
(2011) 05 AHC CK 0399

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 305 of 2005

Indopol Flour Mills

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 31-05-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Trade Tax Act, 1948 — Section 12B, 13A(6), 13A(8)

Citation : (2011) 6 ADJ 643

Hon'ble Judges : Ferdino Inacio Rebello, C.J.; Dilip Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ferdino Inacio Rebello, C.J.—The relief's sought in this petition are as under:

(i) that a suitable writ, order or direction in the nature of Mandamus be issued directing the Respondents to pay the amount of the value of the goods seized by the Respondent No. 3, since the valuation of the goods have been determined by the Trade Tax Department itself.

(ii) that a suitable writ, order or direction in the nature of Mandamus be issued directing the Respondents to refund the amount of security as well as the value of the goods which has been determined and which has become waste and non-edible and unfit for human consumption on account of the lapses, fault and negligence of the Respondents.

2. The State Government, with a view to implement the Prime Minister Gramodaya Yojana, decided to import weaning food for its free distribution to the children in the State of Uttar Pradesh. In furtherance of that decision, the State Government placed orders with the Petitioner for supply of the weaning food. The Petitioner accordingly dispatched a consignment of weaning food. The Assistant Commissioner, Trade Tax, Mohan Nagar Check Post, Ghaziabad detained 246 bags of weaning food on 27.02.2004. In the detention notice dated 27.02.2004,

according to the Petitioner, it was set out that 246 bags of Pushtahar (weaning food) were sent from Faridabad to Bal Vikas Parijoyana Adhikari, Ballia on bilti, but the consignee has not given any Form 32 nor any declaration under Form 31 and, hence, the goods valued at Rs. 1,37,700/- were detained, on which the Central Sales Tax at the rate of 4 percent was also charged. The Petitioner filed a writ petition, being Writ Petition No. 334 of 2004. This Court, by order dated 10.03.2004, issued direction that, on furnishing security on the amount of tax payable on goods by the Petitioner, the goods shall be released forthwith by Respondent No. 3 -Assistant Commissioner, Trade Tax and shall be delivered to the consignee, and that the Trade Tax Department shall hold an enquiry as to whether the goods delivered to the consignee were subjected to trade tax and in case it was found that the goods were not subjected to trade tax, the security should be released forthwith. A further direction was issued, considering that the problem would persist, to make a representation to the Respondent authority and on such representation being made, the said authority was required to consider and pass appropriate orders in accordance with law.

3. In compliance of that order, the Petitioner made a representation to the Principal Secretary, Institutional Finance, U.P. Government, Lucknow on 24.03.2004 through Speed Post. According to the Petitioner, till the date of filing the writ petition, neither any enquiry were made nor order was passed on the same. The Petitioner has then pleaded that the Director, Bal Vikas and Pushtahar, U.P. Government, Lucknow had sent several letters to the Commissioner of Trade Tax, U.P., Lucknow requesting him to issue Form 32, so that the same would be made available to the Petitioner. The Commissioner of Trade Tax did not pass any order nor supplied the Form 32 to the Director, Bal Vikas and Pushtahar, U.P. Government, Lucknow, and that is why the department/consignee was not able to give Form 32 to the Petitioner.

4. After the aforesaid order was passed in Writ Petition No. 334 of 2004, the Petitioner sent five consignments through different challans and bilti through five different trucks. The goods of all the five trucks were detained on 01.04.2004 and a show cause notice was issued to the Petitioner, which was replied to. Thereafter, the Assistant Commissioner, Trade Tax, Mohan Nagar Check Post, Ghaziabad seized the goods in Truck No. HR-38F/5797, whereupon the Petitioner filed an application u/s 13-A (6) of the Uttar Pradesh Trade Tax Act, 1948 (hereinafter referred to as the "Act") before the Deputy Commissioner (Help Centre), Trade Tax, Mohan Nagar, Ghaziabad, which was rejected by order dated 20.03.2004. Against that, the Petitioner preferred a writ petition, being Writ Petition No. 524 of 2004. The said writ petition was disposed of by order dated 06.05.2004 declining to interfere with the show cause notice in exercise of its extraordinary jurisdiction. However, the Court permitted the Petitioner to file a reply to the show cause notice. It is pointed out that the seizure orders were passed on 12.04.2004, i.e. before the decision in Writ Petition No. 524 of 2004.

5. According to Petitioner, he filed applications u/s 13-A (6) of the Act, before the

Deputy Commissioner, Trade Tax, Kotban, Mathura against the seizure order dated 12.04.2004. The applications were rejected by order dated 26.04.2004. The record would show that the Petitioner filed only one appeal against the order of the Deputy Commissioner dated 26.04.2004 in respect of the goods relating to Truck No. HR.38C/6795, being Appeal No. 228 of 2004. An order came to be passed on 24.06.2004 directing release of the goods.

6. On 24.07.2004, the Petitioner filed four separate appeals, being Appeal Nos. 306 of 2004, 307 of 2004, 308 of 2004, and 209 of 2004 against four separate orders dated 26.04.2004 passed by the Deputy Commissioner, Trade Tax (Help Centre), Mathura. The Petitioner also moved an application u/s 12-B of the Act, annexing a letter of Upper Pariyojana Prabandhak dated 23.07.2004, contending that the delivery of seized goods be not taken by Bal Vikas Pariyojana Adhikari and the same be taken back. By order dated 18.12.2004, the four appeals were partly allowed, directing the Respondents to release the goods on deposit of cash security by the Petitioner to the tune of 5 percent of the value of goods. The Petitioner, pursuant to the said directions, deposited the relevant amount. According to the Petitioner, he also filed an application on 13.01.2005 before the Assistant Commissioner of Trade Tax, Help Centre Kotban, Mathura, wherein it was mentioned that the Petitioner was depositing 5 percent of the value of the goods as security for release of the goods, but the goods which was seized appeared to have deteriorated, hence, sample of the same be taken for laboratory test, so that the value of the goods could be ascertained. The Petitioner also requested for giving sample for testing. According to the Petitioner, after depositing the amount, fresh application was moved on 18.01.2005 before the Assistant Commissioner, Trade Tax, Mathura, mentioning that on inspection of the seized goods, various insects and worms were found in the weaning food and, as a consequence, the seized goods had become waste and useless and, hence, the Petitioner should be given the value of the same.

7. The Petitioner's case is, that the value of the goods was determined by the Trade Tax Department at the time of detention and seizure of the goods when the value of the same was also mentioned, on the basis of which 5 percent security was directed to be deposited by the Trade Tax Department and, hence, the Petitioner is entitled for the amount of the said goods, which had already become waste and useless, and unfit for human consumption. Further, considering Section 13-A (8) of the Act, the officer ought to have taken action to dispose of the goods, and after adjusting the expenses of Trade Tax and penalty imposed, balance amount ought to have been returned to the dealer. That was not done.

The Petitioner received a reply dated 28.01.2004⁵ from the Assistant Commissioner, Trade Tax, Help Centre, Kotban, Mathura that the Petitioner had not given any application earlier for giving the goods in his possession (supurdgi) nor any sample was taken at the time of seizure and, hence, on the dispute being raised about the goods having become waste, the claim of the Petitioner

could not be accepted and the Petitioner should get the goods released in its favor. There were further correspondences exchanged between the parties.

It is the case of the Petitioner that it was the duty of the Department to have given the samples for testing at the time of seizure and since the goods had become waste and useless, the Respondents are liable for payment of the value of the goods to the Petitioner.

8. Reply has been filed on behalf of the Respondents wherein it is set out that the petition raises disputed questions of fact and, as such, the petition is not maintainable. It is further set out that what is in issue is the seizure of five consignments, which were detained on 30/31.03.2004 and in respect of which show cause notices dated 01.04.2004 were issued to the Petitioner. The goods in question were packed in strong HDPE laminated bags and they were still in the same form and condition as they were at the time of seizure of the goods and the Petitioner neither requested for sampling or testing of the goods at the time of seizure of goods nor itself took the sample and nor moved any application in this regard at any point of time, except for the first time on 13.01.2005. It is also pointed out that the release of the goods is merely consequential to the order of the Tribunal and there is no dispute that the goods, as directed by the Tribunal by order dated 18.12.2004, stood released in favor of the Petitioner. It is also set out that the Petitioner was found importing the goods without they being accompanied by the requisite documents with intent to evade the payment of trade tax and, as such, the goods were lawfully seized on 12.04.2004. The Petitioner contested the matter at various judicial forums.

9. A rejoinder affidavit has been filed on behalf of the Petitioner, wherein it is set out that the goods in question were packed in strong HDPE laminated bags and the date of expiry was mentioned on the same. The fact, that the goods were perishable in nature, was brought to the notice of the Department at every stage of proceedings. The Petitioner did not request for sample at the time of detention of the goods for the reason that, at that time the weaning food (flour) was fresh and fit for human consumption. It is not necessary to refer to other facts.

10. The question for our consideration is, whether it will be open to the writ Court, on the facts as contained in this petition, to award damages as claimed by the Petitioner, based on the valuation of the goods seized by the Respondents at the time the show cause notices were issued to the Petitioner.

On behalf of the Petitioner, learned Counsel has principally relied on the judgment of the Supreme Court in the case of Lucknow Development Authority Vs. M.K. Gupta, We may reproduce paragraph 8 of the said judgment, as it is the ratio of this judgment based upon which the arguments have been advanced:

8. Having examined the wide reach of the Act and jurisdiction of the Commission to entertain a complaint not only against business or trading activity but even against service rendered by statutory and public authorities the stage is now set for determining if the Commission in exercise of its jurisdiction under the Act

could award compensation and if such compensation could be for harassment and agony to a consumer. Both these aspects especially the latter are of vital significance in the present day context. Still more important issue is the liability of payment. That is, should the society or the tax payer be burdened for oppressive and capricious act of the public officers or it be paid by those responsible for it. The administrative law of accountability of public authorities for their arbitrary and even ultra vires actions has taken many strides. It is now accepted both by this Court and English Courts that the State is liable to compensate for loss or injury suffered by a citizen due to arbitrary actions of its employees. In *State of Gujarat v. Memon Mahomed Haji Hasam*, A.I.R 1967 SC 1885 , the order of the High Court directing payment of compensation for disposal of seized vehicles without waiting for the outcome of decision in appeal was upheld both on principle of bailee's, "legal obligation to preserve the property intact and also the obligation to take reasonable care of it .. to return it in the same condition in which it was seized" and also because the Government was, "bound to return the said property by reason of its statutory obligation or to pay its value if it had disabled itself from returning it either by its own act or by act of its agents and servants". It was extended further even to bona fide action of the authorities if it was contrary to law in *Bishambar Nath and Others Vs. The Agra Nagar Mahapalika, Agra and Another*, It was held that where the authorities could not have taken any action against the dealer and their order was invalid, "it is immaterial that the Respondents had acted bona fide and in the interest of preservation of public health. Their motive may be good but their orders are illegal. They would accordingly be liable for any loss caused to the Appellants by their action." The theoretical concept that King can do no wrong has been abandoned in England itself and the State is now held responsible for tortuous act of its servants. The first Law Commission constituted after coming into force of the Constitution on liability of the State in Tort, observed that the old distinction between sovereign and non-sovereign functions should no longer be invoked to determine liability of the State. Friedmann observed;

It is now increasingly necessary to abandon the lingering fiction of a legally indivisible State, and of a feudal conception of the Crown, and to substitute for it the principle of legal liability where the State, either directly or through incorporated public authorities, engages in activities of a commercial, industrial or managerial character. The proper test is not an impracticable distinction between governmental and non-governmental function, but the nature and form of the activity in question.

Even *Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh*, did not provide any immunity for tortuous acts of public servants committed in discharge of statutory function if it was not referable to sovereign power. Since house construction or for that matter any service hired by a consumer or facility availed by him is not a sovereign function of the State the ratio of *Kasturi Lal* (supra) could not stand in way of the Commission awarding compensation. We respectfully agree with Mathew, J., in *Shyam Sunder and Others Vs. The State of Rajasthan*, that it is

not necessary, "to consider whether there is any rational dividing line between the so-called sovereign and proprietary or commercial functions for determining the liability of the State" (SCC p. 695, Para 20). In any case the law has always maintained that the public authorities who are entrusted with statutory function cannot act negligently. As far back as 1878 the law was succinctly explained in *Geddis v. Proprietors of Bann Reservoir*, (1878) 3 AC 430, thus:

I take it, without citing cases, that it is now thoroughly well established that no action will lie for doing that which the Legislature has authorized, if it be done without negligence, although it does occasion damage to anyone; but an action does lie for doing what the Legislature has authorized, if it be done negligently.

Under our Constitution sovereignty vests in the people. Every limb of the constitutional machinery is obliged to be people oriented. No functionary in exercise of statutory power can claim immunity, except to the extent protected by the Statute itself. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behavior before authorities created under the Statute like the Commission or the Courts entrusted with responsibility of maintaining the rule of law. Each hierarchy in the Act is empowered to entertain a complaint by the consumer for value of the goods or services and compensation. The word "compensation" is again of very wide connotation. It has not been defined in the Act. According to dictionary it means, "compensating" or being compensated; thing given as recompense;". In legal sense it may constitute actual loss or expected loss and may extend to physical, mental or even emotional suffering, insult or injury or loss. Therefore, when the Commission has been vested with the jurisdiction to award value of goods or services and compensation it has to be construed widely enabling the Commission to determine compensation for any loss or damage suffered by a consumer which in law is otherwise included in wide meaning of compensation. The provision in our opinion enables a consumer to claim and empowers the Commission to redress any injustice done to him. Any other construction would defeat the very purpose of the Act. The Commission or the forum in the Act is thus entitled to award not only value of the goods or services but also to compensate a consumer for injustice suffered by him.

11. Reliance is also placed on the judgment in the case of *Ram Singh and Ors. v. State of Uttar Pradesh and Ors.*, 2000 UPTC 865 . That was a case, where the vehicle was detained and seized. This Court found that the action of the Respondents was clearly mala fide. The Court placed reliance on the judgment in *M.K. Gupta (supra)* as also in the case of *Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh*, which had taken the view that there was no immunity for tortuous acts of public servants committed in discharge of statutory function if it was not referable to sovereign power of the State. This Court held that the law has always maintained that the public authorities who are entrusted with statutory function cannot act negligently. As noted earlier, the Court clearly recorded a finding that the action of the Respondents was mala fide in law as set out in

paragraph 9 of the judgment. After having considered the various aspects, the learned Division Bench observed that, instead of relegating the Petitioner to suit, it would be a fit case where compensation should be awarded. After having so said, the Court did not quantify the amount of compensation but directed the Commissioner of Trade Tax to grant proper compensation to the Petitioner commensurate to the loss they have suffered.

12. On the other hand, it is the contention of the Respondents, that the petition raises several disputed questions of fact and considering the settled proposition of law that, where a disputed question of fact is involved, jurisdiction of this Court under Article 226 of the Constitution of India is not a proper remedy, the petition should be dismissed. In the case of *Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) and Ors. v. Smt. Sukamani Das and Anr.*, AIR 1999 SC 3412, as also in the case of *Orissa Agro Industries Corporation Ltd. and Others Vs. Bharati Industries and Others*, the Supreme Court has reiterated the position, that cases involving disputed questions of fact in contractual matters cannot be gone into by a writ Court in exercise of its extraordinary jurisdiction. The view taken in *Chairman, Grid Corporation of Orissa Ltd. (supra)*, was reiterated in *S.D.O. Grid Corporation of Orissa Ltd. and Ors. v. Timudu Oram*, AIR 2005 SCW 3715. Considering the judgment in *Chairman, Grid Corporation of Orissa Ltd. (supra)*, the Supreme Court held that actions in tort and negligence were required to be established initially by the claimants. Our attention is also invited to an order dated 15.04.2011 passed by this Bench in Writ Tax No. 250 of 2011, *M/s. Anmol Coal Traders, Chandauli v. State of U.P. and Ors.*, wherein the Petitioner had raised an issue that its trucks were illegally detained and, as such, the Respondents were liable to pay the detention charges, which have been incurred by the Petitioner to the extent of Rs. 2,000/- per day. In that case, this Court held that on the issue of damages that has neither been proved nor established, the appropriate remedy for the Petitioner was to file a suit.

13. It may be mentioned that in the case of *M.K. Gupta (supra)*, the matter arose from proceedings before a Commission under the provisions of the Consumer Protection Act. In other words, a special forum was created excluding the jurisdiction of the Civil Court. It was, therefore, an adjudication in which the amount of compensation was decided. That was, therefore, not a case where the Court, in exercise of extraordinary jurisdiction, granted compensation. This is relevant as in such cases, even though the dividing line between contractual or commercial activities on the one hand and sovereign function on the other, is sought to be blurred/obliterated, nonetheless in the absence of material, it will not be possible for the writ Court in exercise of its extraordinary jurisdiction to determine the quantum of compensation in the absence of establishing *mala fides* and the like; if the amount was quantified, as has been pointed on behalf of the Petitioner when it was called upon to deposit 5 percent of the amount.

14. In that context, let us examine the present case. Will it be open to this Court, in exercise of its extraordinary jurisdiction, considering what is on record,

to award damages for the purported loss occasioned to the Petitioner by the detention of the goods. We may note the following aspects:

1. There is no material before this Court to set out as what was the state of the goods when they were detained.

2. Admittedly, an order was passed to release the goods on furnishing the security. The goods, therefore, continued to be detained pursuant to an exercise of quasi judicial power under the Act. It is, therefore, not merely an administrative action, but a decision of a quasi judicial authority. The Petitioner has not been able to place any material on record to show as to it what disabled, to get the goods released, considering the various orders of the judicial and/or quasi judicial forums.

3. The issue involved in this case pertains to the quantum of compensation if and at all that has to be awarded. A finding will have to be recorded that the action of the Respondents was mala fide, if such plea is available as the goods were detained pursuant to order of a statutory authority and confirmed by other quasi judicial and judicial authorities. There is no such material. Act done in the course of official duties by itself cannot result in awarding compensation against the State or its authorities.

15. In our opinion, the seizure was pursuant to a power conferred on the Respondents under the Act. The power to levy tax or collect tax is normally a part of the sovereign function of the State. The Act has conferred power on various authorities who are bound to discharge their statutory functions. There is no material on record to show that the exercise of that power was mala fide. Even otherwise, it would not be possible for this Court, considering the disputed questions of fact involved, to quantify the compensation and, as such, in our opinion, this would not be a fit to exercise our extraordinary jurisdiction.

16. For all the aforesaid reasons, we do not find any merit in the petition which is, accordingly, dismissed.