

23.12.2025

Item No. 13

Crt.No.10

b.r.

WPA 25743 of 2025

Akbar Ali

-vs-

Union of India & Ors.

Mr. Saptarshi Roy
Ms. Kakali Das Chakraborty
.... For the petitioner.

Mr. Biplab Guha
Ms. Debarati Sen (Bose)
.... For the State.

Mr. Chirantan Dawn
Mr. Rajesh Kumar Shah
... for the Resp. nos. 1 to 4.

Mr. Swapan Kr. Pal
... for the Resp. no.5.

1. Parties are represented through their respective learned counsels.
2. The petitioner in the instant writ petition is a registered lease-holder of the Eastern Railway alleging, inter alia, the illegal imposition of a punitive over loading charge of Rs. 61,517/- at Howrah Division Eastern Railway arising out of an unilateral re-weighment of tare (empty) Leased Parcel Van (LVPV) attached to Train no. 12302 (New Delhi Howrah Rajdhani Express) under Contract No. PCL-12301-02-12305-06-VP1 dated 04.07.2025.

3. The petitioner submits that the re-weighment was conducted from Howrah Station on 30.10.2025 by levelling an allegation based on reading from a defective weighbridge against the petitioner for overloading of 2.61 tonnes by applying the outdated tare weight 37.8 tonnes instead of revised 39.5 tonnes as notified by the Railway Board which runs contrary to the clause 3.2 of the Freight Marketing Circular no. 07 of 2021. Based on readings from a defective, uncelebrated weighbridge.
4. The petitioner has already suffered a punitive demand notice of Rs. 61,517/- on 31st October 2025 but the same has been paid under protest to secure the release of the consignment.
5. Learned counsel for the Union of India submits that though the issue involved herein pertains to re-weighment but such re-weighment was never done by the authority concerned and as such no illegality has been committed by the concerned authority.
6. It is also further submitted with regard to the point of maintainability that the case shall be referred to the Railway Claims Tribunal for proper adjudication of the disputed question of facts involved herein.

7. The respondent no.5 also adopts the submissions advanced by the Union of India with regard to the point of maintainability.
8. Learned counsel for the Railway authorities strenuously argues on the point of maintainability since there is an alternative forum available to agitate the grievance for redressal.
9. Let the maintainability point be kept open and be decided at the time of hearing.
10. Learned counsel for the petitioner submits that it has also been held by a Co-ordinate Bench of this Court in WP 21636(W) of 2019 (National Carrying Corporation & Anr. -vs- The Union of India & Ors.) in 15, which is reproduced below:-

“ Last but not the least, the challenge to the maintainability of the writ petition made by the respondents is required to be dealt with. Learned counsel for the respondents has placed reliance on a judgement of a coordinate Bench of this Court dated 6th December, 2019 in W.P. no. 6127(W) of 2012 wherein the learned Court has held that the writ Court is not the appropriate forum to adjudicate disputed questions of fact with regard to determination of rate of freight on a consignment and truth of a declaration made by the parties about the consignment in question.”

11. It was held by another Division Bench of the Hon'ble Supreme Court judgement, rendered in 2021 SCC Online SC 99 (Unitech Limited and Ors. –vs- Telengana State Industrial Infrastructure Corporation (TSIIC) & Ors.), in which paragraph 39 is reproduced below:-

“39. A two judge Bench of this Court in ABL International Ltd. V. Export Credit Guarantee Corporation of India analyzed a long line of precedent of this Court to conclude that writs under Article 226 are maintainable for asserting contractual rights against the state, or its instrumentalities, as defined under Article 12 of the Indian Constitution. Speaking through Justice N. Santosh Hedge, the Court held:

N”27..... the following legal principles emerge as to the maintainability of a writ petition:

- (a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of (a) contractual obligation is maintainable.
- (b) Merely because some disputed questions of a fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.”

12. The respondent no.5 also relied upon a Division Bench judgement of this Court, rendered in FMA 1623 of 2025 with CAN 2 of 2025 (Union of India & Ors -vs- Harish Sharma & Ors.), in which paragraph-5, which is reproduced below:-

“5. These are disputed questions of fact, which a writ Court cannot enter into. Similar cases have been referred by this Court to be agitated before the Railways Claims Tribunal, specially constituted under Statue, entrusted with powers of determining by trial of evidence of any dispute raised by any consumer of the services of the railways.”

13. Having heard the learned counsels appearing for the respective parties upon considering the materials available on record, I direct all the respondents to file a report in the form of affidavit indicating the discrepancies it appears in the punitive notice with regard to the tare weight and also the detailed status and functioning of the in motion weighbridge with regard to the consignment involved in the instant case.

14. The matter shall appear in the Combined Monthly List of February, 2026.

15. In the meantime, parties shall file their reports in the form of affidavit and copy of the same shall be exchanged between the parties.

16. Liberty is given to the petitioner file exception, if any, to the report filed by the respondents.

(Smiita Das De, J.)