

(2016) 07 SC CK 0121

In the Supreme Court Of India

Case No : Writ Petition (C) No. 471 of 2015

R.M. Dhariwal 100% EOU

APPELLANT

Vs

Union of India & Others

RESPONDENT

Date of Decision : 18-07-2016

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g), 32

Plastic Waste (Management and Handling) Rules, 2011 — Rule 2, 5(d), 5(g)

Citation : (2016) AllSCR 1997 : (2016) 338 ELT 332 : (2016) 6 FLT 695 : (2016) 4 JCR 99 : (2016) 7 JT 54 : (2016) 7 Scale 459

Hon'ble Judges : Kurian Joseph and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : Sudhir Chandra, Sr. Adv., Sanjai Kumar Pathak, T.R. Andhyarujina, Sr. Adv., Pravin H. Parekh, Lalit Chauhan, Ms. Ritika Sethi, Abhishekh Deshmukh, (M/s. Parekh & Co.), Advocates, for the Appellant; K. Radhakrishnan, Sr. Adv., Ms. Sushma Manchanda, H.R. Rao, Vijay Prakash, N.K. Karhail, G.S. Makkar, B. Krishna Prasad, Shreekant N. Terdal, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Kurian, J.—;This writ petition is filed with the following prayers:

(i) Issue writ of mandamus that the exemption contained under Rule-2 of Plastic Wastes (Management & Handling) Rules, 2011 must be available to the Petitioner to export its Pan Masala, Gutkha and tobacco in multilayered plastic sachet and also in other packages containing plastic.

(ii) Issue writ of Certiorari or any order, writ or direction in the nature of Certiorari quashing the impugned Rules 5(d) and 5(g) contained in Plastic Waste (Management & Handling) Rules, 2011 as amended vide notification dated 02.07.2011; and/or

(iii) Issue a writ of Mandamus or any other appropriate writ, order or direction declaring Rules 5(d) and 5(g) of the Plastic Wastes (Management & Handling) Rules, 2011 as being violative of Articles 14, 19(1)(g) of the Constitution and

also ultra vires the provisions of the Environment (Protection) Act, 1986; and

(iv) Grant such and further orders as may be deemed just and necessary in the facts and circumstances of the present case and in the interest of justice.

2. When the matter was listed before this Court on 13.10.2015, the following order was passed :

"Learned Senior Counsel appearing for the Petitioner states that the facts that obtain in the present Petition are in pari materia with and materially identical to those which existed in the Writ Petition No. 466 of 2011 titled "Baba Global Ltd. v. Union of India". The Petitioner before us is also a 100% export oriented unit exporting Pan Masala, Gutkha and Tobacco across the globe. In Baba Global Ltd. by Order dated 03.09.2013 this Court had taken note of sundry undertakings given by the Petitioner therein, the principal one of which was that no part of the production would be sold or released in the local market in India. The Petitioner before us has filed a similar Undertaking and has assured the Court that it will abide by all the terms of the Undertaking. Baba Global Ltd. was finally disposed of by Order dated 03.09.2013 inter alia by noting the statement of the learned Additional Solicitor General that Baba Global Ltd. would be exempted from operation of the Plastic Wastes (Management and Handling) Rules 2011 (in short "the 2011 Rules"). The learned Senior Counsel for the Petitioner rests his case on that Order seeking parity of treatment between both the sets of Writ Petitioners.

Learned Senior Counsel appearing for the Respondents submits that learned Additional solicitor General was not authorised to make the "Exemption Statement" recorded in the Order dated 03.09.2013 since the stand is that the Ministry itself is not competent or empowered to grant any exemption. It is further submitted that for these reasons that a Review has been filed.

In the course of hearing yesterday as well as today it has been vehemently contended by the learned Senior Counsel for the Petitioner that the existence of the Review is not reflected on the record. This contention seems to be vindicated by the fact that even in the affidavit filed on behalf of the Union of India particulars of the Review have been withheld.

Our attention has also been drawn to the Orders passed in the Writ Petition No. 856 of 2013 entitled M/s. Harsh International v. Union of India on 06.12.2013 which reads as follows:

"Shri Radhakrishnan, learned senior counsel appearing for the respondents again requests for an adjournment to enable his clients to file reply affidavit. The time prayed for is granted. List the case on 20.01.2014. In the meanwhile, Petitioner No. 1 shall be exempted from the operation of the Plastic Wastes (Management and Handling) Rules, 2011"

It is evident therefore that a Writ Petition under Article 32 of the Constitution filed by Baba Global Ltd. has been finally disposed of by permitting the 100%

export of Pan Masala, Gutkha and Tobacco in multilayered plastic sachet; and in Harsh International interim orders have been passed exempting the Writ Petitioner from the operation of the said 2011 Rules.

We think it is imperative to impart parity to all the Writ Petitioners before us. In these circumstances, we pass orders similar to those passed in Harsh International namely that during the pendency of the present proceedings, the Petitioner shall stand exempted from the operation of the 2011 Rules on the understanding that it shall strictly abide by all the terms contained in the Undertaking furnished by it in terms of its Affidavit dated 28th July, 2015.

As prayed for, Counter Affidavit be filed within six weeks from today. Rejoinder within four weeks" hence.

Tag with W.P.(C) No. 856 of 2013.

List thereafter."

3. The parties have completed their pleadings.

4. The learned senior counsel appearing for the Union of India (Ministry of Environment & Forest) submits that the undertaking would not be sufficient to meet the requirements under law. However, it is pointed out that on this ground though a review was filed, it was dismissed on 14.01.2016.

5. In that view of the matter, we confirm the order dated 13.10.2015 and allow the writ petition in terms of the order in Baba Global Ltd. (Supra).