(2005) 10 GUJ CK 0027

In the Gujarat High Court

Case No : Special Criminal Application No''s. 771 and 772 of 2002 and 514 of 2003

Divya Corporation APPELLANT

Vs

State of Gujarat and Others RESPONDENT

Date of Decision : 11-10-2005

Acts Referred:

Constitution of India, 1950 — Article 227
Essential Commodities Act, 1955 — Section 6

Citation : (2005) 10 GUJ CK 0027

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Amar D. Mithani, for the Appellant; Public Prosecutor for Respondent 1, for the Respondent

Judgement

K.A. Puj, J.—Since common issues are involved in all these three petitions and common arguments are advanced by Mr. A.D. Mithani, learned advocate appearing for the petitioner in all these three petitions, the same are being disposed off by this common order and judgment.

2. Special Criminal Application No. 771/2002 is filed under Article 227 of Constitution of India praying for quashing and setting aside the order of confiscation-seizer passed by the learned Sessions Judge, Junagadh in Criminal Appeal No. 50/1998 on 9.1.2002 rejecting the Appeal and confirming the order of confiscation dated 16.6.1998 passed by the District Collector, Junagadh, in Case No. Food-Enfo./ECA/Case No. 11/1998.

3. Similarly Special Criminal Application No. 772/2002 is filed by the petitioner under Article 227 of the Constitution of India praying for quashing and setting aside the order of confiscation seizer passed by the learned Sessions Judge, Junagadh in Criminal Appeal No. 51/1998 dated 9.1.2002 rejecting the Appeal and confirming the order dated 16.6.1998 passed by the Collector, Junagadh, in confiscation order No. Food/Enfo.ECA/Case No. 12 of 1998 and the seizer order

dated 7.4.1998.

4. Similarly Special Criminal Application No. 514/2003 is filed by the petitioner under Article 227 of the Constitution of India praying for quashing and setting aside the judgment and order dated 19.10.2002 passed by the learned Sessions Judge, Junagadh, in Criminal Appeal No. 60/1998 rejecting the Appeal and confirming the order dated 8.9.1998 passed by the District Supply Officer, Junagadh, in confiscation order dated 8.9.1998 passed in Food/Enfo/ECA/Case No. 21 of 1998.

5. In Special Criminal Application No. 771/2002, the petitioner, namely, M/s. Divya Corporation is engaged in the business of dealing in essential commodities. The petitioner''s sister concern, namely, M/s. Magan is also engaged in the business of dealing in essential commodities. The petitioner firm holds for the said purpose, the wholesale license bearing No. 207 whereas the petitioner''s sister concern holds license being No. 208. The place of the business of the petitioner firm is House No. 4/7, Pinjara Sheri, Agatray, whereas the house of the petitioner''s sister concern is House No. 4/8 Pinjara Sheri, Agatray. Thus, the place of business of both these firms is situated in adjacent to each other and as such they are located in one and the same compound. It is further stated that the petitioner firm was earlier inspected by the concerned authorities and it was found that the business was run and managed strictly in accordance with the provisions of law and no irregularity was observed. It was further submitted that on 7.4.1998 inspecting authorities in the Company of the District Supply Officer, inspected the petitioner firm with some oblique motive and since the petitioner could not satisfy their unreasonable and illegal demand the said inspection was carried out from early morning hours till about 10:30 p.m., meaning thereby the same was continued for 13 hours and it had resulted into seizer order confiscating the essential commodities, namely, groundnut and groundnut seeds worth Rs. 12,53,952/-. In the seizer order about five irregularities were alleged against the petitioner, which were in the nature of deficiency in the stock, maintenance of the gate pass, maintenance of board of stock etc. In the seizer order itself, it was pointed out that the petitioner would be entitled to get the stock released on furnishing the Bank guarantee of the like amount from a Nationalised Bank.

6. On the bare reading of the said seizure order, it is clear that at the time of inspection the manufacturing process was going on.

7. It is further stated that on 20.5.1998, the Collector Junagadh issued show cause notice under the provisions of Section 6 of the Gujarat Essential Commodities Act, wherein it is pointed out that on the basis of chitthis/chits/ small sheets of paper it appears that the inward gate-pass was not issued and it was not taken in the Stock Register and that outward gate-pass was not issued and therefore the stock of 2276 bags of groundnut appeared to have been disposed of illegally and thus it was alleged that there was a breach of clause-23, and 24 of the Gujarat Essential Articles (Licensing, Control and Stock

Declaration) Order 1981, read with condition No. 4,6 and 9 of the License. It was further pointed out that there was deficit of 84030 kg., of groundnut and the deficit of 31901 kg., of groundnut seeds in the actual stock. It was further pointed out that the process was on going, however the price stock board was not maintained and the inward and outward gate-passes were not kept. It is further pointed out that the government has issued Policy Guidelines on 1.4.1998 that the stock of edible oil seeds to be sent outside the State of Gujarat may be informed and intimated to the Collector by 48 hours in advance. However, between 3.4.1998 to 6.4.1998 though stock of edible oil seeds was sent to Gandhidham, Kandla Port, the same was not informed in advance, as required. It is further pointed out that the stock has been disposed of illegally without issuing the inward gate pass.

8. It is further stated that pursuant to the aforesaid notice, on 16.6.1998 the petitioner filed its detailed written reply, which was supported by the affidavit of the proprietor. The petitioner has also filed documentary evidence list running into about 27 documents as well as stock summary of M/s. Divya Corporation and M/s. Maganlal Bhovanbhai. The petitioner has taken a specific plea that the illegal demands of the authorities at the time of inspection were not satisfied by the petitioner and though the District Supply Officer, headed the inspection, the seizure order was passed and persons were threatened, mentally tortured. All the defects pointed out in the show cause notice were properly replied by the petitioner. Despite this fact that the District Collector has passed an order on 16.6.1998, interalia, confiscating 50% of groundnuts stock i.e., 17,667 kg., worth Rs. 2,47,338/- and 15% of groundnuts seeds of 5424 kg., worth Rs. 1,13,904/-. The total value of goods seized has therefore come to Rs. 3,61,242/-.

9. Being aggrieved by the said order of Collector, Junagadh, the petitioner has filed an Appeal before the Special Court and Sessions Judge, Junagadh, which was registered at Criminal Appeal No. 50/1998. Alongwith the said Appeal the petitioner preferred an application for the interim relief wherein the learned Additional Sessions Judge and the Special Judge, Junagadh, has allowed the said application for interim relief and has stayed the operation of the order passed by the Collector, Junagadh on the condition that the petitioner furnishes Bank Guarantee of equal amount of the value of the stock confiscated.

10. It is further stated that the learned Sessions Judge, Junagadh by his judgment and order dated 9.1.2002 after hearing the parties dismissed the Appeal being Appeal No. 50/1998 and the said order is under challenge before this Court in the present petition.

11. Similarly in Special Criminal Application No. 772/2002, the inspecting authority passed an order of seizure on 7.4.1998 and seized the essential articles worth Rs. 5,49,192/-. The Collector, Junagadh, thereafter passed an order on 16.6.1998 ordering confiscation of articles worth Rs. 26468/- i.e., for 1308 kg., of groundnut seeds being 5% of seized stock and releasing balanced seized stocks. The said order was challenged before the District Court, Junagadh in

Criminal Appeal No. 51 of 1998 and the learned Additional Sessions Judge and Special Judge, vide his order dated 9.1.2002 rejected the said appeal and hence this petition.

12. Likewise, in Special Criminal Application No. 514 of 2003, the inspecting authority passed an order of seizure on 19.5.1998 and seized the essential articles worth Rs. 85,344/-. The District Supply Officer, Junagadh, thereafter passed an order on 8.9.1998 ordering confiscation of articles worth Rs. 21,336/- for 1014 kg., of groundnuts being 25% of seized stock and releasing balanced seized stocks. The said order was challenged before the District Court, Junagadh in Criminal Appeal No. 60 of 1998 and the learned Additional Sessions Judge and Special Judge vide his order dated 19.2.2002, rejected the said appeal and hence this petition.

13. Mr. A.D. Mithani, learned advocate appearing for the petitioners in all the three petitions has made common submissions in respect of all the three petitions. He, however, made his submissions more streneously and more emphatically in respect of Special Criminal Application No. 771 of 2002 as the stake involved in this petition is on the higher side and 50% of the seized stock valuing Rs. 3,61,242/- was ordered to be confiscated. The Court, therefore, mainly discusses the facts gathered from this petition and applied the finding arrived at therein to other two petitions too. Mr. Mithani has submitted that the learned Sessions Judge, Junagadh has passed a thoroughly unreasoned order without recording the contentions and/or findings of the same and therefore, on this ground alone the present petition deserves to be allowed. He has further submitted that the authority below has grossly failed to appreciate and consider the whole matter with some extraneous considerations. The inspection was carried out only because as the illegal demands were not satisfied. The papers were prepared after 13 hours and the inspecting authority has forcibly and under threat obtained signatures of the persons concerned. Without making the signatories aware of the contents thereof, on the prepared papers, the signatures were obtained and hence alone the impugned order is required to be quashed and set aside.

14. Mr. Mithani, further submitted that the learned Sessions Judge, did not record the findings of the applicability of the judgments produced and relied upon and the effect thereof on the issues raised. The learned Sessions Judge has failed to exercise the jurisdiction conferred upon him and on this ground alone the present petition deserves to be allowed. Mr. Mithani further submitted that the petitioner has made specific request before the respondent No. 2 to hear the case of the petitioner as well as M/s. Meganlal Bhvanbhai together and specific circumstances existed with regard to the date of inspection and the stock deficit in the case of the petitioner. Mr. Mithani further submitted that the confiscation order was merely passed on the ground that the certain irregularities which are technical in nature have been committed. He has further submitted that before the respondent No. 2 about 37 documents were produced. However, all these

documents have not been referred to for discussion in the impugned order. The order is, therefore, passed without application of mind especially when serious allegations of illegal demand against inspecting authorities were made. He has further submitted that the respondent No. 2 has not given any finding on the affidavit and other evidence produced by the Panchas, farmers etc., wherein the unusual behaviors of the inspecting authorities with ulterior motive, were clearly set out and under what circumstances the seizure order was passed, have been narrated. Mr. Mithani, further submitted that the respondent No. 2 has not considered that at the time of inspection, the deshelling process was going on and in view of provisions of Clause 23 of 1981 order it was incumbent upon the petitioner to complete the Register-Account etc., at the end of the day.

15. Mr. Mithani, further submitted that the alleged chitthis were in the name of M/s. Maganlal Bhovanbhai and not in the name of the petitioner and, therefore, even for the sake of assumption it is believed that the said allegations are true, in that case the very irregularity pertains to another firm and does not pertain to the petitioner firm. He has further submitted that the petitioner No. 2 has not given the finding on the specific weight and other particulars narrated in detail which were submitted in the written reply. Mr. Mithani further submitted that the stock of the petitioner lying in the compound has been intentionally shown to be that belonging to M/s. Maganlal Bhovanbhai and, therefore, it was wrongly alleged that in case of the petitioner there is deficit in the actual stock and in case of Maganlal Bhovanbhai there was an excess stock. Mr. Mithani further submitted that the allegations about non-maintenance of the Board etc., is not correct in as much as in the Panch Rojkam on page No. 12, vide paragraph No. 4 it has been mentioned that the Sing Board has been maintained. He has further submitted that the petitioner was not indulged in a single transaction without issuance of the gate-pass and on 7.4.1998 itself the inspector seized the entire record and there were 18 bags from Dinesh Keshavlal and 40 bags from M/s. Maganlal Gordhanbhai of groundnuts, but as the record was with the inspecting authority, only for these two transactions the gate-passes could not be issued and for the said purpose the petitioner could not be held liable. He has further submitted that the petitioner was not given sufficient opportunity to cross-examine the witnesses which have been relied on and neither the documents were duly made available nor any fair opportunity of hearing was afforded to the petitioner. It is further submitted that there was no search and seizure but in the prepared Panchnamas, the signature were obtained, the statement of admission was recorded unilaterally and signatures were obtained forcibly. He has, therefore, submitted that both the authorities have even not considered the documentary evidence produced before them. The order passed in appeal is also a cryptic one and does not contend any reasons whatsoever. He has, therefore, submitted that both the orders are required to be quashed and set aside.

16. In support of his submissions Mr. Mithani relied on the decision in the case of Govind Karsan and Co. Vs. State and Another, wherein factors to be considered by the authorities while exercising the powers of confiscation in the cases under

the Essential Commodities Act, have been pointed out.

17. Mr. Mithani further relied on the decision of in the case of N. Nagendra Rao and Co. Vs. State of Andhra Pradesh, wherein it is held that in the mater of confiscation, proper application of mind is necessary, and that technical violations like failure to put up price list etc., or even discrepancies in stock or for every such contravention, confiscation is not necessary.

18. Mr. Mithani, further relied on the decision in the case of Patel Ambaram Kuberbhai v. State of Gujarat and Ors., reported in 1998 (2) GLH 533, wherein it is held that when there is no intention of black marketing or hoarding, the Court may exercise discretion by reducing penalty. Penalty reduced from 50% to 25% wherein the order of the appellate authority was confirmed in a writ petition.

19. He has further relied on the decision in the case of Chetan Kumar Jayantilal Shah v. District Supply Officer and Ors., reported in 1998 (2) GCD 980, wherein at the time of the inspection, stock registers, account books, bill books were not found at the place of business as well as at the godown. The order of the District Supply Officer was confirmed in appeal and as such, there was concurrent finding of facts. The Court still took the view that the irregularities were not technical defects nor minor irregularities, and despite that 50% confiscation was reduced to 25% by this Court.

20. In the case of Navjivan Roller Flour and Pulse Mills Ltd. Vs. State of Gujarat and Another, seven irregularities were found, which includes, (i) not maintaining the stock register, (ii) without bringing the stock at the godown or entering into the register it was disposed of, (iii) transactions were not intimated to the Civil Supply Officer, (iv) quantity stored is in excess of the permissible quantity etc. Despite there being concurrent finding of facts that the petitioner has committed irregularities, the Court reduced the confiscation from 50% to 25%.

21. In the case of Dineshchandra Kalidas & Co. v. State of Gujarat, reported in 1997 (1) GLH (Uj.) 23, the Court after considering the irregularities like not preparing the bills and not writing the stock registers for months together, reduced confiscation of 100% stock to 30%.

22. In the case of K.V. Allimuthu & Co. v. State of Gujarat and Ors., reported in 1986 GLH (Uj.) 55, there was concurrent finding of facts and the Court has reduced the penalty. It was the case wherein bi-weekly register was not maintained and before exporting the stock out of State, the authorities were not intimated.

23. In the case of M.D. Agency v. State of Gujarat and Ors., reported in 1997(2) GCD 439 (Guj), the irregularities were that the cash memo does not bear the license number, the goods which were sold for which no license was issued etc. Despite there being concurrent finding for confiscation of 10% stock was quashed by the High Court.

24. In the case of Ramanlal Ambalal Patel v. Hina Industries., reported in 1993

(1) GLR 820, this Court has laid down the principle that the authorities cited before the learned Judge requires to be discussed. It has been held that merely noting down the authorities in the judgment would be doing injustice to the party. In Shri Baradakanta Mishra Ex-Commissioner of Endowments Vs. Shri Bhimsen Dixit, the Court held that a subordinate Court or Tribunal refusing to follow the High Court''s decision amounts to contempt of Court.

25. In the case of The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, the Hon''ble Supreme Court has held that the quasi judicial order must be supported by reasons. This rule being one of basic principles of natural justice, requires to be observed in its proper spirit and mere pretense of compliance with it would not satisfy the requirement of law.

26. In the case of Commissioner of Income Tax, Bombay Vs. Walchand and Co. Private Ltd., , it is held that the Appellate Tribunal under the Income Tax Act being the final fact finding body, its decision on questions of fact is not to be questioned before the High Court. Hence the nature of jurisdiction predicates that the Tribunal will approach and decide a case in judicial spirit and for that purpose it must indicate the disputed questions before it, with evidence pro and cone and records the reasons in support of the decision. The practice of recording a decision without reasons in support cannot but be severally deprecated.

27. In the case of Kiran Oil Industries Vs. District Collector, it is held that before passing the order of confiscation the authority is required to disclose to the dealer the material on which it seeks to rely on. Since this was not done, the matter was remanded.

28. In the case of Damodar Oil Mill v. District Supply Officer, Junagadh, reported in 2001 (1) GLH 580, at the time of inspection the Mills were in operation and was extracting oil from raw groundnuts, confiscation of stock of groundnut on the ground of short fall or excess of stock is not justified.

29. Lastly in the case of Santosh Hazari Vs. Purushottam Tiwai (Dead) by Lrs., , it is held that under the CPC in First Appeal, where the view of the Trial Court is upheld, the first Appellate Court need go into detail, but an expression of general agreement should not become a way to avoid the duty caste on such Court to apply its mind consciously while giving judgment being the final Courts of facts and of law.

30. Based on the factual matrix and the authorities cited above Mr. Mithani has submitted that the impugned order passed by the authorities are contrary to the provisions of law, in violation of principles of natural justice and against the settled principles of law and hence the same deserve to be quashed and set aside.

31. After having heard the learned advocate appearing for the petitioners, after having gone through the memo of petitions, documents attached therewith and

the orders passed by the District Collector as well as the Appellate Court and after having carefully examined the authorities cited and relied on, the Court is of the view that none of these petitions merits any indulgence by this Court while exercising its discretionary, prerogative and extraordinary writ jurisdiction under Article 227 of the Constitution of India. Very serious defects and irregularities were pointed out. In all, five defects were found at the time of personal inspection. Non-issuance of inward and outward gatepass, non-recording of stocks in stock registers, deficit of groundnut and groundnut-seeds in the actual stock, non-maintaining price stock board, no prior intimation about despatch of stock of edible oil seeds out side the State of Gujarat are some of the serious defects which no Court or authority can take lightly. This can be viewed in the light of relevant statutory provisions, rules, orders, terms and conditions of the license and the guidelines issued by the State Government from time to time. One has to see the cumulative effect of all these defects and then to examine the orders of confiscation. The competent authority has issued the detailed show cause notice, considered the reply and materials produced and after careful consideration, passed the impugned orders. The very fact that the Accountant and/or Proprietor has admitted certain defects, subsequent retraction by itself will not absolve the petitioners from the rigours of statutory violations. The very fact that as against seized stock of Rs. 12,53,952/- the District Collector confiscated stock of Rs. 3,61,242/- (50% groundnut stock worth Rs. 2,47,338/- and 15% of groundnuts seeds worth Rs. 1,13,904/-) itself indicates that the order was passed after due appreciation of evidence and proper application of mind. Since appellate Court was in conformity with the view taken and finding arrived at by the competent authority, no more detailed discussion than what was necessary is called for. Even otherwise, this is not a good ground to interfere in the orders passed by the authority/Court below.

32. There is no quarrel about the propositions laid down or the principles enunciated by the Courts in various judgments relied on by Mr. Mithani. However, those propositions and principles will have to be applied keeping in mind the facts of each case. While considering the facts of the present case, it is difficult to believe that there were merely technical violations or that there was no application of mind or that there was no intention of black marketing or hoarding or that the order of competent authority is not based on any reason or that it is based n any bias or is vindictive. Since the Court is not satisfied with the submissions made and contentions raised and since the confiscation made is in no way disproportionate to the nature and gravity of defects found, the Court does not think it just and proper to exercise its extraordinary power in favour of the petitioners under Article 227 of the Constitution of India.

33. All these three petitions are, therefore, summarily dismissed.

34. Office is directed to keep copy of this order/judgment in each of these three petitions.

