
(1988) 05 BOM CK 0003

In the Bombay High Court

Case No : Writ Petition No. 1452 of 1988

Sainath Shipping Corporation

APPELLANT

Vs

Collector of Customs

RESPONDENT

Date of Decision : 11-05-1988

Acts Referred:

Citation : (1988) 38 ELT 323

Hon'ble Judges : G.H. Guttal, J

Bench : Single Bench

Judgement

1. The Petitioner No. 2. carries on business in the name of Sainath Shipping Corporation, who is the petitioner No. 1. The petitioner No. 3 is an employee of the petitioner Nos. 1 and 2. On 6th May 1988, the Assistant Collector of Customs recorded that the Proprietor of the Petitioner No. 1 Subhash Pawar appeared in the examination referred to in Regulation No. 9 of C.H.A. licensing Regulation and failed at the third attempt. Consequently, the Assistant Collector of Customs informed Subhash Pawar that since he has failed to qualify in the examination within the stipulate period of two years after availing three chances, his temporary Customs House Agents licence was liable for cancellation from 10.5.1988. This order is impugned in this Petition.

2. The first point urged by Mr. Makhija in this :-

A temporary licence is always issued to every applicant. Pawar, the Petitioner No. 2 as a proprietor is the holder of such temporary licence. Such licences are issued also to Companies. In the case of sole proprietary firm, it is the individual who is required to qualify in the examination. In the case of company or firm, it is "the person or persons who will be actually engaged in the work of clearance of goods," that is required to qualify in the examination. Each of such persons by Regulation No. 9 of Customs House Agents Licencing Regulations, 1984, is required to qualify in the examination and is allowed three attempts in a period of two years. Upon his passing such examination within two years, a regular licence is issued under Regulation No. 10. According to the Petitioner, the

Regulations are discriminatory inasmuch as in the case of sole proprietor of clearing agency, a subordinate or employee is not permitted to qualify at the examination. But, in the case of the Company or a firm, a subordinate is permitted to qualify at the examination. According to him, even if the Petitioner No. 2, who is the Proprietor had failed in all the three items, had the rule permitted his subordinate, the Petitioner No. 3, to appear at the examination, his business establishment could have qualified to receive the regular licence. This submission is without any merit. The question of discrimination arises in the case of persons who are similarly situated. A sole proprietor does not have the same attributes in the matter of conduct of the business as that of an organisation like a company or a firm. In the very nature of the things, the provision for permitting "the person or persons who will be actually engaged in the work of clearance of goods" is necessary in order to enable the company to qualify at the examination. It is not every employee of the company or any employee of the company that is permitted to represent the company at the examination. It is the person or persons who is actually doing the work of clearance of goods that can appear in the examination. In the case of sole proprietor, in most cases, the proprietor himself does the work of clearance of goods. Therefore, the proprietor in the case of sole proprietary concern and the person actually carrying on the work of clearance of goods in the case of a company are the appropriate persons who can appear the examination. The regulation of grant of licences demands that a company should depute its representative to qualify at the examination. There is no other way in which a Company at can qualify at the examination. This difference between the character of a company and a sole proprietary concern, negatives the charge of discrimination.

3. Secondly, it is urged that under Regulation No. 1, the Collector is empowered to suspend or revoke the licence of a Custom House Agents on the grounds specified therein. According to Mr. Makhija, in the case of the Petitioner, the grounds mentioned in the Regulation No. 21 do not exist and revocation made without any show cause notice is illegal. This submission is without any merit.

The petitioner No. 1 is the holder of a temporary licence which means that he has been temporarily to carry on the work of clearance of goods. He has not yet been granted regular licence. The question of cancellation or revocation of licence arises when the licence is, in fact, granted to the Petitioner. As holder of the temporary licence and a candidate at the examination conducted under Regulation No. 9, the Petitioner is still an aspirant for the licence and not holder of the licence. Regulation No. 21 has no application.

4. For all these reasons, the petition is rejected summarily.