

(2014) 03 SC CK 0028

In the Supreme Court Of India

Case No : I.A. Nos. 23, 40, 42, 55-57 and 63-69 in Writ Petition (C) No. 657 of 1995 and S.L.P. (C) No. 16175 of 1997, Civil Appeal No. 7660 of 1997 and Contempt Petition and (C) No. 155 of 2005

Research Foundation for science technology and National
Resource Policy

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 04-03-2014

Acts Referred:

Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008
— Rule 21(1), 4, 5, 6, 8(1)

Citation : (2014) 301 ELT 433 : (2014) 3 SCALE 531

Hon'ble Judges : Kurian Joseph, J;H.L. Gokhale, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This matter came up before this Bench on 13-2-2014 when it was noticed that in spite of order passed by this Court in Research Foundation for Science, Technology and Natural Resource Policy Vs. Union of India (UOI) and Others, containers referred to in paragraph 16 of the SCALE Report [paragraph 43 of 2012 (7) SCC 769] were lying without incineration. We were informed on that date the number of containers containing waste oil and various other waste materials were 212. We are also informed that analysis of the samples from these containers was obtained way back on 8-5-2007 and still no action was taken to dispose of those hazardous materials. We therefore directed necessary affidavits to be filed stating as to what steps are going to be taken with respect to the incineration of these waste materials. Subsequently, the matter came up on 18-2-2014 when certain affidavits were filed but the information was not complete and therefore, we directed a report to be filed by Ms. Seema Jere Bisht, Commissioner of Customs (Import), Mr. Arvind Pradhan, Manager (Traffic), JNPT and Dr. Yeshwant Sontakke, Regional Officer of the Maharashtra Pollution Control Board at Navi Mumbai. They were also asked to take assistance from Dr. D.B.

Boralkar and Dr. Claude Alvares both experts in the field as suggested by Mr. Sanjay Parekh, Learned Counsel appearing for the Petitioner. Now a report has been submitted, as directed, along with the affidavit of Ms. Seema Jere Bisht. This report records that in the near vicinity of JNPT, only one agency is available for incineration, namely Mumbai Waste Management Ltd., situated at Plot No. P-32, MIDC Talaja, Tal, Panvel, District Raigad. It is at a distance of 30 Kilometres from the area where the goods are kept. The agency has also agreed to accept the rate as suggested by the Commissioner of Customs which is in tune with the relevant rules. The suggested rate for disposal of waste oil is Rs. 14.80 per Kg. including collection, transportation and unloading charges. As far as non-ferrous metallic hazardous waste is concerned, the charges for disposal are Rs. 3.75 per Kg. for all purposes. The responsibility for transportation and all precautions, etc., will be of the concerned agency. Therefore, as the affidavit states in paragraph 6, the Committee uniformly decided that this particular agency be preferred for the purpose of incineration.

2. Mr. Vijay Panjwani, Learned Counsel appearing for the Central Pollution Control Board has drawn out attention to The Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008, and particularly Rules 4, 5 & 6 thereof which lay down the procedure for handling hazardous wastes. We expect the agency to follow these rules which are statutory rules. They shall also comply with the rules which are framed for the protection of the employees who work in these hazardous procedures. The Committee has recommended following modalities for destruction and final disposal of the hazardous wastes other than waste oil:

Modalities of destruction and final disposal

18. The following procedure shall be followed for the waste oil consignments:

(a) An MPCB Officer and CFS representative shall be deputed to supervise the loading of the containers and or de-stuffed barrels/drums/materials in transport vehicles authorized by MPCB as per Hazardous Waste (MH & tm) Rules, 2008.

(b) The manifest documents as required under Form 13 Rule 21(1) of the HW Rules, 2008 shall be followed and additionally will be countersigned by the representative officers of the MPCB and CFS.

(c) The transporter will be strictly responsible and liable for the safe transportation of these wastes to the disposal site and follow the procedure of transport safety, insurance and good condition of vehicles, etc., as per the HW Rules, 2008.

(d) On reaching the CHWTSDF (Common Hazardous Waste Transport, Storage, Disposal Facility), CHWTSDF operator shall issue the acknowledgment to CFS and MPCB as per HW Rules. CFS shall submit a daily report to the Asst. Commissioner of Customs i/c of Disposal Section. A copy will also be put up online for monitoring by all concerned agencies.

(e) The CHWTSDf operator shall be bound to carry out the treatment and disposal of the waste in compliance of conditions laid down by the MPCB in its combined consent and authorization granted to the operator. Additionally, the MPCB will depute one officer to supervise the disposal by CHWTSDf and keep a record, which shall be submitted to MPCB (as has been done in case of 133 containers incinerated earlier). CHWTSDf will send a copy of the manifest to CFS/ Customs and MPCB. The MPCB shall verify the first and last Manifest, so that the cycle is complete.

Hazardous wastes other than waste oil

(a) In the case of non-ferrous metallic and other wastes which are recyclable as per Schedule 4 of the HW Rules, 2008, they will be auctioned by the respective CFSs/Custodian. Only those recyclers who are registered with MPCB as per the procedure laid down in Rule 8(1) and Rule 9 of the HW Rules, 2008 for the wastes listed in Schedule 4, will be allowed to participate in the auctions.

(b) As for the non-ferrous and other wastes which are prohibited/banned for export and import and not suitable for recycling, these shall be sent to CHWTSDf, Taloja for treatment and disposal as per the procedure laid down in HW Rules, 2008. (This is also in accordance with the earlier direction of the SCMC to JNPT in its letter dated 18-5-2005).

(c) The list of the containers other than waste oil such as metallic and other wastes based on their mode of disposal is enclosed herewith and marked as Annexure-3.

(d) Entire operation shall be done under the supervision of MPCB as was done earlier in the case of incineration of 133 containers. Fortnightly progress report shall be prepared/obtained by MPCB and submitted to JNPT and Customs for information.

3. We are informed that the whole process will take about 60 days. The aforesaid report is accepted. The agency is expected to follow the guidelines, as mentioned above.

4. Mr. Rakesh Khanna, learned Additional Solicitor General on instruction from Ms. Seema Jere Bisht states that the necessary formalities will be completed within a week and the process of incineration will start from 10th March, 2014. We expect the work to be completed by 10th May, 2014 as assured. The Commissioner (Customs) will file an interim report after 30 days and final report on completion of the work after 60 days.

5. Apart from the disposal of this waste material, the Customs authorities will have to take steps for recovery of the amount spent in this incineration process and other charges. The Customs authorities are directed to take necessary action against all those importers, ship liners and CFS (Custodians) responsible for dumping this waste material, and all those whoever are otherwise responsible for this.

6. Mr. Sanjay Parikh, Learned Counsel appearing for the Petitioner has drawn our attention to the orders passed by this Court in this matter on earlier occasions, beginning with Research Foundation for Science Technology and Natural Resources Policy Vs. Union of India (UOI) and Another, which is the order passed on 13-1-2005. Paragraph 38 of this order has dealt with these very same containers though at that very time the number of containers identified were 170, which number is now stated to be 212 as recorded earlier. This paragraph reads as follows:

In regard to 170 containers referred to in the report of the Commissioner of Customs which are also lodged in the same premises in more or less the same condition, the Monitoring Committee has noted that these containers have not been claimed by the importers. The details of the importers of these consignments are not on record. Before we issue directions in respect of these 170 containers, it would be necessary to have on record the details of these imports. The authorities concerned i.e. Jawaharlal Nehru Port or Mumbai Port and all other departments concerned are directed to furnish to the Monitoring Committee within four weeks up-to-date information as to the import of the 170 containers, how the consignment was dealt with right from the date of the arrival till date. The Monitoring Committee shall file a report along with its recommendations and on consideration thereof, necessary directions in regard to 170 containers would be issued.

7. Mr. Khanna, learned Additional Solicitor General in fact tried to take a little advantage from this paragraph by contending that the Monitoring Committee was supposed to file a report and thereafter directions were expected from the Court. We are not prepared to buy this submission of Mr. Khanna. Prima facie there is a complete dereliction on the part of the concerned officers in not taking any action when these containers were lying in the JNPT area for years together. In fact they have been imported/bought from 1992 onwards. No orders of Court are required for incineration or deciding the responsibility for the authorities. It is only because the authorities concerned do not act in time that when some individual or organization interested in public cause, bring this issue to the notice of the Court, the Court has to give necessary directions. Merely because the Court has stated in the aforesaid paragraph that the report be filed, does not mean that the Governmental authorities are not expected to act otherwise.

8. The officers concerned could have sought clarification from the Court if they felt that any order from the Court was required. Mr. Sanjay Parikh has drawn our attention to the attitude of the officers of the Government with respect to these containers, and the order passed on 9-5-2005 which recorded that despite an earlier direction issued on 5-1-2005, neither JNPT nor the Commissioner of Customs had furnished the requisite information about 170 containers to the Monitoring Committee. Thereafter, another order was passed on 18-7-2007 which specifically recorded that some of the imports took place as early as in the year 1992 and all those goods remained unattended without initiating any

proceedings for the last so many years. The Court hence directed an affidavit to be filed placing on record as to what action was proposed to be taken in case the inaction was the result of some of the officers. This paragraph of the order reads as follows:

The Chief Commissioner of Customs shall also file an affidavit explaining in detail the circumstances under which the goods in question remained unattended without initiation of any proceedings for the last so many years. As per the documents now filed, about 209 containers fall in this category. The affidavit shall also place on record the action, if any, which is proposed to be taken in case the inaction was the result of some of the officers of the department. This affidavit shall be filed within a period of two weeks.

9. These two orders were followed by an order passed on 23-10-2007 by which Mr. Gopal Subramaniam, then learned Additional Solicitor General was directed to give a report on the modalities for dealing with the waste oil/used oil. Mr. Subramaniam did submit the necessary report in September/2008 and paragraph 6(a) & 6(b) thereof gave certain recommendations about these modalities to deal with the illegally imported containers which read as follows:

6. Recommendations.--(a) Suggested modalities to deal with illegally imported consignments:

When the Custom Authorities confiscate the consignments which are not in conformity with the declaration or import manifest system filed by the importer, disposal of such confiscated consignments becomes a burden on the State Exchequer.

In case of consignments in respect of oils not confirming to the specifications of the products as applicable and meeting the specifications of used oil/waste oil as per Schedule 5 and Schedule 6 of the HW (M & H) Rules, such goods may be auctioned or sold only to the recyclers registered with Central Pollution Control Board having valid registration. In case the oils not confirming to the specifications of the products as applicable and the waste oils not meeting the specifications as per Schedule 6, in such cases the Customs department may consult various incinerators and the consignments may be disposed of through a Common hazardous waste incinerator. The cost towards disposal of such confiscated consignments need to be distributed among the importers traceable in proportion to the quantity of the consignments including the cost of incineration as well as penalty in such a manner that the damage upon the state exchequer is dealt with.

(b) Suggested modalities to deal with illegal imports: Apart from the procedures to be followed in respect of the import of hazardous wastes as specified under the HW (Management & Handling) Rules as well as the Customs Act, following additional measures are suggested to control illegal imports of hazardous wastes into the country:

(i) Pre-shipment Inspection of the goods in the exporting country with regard to actual nature of goods sought to be imported. Such certificate is submitted along with the import manifest system. The pre-inspection from the internationally approved agency alone would be recognized so as to verify certain category of oils (list of oils recommended for pre-shipment inspection or canalization of import is enclosed as Annexure-13). The list of approved agency would be notified from time to time by the Ministry of Commerce & Industry. The list would also be published through the website of Directorate General of Foreign Trade (D.G.F.T.).

(ii) It is also suggested that the importer may submit adequate security deposit (bank guarantee) equivalent to the cost of the consignment. Upon, confirmation of illegal consignments, if any by the importer, the cost towards its disposal be deducted along with a penalty from the security deposit.

(iii) Conjunctively the importers of certain problem oils may be asked to pre-deposit security or Bank guarantee of reasonable amount in order to control illegal import of waste oil. Such an imposition of condition may also deterrent effect.

(iv) Alternatively, it should made mandatory that all the problems oils should be imported through State Trading Enterprises (STE). This may also be effective in dealing with illegal imports of waste oils/used oils.

10. All these orders will indicate that there is a complete apathy and inaction on the part of the concerned officers. In fact, again in our last order we had asked the Director, Ministry of Environment and Forest to place on record as to who are the officers responsible and what action has been taken against them. She has filed an affidavit affirmed on 4-3-2014 but it does not give any assistance in this behalf.

11. Having noted this, the only course available for us is to direct an appropriate inquiry so as to take cognizance of dereliction on the part of the concerned officers and, if satisfied, decide about the disciplinary and other measures. After having a word with Mr. Khanna, learned Additional Solicitor General who also had a word with the officers, we appoint a Committee consisting of (a) Joint Director (Customs), Department of Revenue and Finance; (b) Director, Ministry of Environment & Forest; and (c) Director, Ministry of Shipping, to hold appropriate inquiry to ascertain as to who were the officers from these three Ministries who were responsible for not taking necessary steps for all these years and if satisfied that there is dereliction on the part of some of the officers, initiating the disciplinary measures/appropriate actions in accordance with law. The matter may be placed on 8th July, 2014 before a Bench of which one of us (Kurian Joseph, J.) is a member. It will be open to the Petitioner to raise all other issues, at the appropriate stage.