
(2015) 03 GUJ CK 0089

In the Gujarat High Court

Case No : Special Civil Application No. 3136 of 2015

Shamrock Chemie Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 04-03-2015

Acts Referred:

Citation : (2015) 323 ELT 714

Hon'ble Judges : Jayant M. Patel, J;S.H. Vora, J

Bench : Division Bench

Advocate : S.I. Nanavati, Senior Advocate and Vijay O. Sharma, for the Appellant; Hriday Buch and R.J. Oza, Advocates for the Respondent

Judgement

Jayant M. Patel, J—Draft amendment is granted. In the first sitting, it was submitted by Mr. Nanavati, learned Senior Counsel for the petitioner that there is urgency in the matter since summons has been issued to petitioner No. 2 to remain present on 9-3-2015. Hence, we had directed the learned counsel to inform Mr. Oza, who is appearing for the respondent. Accordingly, the matter is taken up in the second sitting.

2. The petitioner has preferred the present petition for the appropriate writ to direct the respondent not to torture or manhandle the petitioner during the investigation and it is prayed that the petitioner be permitted to be accompanied by the lawyer during the investigation.

3. Mr. Nanavati, learned Senior Counsel appearing for the petitioner, during the course of hearing, by relying upon two decisions of the Division Bench of this Court dated 25-9-2008 in Civil Application No. 5050 of 2008 and dated 12-5-2011 in Special Civil Application No. 5168 of 2011, submitted that if the interrogation is permitted in the presence of the lawyer at a visible distance, the petitioner would be satisfied with the same. Whereas, Mr. Oza, learned counsel appearing for the respondent submitted that as such, the facts of those cases were different and, therefore, the decisions cannot be made applicable, as

sought to be canvassed on behalf of the petitioner. However, he did submit that if this Court finds, considering the facts and circumstances, that the lawyer may be permitted to remain present at a visible distance but not within the hearing range, the Department would not object to the same.

4. Considering the facts and circumstances and without entering into the allegations and counter allegations regarding ill-treatment, we find that the basic thread is voluntariness of the statement, even during the interrogation. As there is apprehension alleged based on the so-called ill-treatment given to the other officers of the Company and the police complaint is also filed, we find that it would be appropriate to allow the lawyer of the petitioner to remain present within sight but not within the hearing range as and when petitioner No. 2 is interrogated by the respondent-authority, if such an interrogation is required after the petitioner remains present pursuant to the summons issued. We may also record that such a course has been adopted by this Court in the above-referred two decisions. In any case, presence of the lawyer within sight and not within hearing range would not result into interference in interrogation process nor would adversely affect the rights of the Revenue authority for further investigation in the matter. Hence, the following order:--

5. The petitioner No. 2 shall remain present on 9-3-2015 pursuant to the summons issued at 11:00 a.m. at the place mentioned in the summons. The duly authorized lawyer, who may be engaged by the petitioner No. 2, shall be permitted to remain present during the interrogation by the Revenue authority, if any, but the said lawyer would remain present within the sight and not within the hearing range. It is clarified that the aforesaid direction has been issued for maintaining transparency in the interrogation and with a view to allay apprehension and all rights and contentions of both the sides, as available in law, shall remain open even after the interrogation and investigation by the Revenue authority. The petition is disposed of accordingly. Direct service is permitted. Mr. Oza, learned counsel shall convey the order.