

(2002) 10 KAR CK 0005
In the Karnataka High Court
Case No : Writ Petition No. 35476 of 2001

Jindal Vijayanagar Steel Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 25-10-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 226 (2)
Customs Act, 1962 — Section 25

Citation : (2003) 153 ELT 295 : (2004) ILR (Kar) 1286

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Atul C. Setalvad, appearing for Bhuvan and Co, for the Appellant;
Arvind Kumar, CGSC, for the Respondent

Judgement

R. Gururajan, J.—Petitioner, a company incorporated under the Companies Act, 1956 engaged in the manufacture of hot-rolled coils and plates, is before me seeking to declare the Notification dated 1-3-2001 in No. 17/2001 as amended by Notification dated 26-4-2001 in No. 44/2001 (Annexure-A) ultra vires Articles 14 and 19(1)(g) of the Constitution to the extent in the description in terms of Serial No. 64A thereof making a distinction between the importers and manufacturers of pig iron or steel on the basis of process adopted and restricting its applicability only to the manufacturers of pig iron or steel using the blast furnace; and to direct the respondents to allow and permit the petitioner company to clear metallurgical coke to be imported by the company for manufacture of iron or steel on payment of basic customs duty at the rate of 5% ad valorem and to forthwith refund a sum of Rs. 4,59,80,394.00 together with interest thereon at the rate of 24% per annum being differential duty-paid by the company as per the details in Annexure-G.

2. Petitioner is a steel company having its plant at Toranagallu. It has adopted COREX basic oxygen furnace, continuous casting process, hot strip mill route. It is stated that an integrated operation for iron making, steel making, slab making

and HR coil was completed by them in the month of August, 1999. A pellet plant of capacity 3 MTPA was set up by the petitioners for manufacturing iron oxide pellets, which is an essential input for pig iron making in the COREX furnace. Petitioners have adopted a state-of-the-art technology for iron making, namely the COREX route, which is imported. Such a plant has been set up for the first time in India keeping in view the imports and benefits for production of pig iron.

3. The Department of Metallurgy, Institute of Science, Bangalore is supported by the University Grants Commission. It opines that the conventional blast furnace and COREX furnace involve the same processes. MECON Limited, a Government of India Enterprise, opines that there is no basic difference between COREX technology and the blast furnace technology except that a good amount of oxygen is used in the COREX and hot-air blast in blast furnace. Certificates issued by the authorities are at Annexures B and C respectively.

4. Respondent No. 1 issued a Notification No. 69/2000-Cus., dated 19-5-2000 for levy of anti-dumping duty. Same is being levied on the goods imported from China. Notification exempted levy of anti-dumping duty on the said goods if imported by manufacturers of pig iron or steel using blast furnace. A writ petition was filed before this Court in terms of Annexure-D. This court granted a conditional interim order.

5. Petitioners state that the notification dated 26-4-2001 provided for basic customs duty payable on the import of the said goods into India when the condition in the said Notification is same as in the case of earlier Notification dated 19-5-2000. Company was compelled to pay basic customs duty at 15 per cent ad valorem. Petitioners made a representation to the Ministry of Coal to consider making recommendations to the Ministry of Finance for extending the benefit of concessional rate of customs duty in terms of the said notification in terms of Annexure-H. They have also filed Annexure J and K in support of their contention. They have referred to the correspondence between the State Government and the Central Government. They have also referred to the speech of the Hon"ble Union Finance Minister made in the Lok Sabha on 25-4-2001. Petitioners in this petition are seeking benefit of Notification dated 26-4-2001, namely payment of 5 per cent ad valorem as is available to metallurgical coke when imported by the manufacturers of pig iron or steel using blast furnace. Petitioners' contention is that, they are similarly situated like that of other manufacturers of pigeon or steel by using blast furnace, and that they are being treated in a different manner in violation of Article 14 of the Constitution. They also say that they are entitled for the same benefit.

6. Notices were issued and the respondents have entered appearance and they have filed a statement of objections. In the statement of objections filed by them, they support their action. They have also raised the question of jurisdiction in terms of Article 226(2) of the Constitution. They say that the processes are different and hence the petitioners cannot seek parity as sought for in the case on hand.

7. Matter is heard for final disposal.

8. Sri Setalvad, learned Senior Counsel for the petitioners took me through the pleadings to contend that COREX process is similar to the blast furnace process. He referred to Annexures B and C in support of his contention. Learned Senior Counsel also says that the Government has issued a Notification to several steel industries expressing financial difficulties. He also states that subsequently for the current year benefits are made available to him. He relies on a catena of judgments in support of his contention. He would rely on *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, (*State of Kerala v. Kumari T.P. Roshana and Ors.*) and *State of Maharashtra Vs. Manubhai Pragaji Vashi and others*, .

9. Per contra, learned Senior Central Government Standing Counsel would say that a similar matter is seized by the Apex Court and therefore this court has to stay all the proceedings in the matter. Learned Central Government Standing Counsel would also say that this court has no jurisdiction to deal with the matter in terms of Article 226 of the Constitution. He contests the case on merits. He relies on a judgment of this court in *Syndicate Bank Vs. Mrs. K. Chandrakala Bhakta and Others*, .

10. Point No. 1: Pendency in the Apex Court: It is submitted that the matter is pending in the Supreme Court in somewhat identical circumstances and therefore this petition has to be kept in abeyance. In the normal circumstances, I would have accepted the plea of the respondents. In the case on hand, it is seen from the order sheet that this court granted a conditional interim order, when the Central Government wanted modification of the interim order, this court passed an order on 9-1-2002 stating that the matter was understood to be finally heard and disposed of at the stage of orders. In fact, the matter was also heard by another learned Judge of this court but subsequently the matter was released from part heard. In the light of these developments in this case, I do not think that the respondents being parties to the earlier orders can now be permitted to say that the matter is to be kept in abeyance. Moreover, there is no order available on record with regard to postponement of hearing. In the circumstances and on the peculiar facts of this case I deem it proper to dispose of the case on merits particularly in the light of the earlier order of this court, to which the Union Government is a party.

11. Point No. 2: Territorial jurisdiction: Sri Arvind Kumar, learned Counsel would say that the petitioners cannot maintain this petition. He says that since the consignments were from the ports of Chennai and Goa, no part of cause of action has arisen attracting the jurisdiction of this Court. Counsel would say that mere establishment of the factory in the State of Karnataka does not provided any jurisdiction to this court in this case. He relies on certain judgment as mentioned earlier. Per contra, learned Senior Counsel for the petitioner would say that the petitioners' factory is situated in Karnataka and that the notification provided for usage of the same in Karnataka. He therefore states that the court has

jurisdiction. Article 226(2) of the Constitution do provides for power to issue a direction to Government authority or person to exercise jurisdiction in the light of territories within which the cause of action whole or in part arises for exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. Wordings used in Article 226(2) of the Constitution is same as the wording used in Section 9 CPC. The Supreme Court in Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, ruled that mere a registered office is at Calcutta cannot by itself provide for a jurisdiction to a litigation to be entertained in writ side. In the same judgment, the Supreme Court in para-6 ruled as under :

"Therefore, in determining the objection of lack of territorial jurisdiction the Court must take all the facts pleaded in support of the cause of action into consideration albeit within embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words, the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition."

The Karnataka High Court in 1965 (1) Mad LJ 201 ruled as under :

"The words "in part" have not been defined. Even a fraction of a cause of action is a part of the cause of action and therefore, if a part of the cause of action accrues within the local limits of the jurisdiction of Tumkur Court then it must be held that, that Court has the jurisdiction to entertain the suit. The provisions of Clause (c) of Section 20 of the CPC are based on broad principle to avoid the multiplicity of the proceedings and inconvenience to the parties. If the reasoning adopted by the Courts below is accepted as correct, it would lead to many inconvenient results which the legislature sought to avoid by enacting the provisions of Clause (c) of Section 20 of the CPC."

12. In 1989 SC 1239 [ABC Laminart Pvt. Ltd, and Anr. v. A.P. Agencies] the Supreme Court has ruled that "the performance of contract is part of cause of action". The Supreme Court has further ruled that "part of cause of action arises where money is expressly or impliedly payable under a contract". Recently the Supreme Court in 2000 SCC 2966 [Navichandra N. Majitha v. State of Maharashtra] has ruled that a cause of action wholly or in part arises with reference to a situation or state of facts that entitles a party to maintain an action in the court, I have in my judgment in writ Petition No. 36940 of 2001 (disposed of on 29-1-2002) in the case of Millipore India Private Limited v. Government of India and Others considered this question after noticing the facts in that case and have ruled that this court has necessary jurisdiction.

13. Let me see as to whether the facts of this case provide a cause of action in this case. Admitted facts reveal that the petitioner is having a manufacturing unit in the State of Karnataka. Admitted facts also reveal of the petitioner using the

coal for operation. In the case on hand, petitioner is aggrieved by the denial of concession in terms of Annexure-A. Section 25 of the Customs Act provides for concessional rate of duty in the matter. Rules have been framed in this regard. For grant of concession benefit in terms of rules, a certificate is required to be issued with regard to the intention to import any commodity for use in his factory. A procedure is also prescribed in this regard. Rule also provides for giving information regarding receipt of imported goods. In the case on hand, the coke imported is being used in the plant situated in Karnataka. Such usage of coke is subject to payment of customs duty. Concessional customs duty, according to the petitioner, is denied by the petitioner in the case on hand. Therefore, the important aspect for getting the benefit is the usage of coke in Karnataka. Duty is referable to usage. Therefore, it cannot be said that there is no cause of action at all as arising in the case on hand. A combined reading of the location, usage and the benefits would definitely show that a part of cause of action is certainly occurred in the State of Karnataka. The present facts of this case would show that this petition is filed in the light of integral part of the cause of action. The facts pleaded in this case are relevant to the dispute between the parties. Therefore, I deem it proper to overrule the objections of the respondents.

14. Petitioner claims in terms of Annexure-B and C that they are on par with the manufacture of pig iron or steel using blast furnace. They also rely on a subsequent notification issued in the current year providing concession of duty. Per contra, same is denied by the respondents. Petitioner's counsel relies on various case laws with regard to the discrimination in violation of Article 14. It is a well-settled principle that the State has not to discriminate in violation of Articles 14 and 16 of the Constitution. Classes are to be treated equally. Learned counsel refers to the case laws in 1979 SC 1628 [Ramana Dayaram Shetty v. The International Airport Authority of India and others] and also Union of India Vs. Paliwal Electricals (P) Ltd. and another, to contend that mini classification is bad in law and it destroys the right to equality. In the case on hand, in my opinion, certainly the factual aspects are required to be noticed by the appropriate authority notwithstanding Annexures B and C and subsequent notification issued by the Central Government. Grant of concession is a realm of jurisdiction of Central Government. It has chosen to provide that concession only to a limited sector. After filing of the petition, petitioner has been granted the benefit by the Central Government. Since the matter involves consideration of certain material facts in addition to certain technological aspects of the matter, I deem it to direct the respondents to reconsider in the matter of providing exemption to the petitioner as well, instead of this court embarking upon the factual details in the given set of facts. Large sums of money are involved in the case on hand. Moreover, this court has granted conditional interim order ordering 5 per cent payment in addition to 5 per cent bank guarantee, and the interest of the revenue is fully safeguarded by the interim order. Taking into consideration all aspects of the matter, I deem it proper to direct the petitioner to file an appropriate representation with all material particulars including Annexures B

and C and the subsequent notification with technical or technological details to the first respondents within four weeks from the date of receipt of a copy of this order and on receipt of the same respondents are to consider as to whether the petitioner's technology is same or similar to that of manufacture of pig iron or steel using blast furnace within six weeks thereafter. I also deem it proper that till the said issue is decided in terms of this order, respondents are not to enforce the bank guarantee and the petitioner is to keep the bank guarantee alive. It is also made clear that I have not expressed any opinion on the merits of the matter.

15. In the result, this petition is partly allowed with the above directions. Parties are to bear their respective costs.