

(2015) 06 BOM CK 0164
In the Bombay High Court
Case No : Writ Petition No. 5091 of 2015

Mangirish Logistix LLP.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-06-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 323 ELT 519

Hon'ble Judges : S.C. Dharmadhikari, J;G.S. Kulkarni, J

Bench : Division Bench

Advocate : Brijesh Pathak, for the Appellant; Pradeep S. Jetly, Advocates for the Respondent

Judgement

1. The Petitioner in this Writ Petition claims a declaration that the impugned actions on the part of the Respondents, in not issuing a Customs Broker Licence under the Customs Broker Licencing Regulations, 2013, though he has fulfilled all necessary conditions, are gross abuse of the powers conferred in them and therefore, this Court should issue appropriate direction so that the petitioner can obtain the licence under these Regulations and function as a Custom House Agent/Broker.

2. The Petitioner is a Limited Liability Partnership Firm. The Managing Partner of the Petitioner firm is an engineer from Indian Institute of Technology (IIT), Mumbai and a post graduate in Management from Indian Institute of Management (IIM), Kolkata. He has worked as a Working Partner/Director with may reputed Customs Brokers since 1994 and has sufficient experience. The Petitioner states that one Mr. Mangesh P. Wagh is the 50% partner in the firm and would be mainly engaged for looking after the work as Customs Broker of the firm. It is in these circumstances that after referring to a notice of conducting an examination for the grant of the Customs Broker Licence, the said Mangesh Wagh applied and in the requisite Form. He appeared for the examination, which is in writing and followed by oral interview in the month of January and October,

2014. The results of the oral examination were declared in November, 2014 and Mr. Mangesh Wagh was declared as having passed the examination. A public notice to that effect has also been issued. However, there are numerous visits which have been paid to the offices of the Respondents and for making inquiries as to why the Customs Broker Licence has not been issued in the requisite form though the procedure is that it is issued within a period of two months from the date of clearance of the examination. The representations requesting for issuance of such licence having been unsuccessful and the Petitioner failing to get any response, he has approached this Court.

3. An affidavit in reply has been filed and pointing out various steps and measures which were required to be taken. It is stated that the Petitioner was initially interested in obtaining licence as a proprietor, but later on the status changed and that is why several inquiries and investigations have to be made. The Respondents have pointed out that though the regulations require the issuance of licence within two months from the date of declaration of results, the difficulties and pointed out in paras 8 and 9 resulted in this delay. There are further inquiries and which are required to be made.

4. On the earlier occasion and before passing final orders, we inquired from Mr. Jetly as to why there is delay in making some inquiries and investigations at the end of the Respondents. Apart from highlighting the difficulties pointed out in the affidavit, Mr. Jetly was instructed to seek three months' time by the licencing authority to complete the steps and measures so also the formalities.

5. After having heard both sides, we are of the opinion that sufficient time has passed from the date the Petitioner's representative or partner has cleared the examination. He may have applied in the requisite form and initially as a Proprietor, but later on we do not find, even if the status is sought to be altered, that this much time and delay was justified. The very purpose of inserting a requirement of passing a written as well as oral examination is defeated, if, within a reasonable time from the candidate being successful thereat, a licence is not issued to him or he is not informed the reasons for not issuing the same. Eventually, these are matters of somebody's livelihood and we expect the authorities to be careful and sensitive. They may have to approach several statutory authorities and for making inquiries, verification and scrutiny, but they must demonstrate a sense of urgency, purpose and expedition. If applicants like the Petitioner and those associated with it are kept waiting and do not know the outcome of their application even within a reasonable time, then, they are required to approach this Court. We find the request made by the Petitioner is justified. The Petitioner's case is that any further delay is likely to defeat the purpose for which the application was made. The Petitioner also points out that from his end everything that is required has been furnished and the necessary information supplied. The Petitioner is ready and willing to answer all the queries and if remaining.

6. We are of the opinion that the mandate of Article 14 of the Constitution of

India requires the authorities even in such matters to act fairly, reasonable and in a nondiscriminatory manner. The Petitioner in the Writ Petition has also indicated as to how the authorities issue licences and after the examinations to several applicants expeditiously.

7. We are therefore of the opinion that the time of three months as sought by the Respondents cannot be granted. We direct all the Respondents and concerned with the issuance of the licence to complete the requisite steps and measures within a period of six weeks from the date of receipt of copy of this order and communicate to the Petitioner their decision on the application seeking licence in terms of the Customs Broker Licencing Regulations, 2013. We will not grant any extension thereafter.

8. With the aforesaid directions, the Writ Petition is disposed of. No costs.