
(2001) 10 PAT CK 0054
In the Patna High Court
Case No : C.W.J.C. No. 10635 of 2000

Dalip Singh Chaudhary

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-10-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 3 BLJR 2349

Hon'ble Judges : Chandramauli Kumar Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Chandramauli Kumar Prasad, J.—In this writ application filed under Article 226 of the Constitution of India, petitioner prays for quashing of the order dated 16-12-1996 (Annexure-9), petitioner has been communicated that his customs House Agent Licence No. 2/CHA/82 is not fit to be renewed. His further prayer is to quash the order dated 28-8-1998 (Annexure-13), whereby petitioner has been informed that as licence condition has been violated, licence has been cancelled right from 19-5-1995 which cannot be renewed. His further prayer is to command the respondents to renew his customs House Agent Permanent Licence No. 2/CHA/82.

2. According to the petitioner, he applied for a Customs House Agent licence in the year 1982 u/s 6 of the Customs House Agent Licensing Regulations 1965 according to which, the minimum qualification required for grant of licence is passing of matriculation examination. It is the assertion of the petitioner that his application was processed and the licence was granted in favour of M/s Dalip Singh Choudhary and Om Prakash Sharma, partners of M/s Everest Road Carriers, 161/1 M.G. Road, C/O Everest Road Carriers (H.O.) Calcutta-7 which was valid till 31st December, 1983. According to the terms of the licence, the work was to be transacted through the petitioner. The aforesaid licence was granted to the petitioner u/s 10 of the Customs House Agents Licensing

Regulation, 1965, which was renewed from time to time and the last renewal was from the year 1992 till 31-12-1995.

3. Petitioner's case further is that in the year 1993, the other partner, namely, Om Prakash Sharma suggested for dissolution of the partnership and accordingly a deed of dissolution (Annexure-3) was signed on 1-10-1993 in which it was stipulated that the licence in question shall be the sole property of the petitioner and said Om Prakash Sharma shall have no interest in the same. Petitioner has averred that by letter dated 17-12-1993, he intimated to respondent No. 3, i.e. the Assistant Commissioner (Tech), Customs Head Quarters, Patna giving details regarding dissolution of the firm by post under Certificate of Posting.

4. Before expiry of the period of licence, according to the petitioner, on 12-12-1995, he sent application for renewal of the licence, to respondent No. 3 along with the required details and renewal fee of Rs. 3000. The application of the petitioner for renewal of the licence was processed and by letter dated 9-8-1996 (Annexure-7), the petitioner was informed that the licence was originally granted to Sarvashri Dalip Singh Chaudhary and Om Prakash Sharma, partners of M/s Everest Road Carriers, 161/1 M.G. Road, C/O M/s Everest Road Carriers (H.O.)) Calcutta-7 and the same was not issued to M/s Everest Road Carriers, Raxaul and in the aforesaid premise, information was sought for from the petitioner as to whether any change in the constitution of the firm has taken place. Petitioner sent the reply by letter dated 12-8-1996 (Annexure-8), inter alia, stating that as per the deed of dissolution signed between him and Om Prakash Sharma, there is change in the constitution of the firm and according to the deed of dissolution, the licence is the sole property of the petitioner and Om Prakash Sharma shall have no interest in the same. On consideration of the reply filed by the petitioner, the matter was examined by the Commissioner of Customs (P) and he directed that the licence is not fit for renewal. Petitioner by the impugned order dated 16-12-1996 was communicated accordingly.

5. Petitioner being dissatisfied with the decision, again wrote to respondent No. 3 by letter dated 27-12-1996 (Annexure-10), inter alia stating that he has submitted the renewal application within the validity period of licence along with prescribed renewal fee and the volume of transaction made during the last three years and he having fulfilled all the conditions prescribed under the Customs House Agents Licensing Regulations, 1984 (hereinafter referred to as the Regulations), there was no justification to refuse the renewal. Accordingly, it was prayed that the matter be again placed before the Commissioner Customs for reconsideration of his renewal application. Petitioner sent reminders for renewal of the licence by letters dated 4-3-1997, and 22-1-1998 (Annexures-11 and 12). In response to the letter dated 22-1-1998, petitioner was informed that since licence condition has been violated, same stood cancelled right from 1995 and same cannot be renewed. Petitioner was however informed that as he has passed the requisite examination, he may apply for a new licence, if he so desires. It seems that a Member of the Parliament, wrote to the Finance Minister

regarding the issue of a fresh Customs House Agents Licence to the petitioner and in response thereto, the Minister wrote to him that petitioner does not fulfill the terms and conditions of the Customs House agents Licensing Regulation 1984 as he is not a graduate and hence, licence was not issued to him.

6. Counter affidavit has been filed on behalf respondents 1 to 4 in which besides the plea on merits, they have sought for dismissal of the writ application on the ground of delay and laches. Their stand further is that the licence in question was granted to M/s Everest Road Carriers Calcutta and the petitioner being one of the partners of the firm, was authorised to conduct the custom business since he had passed the examination as provided under Rules 9 of the Customs House Agents Licensing Regulation, 1984 (hereinafter referred to as the Regulation). Their stand further is that the licence was renewed from time to time upto 31-12-1995 and thereafter the petitioner applied for renewal of the licence for a further period of five years, i.e. upto 31-12-2000 and since the respondents were not informed regarding the dissolution of the partnership firm, petitioner was informed that the said licence was not fit for renewal and before doing so, petitioner, by letter dated 9-8-1996 (Annexure-7), was asked to clarify the position.

7. Respondents' plea further is that after the closure of the issue of renewal of licence, petitioner filed application dated 2-9-1998 for issuance of fresh Customs House Agents Licence and by a letter dated 2-9-1998 (Annexure-8), he admitted that he had violated the conditions of licence innocently but in future, he will be careful about the Rules and Regulation. In answer to the allegation of the petitioner that he had sent information about the dissolution of the partnership, stand of the respondents is that there is no evidence available in the office of the Deputy Commissioner, Land Customs Station, Raxaul regarding submission of any such information. Petitioner having not reported any change in the constitution of the firm to the Commissioner as early as possible, the respondents decided not to renew the licence.

8. From the pleadings of the parties, following questions fall for determination:

- (i) Whether Customs House Agents Licence No. 2/CHA/82 was granted to M/s Everest Road Carriers, Calcutta or to the petitioner and Om Prakash Shrama?
- (ii) Whether petitioner informed about the change of partnership to the authority required under Regulation 16 of the Regulation?
- (iii) Whether the writ application suffers from delay and laches and on this ground alone, same is fit to be dismissed?

9. Question No. (i): As stated earlier, stand of the petitioner is that the licence dated 15-1-1983 was issued in favour of M/s Dalip Singh Chaudhary and Om Prakash Sharma as individual and not as partners of M/s Everest Road Carriers, Calcutta. However, the stand of the respondents in the counter-affidavit is that the licence, in fact, was issued to M/s Everest Road Carriers, Calcutta and the

petitioner being one of the partners of the firm was authorised to conduct the business, on behalf of the firm, as he had passed the examination provided under Rule 9 of the Regulations.

10. Mr. Ram Balak Mahto, learned Senior Advocate for the petitioner contends that the very premise on which the respondents had proceeded that licence was in the name of the firm and not in the name of petitioner is erroneous in law and renewal having been refused on the erroneous ground, impugned orders are fit to be quashed. In this connection, he has drawn my attention to the licence and contends that the licence was granted to Sarvashri Dalip Singh Chaudhary and Om Prakash Sharma, partners of M/s Everest Road Carriers, 161/1 M.G. Road, C/O Everest Carriers, (H.O), Calcutta~7. This, according to the learned Counsel, clearly shows that it was the petitioner along with Om Prakash Sharma who were granted licence. I am not prepared to accept this submission of the learned Counsel for the reasons stated hereinafter. In the licence itself, it has been indicated "that in the case of a firm or company, the Customs House work shall be transacted through one of the following persons". In the said column, it has been stated that it is Dalip Singh Choudhary, i.e. the petitioner, who shall carry out the Customs House work on behalf of the firm. Had licence been granted to individual there was no occasion to authorise the petitioner to transact the business on behalf of the firm. Further in the deed of dissolution, it has been clearly stated that the licence is held "in the name of M/s Everest Road Carriers" and shall be the property of the petitioner and Om Prakash Sharma shall have no interest in the same. Not only this, in its letter dated 17-12-1993 (Annexure-3) addressed to respondent No. 3, the petitioner, in no uncertain term, has stated that after dissolution of the partnership, the licence was retained by him. In case, the licence stood in the name of the petitioner and Om Prakash Sharma, there was no occasion for him to intimate about the dissolution of the partnership which he claimed to have done. Letter dated 4-9-1998 (Annexure-A) is an admission of the petitioner that he has violated the conditions innocently and shall be careful in future. In the case of any firm or company being a licence, any change in the constitution thereof, is required to be reported by the firm or the company to the Commissioner as early as possible under Regulations 16 of the Regulations and such firm or company indicating such change, is required to make a fresh application for the grant of licence under Regulation 5 or Regulation 10 as the case may be. According to the petitioner, he had intimated about the dissolution of the firm to the authority. In my opinion, had the licence being in favour of the petitioner as individual, there was no occasion for him to intimate about dissolution of firm.

11. From what has been stated above, it is evident that the licence stood in the name of M/s Everest Road Carriers, Calcutta and the petitioner as also Om Prakash Sharma were only described as its partners. This question is thus answered against the petitioner.

12. Question No. (ii): Petitioner has averred that by letter dated 17-12-1993

(Annexure-3) which was sent under the Certificate of Posting, he informed respondent No. 3 about the dissolution of the firm. Respondents in the counter-affidavit, had, however, stated that there is nothing on the record to show that such an information was sent by the petitioner. In my opinion, had the petitioner sent information about the dissolution of the firm to the respondents, same should have been in the file. Further, petitioner in his letter dated 2-9-1998 had clearly admitted that he had violated the conditions innocently. Had he informed about the dissolution of the firm, there was no occasion for him to say so. Thus, the stand of the petitioner that he had sent the information regarding the dissolution of the firm, has to be seen with a pinch of salt. I am of the opinion that the petitioner has not been able to prove that he had sent the information regarding the dissolution of the firm to the authority as required under Regulation 16 of the Regulation.

13. Question No. (iii): It is relevant to state here that by letter dated 12-12-1996 (Annexure-9), petitioner was informed that his application for renewal of Customs House Agents licence, is not fit to be renewed. Thereafter, by letters dated 17-12-1996, 4-3-1997 and 22-1-1998 (Annexures-10, 11 and 12), petitioner sent reminders for renewal. In response of the letter dated 22-1-1998, respondent No. 3, by letter dated 28-8-1998 (Annexure-13), wrote to him that the licence stood (sic) Petitioner was further intimated by the said letter that he having passed the required examination, may apply for a new licence. This writ application has been filed on 23-10-2000. As stated earlier, prayer for renewal was rejected for the first time by communication dated 12-12-1996 and then by letter dated 28-8-1998.

14. Mr. Mahto contends that in view of the stand of the respondents in letter dated 28-8-1998 whereby the petitioner was communicated that he has passed the requisite examination and can apply for a new licence, misled the petitioner and only after the communication dated 15-5-2000 (Annexure) that the petitioner does not fulfill the terms and conditions of the Regulation, which stipulates that the applicant has to be a graduate for grant of fresh licence he has chosen to file this writ application. Explanation put forth by the petitioner, does not appeal to me at all. So far the question of renewal of the licence is concerned, the same was rejected by communication dated 12-12-1996 and 28-8-1998. In fact, conduct of the petitioner by applying for a fresh licence, clearly goes to show that he accepted the rejection of the renewal application as a fate accompli. Had he not accepted that, there was no occasion for him to apply for the fresh licence.

15. In my opinion, as the issue of renewal of licence was finalised by communication dated 28-8-1998 and the petitioner has chosen to file this writ application on 23-10-2000, and the explanation put forth by him for approaching the Court at a belated stage, being unsatisfactory, the writ application suffers from delay and laches and fit to be dismissed on this ground also.

16. To put the record straight, it is relevant to State here that it is not the case of

the petitioner that the change in the constitution of the firm is not required to be intimated. As observed earlier under Regulation 16 of the Regulation which provided for an intimation of change in the constitution of the firm or a Company.

17. In the result, I do not find any merit in this writ application and it is dismissed accordingly. In the facts and circumstances of the case, however, there shall be no order as to costs.