

(2003) 12 DEL CK 0001
In the Delhi High Court
Case No : CW No. 70 of 2002

Manoj Overseas and Another

APPELLANT

Vs

Apparel Export Promotion Council and Others

RESPONDENT

Date of Decision : 04-12-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 109 DLT 172 : (2004) 72 DRJ 394 : (2004) 91 ECC 572 :
(2004) 113 ECR 963 : (2004) 166 ELT 166 : (2003) 2 ILR Delhi 576

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : Vandana Bhatnagar, for the Appellant; Kuljeet Rawal, for the Respondent

Judgement

Badar Durrez Ahmed, J.—The petitioner was allotted export quotas during the year 1997 under the then Garment Export Entitlement Policy. Under this policy the petitioner was required to meet its export obligation and in case it failed to meet 75% of the same, the petitioner was liable to be visited with forfeiture.

2. The petitioner, in fact, was unable to meet the export obligation and, Therefore, because of the short shipment the Apparel Export Promotion Council (AEPC), Zamrudpur, New Delhi by a speaking order dated 26.5.1998 forfeited an amount of Rs. 10,26,990/-. Against this order dated 26.5.1998 the petitioner preferred an appeal before the Textile Commissioner on 8.6.1998. In the appeal the petitioner indicated that it had performed 69.34% of its export obligation and that the shortfall was because the petitioner's buyer cancelled the order due to delay in execution, due to non-receipt of fabric in time and other unavoidable reasons. The exact ground furnished by the petitioner in the appeal before the Textile Commissioner was as under:-

" In this connection, we further want to say that we could not ship the goods because our buyer cancelled the order due to delay in execution, due to non-receipt of fabric in time and other unavoidable reason."

3. The Senior Officers, Appellate Committee of the office of the Textile Commissioner, Mumbai by an order dated 28.7.2000 upheld the speaking order passed by the AEPC on 26.5.1998. The First Appellate Order clearly found as under:-

"FINDINGS:

We have carefully gone through the records of the case and it is clear that the performance of the exporter was affected not because of any FORCE-MAJEURE conditions, as spelt-out under para-13 of Ministry of Textiles, Government of India, Notification No. : 1/50/96-EP(T&J) I dated 16.10.96."

4. Being aggrieved by this the petitioner preferred a second appeal on 4.9.2000 in which the petitioner mentioned, for the first time, that the shipment of the revalidated quota could not be done due to bad weather and electricity failure in the Okhla Industrial Area. In the said appeal, it was also mentioned that a fire broke out in the petitioner's factory premises on 22.4.1998 as a result of which the petitioner suffered heavy losses. In the appeal presented by the petitioner before the Second Appellate Committee the petitioner also claimed that the utilisation of the quota also needed to be recalculated and if it was properly calculated, the petitioner might not be liable for any forfeiture at all. This last contention was de hors the plea of force majeure taken by the petitioner. The Second Appellate Committee by the impugned order dated 27th June, 2001 rejected the appeal. However, the Second Appellate Committee directed the AEPC to reverify their records to see, if on recalculation, any relief was admissible, and, if made out, to grant the same to the petitioner within thirty days of the date of the impugned order.

5. The learned counsel for the respondent submitted that from the tenor of the impugned order of the Second Appellate Committee it becomes clear that at the time of hearing, apparently the only ground urged was with regard to the fact that the AEPC had not taken into account some of the proofs of shipment while calculating the forfeiture amount. In this context, the AEPC had agreed to reverify the records as there appeared to be a case made out for granting some more relief to the petitioner.

6. It is apparent that the ground with regard to force majeure condition which was sought to be invoked in the light of the alleged bad weather and electricity problem was not really pressed before the Second Appellate Committee at the time of hearing. In fact, the same had been urged only at the time of filing the second appeal. This is clear from the fact that the first appeal itself only mentioned cancellation of the order by the buyer due to delay in execution which in turn was due to alleged non-receipt of fabric in time. In the first appellate order also, it was recorded that Shri Manoj Shetty, a partner in the petitioner firm during the course of personal hearing had urged before the First Appellate Committee that the quota could not be utilised due to the following reasons:-

"Non-receipt of printing fabric in time from the (sic) Jodhpur."

In this view of the matter, it becomes clear that the plea of force majeure was, first of all, an afterthought and secondly, was not established before the authorities below.

7. As regards recalculation/reverification, the Second Appellate Committee had clearly directed that the same be done. In fact, on the part of the AEPC the same had been done as is clearly indicated in paragraph 4 of the affidavit in opposition filed on behalf of the AEPC and the said paragraph reads as under:-

" I say accordingly on receipt of the order passed by the 2nd Appellate Committee re-conciliation was carried out on the basis of the documents/ evidence which even petitioner submitted after passing of the Speaking Order by replying respondent. Petitioner did not place on record the application dated 1st June 1998 as they were fully conscious of the totality of the facts. Verification was carried out by AEPC and it was found that proof of shipments were submitted subsequent to the passing of the order by AEPC and on re-conciliation the petitioner was entitled to refund of Rs. 6464/- and accordingly on 9th August 2001 party was informed. The party was accordingly informed to deposit rest amount and party was also informed that benefit of Rs. 6464/- has been extended to them. No steps were taken by the Petitioner to deposit rest of the amount. Hence the allegations as have been set out in the petition are not only false and frivolous but deliberately material documents have been kept away from this Hon''ble Court and it has been highlighted in the fashion as a relief as desired by the petitioners, was not extended to them."

During the course of arguments, it was stated by the learned counsel for the respondent that if the petitioner felt aggrieved with the reverification/recalculation it was still open to the petitioner to approach the respondents and in particular the AEPC for carrying out the same once again.

8. This Court in exercise of its writ jurisdiction under Article 226 of the Constitution does not sit as a court of appeal. Normally, this Court is loath to substitute its views in place of the findings of the authorities below. Interference by this Court is also limited to specific cases of arbitrariness or violation of principles of natural justice. In the present case no such grounds for interference had been made out.

9. In this view of the matter, the writ petition is liable to be dismissed. However, liberty is granted to the petitioner to represent before the AEPC within two weeks of this order along with all materials in its support with respect to the reverification/recalculation of the exact quantum of shipment/utilisation of quota in terms of the directions of the Second Appellate Committee. The AEPC would, thereafter reverify/recalculate the quota utilisation and inform the petitioner with regard to the benefit, if any, available to the petitioner as a result of such reverification/recalculation. Such benefit shall be adjusted against the forfeiture amount of Rs. 10,26,990/-. The AEPC shall complete this exercise within two weeks of the petitioner representing as above and the petitioner shall, thereafter

forthwith pay the balance forfeiture amount.

8. With these directions the writ petition is disposed of. No order as to costs.