
(1998) 06 CAL CK 0013

In the Calcutta High Court

Case No : Civil Appellase Jurisdiction Original Side G.A. No. 2356 of 1998,
S.P.O.T. No. 470 of 1998 and W.P. No. 1229 of 1998

M/s. N.C. Singha and Sons and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-06-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Customs House Agents Licensing Regulations, 1984 — Regulation 21(1), 23, 21(2)

Citation : (1998) 2 CALLT 483 : (1998) 61 ECC 47 : (1998) 104 ELT 11

Hon'ble Judges : Vinod Kumar Gupta, J;Dipak Prokash Kundu, J

Bench : Division Bench

Judgement

The Court

1. There will be an order in terms of prayer (a) of the petition.

2. Bases on certain allegations, and order dated 9th June, 1998 was passed by the respondent No. 2, Commissioner of Customs, Calcutta, whereby, in purported exercise of his power under sub-Rule (2) of Rule 21 of the Customs House Agent Licensing Regulations. 1984, the licence of the petitioner as a Custom House Agent was suspended with Immediate effect The operative part of the said order reads as under :

"And whereas an enquiry against the aforesaid clearing Agent M/s. Singha & Sons is contemplated, in exercise of powers vested in me under Regulation 21(2) of the Customs House Agents Licensing Regulations, 1984, I order suspension of the Custom House Agents Licence No. N-17 of M/s. N.C. Singha & Sons with Immediate effect"

3. The appellants feeling aggrieved by the said order moved the writ application under Article 226 of the Constitution of india. The learned single Judge did not grant interim relief in favour of the appellants and while disposing of the writ petition finally passed certain directions with regard to the passing of the orders

in future by the respondents. The present appeal is directed against the aforesaid Judgment of the learned Judge dated 25th June, 1998.

4. We have heard the learned Advocate for the parties and considered the rival contentions. Regulation 21(2) of 1984 Regulations read thus :

"21(2). Notwithstanding anything contained in sub-regulation (1), the Commissioner may in appropriate cases, where Immediate action is necessary, suspend the licence of a Custom House Agent where an enquiry against such agent is pending or contemplated."

5. A perusal of the order dated 9th June, 1993 passed by the respondent No. 2 clearly suggests that the power under Regulation 21(2) was resorted to apparently without spelling out in the impugned order as to whether any Immediate action was necessary so as to suspend the licence of the appellants with Immediate effect. Undoubtedly a plain reading of the Regulation 21(2) clearly stipulates that the requirement to take Immediate action is a *sin qua non* to the suspension of a licence under Regulation 21(2) because such suspension is not be way of any punishment, as is contemplated by Regulation 21(2), but is required to cater to a situation warranting Immediate action. The purpose of resorting to immediate suspension of a licence because of some immediate action is to immediately stop the activities of the clearing agent so as to disable him from taking any further action in the matter since, under a particular situation and under some given set of circumstances, the requirement of Immediate action may demand that the clearing agent may be Immediately required to be prevented from working any further. The minimum that is required by the Commissioner to enable him to exercise such power is the spelling out of the circumstances in the order warranting the need to take such Immediate action and to actually say that Immediate action is indeed required in the matter. What we see from the Impugned order dated 9th June, 1998 is that the expression "Immediate action" itself is missing. That apart, what we find from the preamble, recitals and facts stated in the order is that the circumstances did not warrant the taking of Immediate action in terms of Regulation 21(2) of the 1984 Regulation.

6. We stop short of saying any further or any more because the matter may again come up for consideration by the respondents. Our only concern, rather sole concern in this appeal is about the legality and validity of the suspension order in purported exercise of the power under Regulation 21(2). That order, in our opinion, is not sustainable because it does not spell out that any immediate action is required to be taken in the matter nor does the order on its face indicate that such action was indeed warranted.

7. The appeal accordingly is allowed. The judgment of the learned single Judge is set aside. Consequently the Impugned suspension order dated 9th June, 1998 is quashed and set aside. We wish to make it absolutely clear that the observations made by us in this judgment, the setting aside of the judgment of the learned

single Judge and the quashing and setting aside of the Impugned order dated 9th June, 1998 are all confined and restricted to the only question regarding the validity of the order on the touch-stone of Regulation 21(2) and the exercise of such power by the Commissioner and that nothing stated herein shall at all be construed as any expression of opinion by us with regard to the extent of the power exercisable under Regulation 21 (1) read with Regulation 23 or other Regulations on the subject or the merits of the controversy nor shall it in any way be construed as any expression of any opinion by us with regard to any contemplated action sought to be taken, if at all. under the aforesaid Regulation 21(1), if so advised. This judgment accordingly shall also not be construed as preventing the respondents from proceeding in any such direction, if they propose to do so, or if they feel that any such action is required to be initiated against the appellants.

8. The application is disposed of accordingly. The appeal after the same being treated as on the day's list is also disposed of accordingly.

9. There will be no order as to costs.

10. All parties are to act on a signed xerox copy of this dictated order on the usual undertaking.

11. Application disposed of