
(2003) 11 DEL CK 0150
In the Delhi High Court
Case No : CW No. 7046 of 2003

Modesty Garments

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 07-11-2003

Acts Referred:

Citation : (2004) 1 AD 54 : (2003) 108 DLT 105 : (2004) 175 ELT 27

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : Raja Chatterjee and Praveen Chauhan, for the Appellant; Vivek K. Goyal and Kuljeet Rawal, for the Respondent

Judgement

Badar Durrez Ahmed, J.—In this petition it is, inter alia, alleged that the petitioner did not have notice of the hearing before the Second Appellate Committee of the Ministry of Textiles in respect of its second appeal preferred against the First Appellate order dated 16.7.2001 which, in turn, arose out of the order of the AEPC dated 22.10.1997. The AEPC had by its said order forfeited the amount of Rs.4,78,379/- on the ground that the petitioner had not met its export obligation. This order was confirmed in First Appeal and although the petitioner sought the benefit of the force majeure clause, the First Appellate Authority did not feel that, in the facts of the case, the clause could be invoked.

2. The petitioner thereafter filed the second appeal before the Second Appellate Committee. Several notices for different dates of hearing have been issued from time to time. However, hearing was not held on those dates. Ultimately, the Second Appellate Committee passed an order on 14.7.2003 whereby the petitioner's second appeal was rejected. Apart from the merits of the matter, the petitioner is aggrieved by the fact that no opportunity of hearing was granted before the impugned order was passed. In particular, he has referred to first paragraph of the impugned order which reads as under:-

" The 2nd Appellate Committee considered the appeal of the above appellant in

its meeting held on 14.7.2003. None appeared on behalf of the appellant firm for the hearing held on 11.6.2003 despite proper notice. The 2nd Appellate Committee decided to take up the case on the basis of the documents available on file."

3. From the above paragraph, it appears that, first of all, a notice was given to the petitioner for a hearing on 11.6.2003. Second, that the petitioner did not appear for hearing on that date. Third, that the appeal was disposed of by the Second Appellate Committee in its meeting held on 14.7.2003. On the last occasion when the learned counsel for the petitioner raised this question about opportunity of hearing not being granted, and the impugned order being an ex parte order without notice to the petitioner, I had indicated to the learned counsel for the respondent to produce the original file with regard to the Second Appellate Committee. The same was produced in court today and from the file it becomes apparent that notices for personal hearing were issued in this matter on 5.3.2003, 10.4.2003, 6.5.2003 and 27.6.2003 for personal hearing fixed on 2.3.2003, 25.4.2003, 21.5.2003 and 14.7.2003 respectively. There is no notice in respect of any hearing for 11.6.2003. Therefore, it becomes clear that the statement contained in the impugned order - "None appeared on behalf of the appellant firm for the hearing held on 11.6.2003 despite proper notice" - is contrary to the record. Insofar as the meeting held on 14.7.2003 is concerned, there is a letter of the petitioner itself dated 4.7.2003 which is on record of the original file whereby the petitioner had requested for an opportunity to explain the case to the Committee in the next Appellate Committee meeting to be held on 14.7.2003. The learned counsel for the petitioner was pointedly asked that in view of this statement contained in the letter of 4.7.2003, the petitioner was very well aware of the meeting of the Second Appellate Committee which was to be held on 14.7.2003 then how could he submit that he had no notice of the same. To this, learned counsel appearing for the petitioner replied that though he was aware that there was going to be a meeting of the Second Appellate Committee held on 14.7.2003, this did not mean that on that date the petitioners' case was also posted for hearing. Other matters were listed before the Second Appellate Committee on that date. By the letter dated 4.7.2003, he had only requested that his matter also be taken up for hearing on that date. In response to this letter of his, he did not receive any notice and Therefore he had no way to know that this case was, in fact, posted for hearing on 14.7.2003. It is only on this ground that he submits that he had no notice of the hearing of 14.7.2003. Learned counsel for the petitioner further points out that he had submitted a letter dated 14.7.2003 itself to the Appellate Committee although he had not appeared for the hearing as, according to him, there was no such opportunity of hearing granted to him. The letter dated 14.7.2003 which apparently had been handed over to the Second Appellate Committee on 14.7.2003 itself is also on record in the original file which has been seen. However, there is no mention of the contentions contained in the letter either in the Second Appellate Committee's order. There is some ambiguity with regard to

the question as to whether the petitioner was properly informed about the hearing to be granted on 14.7.2003. Though learned counsel for the respondent has stated that they had already issued notices which have already been mentioned above and in particular for the hearing on 14.7.2003 and they say that the same had been dispatched by speed post on 2.7.2003. On the letter dated 4.7.2003 which had been received from the petitioner there is an handwritten endorsement to the effect :-

" Will attend - as telephonically Info ."

4. This endorsement, of course, does not bind the petitioner and as there is some doubt, particularly, in view of the palpably incorrect statement that is contained in the impugned order that a hearing was held on 11.6.2003 where nobody appeared on behalf of the petitioner firm despite proper notice, there is sufficient cause that the petitioner did not get an appropriate opportunity of hearing.

5. In view of these circumstances, it would be appropriate that the matter be remanded to the Second Appellate Committee for hearing afresh after giving notice to the petitioner. It is directed that the appeal be disposed of by the Second Appellate Committee within three months from today.

The writ petition is disposed of.

dusty to both the parties.