
(1993) 07 BOM CK 0041
In the Bombay High Court
Case No : Writ Petition No. 609 of 1984

Arvind V. Shah

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 30-07-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 49 ECR 32 : (1993) 68 ELT 286

Hon'ble Judges : M.L. Pendse, J;A.P. Shah, J

Bench : Division Bench

Advocate : Shri S.U. Kamdar and Mr. N.M. Shah, for the Appellant; Shri L.S. Vyas, for the Respondent

Judgement

Pendse, J.—The Import-Export Policy of year 1982-83 by Appendix 6 provided for import of cars. Clause (F) of Appendix 6, inter alia, stated that persons who are physically handicapped can import cars and for which import licence or CCP will not be necessary for clearance of a vehicle. To enable a person, who is physically handicapped to import car, the Appendix provided that the state Civil Surgeon or head of concerned wing in a Government Hospital must issue a certificate detailing nature and extent of disability and justification for use of a special car with disability control device(s).

In accordance with the policy, the petitioner filed application on November 23, 1982. The application, inter alia, recites that the petitioner is carrying on business as a partner in Bombay and desirous to import car of CIF value of Rs. 70,000/- with spare parts of Rs. 2,500/-The petitioner was working as a partner in Export House and claimed that car is required to carry valuable cargoes to custom for export. In support of the application, a certificate issued by Civil Surgeon, Thana on December 13, 1982 was annexed. The certificate recites that physical disability is "amputated middle finger at pipit and ringer middle of proximal phalanx". The Civil Surgeon recommended import of car as hand operated automatic change of gear system.

2. Some time after May 25, 1983, the Section Officer, Government of India, Ministry of Finance, informed the petitioner that the permission to import car with duty concession is regulated by Notification dated May 25, 1983 and Notification requires satisfaction of certain conditions. The petitions advised to approach the Collector of Customs, Bombay, in case the petitioner satisfies the conditions set out therein. On July 22, 1986, the Supreme Court passed order in Civil Appeal No, 985-1096 of 1986, inter alia, directing the Government to dispose of the applications filed for import of car by person, who has physical disability in accordance with the import policy and with reference to the conditions in the Notification, provided the applications were filed before December 27, 1982. Though the petitioner had not approached the Supreme Court, the Government decided to examine the application of the petitioner on merits and the Screening Committee constituted by Government of India considered the application and decided to reject it on three grounds. The first ground was that the application was not tendered before December 27, 1982. The second ground was that proof of income was not produced, while the last ground was that on security of medical certificate, the disability shown was not sufficient to justify import of specially designed car. The decision was communicated to the petitioner by letter dated October 13, 1986. In the meanwhile, on March 20, 1984, the petitioner filed the present petition under Article 226 of the Constitution claiming writ of mandamus for quashing the letter written by Government of India advising the petitioner to approach the Customs Authorities in accordance with Notification dated May 25, 1983. After the order rejecting the application on merits was communicated by letter dated October 13, 1986, petition was amended to challenge the correctness of the order.

3. Shri Kamdar, learned counsel for the petitioner, submitted that the Screening Committee could not have considered the application of the petitioner with reference to the conditions set out in Notification dated May 25, 1983. The learned counsel is right in submission that the application, which was filed long before May 25, 1983, must be determined with reference to the conditions set out in Appendix 6 of Import-Export Policy, 1982- 83. The learned counsel further submitted that the claim of the Screening Committee that the application was not filed before December 27, 1982 and proof of income was not produced is not correct. We will accept the claim of the learned counsel and proceed to examine whether the third ground that the disability claimed by the petitioner was not sufficient to justify import of specially designed car is correct or otherwise. The learned counsel very fairly stated that the conditions set out in Appendix 6 of Import-Export Policy specifically provide that the disability must be to such an extent which would justify use of a special car with disability control device(s). The short question, which falls for determination, is whether the petitioner satisfies these conditions.

4. On perusal of certificate issued by Civil Surgeon, it is obvious that disability suffered by the petitioner is not such which justify import of specially designed car. The middle finger and ring finger of the right hand of the petitioner was

amputated due to some accident. The loss of two fingers has not affected the use of right hand. The perusal of certificate indicates that there is no other physical disability. In our judgment, the loss of two fingers of right hand is not a disability which would justify import of specially designed car. The petitioner is working as a partner in Export House and, in our judgment, the decision of the Screening Committee that the disability does not entitle the petitioner to import a car cannot be faulted. In these circumstances, the petitioner is not entitled to any relief.

5. Accordingly, petition fails and rule is discharged, but there will be no order as to costs.