

GAHC010073662021



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

Case No. : WP(C)/2957/2021

M/S VINAYAK LOGISTICS AND ANR
A PROPRIETORSHIP FIRM REP. BY ITS PROPRIETOR SRI PRAVESH KABRA
HAVING ITS OFFICE SITUATED AT M.G. ROAD, NEAR ICICI BANK, FANCY
BAZAR, GUWAHATI-781001.

2: PRAVESH KABRA
PROPRIETOR OF M/S VINAYAK LOGISTIC HAVING HIS OFFICE SITUATED
AT M.G. ROAD
NEAR ICICI BANK
FANCY BAZAR
GUWAHATI-781001

VERSUS

THE UNION OF INDIA AND 7 ORS
REP. BY THE SECRETARY, MINISTRY OF RAILWAYS, RAILWAY BOARD,
RAILWAY BHAWAN, AND NEW DELHI.

2:THE GENERAL MANAGER

NORTH EASTERN FRONTIER RAILWAYS
MALIGAON
GUWAHATI
ASSAM.

3:THE COMMERCIAL SUPERVISOR (GOODS)
NORTH EASTERN FRONTIER RAILWAYS
CHANGSARI
ASSAM.

4:THE GENERAL MANAGER

NORTH WEST RAILWAY
HEAD OFFICE

NEAR JAWAHAR CIRCLE JAIPUR-302017.

5:THE DY. CHIEF VIGILANCE OFFICER (TRAFFIC)

NORTH WEST RAILWAY
HEAD OFFICE
NEAR HAWAHAR CIRCLE JAIPUR-302017.

6:THE SR. DIVISIONAL RAILWAY MANAGER

DIVISIONAL OFFICE
NORTH WEST RAILWAY
AJMER (RAJASTHAN).

7:THE GENERAL MANAGER
NORTHERN RAILWAY
BARAKHAMBA ROAD
NEW DELHI.

8:THE STATION SUPERINTENDENT

NORTHERN RAILWAY
KATHUWA

Advocate for the Petitioner : DR. ASHOK SARAF

Advocate for the Respondent : SC, RAILWAY

BEFORE

HON'BLE MR. JUSTICE PRASANTA KUMAR DEKA

18.05.2021

Heard Mr. A Saraf, learned Senior counsel assisted by Mr. A Goyal, learned counsel for the petitioners. Also heard Mr. B Sarma, learned standing counsel for the respondent Railways.

This writ petition is filed challenging (i) demand notice dated 26.03.2021 issued by the Senior Divisional Commercial Manager, Ajmer, North Western Railways directing the petitioners to pay Rs. 94,14,519/- as penalty on account of alleged mis-declaration of goods

booked from Nathduwara (NDT) Rajasthan to Kathua, Jammu & Kashmir after the goods in the consignment were delivered to the consignee, (ii). the demand notice dated 27.03.2021 and 29.03.2021 issued by the Commercial Superintendent/ Supervisor, Changsari, NF Railways directing the petitioners to pay the said amount of Rs. 94,14,519 for the aforesaid violation of mis-declaration of goods at the time of booking the consignment from NDT to Kathua, (iii). letters dated 29.03.2021 and 30.03.2021 issued by the Commercial Supervisor (Goods) NF Railways, Changsari demanding penalty of Rs. 94,14,519/- and subsequent retention of five wagons of goods of the petitioners against the consignment booked at Gotam (Rajasthan) to Changsari as security against the demand of Rs. 94,14,519/- after delivery of the consignment.

Mr. Saraf, learned Senior counsel submits that such action of demand for mis-declaration that too after delivery of goods is in specific violation of Section 78 and 83 of the Railways Act 1989 and the law is settled by this Hon'ble Court subsequently held by the Hon'ble Apex Court. It is also his contention that there was specific violation of principles of natural justice inasmuch as prior to imposition of the said demand of Rs. 94,14,519/- no show cause notice/ notices were issued. It is also the contention that if at all there was any mis-declaration of the goods consigned there is no provision for imposition of penalty rather it is the differential amount of transportation cost which at best the Railways can impose. The forwarding note was issued by the petitioner mentioning the nature and the weight of the consignment upon which the goods were booked at Nathduwara. Accordingly, upon such submission, Mr. Saraf sought for intervention by this court and also to pass an appropriate interim order protecting the petitioners from such unlawful acts.

Mr. Sarma, learned standing counsel on the other hand objected to the submissions made by Mr. Saraf to the extent that this Hon'ble Court has no jurisdiction to enter into the dispute inasmuch as the demand notice dated 26.03.2021 impugned in this writ petition was issued by the Senior Divisional Commercial Manager, Ajmer, North Western Railways and moreover the dispute requires evidence in order to resolve the same and as such the petitioner ought to have preferred appropriate application/ appeal in the Railways Claims Tribunal. Regarding the interim prayer sought for by the learned Senior counsel for the petitioners, it is submitted by Mr. Sarma that the Railways has the authority under Section 83

of the Railways Act, 1989 to invoke lien over any consignment of the petitioners which entered into concerned station at the very first after the demand was made and accordingly the action initiated by the Commercial Supervisor, NF Railways, Changsari is well within the ambit and scope of Section 83 of the Railways Act, 1989. Further it is on the own volition of the petitioners on the basis of which the five wagons were kept on lien and as such the petitioners cannot ask for any interim order thereby releasing the said wagons from the lien invoked by the NF Railways.

Considering the submissions of the learned counsel I feel that the matter requires substantial hearing. Let notice be issued. Mr. Sarma accepts notices on behalf of respondent Nos. 1,2 and 3. The petitioners shall take steps on the rest of the respondents within a period of one week from today by way of registered post with A/D. Necessary extra copies be served on Mr. Sarma.

Notices are made returnable after four weeks.

Upon consideration of the nature of relief sought for by the learned Senior counsel for the petitioners and also keeping in view the submission made by Mr. Sarma, the learned standing counsel for the respondent NF Railways, I am of the view that the interest of the Railways shall be protected in the event if the petitioners are directed to submit indemnity bond covering the amount of Rs. 94,14,519/- to indemnify the Railways as against the claim made by it and on submission of the said indemnity bond the respondent No. 3 shall release the said five wagons kept under lien forthwith. This interim order is passed keeping in view the present pandemic situation.

Till the next returnable date, the operation of the demand notice dated 26.03.2021 and the subsequent notices issued by the Senior Divisional Commercial, Ajmer North Western Railways is stayed.

JUDGE

Comparing Assistant