
(2002) 01 BOM CK 0046
In the Bombay High Court
Case No : Writ Petition No. 2567 of 2001

Shri Balaji Automobiles

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 14-01-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 27A

Citation : (2002) 3 ALLMR 479 : (2002) 3 BomCR 599 : (2002) 1 BOMLR 435 :
(2002) ECR 7 : (2002) 140 ELT 367 : (2002) 2 MhLj 261

Hon'ble Judges : V.C. Daga, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : V.N. Kantawala and S.N. Kantawala and Co, for the Appellant; R.C. Master, instructed by . H.D. Rathod, for the Respondent

Final Decision : Allowed

Judgement

V.C. Daga, J.—Petitioner has filed this petition claiming refund of the amount on admitted facts. The entitlement of the petitioner was not in dispute. On being noticed, the respondents appeared. The respondents through their Counsel filed an affidavit undertaking to refund the amount to the petitioner as per order of the CEGAT dated 21-5-1997, on or before 21-12-2001. It is not in dispute that the amount has now been paid to the petitioner as per the undertaking given by the respondent.

2. The learned Counsel for the petitioner submitted that the order of the Tribunal was passed on 21-5-1997. It was obligatory on the part of the respondents to refund amount as per the order of the Tribunal. The petitioner was required to move this Court for implementation of the order of the Tribunal. Had this amount been paid well within the reasonable period, he would not have been required to approach this Court. He, therefore, prayed for grant of interest as consequential relief for delayed payment of admitted amount of refund to which petitioner was entitled in law.

3. Per contra, learned Counsel for the respondents raised a solitary contention that the writ petition itself being not maintainable, no such relief as prayed for can be granted. No mandamus can be issued to grant relief of refund. He placed reliance on the judgments of the Apex Court, one in the case of *Suganmal Vs. State of Madhya Pradesh and Others*, and another in the case of *Union of India and Others Vs. M/s. Orient Enterprises and Another*, and third in the case of *Kirloskar Brothers Ltd. v. Union of India* reported in 2001 (132) E.L.T. 14 .

4. In rejoinder, the learned Counsel for the petitioner urged that the writ petition seeking mandamus to command the respondents to implement the order of the Tribunal is very much maintainable and as a consequential relief prayer for grant of interest for delayed payment can also be considered in the writ jurisdiction of this Court. He further sought to distinguish the above judgment cited by the learned Counsel for the respondent on the ground that in the last two reported judgments cited supra, writ petitions were filed only to seek relief of payment of interest on delayed payment of the amounts already received by the petitioner. In the circumstances, it was held by the Apex Court that writ petition was not an appropriate remedy. The learned Counsel for the petitioner also tried to distinguish the judgment in *Suganmal's* case on the ground that the petitioner in that case was praying for issue of writ of mandamus to direct the State to refund the money alleged to have been illegally collected by the State as tax. In the circumstances the Apex Court ruled that writ petition was not ordinarily maintainable. He, at the cost of repetition, urged that the petitioner was within its right to seek mandamus to get the order of the Tribunal implemented and in such a petition consequential order directing grant of interest can always be passed.

5. It is no doubt true that in all these cases what was laid down was that proceedings by way of writ were not appropriate in case where the Court is called upon to go into disputed questions of facts. In that event, writ petition would not be an appropriate remedy. The Apex Court in the case of *State of Madhya Pradesh Vs. Bhailal Bhai and Others*, had occasion to observe as under:

"Where sales tax, assessed and paid by the dealer, is declared by a competent Court to be invalid in law, the payment of tax already made under a mistake within Section 72 of the Contract Act and so the Government to whom the payment has been made by mistake must in law repay it. In this respect, the High Court had, in exercise of its jurisdiction under Article 226 of the Constitution of India, power for the purposes of enforcement of fundamental rights, and statutory rights to give consequential relief by ordering repayment of money realised by the Government without the authority of law."

"At the same time the special remedy provided in Article 226 is not intended to supersede completely the modes of obtaining relief by an action in a Civil Court or to deny defence legitimately open in such actions. The power to give relief under Article 226 is a discretionary power."

"It is not easy or desirable to lay down any rule for universal application. It may, however, be stated as a general rule that if there has been unreasonable delay the Court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus. Again, where even if there is no such delay the Government or the statutory authority against whom the consequential relief is prayed for raises a prima facie triable issue as regards the availability of such relief on the merits on the grounds like limitation the Court should ordinarily refuse to issue the writ of mandamus for such payment. In both these kinds of cases, it will be sound use of discretion to leave the party to seek his remedy by the ordinary mode of action in a Civil Court and to refuse to exercise in his favour the extraordinary remedy under Article 226 of the Constitution."

The remedy of writ is always a discretionary remedy as observed by the Apex Court in the above judgment. It is the discretion of the Court either to issue writ or not to issue writ, but discretion has to be exercised judiciously depending upon facts of each case. The Constitution Bench of the Apex Court while dealing with the scope of Article 226 of the Constitution, in the case of *Burmah Construction Co. Vs. The State of Orissa and Others*, had an occasion to observe as under:

"The High Court normally does not entertain a petition under Article 226 of the Constitution to enforce a civil liability arising out of a breach of contract or a tort to pay an amount of money due to the claimant and leaves it to the aggrieved party to agitate the question in a civil suit filed for that purpose. But an order for payment of money may sometimes be made in a petition under Article 226 of the Constitution against the State or against an officer of the State to enforce a statutory obligation."

6. In this case, claim for refund was not at all in dispute. As a matter of fact, it was obligatory on the part of the respondents to refund the said amount in pursuance of the order of the Tribunal dated 21-5-1997. Had the respondents discharged their obligation, the petitioner would not have approached this Court. The respondents had no justification whatsoever not to make payment of refund demanded by the petitioner. They had no defence whatsoever; and rightly they did not dispute right of the petitioner to claim refund and ultimately paid the same during the pendency of this petition without any objection. Had the amount of refund been paid before filing writ petition, writ seeking simpliciter relief of claiming interest would not have been tenable.

7. The only question which needs consideration is whether petitioner is entitled to claim interest for delayed payment of refund amount. In order to answer this question, it is necessary to turn to Section 27A of the Customs Act. Till the insertion of Section 27A in the Customs Act by Act 22 of 1995, there was no right to claim payment of interest on delayed refund under the Act. After amendment as noticed, this statutory obligation can certainly be enforced by issuing writ of mandamus. In this view of the matter, remedy of writ is very much available to the petitioner. No doubt, this power is to be exercised keeping in view the self

imposed restrictions but at the same time if a person is deprived of his right to use his money, such deprivation has to be compensated as held by the Apex Court in the case of The K.C.P. Employees' Association, Madras Vs. The Management of K.C.P. Ltd., Madras and Others, . In view of the matter, it is not in dispute that the petitioner was deprived of his liquidity in the business for no justifiable reasons. Thus, we propose to accept the submissions made by the learned Counsel for the petitioner and grant simple interest to the petitioner for the period 21-5-1997 to 4-12-2001 at the rate of 6% p.a. on the amount of refund, if paid within 60 days from the date of receipt of writ of this judgment, otherwise the refund amount shall carry interest @ 10% p.a. instead of 6% p.a. as granted herein.

Accordingly, petition is allowed. Rule is made absolute with no order as to costs.