
(1998) 03 CAL CK 0014
In the Calcutta High Court
Case No : Writ Petition No. 142 of 1998

Raichand and Co.

APPELLANT

Vs

Director General of Foreign Trade

RESPONDENT

Date of Decision : 17-03-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 19
Constitution of India, 1950 — Article 14, 19(1), 226, 226(1), 226(2)
Foreign Trade (Development and Regulation) Act, 1992 — Section 5

Citation : (1998) 75 ECR 691 : (1998) 101 ELT 574

Hon'ble Judges : Ruma Pal, J

Bench : Single Bench

Advocate : Hasmukh Kundalia and Vipul Kundalia, for the Appellant; B. Samadar and Abhijit Kumar Ghosh, for the Respondent

Judgement

Ruma Pal, J.—The petitioners are importers of spices. The petitioners have challenged a notification being No. 29/97-02 dated 17th December, 1997 published in the Gazette of India (Extraordinary) by the Directorate of Foreign Trade and Ex officio, Additional Secretary to the Government of India. The grievance of the writ petitioners is primarily that by the impugned notification, special favours had been granted with regard to importation of spices to National Agricultural Co-operative Marketing Federation of India Limited (NAFED) and Spices Trading Corporation Limited (STCL) illegally and in violation of Article 14 and 19(1)(g) of the Constitution of India.

2. Initially the writ application was filed against four respondents namely; the Director General of Foreign Trade, Ministry of Commerce, having his office at Udyog Bhawan, New Delhi 110011; the Deputy Director General of Foreign Trade, Ministry of Commerce, having his office at Udyog Bhawan, New Delhi 110011; the Joint Director General of Foreign Trade, having his office at 4, Esplanade East, Calcutta 700069 and the Union of India, through the Joint Director General of Foreign Trade, having his office at 4, Esplanade East, Calcutta 700069. On the basis of allegations contained in the petition and as the Court

was of the view that any relief granted in the writ petition would seriously affect both NAFED and STCL, by an order dated 4th February, 1998 the petitioners were directed to make them party respondents. Both NAFED and STCL are now respondents Nos. 5 and 6 in the writ petition. NAFED has been described in the cause title as being located at "Ashram Chowk, New Delhi" and STCL has been described as been located at "72, Nandi Durg Road Extension, Bangalore 560046".

3. A preliminary objection has been raised by the respondents that this Court does not have the territorial jurisdiction to entertain the writ application. The matter was taken up for hearing on 10th February, 1998 on the preliminary issue of jurisdiction. The petitioners sought to attract the jurisdiction of this Court on the ground that they carry on the business of importing spices at Calcutta. They had been granted an Import & Export Code Number by the respondent No. 3, who has his office in Calcutta. According to the petitioners the notification which had been challenged had been made applicable to the petitioners at Calcutta and caused prejudice to the petitioners business here. The petitioners have relied upon a contract stated to have been entered into at Calcutta with the foreign purchasers who were threatening action against the petitioner in the event the petitioner did not make supplies. It has also been argued that the respondents Nos. 3 and 4 had their office in Calcutta and the impugned notification was being enforced and implemented in Calcutta.

4. The respondents Nos. 1 to 4 have submitted that an identical issue was pending before the Delhi High Court. A writ application had been filed by another exporter of spices raising the same contention. It is also stated that all the records relating to the case were therefore at Delhi where the hearing was continuing. It is submitted that an application had been made to the Supreme Court for transfer the proceedings from the Calcutta High Court and the application was pending admission. It is also submitted that the notification had been issued by the respondent No. 1, who had his office outside the jurisdiction of this Court. It is stated that the respondent No. 3 had no power to either formulate or effect change in the policy nor issue any notification nor withdraw the impugned notification. It is submitted that merely because the petitioners might suffer loss and damages in Calcutta was insufficient to found jurisdiction in the Calcutta High Court.

5. The respondent Nos. 5 and 6 have adopted the arguments of the respondents Nos. 1 to 4. They have also stated that the notification became effective from the date of its publication. This was to be distinguished from cases where service of notice was held by Courts to be sufficient to be part of the cause of action because the notice became effective on communication.

6. Several decisions have been relied upon by the parties in support of these respective submissions that these facts were either sufficient to attract the jurisdiction of this Court.

7. On a consideration of the cases cited and the language of Article 226 I would venture to lay down the following broad propositions :

(I) If the respondents are all within the jurisdiction of the Court the writ application will lie under Article 226(1).

(II) Even if all the respondents are not within the jurisdiction of the Court, the presence of the concerned respondent against whom the primary relief is claimed within the jurisdiction of a Court would be sufficient to clothe such Court with the territorial jurisdiction to entertain the Writ application. Thus in *Industrial Fuel Marketing Co. Vs. Union of India (UOI)*, the jurisdiction of this Court was affirmed under Article 226(1) as it was found that the office of the concerned officer was in Calcutta.

(III) If none of the respondents are within the Court's jurisdiction, but if the cause of action wholly or in part arises within its territorial limits, the writ application may be entertained under Article 226(2). The issue has to be decided on facts established on the entire pleadings and the Court is not limited to the statements contained in the petition [See *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others*,

(IV) In determining whether the Cause of Action has arisen within the jurisdiction of the Court, the nature of the impugned action or order is relevant.

(a) If the impugned order action is personal in the sense that it affects the writ petitioner alone the situs of cause of action will depend upon the relief claimed and would arise where the order becomes effective or the action effected.

(i) Thus in *Damomal Kausomal Raisinghani Vs. Union of India and Others*, the subject matter of challenge was an order applicable only to the writ petitioner who had been sought to be denied compensation by the impugned order. It was in that context that the Division Bench of the Bombay High Court said :

"The petitioner, as it, appears, was a resident of Ullasnagar, a place situated in the District of Thana of Maharashtra State. The impugned order itself shows that the case was heard in Bombay. It is indeed true that the order on the face of it does not show the place where it was made. Even assuming that this order was made by the third respondent in New Delhi, there can hardly be any doubt that the effect of this order fell on the petitioner at Ullasnagar where he resides. It is also not in dispute that the proceedings that would be taken against the petitioner in consequence of the impugned order would be by officers located within the territories in relation to which this Court exercises jurisdiction."

(ii) Similarly in *L.V. Veeri Chettiar and Another Vs. Sales Tax Officer, Bombay*, , cited by the petitioners the subject matter of challenge was a notice to show cause why they would not be assessed to Sales Tax. That was why the Division Bench of the Madras High Court held :

"It is established that in fiscal laws a proposal to assess forms part and parcel of

the machinery of assessment and thus understood, the service of notice to assess and calling upon the petitioner to explain has given rise to a cause of action as is popularly and legally understood and the machinery of assessment has been set in motion and the impact of that motion is felt by the petitioners within the territorial limits of this State. We have therefore no hesitation in holding that a part of the cause of action has arisen in the State of Tamil Nadu."

(iii) The decision of *The State of Maharashtra Vs. Sarvodaya Industries*, was rendered in the context of a suit for compensation for "wrong done" or "complained of" u/s 19 of the Code of Civil Procedure. The place where loss was suffered was held to be part of the cause of action.

(iv) In *P.S. Rao v. Union of India* : AIR 1974 Mysore 39 the case of the petitioner was that the Union Government was not competent to promote the respondent No. 2 without considering the case of the petitioner who held the post of Head of Utilisation Research at the Forest Research Laboratory, Bangalore. The very basis of claiming relief in the writ petition was that the petitioner was the holder of the aforesaid post in Bangalore. This was held to be part of the Cause of Action and sufficient to allow the writ application to be filed up the High Court at Mysore.

(v) In *Abdul Kafi Khan Vs. Union of India (UOI) and Others*, relied on by the respondents disciplinary proceedings were sought to be quashed. It was held that the Court within the jurisdiction of which the disciplinary proceedings took place was the appropriate Court.

(vi) In *Gurinder Jit Singh v. Union of India* : 1998 (1) CLJ 98 the subject matter of challenge was an endorsement in the confidential report of the petitioner. It was held that as the petitioner had made the statutory complaint against the endorsement in Bengal which was forwarded to Command Headquarters, the processing of the complaint played an important part in the decision ultimately taken and therefore it was a part of the cause of action which arose within the jurisdiction of this Court.

(vii) In *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others*, the writ petitioner had challenged the non-consideration of his tender. The place where the non-consideration took place was held to be the appropriate Court.

(viii) In *State of Rajasthan and Others Vs. Swaika Properties and Another*, the jurisdiction of this Court had been sought to be attracted on the ground that a notification issued by the State Government u/s 52(1) of the Rajasthan Urban Improvement Act, 1959 was served on the petitioner within the jurisdiction of the Court. The Supreme Court held that mere service of notice u/s 52(2) within the jurisdiction of this Court did not give rise to a cause of action unless the service was an integral part of the cause of action:

"The answer to the question whether service of notice is an integral part of the cause of action within the meaning of Article 226(2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action.

The notification dated February 8, 1984 issued by the State Government u/s 52(1) of the Act became effective the moment it was published in the official Gazette as thereupon the notified land became vested in the State Government free from all encumbrances. It was not necessary for the respondents to plead the service of the notice on them by the Special Officer."

(b) If the challenge is to the vires of a Central statute or notification or other statutory instrument which is applicable nationwide the place where the petitioner is affected by the implementation of the statute would have the jurisdiction to entertain the challenge. A distinction is to be drawn between circulars which are executive in character and statutes or statutory orders, notifications or other statutory instruments (See *Hindusthan Sugar Mills and Others Vs. Union of India (UOI) and Others*,

(V) There is an overriding discretion in the Courts to refuse to entertain the writ application on the ground that another forum having jurisdiction was more convenient. No arguments were made on this basis, nor any authority cited by the respondents. However, the respondents statement regarding the pending proceedings before the Delhi High Court may have been a relevant consideration under this head had such an argument been advanced.

8. Keeping these propositions in mind, I deal with the facts of this case.

9. The impugned notification was issued u/s 5 of the Foreign Trade (Development & Regulation) Act, 1992 (referred to as the Act) read with paragraph 4.1 of the Export & Import Policy, 1997 to 2002 (referred to as the policy).

Section 5 reads:

"5. Exports and import policy - The Central Government may, from time to time formulate and announce, by notification in the Official Gazette, the export and import policy and may also, in like manner, amend that policy."

Paragraph 4.1 of the Policy provides :

"Exports and imports shall be free, except to the extent they are regulated by the provisions of this Policy or any other law for the time being in force. The item wise export and import policy shall be, as stated in columns 3 to 5 of the book, titled "ITC (HS) Classifications of Export and Import Items" published and notified by the Director General of Foreign Trade and as amended from time to time".

10. What the petitioners are asking for in this writ application may be granted to them by the Director General of Foreign Trade (DGFT) alone. This is clear from paragraph 4.14 of the policy itself which reads :

"Any request for relaxation of the provisions of this Policy or of any procedure, on the ground that there is genuine hardship to the applicant or that a strict application of the Policy or the procedure is likely to have an adverse impact on trade may be made to the Director General of Foreign Trade for such relief as

may be necessary. The Director General of Foreign Trade may pass such orders or grant such relaxation or relief as he may deem fit and proper. The Director General of Foreign Trade may, in public interest, exempt any person or class or category of person from any provision of this Policy or any procedure and may, while granting such exemption, impose such conditions as he may deem fit."

11. Neither the Policy nor the Act provides for delegation of power so granted to any other officer by the DGFT. The DGFT has his office in Delhi. Therefore even if the Respondent No. 3 has its office within the jurisdiction of this Court it is immaterial.

12. The respondents are thus correct in their submission that the principal respondent against whom the primary relief has been claimed is outside the jurisdiction of this Court.

13. The petitioners must therefore fall back on Article 226(2) and establish that at least part of the cause of action has arisen within the jurisdiction of this Court so that this Court has the territorial jurisdiction to entertain their petition.

14. The impugned notification is statutory having been issued in terms of and u/s 5 of the Act. What is being challenged is the constitutional validity of a statutory notification issued under a Central Statute having application through out the country. The case, in my opinion, would therefore fall within proposition IV(b) above. Therefore, this Court, where the petitioner has its place of business, would have the jurisdiction to entertain the writ application. I therefore reject the preliminary objection raised by the respondents and decide the issue in favour of the petitioner. The matter may now be heard on merits.