

(2005) 03 CAL CK 0038

In the Calcutta High Court

Case No : G.A. No. 332 of 2005 and APOT No. 54 of 205 with WP No. 1587 of 2003

R. Piyarelall Import and Export Ltd.

APPELLANT

Vs

Bright Consumer Co-operative and Stores Ltd. and Others

RESPONDENT

Date of Decision : 22-03-2005

Acts Referred:

Citation : (2005) 03 CAL CK 0038

Hon'ble Judges : Soumitra Pal, J;D.K. Seth, J

Bench : Division Bench

Judgement

1. This appeal has been preferred against various orders passed in WP No. 1587 of 2003 passed by the learned Single Judge, by the appellant, not a party to the writ petition, with leave of this Court. After having heard Mr. Sen, learned Counsel for the appellant and Mr. Mitra and Mr. Saha learned Counsel for the respective respondents No. 12 and 13, the transporters, who are parties to the writ petition, it appears that Mr. Sen has been able to raise a fair question to be gone into so far as the appellant is concerned. Therefore, we propose to grant leave to prefer this appeal. Accordingly, leave is granted in terms of prayer (a).

2. The application for stay of operation of the respective orders specified in the prayer thereto was pressed by Mr Sen and had made various submissions pointing out to various infirmities, irregularities and illegalities in the whole process in which the writ petition has been dealt with and has drawn our attention to the illegalities galore from the orders passed in the writ petition supported by various documents which are produced before this Court.

3. Mr. Dutta, learned Counsel for the writ petitioner/respondent, on the other hand, points out that many of these documents which have been used before this Court were not before the learned Single Judge and that many of the papers on which the learned Single Judge had relied upon have not been placed before this Court. Therefore, according to him, this Court cannot enter into the question raised by Mr. Sen without allowing affidavits in opposition by the respective

parties bringing on records the relevant materials.

4. Mr. Samadar led by Mr. Banerjee appearing on behalf of the Customs Authorities, had pointed out that it had disclosed in its affidavit before the learned Single Judge that there are certain formalities, which are to be observed for the purpose of destruction of confiscated items by the Customs Authorities. There are special provisions for destruction of contraband items. This can be done only in accordance with the rules and guidelines laid down therefore by the Customs Authorities provided the ingredients necessary therefore are satisfied. This can also be done at the instance of an order passed by the appropriate adjudicating Authority including the Courts in appropriate cases. It appears from one of the orders, Mr. Sen, appearing for the Customs Authorities had pointed out, that the Customs Authority took the stand that it cannot undertake the liability or responsibility to destroy the goods.

5. Mr. Saha and Mr. Banerjee appearing respectively for the respondents no. 13 and 12, who are transporters, submitted that they can address the Court only after they have been given an opportunity to file their affidavit-in-opposition bringing on record the materials/documents in support their stand.

6. It also appears that the transporters had agreed to destroy the goods after receiving the same from the warehouses and transporting the same to a distant place voluntarily free of cost and they had agreed to pay the remuneration of the Special Officer which has been fixed at a very high rate and also bear the same month by month. This is also one of the factors to think about the object of those respondents to spend their goods money over something from which they are not supposed to make any profit.

7. Mr. Dutta had contended that the scope of the appeal is confined only to the extent of the sugar upon which the appellants is laying its claim and no nexus has been shown as to the 519.950 M.T. of sugar shown to have been destroyed to be the sugar imported by the appellant. Therefore, the appellant has no locus standi to prefer this appeal. He has pointed out various other infirmities in the case made out by Mr. Sen with which we may deal at appropriate stage.

8. After having heard the learned Counsel for the parties, it appears that the manner in which the writ petition has been filed and the pleading incorporated therein tends to be public interest litigation, at the same time personal interest has also been pleaded in the writ petition by the petitioner. It is no clear from the orders passed by the learned Single Judge on which basis the Court had proceeded. Though Mr. Banerjee, appearing for the Customs Authorities, at one point of time had raised the question of maintainability of the writ petition but that was not decided by a clear decision. On the other hand, the Court had proceeded to deal with the writ petition. Even though at one point of time the writ petitioner had pointed out that the purpose having been served the writ petition should be dismissed and the Court had occasion to observe that the question of dismissal is a formal one but even then in order to enable the parties

to ventilate their grievances the writ petition has been kept pending. At the same time, Mr. Dutta had pointed out that the writ petition was not moved as a public interest litigation but on the strength of the personal interest having regard to the cause of action pleaded in the writ petition he had drawn out attention to the various pleadings made out therein.

9. On this question, we may observe tentatively without laying down the final decision that if it is the public interest litigation, then the learned Single Judge could not entertain the same in view of the rules of this Court which requires the Division Bench to entertain the public interest litigation only with the approval of the Hon'ble the Chief Justice. Therefore, the learned Single Judge could not have proceeded with the writ petition as a public interest litigation. The second point is that the writ petitioner had pleaded this personal interest, which is a disqualification for maintaining a public interest litigation. Therefore, the writ petitioner could not maintain the public interest litigation if it was so treated.

10. Thus, as rightly contended by Mr. Datta, it could have been entertained by the learned Single Judge as an ordinary litigation. In order to maintain such writ petition, one must have locus standi, which is related to cause of action. Mr. Dutta had relied on this decision in Janata Dal Vs. H.S. Chowdhary and Others, . Relying on this decision, he pointed out that having regard to the pleadings of this case, it cannot be treated to be a public interest litigation but a simple litigation by an aggrieved party. It is an established principle that a person can maintain the writ petition only in respect of cause of action personal to him in relation to matters, which have already occurred in between and for specific purpose. The system of judicial process followed in this country is an adversary system. Until and unless it appears that there are sufficient pleadings to make out a case that the cause of action by which the writ petitioner is aggrieved is related between particular persons against whom the cause of action is pleaded and that it relates to an action which had happened or on the strength whereof which is apprehended to happen.

11. The pleadings as has been made out seem to be that some items of the goods, which have since been imported and are lying in the custody of the Customs Authority, are contaminated or adulterated which, if comes to the market, will affect the writ petitioner in its business relating to the same items on the ground that these adulterated goods would be sold at a lesser price due to which the better quality goods dealt with by the writ petitioner cannot be sold at its usual price and, thus, it will suffer loss.

12. The reasoning on which this ground is founded seems to be preposterous. In the market always different qualities of goods are available and so far as business is concerned, it is the market force, which operates in the field. On the apprehension that the presence of certain inferior quality goods would give rise to a cause of action of a private individual or juristic person dealing with such goods, a very wide proposition beyond the comprehension of the Court and the judicial principles, could give rise to a cause of action on the basis of which the

writ petition could be maintained and proceeded with.

13. Apart from the said question from the various orders and the materials to which our attention has been drawn, it appears that various goods are being dealt with by the court through the Special Officer who had attempted to fish out materials and evidence for the purpose of enabling the Court to proceed with the matter but at the same time these goods were lying in the custody of the customs must be within the four corners of the Customs Act and the rules framed thereunder and some of them may be the subject matter of certain proceedings. In the absence of the owners of these items, no order could be passed in respect thereof.

14. It is pointed out by Mr. Sen that so far as the sugar with which his client is concerned was subject matter of a writ petition pending before this Court which is still pending and is subject matter of an order due to which these goods cannot be disposed of even if, assuming but not admitting, it is adulterated, contaminated or damaged, so long the writ petition remains pending and an appropriate order of the Court is not passed.

15. From the record, it appears the irrespective of such fact, the Court proceeded with the matter. It further appears that the identity of the goods was not established. It further appears that whether the goods were adulterated or not is not clear. However, certain certificates have been produced by the Port Health Officer certifying the goods as unfit for human consumption. But from the certificate that was issued (at page 136 of the stay petition) in respect of the said 519.950 M.T. sugar, it appears that the same was not adulterated as on 29th September 2003. Whereas, the xerox copy of the certificate produced today shows that 519.950 M.T. of sugar was certified to be physically unfit for human consumption on 10th October 2002. The signature of the officer appears to be the one and the same. The particulars of the sugar given in the certificate dated 29th of September 2003 (at page 136 of the stay petition) appears to be opposing the particulars given in the certificate dated 10th October 2002 and then in respect of the same sugar of 519.950 M.T. a fresh certificate was issued on 11th November 2004 by the Port Health Officer (at page 137 of the stay application) certifying that the said sugar as adulterated. However, this 10th October 2002 certificate has been mentioned in a list furnished to the Special Officer along with the letter dated 18th February 2005 addressed by the same Port Health Officer in reply to the letter dated 24th December 2004 addressed by the Special Officer which is at pages 120 and 121 of the compilation since filed by the Special Officer on the direction of this Court.

16. After looking into the material placed before us and the manner in which it was proceeded, it seems that all legal principles and statutory norms under which the goods determined by the Customs Authority are dealt with were thrown to the winds. The matter has been dealt with extra-statutorily. It is pointed out by Mr. Samaddar apart from this writ petition that there were some other writ petitions and appeals preferred by the Customs Authority. It is not an

isolated writ petition but it appears that on earlier occasion some which other writ petitions have been field and some orders have been obtained. The entire situation as has been disclosed before us, without laying down in details, gives as an impression that there is something, which needs a comprehensive adjudication. In case the other writ petitions and this writ petition and the appeals are decided separately, there might be conflict of decision. In our opinion, all these matters should be dealt with by one Court. This writ petition and the other writ petitions and the appeal should be assigned to a Division Bench for deciding the whole issue. Even if the earlier writ petitions might have been disposed of then the records of those writ petitions should be placed before the Court so as to appreciate the whole situation and the manner in which they were being dealt with.

17. The purity of justice is to be upheld at all costs. We cannot allow the fountain of justice to be polluted. It is in the realm of the duty of the Court to seen that the fountain of justice remains pure and unpolluted and the parties are not allowed to abuse the process of the Court. For all these reasons, we stay the operation of all the orders passed in Writ Petition No. 1587 of 2003 and on all applications in connection therewith including those challenged in this appeal and mentioned in the stay petition. The Special Officer is hereby restrained from acting in pursuance of any of the directions passed by the Court in any of the orders passed in connection with the said writ petition except in terms of this order or any order that might be passed hereafter.

18. The Special Officer shall submit his report within a fortnight, when this matter will appears before this Court, with regard to the steps he had taken as details in the report submitted by him on 6th January 2005 (at page 64-68 of the compilation). He should disclose the names of the persons who had transported the goods and the quantities transported by each of the transporters on each date and the manner in which it has been destroyed, where, when, how and by whom. He should also give the details of the identification of the lots or the goods with reference to the customs documents or the ort documents under which the goods were imported and/or were kept in the warehouse or the godowns in order to identify each of the items. He will also furnish the particulars and addressed of the persons who had imported the goods and also give the details of the proceedings if any pending or disposed of in respect of each of those items. He will also disclose the names of the person who were involved in the process and give their addresses.

19. The respondent nos. 12 and 113 shall file their opposition within a period of two weeks disclosing the names and addresses of each of the person who are operating the said transport agencies/organization. He will also disclose the registration number of vehicles and number of trips each vehicle undertook and the quantity of goods transported and identify all the goods it had lifted together with dates and other particulars and also the details as to where it had taken the goods and from where it had lifted the goods and the manner in which it had

destroyed the goods.

20. It is pointed out in Court on behalf of the respondent nos. 12 and 13 supported by Mr. Dutta that these goods were burnt as industrial fuel.

Therefore, the transporters shall disclose the names and addresses and the licenses of those industries to whom these goods have been given for being destroyed and the dates and the quantity of delivery made and the dates and the particulars when and how these industrial fuel have been utilized and destroyed. Mr. Saha, appearing on behalf of respondent no. 13, had submitted that these goods were also disposed of as cattle manure or agricultural manure and cattle feed.

21. Mr. Datta shall also file his opposition within a period of two weeks disclosing the names and identities and address of all the members of the executive committee and the other members of the writ petitioners and also disclose its licenses and period of its validity together with the information as to whether the allegations made by Mr. Sen the those writ petitioners, Co-operative Society were defunct are correct or not. It should also contain the particulars or the identities of the goods and the manner in which the writ petitioner had gained the knowledge of the quantity of the goods left with the Customs Authority and how he could get the information and the source of information and the date on which he had received such information. He should also disclose all the writ petitions of this kind his client had moved before this court and what orders he had obtained. These should be disclosed serially in the form of a paper book in respect of each writ petitions, which should be filed along with the affidavit-in-opposition. This should contain the pleadings and all the orders passed and all the reports by the Special Officer including the quantity and identity of the goods dealt with in connection with the respective writ petitions.

22. Mr. Samaddar shall file his opposition disclosing the details of the identities of each of the goods dealt with by each of the writ petitions and names and addresses of each of the importers and also state whether any notice was given to any of those importers or owners of the goods as contemplated under the Customs Act and disclose as to how the goods could be dealt with at all. He should also disclose all the proceedings in relation to each of the goods whether pending or disposed of and the status of those proceedings and the goods. He should also disclose the lot number and the shops through which it was imported and all other particulars in relation thereto. He should also disclose all other particulars in relation thereto. He should also disclose all other cases in which by order of Court such materials have been dealt with or destroyed in similar manner in the past. He will also disclose the names addresses and particulars of the respective officers who had dealt with those matters and the reasons why the appeal has not preferred and if preferred why they have not been pressed. He will also submit all the reports, which the respective officers have given from time to time. He shall file his opposition within a period of four weeks. However, even without the affidavit-in-opposition filed by the Customs Authority the

matter will appear after three weeks.

23. Reply, if any, by Mr. Sen, to the respective opposition may be filed within one weeks of service upon his advocate on record.

24. Since all these matters requires an assignment, let the records be placed before Hon"ble the Chief Justice for an appropriate order of assignment of the matters before a Division Bench as Hon"ble the Chief Justice may desire.

25. Having regard to the situation, we and Dr. M.K. Bag, Port Health Officer, Marin House, Hestings, Calcutta - 700002 as respondents no. 14.

26. After the order is dictated, Mr. Samaddar submitted that the procedure has been disclosed by the Customs Authorities either in the form of a report or in an affidavit, which he does not exactly remember.

27. After the order is dictated, it is also pointed out on behalf of respondent nos. 12 and 13 that those transporters were being compensated out of the sale of those goods as industrial fuel or cattle feed or agricultural manure.

All parties, including the Special Officer and the added respondents are to act on a signed xerox copy of this Dictated Order on the usual undertaking.