

(2016) 11 MAD CK 0148

In the Madras High Court

Case No : Writ Petition No. 29991 of 2016 and W.M.P. Nos. 25962 & 25963 of 2016

M/s. Aravindh Leather Corporation

APPELLANT

Vs

Government of India

RESPONDENT

Date of Decision : 03-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 MLJ 295 : (2017) 1 WritLR 224

Hon'ble Judges : Mr. B. Rajendran, J.

Bench : Single Bench

Advocate : Mr. C.P. Sivamohan, Advocate, for the Petitioner; Mr. R. Veludas, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Mr. B. Rajendran, J. - The petitioner has come forward with the writ petition seeking a Mandamus directing the second respondent to send the sample pieces in respect of the finished leathers imported by the petitioner firm and forwarded by the Customs Authorities to him, for testing for ANTHRAX to the Central University Laboratory at Madhavaram.

2. According to the petitioner, they are importing finished leathers from various countries. In the present case, they have imported finished leathers from Japan (Finished Cow Split Leathers) as per invoice dated 09.06.2016. The container containing the Finished Cow Split leathers arrived at Chennai Harbour on 12.07.2016 and the Customs Department issued a Bill of Entry for home consumption dated 28.07.2016 noting that Animal Quarantine and Certification Services (AQCS) is pending for clearance.

3. According to the petitioner, since the goods are subjected to clearance and no objection by AQCS, of which the second respondent is the authority, a sample piece was drawn at random by the Customs Authorities for certification and it

was sent to the second respondent on 23.08.2016. Further, according to the petitioner, as per Economic Partnership Agreement between India and Japan, Health Certificate is not necessary from the Exporting country viz., Japan in this case, for finished leathers and similarly it is quid pro quo. Therefore, in the absence of health certificate for finished leathers, which is not mandatory, the only option left for the second respondent is to get the goods tested for ANTHRAX and if the test being positive, the second respondent is not bound to give NOC and if the test for ANTHRAX is negative, then he is bound to give NOC.

4. The petitioner would further point out that on an earlier occasion, similar finished leathers were imported from Germany and Portugal and as Health Certificates were not issued by the said exporting countries, the imported leathers were tested for ANTHRAX and consequently they got NOC from the very same second respondent and had taken delivery. It is the case of the petitioner that now the second respondent is not inclined to send the samples for testing ANTHRAX. Therefore, he would now contend that the second respondent is duty bound to issue provisional release order and also send samples for being tested for bacillus anthracis (ANTHRAX test), which he is refusing to do so.

5. The petitioner would further state that the customs department has issued a notice dated 11.08.2016 under Section 48 of the Customs Act, 1962 (as amended) requiring the petitioner firm that the consignment ought to have been cleared within 30 days and hence there is a threat of the consignment being sold by the Customs Department if not cleared.

6. The petitioner would further contend that on an earlier occasion he has also imported similar goods (finished leathers) from the very same exporter S.K. Ltd., at Tokyo, Japan and at that time, the second respondent refused to send the samples to the Central Lab for testing Anthrax. Therefore, the petitioner filed a writ petition in W.P. No. 22202 of 2016 before this Court for the very same relief and by virtue of this Court's order, samples were sent for testing and upon receipt of the report, which was opened in this Court, the same was found negative and this Court directed the second respondent to pass appropriate orders and pursuant to the same, the very same finished leather, from the very same company and from the very same country was released without the original health certificate. Therefore, it is not open for the second respondent to deny the same relief at this point of time and hence he would contend that the writ petition should be allowed.

7. A detailed counter has been filed by both the respondents. According to the respondents, the application was submitted only on 24.08.2016 and when it was scrutinized, it was found that the original health/sanitary certificate from the competent authority of the exporting country was not attached to the application. Hence, the petitioner was directed to produce the same.

8. The respondents would mainly contend that the samples drawn from the consignment could be forwarded by the Department for testing only if all the

documents required by the officer concerned are in order. Since there is no original health certificate accompanied with the consignment from the exporting country, the question of forwarding the samples by the second respondent does not arise at all.

9. It is submitted by the respondents that the petitioner has stated that the samples are sent for testing against ANTHRAX only but it is not the case, the samples are tested for Bacterial Zoonotic diseases such as Anthrax, Tuberculosis, Brucellosis, Salmonella, Leptospirosis, Tetanus and for Bacterial Animals infections such as Black Quarter, John's diseases, Viral Zoonotic diseases such as Rift Valley Fever etc., these diseased can be transmitted to India through import of leather which in turn will affect the animal and human population of this country. Therefore, in the larger national interest as the Quarantine Officer is responsible to check whether the livestock product imported into India is accompanied with a valid Veterinary Health Certificate issued by the authorised Veterinarian of the exporting country and without fulfilling the said health requirements laid down by the Government of India, if it is not done in accordance with law, it has to be deported back. In fact, in order to avoid illegal import of livestock, such stringent laws are formulated by the Government in the larger national interest.

10. The respondents would further contend that as under Livestock Importation Act, 1898 and notifications issued thereunder, every country is issuing the valid health/sanitary certificate to the finished leather consignments and it is not correct to state that health/sanitary certificate is not required. Further AQCS clearance is given only if it is certified by the official authority of the exporting country as most of the diseases cannot be tested by the importing country as the antimortem and postmortem cannot be done here and it should have to be done only in the exporting country and the epidemiological status of the exporting country. In fact, after the amendment all the importers are producing the original health/sanitary certificate from the competent authority of the exporting country. In fact the very same importer, the petitioner herein, had imported two consignment of finished cow leather from Germany vide Bill of Entry Nos. 4966060 dated 19.04.2016 and 5196241 dated 09.05.2016, which were accompanied with valid original health certificates. Therefore, the petitioner was aware of the need and necessity of annexing the original health/sanitary certificate.

11. The respondents would further state that animal quarantine is a mandatory procedure. Therefore, they would contend that merely because on the previous occasion, the import of finished leathers from Japan was allowed, that to not directly by the department but at the intervention of this Court it was done. Therefore, they would contend that there is no need to consider the application of the petitioner and prays for dismissal of the writ petition.

12. A reply was filed by the petitioner admitting that original health/sanitary certificate was not attached to the application. According to them, the exporting

country does not issue such certificate. They would mainly contend that the very same quarantine officer, the second respondent herein, for the earlier consignment, on finding the test report is negative has released the same and yet another consignment from Japan has also been released by him. Since in another case they refused, writ petition was filed. But, even at that point of time, the goods of the writ petitioner was allowed to be released and they did not bring to the notice of the Court or to the petitioner that original health certificate/sanitary certificate has been made mandatory for finished leather as per official memorandum dated 12.05.2015. That being so, they are estopped from questioning the same at this point of time. Had it been brought to the notice of the petitioner, he would not have imported the goods from Japan at all. He would further state that he will file a memorandum of undertaking that he will not hereinafter import such finished leather goods unless accompanied by original health certificate of the country of origin. He has also filed an affidavit of undertaking to the said effect before this Court.

13. The respondents have filed typed set of papers producing the Notification published in the Gazette of India dated 17.10.2014, wherein, the Ministry of Agriculture, Department of Animal Husbandry and Dairying and Fisheries has clearly stated that :

"1. The word "live-stock products" shall include the following products, namely:

(xix) Tanned or crust hides and skins of bovine (including buffalo) or equine animals, without hair on, whether or not split, but for further prepared;"

"Procedure for import of livestock products into India:

(vii) Sanitary Import Permit will not be required for the livestock products listed at Sl. No. (XV) to (XXIV) above. However, import of livestock products indicated at Sl. No. (XV) to (XXIV) will be regulated against the production of No Objection Certificate from the Officer-In-Charge of the Animal Quarantine and Certification Services Stations located at Delhi, Mumbai, Chennai and Kolkatta or any other veterinary officer duly authorised by the Department of Animal Husbandry, Dairying and Fisheries after inspection of the goods."

14. Then subsequently in the office memorandum dated 12.05.2015, it has been stated that :

"(h) The original health certificate issued by the Official Veterinarian of the country of origin is required before clearance of the product."

Pointing this out, the respondents would contend that import is prohibited.

15. Heard both the parties and perused the records carefully.

16. In view of the urgency for clearance of the goods, the main writ petition itself is taken up. The main and only argument raised by the petitioner was that the petitioner had been importing regularly the very same goods both from Germany as well as from Japan. Even in the latest one, by virtue of the interim order dated 25.07.2016, in W.P.No.22202 of 2016, this Court directed the authorities to send the samples for testing Anthrax and it was tested and the test report was negative and therefore this Court directed the second respondent to consider the application of the petitioner and pursuant to the same, the authorities themselves taking into consideration that they have received a negative report, released the goods. Therefore, the present embargo created by the very same second respondent in not sending the samples for test and not releasing the goods is illegal.

17. But on a careful perusal of the Court order dated 16.08.2016, it is not as per the Court order that the goods were released. No doubt the Court directed the goods to be tested, after the test report being received, the petitioner had stated in the Court that since the goods have been released, the writ petition has become infructuous. Therefore, based on the report, it was the authorities who themselves have released the goods and not on the basis of the Court order and the petitioner also conveniently withdrawn the earlier writ petition and therefore the earlier order does not substantiate the case.

18. But the argument that was raised by the petitioner even at that point of time was that when the very same goods were released, which was also brought from Japan, the respondents did not either bring to the notice of the Court or the petitioner regarding the memorandum dated 12.05.2015 mandating for the original health certificate issued by the official veterinarian of the country of origin for clearance of the product. This argument cannot be correct for the simple reason that the authority originally did not allow the import and also not released the goods. Therefore, the petitioner has come to the Court and pursuant to an interim order alone it was sent for testing and no doubt after the negative report, the authorities have simply released it not due to the Court order but they themselves had done it. Whether it would create estoppel as against the officials, that was a mistake committed by the officials on the earlier occasion. They ought to have brought to the notice of the Court the subsequent amendment made in May, 2015 where it is made mandatory to produce the original health certificate from the originating country. Furthermore, it is not the case of the petitioner that they were not aware of such a requirement. In fact, even in his own affidavit, he has stated on earlier two occasions in respect of other countries, he had already obtained the necessary certificates from the originating countries, thereafter only he imported. So the petitioner had knowledge of the need and necessity of the original health certificate. Merely because on the previous occasion, it was not specifically pleaded by the respondents, the same cannot be taken advantage of by the petitioner, now to say that on the earlier occasion, he had been allowed to take the goods and therefore on this occasion also he should be allowed to take the goods.

19. As rightly pointed out by the authorities concerned, it is a very important mandatory requirement because it will affect the life and health of the public at large and the argument of the petitioner that the original health certificate is not required in the case of finished products also does not arise because in the Memorandum, it has been very clearly stated that the original health certificate issued by the Official Veterinarian of the country of origin is required before clearance of the product. Therefore, even the finished goods are required to be sent along with the original health certificate. It is more so as per the explanation given by the department that postmortem analysis in respect of that thing cannot be done here, which should have to be done and certified by the official veterinarian of the exporting country, as many of the diseases cannot be tested here, what is now tested is only Anthrax. Merely because there is an negative report for Anthrax, that by itself would not amount that the goods are correct/safe and can be imported.

20. In such view of the matter, though unfortunately this Court feel sympathy for the petitioner that he has imported the goods because of the misunderstanding that even on an earlier occasion, his goods were released without the original health certificate, but that may not be a reason to jeopardise the life of many cattle or health of the persons in India by the wrong import of goods. In fact, in order to avoid illegal import of livestock, such stringent laws are formulated by the Government in the larger national interest. Therefore, the writ petition as such deserves to be dismissed and accordingly dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.