

(2000) 09 MAD CK 0012

In the Madras High Court

Case No : Writ Petition No. 8823 of 2000 and W.M.P. No. 13000 of 2000

S. Balaji Forwarders

APPELLANT

Vs

Commissioner of Customs, Chennai-1

RESPONDENT

Date of Decision : 08-09-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Customs House Agents Licensing Regulations, 1984 — Regulation 9

Citation : (2002) 142 ELT 36

Hon'ble Judges : R. Govindarajan, J

Bench : Single Bench

Advocate : M. Sathyanarayanan, for the Appellant; S. Balaji, for J. Madanagopal Rao, for the Respondent

Final Decision : Dismissed

Judgement

R. Govindarajan, J.—By consent of both parties, this writ petition itself is taken up for final disposal.

2. Writ petitioner filed the above writ petition seeking to issue writ of mandamus directing the respondents to permit the petitioners sponsored

candidates to write next ensuing Regulation 9 examination under Customs House Agents Licensing Regulations, 1984 to be held in the year 2000

and thereafter thereby consequently directing the respondents to extend the validity of petitioner's temporary Custom House Agents Licence No.

150/98 till such examination and publication of the result thereof.

3. Petitioner is the proprietor of M/s. Balaji Forwarders. The petitioner applied for the Customs House Agents Licence to the respondents on 13-

1-1998 under Regulation 5 of the Custom House Agents Licensing Regulations, 1984. The petitioner was granted that licence under Regulation 8

of the said Regulations, 1984 on 2-6-1998. This licence was valid for one year from its issue. Subsequently, it has been extended for further one year, that is upto 1-6-2000. The petitioner has to pass the examination for regularising the temporary licence as contemplated under Regulation 9 of the said Regulations, 1984. He wrote the examination on 2-8-1998 and he failed. Again on 5-3-1999 he wrote the examination and he could not succeed. As the third attempt, he wrote the examination on 18-8-1999 and in this attempt also he could not get through. So, according to the petitioner, in view of the above, the respondents refusing to regularise the licence of the petitioner and also they are not permitting the petitioner to write the examination subsequently. On that basis, the petitioner has filed the above writ petition.

4. Learned Counsel appearing for the Department has submitted that when Regulation 9 of Regulations, 1984 is very specific in permitting the applicants to avail maximum of three chances to qualify the examination within a period of two years. The petitioner's prayer to permit him to write the examination even after the expiry of two years and after failure in its three attempts cannot be sustained.

5. To appreciate the submissions of the learned Counsel on both sides, it is necessary to appreciate the Regulation 9 of the abovesaid Regulations, 1984, which reads as follows :-

1. The holder of a temporary licence in case of an individual and the person or persons who will be actually engaged in the work of clearance of goods through customs on behalf of the firm or company holding a temporary licence, as the case may be, shall be required to qualify in examination, at the earliest opportunity. Such person or persons shall be eligible to appear in the examinations as soon as a temporary licence is granted and shall be permitted to avail of three chances within a period of two years from the date of issue of temporary licence on payment of prescribed examination fee of Rs. 500/- for each examination.

2. The examination referred to in Sub-regulation (1) shall include a written and oral examination and will be conducted twice every year. Each applicant would be permitted to avail of a maximum of three chances to qualify in the said examination but, all such chances should be availed of within a maximum period of two years from the date of grant of temporary

licence.

6. As per Regulation 9(2) of the said Regulations, 1984 each applicant should avail of a maximum of three chances to qualify the said examination,

but it should be within the period of two years from the date of granting the temporary licence. In the present case, the petitioner had availed the

said three chances within the period of two years. The said fact is not in dispute. Now according to the learned Counsel since the licence has been

extended further for one year from 1-6-1999, he is entitled to appear for examination even beyond the said period of two years and so, the

Department has to accept the petitioner's request to appear for examination. Learned Counsel appearing for the petitioner relied on a decision of

Apex Court reported in D.V. Bakshi and others etc. etc. Vs. Union of India and others, : He relied on the portion in Paragraph 5 of the said

judgment, which stated as follows :-

A conjoint reading of the proviso to Regulation 8(1) and Clauses (1) and (2) of Regulation 9 makes it clear that an examination shall be conducted

twice every year. If a candidate has availed of two chances and has failed to clear the examination he may request the Collector to permit him to

avail of a third chance by extending the duration of the temporary licence for a period not exceeding one year. If the period is extended by a year,

as in the case of the petitioners herein, he would have four opportunities to appear at the examinations to be held over a period of two years. Even

if it is assumed that the candidate must pass the written examination before he appears in the oral one, he would have in all four opportunities for

clearing the written test and three opportunities for clearing the oral test.

On that basis, the learned Counsel has submitted that since his licence has already extended, he is entitled to get further two opportunities to clear

the examination. I am not able to accept the said submission. The judgment of the Apex Court will not apply to the case of the petitioner. Even in

paragraph 4 of the decision of the Apex Court has held that ""The High Court, therefore, noticed that these candidates had actually availed of three

chances under Regulation 9 and had yet failed to clear the examination. Such candidates, the High Court rightly observed, could have no grievance

insofar as sufficiency of chances for clearing the examination was concerned. We were told at the Bar that such candidates have not challenged the

High Court's order before us. All the other candidates had passed the written examination but had failed to clear the oral examination within the maximum period of two years permitted by the Regulations." The abovesaid observation of the Apex Court, it is clear that the facts available before the Apex Court is different and the Apex Court also has approved the finding of the High Court with respect to the candidates, who were not able to clear examination by appearing the three chances within the period of two years. Before the Apex Court, the candidates who passed the written examination have failed to clear the oral examination within the maximum period of two years filed appeal. Even considering the said case of the Apex Court in Paragraph 9 it is held as follows :-

A lervent appeal was made by the learned counsel for the petitioners that having regard to the fact that all the petitioners have passcd the written examination and that some of them had only one opportunity to appear at the oral examination since they passed the written examination at the third attempt. one further chance to appear at the oral examination should be accorded to them as was done in the past under the circular dated May 19, 1988. That would be a matter on which the concerned authorities would have to take a decision if the circumstances so permit but it would not be proper for this court to issue a mandate once it is found as a fact that the petitioners had the requisite opportunities under the regulations for clearing the written as well as oral tests. We may add by way of caution and to avoid any litigation in future if the authorities decide to give one further opportunity to the petitioners to clear the oral test it will be by way of grace only and will not confer any right whatsoever on the petitioners and if the authorities insist on any undertaking to be filed by the candidates permitted to avail of that extra chance in the present proceedings that they will accept the result as final and conclusive and will not make it a ground for further litigation, they will be well withing their rights to so insist. If such undertakings are filed in the present proceedings the Registry will accept the same.

From the above, it is clear that the Apex Court is not willing to extend the period mentioned under Regulation Act. But by way of grace, certain observation has been given. That too, regarding the candidates, who passed the written examination, but wanted to appear for oral examination out

of the time stipulated. So, the petitioner cannot justify such observation, which has been given to those candidates and try to apply to the petitioner's case.

7. When the Regulation 9 of the Regulations, 1984 is very specific that the candidates should be passed the examination within two years, that too,

within three chances, the petitioner cannot seek for extension of period, by filing the above writ petition, liven in Paragraph 9 of the abovesaid

judgment of the Apex Court has held that the Court cannot issue a mandate contrary to the Regulations. In view of the above, I do not find any

merit in this writ petition and it is dismissed. No costs. Consequently, W.M.P. No. 13000 of 2000 is also dismissed.