
(2003) 12 DEL CK 0043
In the Delhi High Court
Case No : CW No. 7550 of 2002

Shri M.L. Narang

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-12-2003

Acts Referred:

Citation : (2003) 12 DEL CK 0043

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : M. Dutta, for the Appellant; Nishi Kant and Kuljeet Rawal, for the Respondent

Judgement

Badar Durrez Ahmed, J.—Rule. With the consent of the parties, the matter is taken up for final disposal.

2. The petitioner is aggrieved by the impugned order dated 30.9.2002 of the Second Appellate Committee under the Garment Export Entitlement Policy. The question involved is with regard to the non-fulfillment of the export quota (revalidated) for the year 1996 by the petitioner. Under the said policy if an exporter is unable to fulfill the revalidated quota obligation then he is liable to forfeiture. In this case the petitioner had not fulfilled the export obligation. An amount of Rs. 3,18,728/- has been forfeited.

3. Against the forfeiture, the petitioner preferred an appeal before the First Appellate Committee which upheld the same by an order dated 9.5.2000 whereunder the petitioner's plea of force majeure was also considered and rejected. The petitioner being aggrieved by the order passed by the First Appellate Committee preferred a second appeal before the Second Appellate Committee which was also dismissed on 30.9.2002 by virtue of the impugned order.

4. Learned counsel for the petitioner has stated that the petitioner could not fulfill the export obligation under the revalidated quota for reasons beyond its

control and those reasons Therefore fell within the force majeure conditions as spelt out under para 15 of Ministry of Textiles, Government of India's Notification No. 1/29/93/EP (T&J) I dated 4.9.93 (i.e. The Policy). The petitioner states that it could not fulfill the export obligation under the revalidated quota on account of the fact that he was prevented from doing so by force majeure conditions. In the second appeal filed by the petitioner, it is stated and submitted as under:

"ii) Jurisdiction of the First Ld. Appellate Authority under the Force Majeure Condition was invoked. It was pointed out that the appellant needed specific type of dyeing and printing and so placed order on M/s. Haryana Dyeing and Printing Mills, which is one of the most Established Textile Processing House and an amount of Rs. 25,000/- was paid in advance in confirmation and timely execution of our order for dyeing & printing. But on account of the technical fault in the boiler, there was a complete mechanical breakdown of the functioning of the Processing House. Furthermore unfortunately Bhatti/Furnace had also developed cracks and in this manner the functioning of the Dyeing & Printing Unit came to standstill."

5. The same submission was made by the petitioner in greater detail before the First Appellate Committee in the following terms:

"3. The process for dyeing & printing is very well known to your goodself and the appellant do not feel the necessity to explain here in detail except that steam is required at every stage and hence Boiler is an important machinery in any textile mills. Unfortunately to our bad luck the boiler developed a technical fault and resulted in a serious mechanical breakdown.

We were informed that the "Bhatti" (Furnace or Oven) have developed cracks and hence heating is not possible. More than 80% fabric was inside the boiler for boiling the grey fabric. Since the fabric was in the stage of semi-finish, we could not look on to another mills for processing the fabrics as per our designs, since all screens and colour recopies were ready here. After making several visits and meetings with the concerned people, we were told that the boiler & ancillary will take time since number of complications were there to be rectified. Finally the goods were only delivered to us in stages by last week of November and consequent of the same was that we were not in a position to complete our fabrication & finishing jobs of the garments. The shipments were required to be shipped by Sea from Bombay (since buyers refused to accept custom clearance for export in New Delhi) and, Therefore, the local office of the C&A (MARCA) refused to accept any Sea Shipment in New Delhi for Transportation to Bombay beyond 20th December, 1995. Therefore, due to paucity of time, it was not possible to send the shipments to Bombay by Road/Air and obtain carting of desired Vessels within the validity period and as such it was completely out of control of the appellant to meet the obligation. All documentary evidence enclosed."

6. The Learned counsel for the petitioner placed reliance on the decision of the

Supreme Court in the case of Gobindram v. Shamji K. & Co. AIR 1986 S.C.1285 for the purposes of explaining the purport and meaning of the expression 'Force Majeure '. In this context, learned counsel for the petitioner relied upon paragraph 17 of the said decision of the Supreme Court which reads as under:

"(17) McCardie J. in *Lebeaupin v. Crispin* 1920 2 KB 714 has given an account of what is meant by "force majeure", with reference to its history. The expression "force majeure is not a mere French version of the Latin expression "Vis-?-vis major". It is undoubtedly a term of wider import. Difficulties have arisen in the past as to what could legitimately be included in "force majeure". Judges have agreed that strikes, breakdown of machinery, which, though normally not included in "Vis-?-vis major" are included in "force majeure". An analysis of rulings on the subject into which it is not necessary in this case to go, shows that where reference is made to "force majeure", the intention is to save the performing party from the consequences of anything over which he has no control. This is the widest meaning that can be given to "force majeure", and even if this be the meaning, it is obvious that the condition about "force majeure" in the agreement was not vague. The use of the word "usual" makes all the difference, and the meaning of the condition may be made certain by evidence about a force majeure clause, which was in contemplation of parties."

7. He further relied upon a decision of a Division Bench of the Orissa High Court in the case of *Md. Serajuddin Vs. State of Orissa*, which essentially reiterated what the Supreme Court had stated in the aforesaid decision.

8. From the aforesaid, it is clear that the force majeure condition is invokable in situations which are beyond the control of the party seeking to invoke the same. Normally speaking the Second Appellate Committee would have been correct in stating that the choice of supplier would not constitute a force majeure condition. That is because the person invoking such condition would, normally, be at liberty to choose another supplier. In fact, this is exactly what the Second Appellate Committee has stated and it is on the basis of this that the impugned order had been passed. However, it does appear that the petitioner was prevented from choosing another supplier as when the supplier's machines developed problems, more than 80% of the petitioner's semi-finished fabrics were inside the boiler. In such a situation, the petitioner could not look to other mills for processing the fabrics. This aspect of the matter appears to have been overlooked by the Second Appellate Committee.

9. Accordingly, this matter is remanded to the Second Appellate Committee for a decision afresh on the question as to whether the petitioner is entitled to take the benefit of the force majeure condition. The writ petition is disposed of. No order as to costs.

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