the asking of Counsel for Respondent to verify the complaint and its annexure. Witness submitted that there is no such authority on record. However, witness volunteered that being legal head he is competent to sign on behalf of the company. It is wrong to suggest that Mr Amarnath was not competent to sign on behalf of the company. At this stage, Counsel for Respondent submitted that there is one GPA executed by Mrs MSPL through Rahul Kumar N.Baladota, Joint Manager Director in favour of Mr. Amarnath.*

Question: *Is there is any resolution of Board of Directors or seal of the company on the GPA?*

Answer: *It is correct that there is no reference on any resolution of Board of Directors, nor there is any seal of the company on the said power of attorney. It is wrong to suggest that said GPA has no force in the eye of law and it is further wrong to suggest that even on the basis of said GPA Mr Amarnath was not competent to sign on behalf of the company.*

Specific objection had been taken by the Respondent about Resolution and Authorisation to the Complainant to file the complaint and place on record.

Although it is very hard to non-suit and pass adverse orders on this technical aspect, but somehow in such a high value case, the applicant has failed to take care and exercise due diligence to execute the matter in an effective and proper manner as expected from Corporate Enterprise undertaking of such a case. Even at the time of arguments, the applicants have failed to counter the arguments raised on behalf of the Respondents, so this Tribunal has no other option, but to take strict view to decide this issue accordingly against the Applicant/applicant.

26. It is the contention of the Railways that OA has not been filed by the competent person and Sri T.S.Amarnath, Sr.Manager (Legal) of Applicant company was not competent to sign the OA. The Applicant has placed on record one General Power of Attorney dated 14.12.2017, executed by Applicant company through Rahul Kumar N. Baladota, Joint Managing Director in favour of Sri S.Amarnath. There is no reference of any resolution of Board of Directors in the said General Power of Attorney so executed. Even there is no reference of any resolution on the strength of which Sri Rahul Kumar Baladota executed said General Power of Attorney in favour of Sri Amarnath in the OA itself. The applicant has placed on record one Board resolution empowering various persons to act jointly or severally and to do all other acts, but in that resolution also there is no specific power to so appointed persons to further delegate their powers in favour of any other officer. Before the Hon'ble High Court, Sri M.Suryaprakash, Sr.Manager (Distribution) had filed writ petitions and not by Sri Amarnath, who has filed present complaint before the RRT Chennai.

27. The Ld.Counsel for the Respondent vehemently argued this aspect at the time of oral hearing as well as at the time of written submissions, but there is no counter from the side of Applicant. On the copy of Power of Attorney, there is no common seal or seal of Applicant-company. The Applicant Company is a Limited

Company and can sue and can be sued in its own name and Applicant is an artificial person and can act through resolutions only.

28. At this juncture, we would like to refer to a decision rendered by Hon'ble Supreme Court in State *Bank of Travancore Vs M/s Kingston Computers (P) Ltd.* (SLP (V) No.18179 of 2009 dated 22.2.2011), wherein the Apex Court held in a similar issue that - ***Suit for recovery of money filed by plaintiff who claimed himself to be a Director of Company – No evidence produced that he was Director and no resolution of Board of Directors produced authorising him to file suit. Suit filed on basis of authority letter issued by Chief Executive Officer of Company, who had no such power – Suit rightly dismissed by trial Court.*** This appeal is directed against the judgement of the Division Bench of Delhi High Court whereby the appeal preferred by respondent M/s Kingston Computers (referred as Company) was allowed and the suit filed by it for recovery of Rs.8,50,952/- along with interest was decreed by reversing the judgement of Addl. District judge, Delhi (referred as Trial Court.). The applicant has failed to prove on record any legal and valid authority as per provisions of Companies Act.

29. This issue is accordingly answered in favour of the Railways and against the Applicant.

30. **Issue No.4:**

Whether the Respondent department is justified in imposing punitive charges without following due process of law?

Section 73 and Section 79 of the Railway Act are the concerned sections dealing with overloading, levy of punitive charges for overloading and reweighment at party's request. They read as under:

Section 73 "Punitive charge for overloading a wagon:-

Where a person loads goods in a wagon beyond its permissible carrying capacity as exhibited under sub-section (2) or sub-section (3), or notified under sub-section (4), of Section 72, a railway administration may, in addition to the freight and other charges, recover from the consignor, the consignee or the endorsee, as the case may be, charges by way of penalty at such rates, as may be prescribed, before delivery of the goods:

Provided that it shall be lawful for the railway administration to unload the goods loaded beyond the capacity of the wagon, if detected at the forwarding station or at any place before the destination station and to recover the cost of such unloading and any charge for the detention of any wagon on this account."

Section 79 - "Weighment of consignment on request of the consignee or endorsee" :-

A railway administration may on the request made by the consignee or endorsee, allow weighment of the consignment subject to such conditions and on payment of such charges as may be prescribed and the demurrage charges if any ;

Provided that except in cases where a railway servant authorized in this behalf considers it necessary so to do, no weighment shall be allowed of goods booked at owner's risk rate or goods which are perishable and are likely to lose weight in transit;

Provided further that no request for weighment of consignment in wagon load or train load shall be allowed if the weighment is not feasible due to congestion in the yard or such other circumstances as may be prescribed.

31. The consignments in the present case were loaded commencing from 22.4.2002 to 31.12.2002 and from 20.9.2003 to 15.11.2003. As observed in Issue No.2, the wagons were loaded under weight-volume ratio methodology and no physical weighment of goods loaded at the originating station had been done as there was no Electronic In-motion Weighbridge (EIMWB) at the originating station. The applicant has not placed on record any circular/ order that the methodology for weighment of goods under weight-volume-ratio had been approved by the Railways at the relevant time. The counsel for Respondent contended that weighment under weight-volume-ratio indicates the approximate weighment but not the actual weighment of the consignment since there are many factors which affects the weight of the consignment viz., maintaining even level of the iron ore in the wagons, loading of consignment either in loose or tight condition into the wagon, wetting of consignment due to rain and moisture etc., and therefore, the weighment under wait-volume-ratio cannot be considered as

correct weighment. It is admitted by both the respondent and the applicants that the Railway Receipts for the goods in question were issued with qualifying remarks viz., Senders weight accepted, Said to Contain which implied that the freight calculated and collected at the originating point was not final and was subject to change depending on the weight discovered during weighment of the rake at the first weighbridge enroute viz., Guntakal EIMWB. While many of the rakes loaded by the applicant were found to be overloaded, the learned counsel for the applicant admitted during the oral arguments that it was not the case that every rake of theirs was found to carry excess weight.

32. In the rakes under consideration in this case, the Respondent vide their letters dt. 12.8.2002, 14.10.2002, 19.12.2002, 21.11.2003 and 29.11.2003/1.12.2003 demanded to pay an amount of Rs.5,10,75,694/- towards the punitive charges, which were assailed by the Applicant in W.P.Nos.7537 of 2002 and 27119 of 2003 before the Hon'ble High Court of Andhra Pradesh.

33. We note that the entire case of the applicants revolves around only one issue and that is that the Guntakal EIMWB was defective. Though the applicant disputed the correctness of the weighbridge at Guntakal, no document has been placed on record by them to prove the same. Admittedly, the goods were loaded at the Applicant's siding where there was no weighbridge installed at the originating station. Therefore, the Respondent had every prerogative to weigh the consignment enroute and recover charges by way of penalty from the consignor or consignee or the endorsee in addition to the freight and other charges. If the Consignee or endorsee found any discrepancy in the weighment, they can request for reweighment of consignment as provided under Sec.79 of the Railways Act.

34. The Applicant has not placed on record any letter showing that they had asked for reweighment of the consignment either at the originating or destination station. Thus, the weighment made at Guntakal weighbridge remains undisputed. The applicant has thus not exercised the right provided to it for reweighment under Sec.79 of the Railways Act. It is seen from the details placed on record that the applicant was a regular customer of the railways for years and therefore they were aware that their rakes would be invariably weighed at the Guntakal EIMWB and that in case of overloading, punitive charges would be levied. Therefore, the applicants being in the know of the whole sequence of things could have immediately requested in each and every case, where overloading was detected, for reweighment before delivery of the consignment. We find that the applicants have failed to produce any document that showed that they had requested for reweighment. Nowhere it has been brought on record by the Applicant that the Guntakal weigh bridge was declared as unfit by the Metrological Department. The counsel for Respondent submitted that the Applicant being a regular customer and the consignment being export traffic, the Railways, in good faith, did not seize the consignment and sell the same in auction to recover the punitive charges, though it is empowered under Sec.83 of the Railways Act. It allowed the applicant to unload the goods and that Respondent was accommodative of the customer's interest. However, their gesture has gone awry. It is also pertinent to note that the RRs were said to contain and the consignments were booked for 'Self'. The Respondent has taken a strong objection that merely mentioning the serial number, date, description, number of rakes, station, destination, qualifying metric tons, railway freight paid without mentioning the Railway Receipt numbers and how much was loaded, does not prove that the rakes were correctly loaded. As observed in above Paras, the Applicant could have asked for re-weighment of consignment before taking delivery but instead questioned the correctness of Weigh Bridge at Guntakal without there being any proof.

35. Be that as it may, it is pertinent to note that though the respondent demanded the Applicant to pay the punitive charges of Rs.5,35,77,390/- no record has been placed on record by the Applicant to show that they have paid the said charges even till date. Nor it is the case of the Applicant that the Respondent has collected the charges by way of adjustment from the refund amounts payable to the consignors or from the port charges paid by the consignors from time to time. The prayer of the Applicant is to pass an order declaring the claim of punitive charges as unreasonable and unjustified and consequently to quash the demand notices issued by the Respondent against the applicant for payment of Rs.5,35,77,390/- towards punitive charges.

36. The present claim application has been filed under Section 36 (c) of the Railways Act, which provides that any complaint against the Railway administration for levying any other charges, which is unreasonable, may be made to the Tribunal, and the Tribunal shall hear and decide any such complaint in accordance with the provisions of this Chapter. However, as per the provisions of Section 44 of said Act, in case of any complaint made under clause (b) or clause (c) of Section 36, the Tribunal may (i) fix such rate or charge as it considers reasonable from any date as it may deem proper, **not being a date earlier to the date of filing of the complaint;** (ii) direct a refund of amount, if any, as being the excess of the rate or charge fixed by the Tribunal under clause (i). Therefore, any relief granted by the Tribunal shall be from the date of filing of the complaint is with prospective effect only. The Applicant has failed to prove that punitive charges levied were without following the due process of law.

37. Therefore, we find that the punitive charges claimed by the Respondent railway are as per Rules in force. Hence, we answer this issue in the negative and against the Applicant.

38. **Issue No.10:**

Since no punitive charges have been paid by the Applicant to the Respondent till date there arises no question of refund of punitive charges. Hence this issue is answered in the negative.

39. **Issue No.12:**

In view of the above findings, the applicant is held not entitled to any relief.

40. In the result, it is

ORDERED

that the claim application is dismissed, on contest, without costs.

Pronounced in Open Court on 9.5.2022

Dictated to the PS on 9.5.2022, corrected and signed by us in circulation

(N. MADHUSUDAN RAO)

Member (Technical)

(VINAY GOEL)

Member (Judicial)

Through Hybrid hearing

APPENDIX**WITNESSES EXAMINED FOR THE APPLICANT:**

- 1) AW.1 Shri Ramakrishna Giyyar, Dy.General Manager (Logistics)

DOCUMENTS MARKED FOR THE APPLICANT:

1. Ex.A1 - Copy of Minutes of the Meeting of Board of Directors of applicant company dt. 3.8.2021.
2. Ex.A2 - Copy of Fresh Certificate of Incorporation consequent on change of name.
3. Ex.A3 - Copy of Minutes of the Meeting of South Western Railway dt.6.12.2003 with Major Exporters on 5.12.2003.
4. Ex.A4 - Copy of letter dt 12.8.2002 from Dy.Traffic Manager, Chennai Port Trust addressed to applicant company.
5. Ex.A5 - Copy of letter dt. 14.10.2002 from CGS/RPM to applicant company.
6. Ex.A6 - Copy of letter dt 19.12.2002 from Dy.Traffic Manager, Chennai Port Trust addressed to applicant company.
7. Ex.A7 - Copy of letter dt 29.11.2003 from Dy.Traffic Manager, Chennai Port Trust addressed to applicant company.
8. Ex.A8 - Copy of Applicant's letter dt. 26.3.2001 addressed to GM/SCR.
9. Ex.A9 - Copy of Applicant's letter dt. 17.8.2001 addressed to CCM/SCR.
10. Ex.A10 - Copy of Applicant's letter dt. 13.9.2001 addressed to DRM/SR.
11. Ex.A11 - Copy of Applicant's letter dt. 16.1.2002 addressed to GM/SCR.
12. Ex.A12 - Copy of letter dt. 2.12.2003 addressed to DRM/Hubli by M/s MMDC Ltd.
13. Ex.A13 - Copy of letter dt. 3.12.2003 addressed to Traffic Manager, Chennai Port Trust under copy to CCM/SWR/Hubli from M/s Bellary Iron Ores Pvt. Ltd.
14. Ex.A14 - Copy of Minutes of the Meeting of South Western Railway with Major Exporters dt. 6.12.2003.
15. Ex.A15 - Copy of Applicant's letter dt. 28.11.2003 addressed to DRM/GTL.
16. Ex.A16 - Copy of letter dt. 6.12.2003 from M/s NMDC addressed to Traffic Manager, Chennai Port Trust.
17. Ex.A17 - Copy of letter dt. 10.12.2003 from M/s Federation of Indian Mineral Industries addressed to Member Traffic, Railway Board.
18. Ex.A18 - Copy of letter dt. 23.1.2004 from Applicant company to CCM/Hubli.
19. Ex.A19 - Copy of Indian Railway Commercial Manual Vol.II.

WITNESSES EXAMINED FOR THE RESPONDENT:

- 1) RW.1 - Shri P. Srinivas, Asst. Commercial Manager

DOCUMENTS MARKED FOR THE RESPONDENT: NIL**(N. MADHUSUDAN RAO)****Member (Technical)****(VINAY GOEL)****Member (Judicial)****Through Hybrid hearing**