(2006) 08 P&H CK 0036

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 12141 of 2006

Shiv Shanker Steel Industries — APPELLANT

Vs

State of Punjab and Another — RESPONDENT

Date of Decision : 25-08-2006

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Land Acquisition Act, 1894 — Section 11A
Punjab Value Added Tax Act, 2005 — Section 51(6), 51(7)

Citation : (2006) 148 STC 314

Hon'ble Judges : Rajesh Bindal, J;Adarsh Kumar Goel, J

Bench : Division Bench

Advocate : Sandeep Goyal, for the Appellant; Amol Rattan Singh, Additional Advocate-General, for the Respondent

Judgement

Rajesh Bindal, J.—The petitioner had filed the present petition in this Court praying for the issuance of writ in the nature of mandamus, directing respondent No. 2, to release the goods of the petitioner in terms of Section 51(6)(b) of the Punjab Value Added Tax Act, 2005 (for short, "the Act"). It is pleaded that the petitioner is a sole proprietorship concern carrying on business of sale and purchase of iron goods at Mandi Gobindgarh. The petitioner is duly registered under the Act.

2. During the course of business, the petitioner ordered for import of certain goods from one M/s. Raj Enterprises, Ghaziabad. The ordered goods were sent by the seller M/s. Raj Enterprises issuing invoice No. 618 dated July 27, 2006 for a sum of Rs. 6,58,772. Tax under the Central Sales Tax Act, 1956 was duly charged in the bill. The goods were transported through Guru Nanak Road Carrier from Ghaziabad to Mandi Gobindgarh. While entering the State of Punjab, the driver of the vehicle produced the invoice and goods receipt at Information Collection Centre, Khanauri (for short, "ICC"). In spite of the bill and the G.R. being in order, the goods were illegally detained at ICC. The plea of the petitioner further is that in terms of the provisions of the Act, the petitioner offered surety

bonds/bank guarantee for release of the goods, but the request of the petitioner was declined by the detaining officer for the reasons best known to him. Under the circumstances, the petitioner had no alternative but to approach this Court.

3. In the written statement filed, the respondents have taken preliminary objection regarding mis-statement and concealment of facts by the petitioner in the writ petition with a view to mislead this Court. The relevant facts as stated in the written statement are extracted below:

Vehicle No. H-58A-9741 loaded with M. S. ingots arrived at the I. C. C. on July 29, 2006. The driver of the vehicle handed over photostat copy of bill No. TE/015/A/06-07 dated July 19, 2006 issued by M/s. Trishul Enterprises, Rurkela (Orissa) in favour of M/s. Jindal Traders, Head Office Ludhiana branch office Amloh Road, Mandi Gobindgarh (TIN No. 03811027759). The value of the goods was shown as Rs. 3,42,160 and weight 23.500 mt. True copy of the same is annexed herewith as annexure R-l. He also produced photocopy of one GR of Dashmesh Road Carrier, Rurkela to Mandi Gobindgarh in which the consignee and consignor were as mentioned in the bill. When he was asked to produce the originals of these documents, he left the window of the data entry operator but did not come back. The data entry operator handed over the photostat copies to the officer-in-charge, i.e., E. T. I. on duty with his report that "The computer has reported that import of scrap and export of iron bar whereas the dealer is a trader of yarn, paper, board, karyana and hosiery goods". The officer-in-charge, E. T. I., waited for the driver for sometime but when he did not return he suspected the genuineness of transaction especially when the computer has reported that the consignee as mentioned in the document is not a dealer of goods in question, i.e., M. S. ingots. Accordingly, he issued a notice No. 000172 dated July 29, 2006 in the name of Jindal Traders, Ludhiana which was sent by serving upon one Mr. Sukhwinder Singh who was looking after the vehicle in the absence of the driver who had fled away with the original documents. Sh. Sukhwinder Singh admitted that he is driver of another vehicle owned by the same owner. None appeared on July 30, 2006 for which date the notice was issued by the detaining officer who had also passed detention order on July 29, 2006. However, it was on July 31, 2006 Sh. Karamjit Singh driver of the vehicle came at the I. C. C. with one bill No. 018 dated July 27, 2006 for a sum of Rs. 6,58,772 issued by one M/s. Raj Enterprises, Ghaziabad in favour of one M/s. Shiv Shankar Steel Industries, Mandi Gobindgarh, true copy of the bill is annexed herewith as annexure R2 and G.R. No. 2755 dated July 27, 2006 of M/s. Guru Nanak Road Carrier, Ghaziabad. Sh. Sunil Kumar proprietor of Shiv Shankar Steel Industries, Mandi Gobindgarh also appeared along with the driver before the detaining officer. They were confronted with the facts specially with regard to the photostat copies of document produced before the data entry operator on July 29, 2006. In view of these facts the detaining officer asked them to establish their ownership of goods. They were asked to produce their regular account books in order to find out the genuineness of their claim as owner of the goods. Another question put for reply was as to why the bill issued by Ghaziabad dealer had been produced on the third day, but no plausible reply was given. The detaining officer suspected that M/s. Shiv Shankar Steel Industries, Mandi Gobindgarh who has now produced the bill issued by dealer of Ghaziabad has made an effort to import the goods in question in the name of M/s. Jindal Traders, Ludhiana either with his connivance or otherwise. The driver Sh. Karamjit Singh who has appeared along with Sunil Kumar made a statement before the detaining officer that the goods have been brought from Rurkela and the original documents were taken by him which were handed over to Mr. Sunil Kumar at Mandi Gobindgarh and the documents now produced have been handed over to him by Sh. Sunil Kumar, proprietor of petitioner-firm. Thereafter, the detaining officer submitted the case to the answering respondent for taking action u/s 51(7)(c) of the Punjab Value Added Tax Act, 2005 (hereinafter referred to as "Act, 2005"). A notice was issued to M/s. Jindal Traders, Ludhiana to whom notice was earlier issued by the detaining officer being a consignee as per documents furnished on July 29, 2006 for appearing on August 2, 2006 but none appeared up to August 4, 2006 either for the release of the goods or for the verification of the transaction.

4. It has further been pleaded that on inquiries conducted by the answering respondent, it was found that the goods had actually moved from Rurkela in vehicle No. HR-58A-9741, under detention, with consignee as Jindal Traders, Ludhiana. This fact is evident from bills issued by the Rurkela dealer, photocopy of which was produced by the driver at the ICC. The fact of movement of goods from Rurkela is fortified from further developments, such as, receipt No. 307034 dated July 21, 2006 issued by MMVI of Talijore Check Gate, Sundergarh in Orissa State, where a sum of Rs. 1,200 was paid by the driver for over-weight. Thereafter, the vehicle crossed Trade Tax Check-post at Babhani (U.P.) on July 24, 2006, from where a transit pass was not issued, showing the goods in question to be M. S. ingots. This information has been received from the Assistant Commissioner, Check-post, Kotvan, Mathura (U.P.) vide letter No. 304 dated August 8, 2006. The vehicle in question stopped on the night of July 27, 2006 at check-post, Kotvan Mathura, where the transit slip issued from entry check-post, Babhani was delivered back for cancellation. Copies of the letters and slips have also been placed on record along with written statement.

5. It has further been found on inquiry by the respondents from the Deputy Commissioner, Trade Tax, Modinagar (Ghaziabad) that the registration certificate of M/s. Raj Enterprises, Ghaziabad, who is stated to have issued the bill, as is sought to have been relied upon by the petitioner in the writ petition, stood cancelled with effect from October 22, 1999 and the above firm was not functional at the address given in the alleged bill. To sum up, it is stated that as per the bill and G.R. produced by the petitioner, the goods were stated to have been loaded on July 27, 2006 from Ghaziabad in vehicle No. HR-58A-9741, whereas the vehicle was at Kotvan, Mathura (U.P.) on that date. So the documents produced by the petitioner at the ICC were fabricated and not genuine on the face of it. Accordingly, a prayer was made for dismissal of the writ petition as the petitioner was indulging in evasion of tax.

6. The allegations made in the written statement filed by the respondents have not been controverted by the petitioner by filing any replication.

7. The jurisdiction of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose is essentially an equitable jurisdiction and those petitioners, who do not come to the court with clean hands are not entitled to be heard on the merits of their grievances.

8. In Hari Narain Vs. Badri Das, , the honourable Supreme Court upheld the objections raised on behalf of the respondents that the appellant was guilty of mis-statement of facts and revoked the leave by making the following observations:

It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Article 136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterises as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked.

9. In Welcom Hotel and Others Vs. State of Andhra Pradesh and Others, , the honourable Supreme Court held that a party which mislead the court in passing an order in its favour is not entitled to be heard by the court.

10. In G. Narayanaswamy Reddy (dead) by L.Rs. and another Vs. Government of Karnataka and another, , the Supreme Court declined relief to the appellant who had concealed the fact that the award was not made by the Land Acquisition Officer within the time specified in Section 11-A of the Land Acquisition Act on account of interim stay order passed in a writ petition. While dismissing the special leave petition, the court observed:

Curiously enough, there is no reference in the special leave petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counter-affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the special leave petitions are liable to be rejected. It is well-settled in law that the relief under Article 136 of the Constitution is discretionary and a petitioner who approaches this Court for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the special leave petitions.

11. In S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, , the honourable Supreme Court held that where a preliminary decree was obtained by playing fraud on the court inasmuch as a vital document was withheld in order to gain advantage on the other side, such party deserves to be thrown out at any stage of the litigation.

12. In Nand Lal v. State of Jammu and Kashmir AIR 1960 J&K 19, a learned Judge of Jammu and Kashmir High Court held that if a party does not disclose all the facts correctly and candidly, it is not entitled to be heard on the merits of the case. The observations made therein are reproduced hereunder:

Where the petitioners under Article 226 have not stated the relevant facts correctly and candidly either in their petition or in the affidavit in support of their petition, this is by itself sufficient to entail an outright dismissal of the writ petition without going into its merits. And even if the petitioners have a good case on merits, the court will be entitled to decline to go into the merits and dismiss their petition, because the conduct of the petitioners has been such as to mislead the court.

13. This Court had also, on a number of occasions, consistently taken serious view of the contumacious conduct of the parties and accordingly declined relief in a large number of cases. In Smt. Bhupinderpal Kaur v. Financial Commissioner (Revenue), Punjab [1968] PLR 169, a learned single Judge held that if the High Court comes to the conclusion that affidavit in support of the application for grant of a writ was not candid and did not fully state the facts but either suppressed the material facts the court ought, for its own protection and to prevent an abuse of its process, refuse to proceed any further with the examination of the merits and where there is such conduct which is calculated to deceive the court into granting the order of rule nisi, the petition should be dismissed on that short ground.

14. In Chiranji Lal v. Financial Commissioner, Haryana [1978] PLR 582, the Full Bench approved the observations made in Bhupinderpal Kau''s case [1968] PLR 169 and held that where there has been a mala fide and calculated suppression of material facts which if disclosed, would have disentitled the petitioners to the extraordinary remedy under the writ jurisdiction or in any case would have materially affected the merits on both the interim and ultimate relief claimed, the writ petition should not be entertained.

15. In Harbhajan Kaur v. Sate of Punjab [1994] PLJ 287, a division Bench held as under:

The writ petitioners have tried to overreach the court. They did not bring the correct facts to the notice of the court and obtained an order from us by concealing material facts and without impleading vitally affected part to the writ petition. They have been lighting litigation against the Punjab Wakf Board since, 1986 as is passed in petition No. 363 of 1986 (Sham Singh v. Punjab Wakf Board). They did not disclose that their applications for transfer of land were dismissed by the Tahsildar (Sales) and, on appeal the orders were affirmed by the Sales Commissioner and that the appeals against the orders of the Sales Commissioner were pending before the Chief Sales Commissioner, that the Punjab Wakf Board had been contesting their claim and in those proceedings it had been held that the Punjab Wakf Board was the owner of the disputed land and that in judicial proceedings Smt. Kuldip Kaur and her husband had made admission that the Punjab Wakf Board was the owner of the disputed land.

16. In C.W.P. No. 15448 of 1993 (Jai Bhagwan Jain v. Hanyana State Electricity Board, Panchkula, District Ambala) decided on September 21,1994, a division Bench of this Court lamented on the growing tendency among the litigants to pollute the course of justice and observed as under:

Satya (truth) and Ahimsa (non-violence) are the two basic values of life, which have been cherished for centuries in this land of Mahavir and Mahatma Gandhi. People from different parts of the world come here to learn these fundamental principles of life. However, post-independence era and particularly the last two decades have witnessed sharp decline in these two basic values of life. Materialism has over-shadowed the old ethos and quest for personal gain is so immense that people do not have any regard for the ''truth''. Proceedings in the courts, which were at one time considered to be pious and the people considered it their duty to tell the truth in the court, now stand vitiated by the attempts made by the parties to pollute the ends of justice.

17. Reference may also be made to some of the English decisions on the subject. In Rex v. Kensington [1917] 1 KB 486, Cozens Hardy M.R. made the following observations on the conduct of a party in an ex parte application in the following words:

On an ex parte application uberrima fides is required, and unless that can be established, if there is anything like deception practised on the court, the court ought not to go into the merits of the case, but simply say we will not listen to your application because of what you have done.

18. Lord Scrutton L. J. said:

It has for many years the rule of the court and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts-facts not law.... The applicant must state fully and fairly the facts, and the penalty by which the court enforces that obligation is that if it finds out that the facts have been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement.

19. In R.V. Churchwardens of All Saints Wigan [1876] 1 A. C. 611, Lord Haterlay observed:

Upon a prerogative writ there may arise many matters of discretion which may induce the judges to withhold the grant of it- matters connected with delay, or possibly with the conduct of the parties.

20. In Rex v. Garland [1870] 39 L. R.Q.B. 269, it was held:

Where a process is ex debito justitiae the court would refuse to exercise its discretion in favour of the applicant where the application is found to be wanting in bona fides.

21. Keeping in view the contumacious conduct of the petitioner, we do not feel inclined to entertain the present petition and exercise extraordinary and equitable jurisdiction of this Court under Article 226 of the Constitution of India.

22. Faced with the situation, the petitioner seeks permission of this Court to withdraw this writ petition.

23. Having regard to the facts and circumstances of the case, while permitting the petitioner to withdraw the petition, we impose cost of Rs. 20,000 on the petitioner payable to State Legal Services Authority, U.T. Chandigarh within two weeks from the date of receipt of a copy of this order. Receipt of costs so deposited with the State Legal Services Authority, U.T. Chandigarh be placed on record/file of the case within one week thereafter, failing which, the matter be put up before the court for further appropriate orders.