
(1988) 10 KL CK 0039
In the High Court Of Kerala
Case No : O.P. No. 7593 of 1988-D

Sabu Rubber Works

APPELLANT

Vs

Collector of C. Ex.

RESPONDENT

Date of Decision : 24-10-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1989) 41 ELT 627

Hon'ble Judges : T.L. Viswanatha Iyer, J

Bench : Single Bench

Advocate : S. Parameswaran, R.B. Nair, K.N. Chandra Babu and T.C. Thomas, for the Appellant; P.V. Madhavan Nambiar Sr. C.G.S.C., for the Respondent

Final Decision : Dismissed

Judgement

T.L. Vishwanatha Iyer, J.—Petitioner challenges a notice to show cause evidenced by Ext. P 31, Petitioner is a manufacturer of tread rubber. Apart from being a manufacturer, he is also active in spear-heading the movement against the high handed actions of the officials of the Collectorate of Central Excise, Cochin. The officials have been on a rampage with raids, searches and seizures and harassment against small scale industrialists which has rendered it impossible for such industries to function. The motivation behind all this is the scheme of award formulated by the Government of India in the year 1985.

2. The ill-will generated towards the petitioner has resulted in successive raids of his premises in October, 1987 and later. Nothing incriminating was found. But the respondents were out to harass the petitioner. They raided the premises of other businessmen as well. In one such raid of M/s. A. V. Thomas & Company Ltd., they got invoices related to one Sabu Rubber Products, Vallachira, which relates to a different firm unconnected with the petitioner which is Sabu Rubber Works, Pulamanthol. However, the respondents have prepared recovery memo with telltale interpolations with a view to cause damage to the petitioner. All this has led to the show cause notice Ext. P 31 which the petitioner challenges on various

grounds numbering 63.

3. Ext. P 31 is dated 29th March, 1988. Petitioner has submitted its explanation in relation thereto. The adjudication proceedings are yet to go on. The adjudication has to be by the first respondent. Though Shri S. Parameswaran, Counsel for the petitioner put forward his contentions about mala fides of the entire department and the various other illegalities raised relating to seizure and otherwise in the original petition and in the grounds, I do not find any reason to entertain this original petition at this stage. There is no allegation of personal mala fides against the first respondent who is the adjudicating authority. As a high official of the Central Excise Department, I cannot presume that said authority will act otherwise than in accordance with law or otherwise than in exercise of his quasi judicial functions in adjudicating on the various points arising for decision. The contentions raised by the petitioner are all based on facts peculiar to the Petitioner's case. There is no question of any lack of jurisdiction or excess of jurisdiction involved in the enquiry or in the issue of the notice to show cause. The various points raised by the petitioner including the alleged interpolation require enquiry with reference to the facts, evidence and circumstances of the case. Such a detailed enquiry is possible only before the first respondent, at which the petitioner will necessarily have their opportunities to put forward their case and to lead evidence. An enquiry into these aspects of the matter is not possible in these proceedings under Article 226 or based on mere affidavits and records.

4. The Petitioner has already filed the objections. It is for him to pursue his objections before the first respondent and seek adjudication. It is not as if the petitioner is left without a remedy, in as much as any decision of the first respondent is liable to correction in appeal by an independent high powered Appellate Tribunal functioning under the Act.

5. The scheme of award formulated by the Central Government does not appear to have prejudiced the petitioner, for there is no allegation that any award has been declared or proposed to be declared, so far as this case is concerned.

6. The Petitioner has questioned the scheme by means of an amendment. The original petition was therefore, heard again on this application. Since however, nothing has been done in the petitioner's case by way of granting rewards or otherwise, I do not find any cause of action for the petitioner to question the scheme at this stage. In any case, the adjudicatory authority namely the first respondent, has necessarily to perform his statutory duty of adjudication. So long as that is not tainted by any action on his part by way of making rewards to his subordinates, I do not find any illegality in his proceeding with the adjudication. So long as the award scheme has not been implemented in the petitioner's case, he cannot complain and he cannot forbear the adjudication proceedings on that ground.

7. Counsel for the petitioner referred to various decisions to contend, with his

characteristic eloquence and emphasis, that this Court could interfere with the notice Ext. P 31 and the proceedings initiated thereunder in these proceedings under Article 226. I cannot and I do not demur to the proposition that this Court's powers under Article 226 are wide enough to quash Ext. P 31 if grounds exist. But the question whether such grounds do exist is a matter which requires investigation into questions of fact which is best done by a fact finding authority like the first respondent. It is not as if the petitioner is on a fortiori case where the facts stated at once lead to an inference of mala fides or lack of jurisdiction or such like grounds.

8. Therefore, I decline to entertain this original petition. I leave open the various questions raised by the petitioner for being agitated before the first respondent.

The Original Petition is dismissed in limine.

Order on C.M.P. No. 23321 of 1988. - Dismissed.