
(1993) 11 CAL CK 0002
In the Calcutta High Court
Case No : Writ Petition No. 2850/93

S.S. Jain and Co.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 19-11-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1995) 76 ELT 251

Hon'ble Judges : Ajoy Nath Ray, J

Bench : Single Bench

Advocate : R.C. Nag and J. Ghosh, for the Appellant; S.K. Mitra and S.N. Sengupta, for the Respondent

Final Decision : Dismissed

Judgement

Ajoy Nath Ray, J.—This is a writ application made by the petitioners who carry on business in Calcutta.

2. They complain against a provisional assessment of duty made in respect of a vessel, M.V. Rainbow Reefer, which was imported into Indian Waters for the purpose of demolition.

3. The Bill of Entry shows that the petitioner declared the weight of the ship (called light displacement tonnage, L.D.T.) at 6178.00 M.Ts. The duty calculated at 5% ad valorem was shown in the Bill of Entry by the petitioners as Rs. 17,19,085/-.

4. The Customs Authorities altered the tonnage to 6441.00 M.T. Mr. R.C. Nag, appearing for the petitioners said that this alteration was done without any basis whatsoever. He showed the reverse of the Bill of Entry where the respondents' endorsements showed that the L.D.T. given by the petitioners was both as shown on the survey report of 1-10-1993 and as shown in the stability book.

5. Mr. Nag next contended that the Bill of Entry was also wrongfully altered by

the respondents by imposing an additional duty of Rs. 1,000 per M.T. on the increased L.D.T.

6. Mr. Nag relied upon the judgment of Ruma Pal, J. reported at *Amar Steel Industries Vs. Collector of Customs*, . He said that in that case it was held by the Learned Judge that an exemption of Excise Duty was made in 1986 in relation to ships which were intended to be broken up without the use of power. It was also held in that case that the third section of the Customs Tariff Act, 1975 makes Customs Duty equal to the Excise Duty so that when the Excise Duty was made nil the Customs Duty also automatically became nil.

7. The said third section is the imposing section of additional duty. Mr. Nag submitted the said duty is impossible as it has already become nil.

8. Mr. Nag said that it was assumed by all parties in that case that power meant electrical power, and not power derived from any other form of physical energy. For the purpose of this case, I need not enter into that question, and Mr. Nag gave the above answer only because I happened to ask the question.

9. Mr. Nag also relied upon the decision of P.B. Mukherji, J. reported in *Mercantile Express Co. Ltd. Vs. Assistant Collector of Customs and Others*, submitted from the observation at paragraph 8 of the said judgment that assessment of duty must be made on the same basis for all citizens concerned by the departments of Customs as otherwise it would lead to discrimination and violation of Article 14.

10. So far as invoking the jurisdiction of this Court is concerned, Mr. Nag relied upon the service of the order of provisional assessment upon his clients within the local writ jurisdiction limits of this Court. Indeed it is undeniable that the said order was served at Calcutta and therefore within the local limits of the jurisdiction of this Court so far as entertaining writs under Article 226 of the Constitution of India is concerned.

11. That such an order, when served within such limits, gives the High Court jurisdiction to entertain a writ is also, in my opinion, settled law. Mr. Nag referred to two Division Bench Judgments of this Court which amply bear out the above proposition. The first is the case reported at *Everest Coal Co. Pvt. Ltd. Vs. Coal Controller and Others*, (the case of *Union of India (UOI) and Others Vs. Hindustan Aluminium Corporation Limited and Another*, These are judgments binding upon me and I have no doubt that this Court has every jurisdiction to entertain this writ if it so will in its discretion.

12. This brings me to the crux of the problem. The problem is this. It now happens quite often in India that a petitioner, who wishes to apply under Article 226 of the Constitution of India, finds that more than one High Court has connection with the cause of action in question. Take the present case as an example. The vessel came into the Bombay Port. The dismantling work without the use of power would take place presumably at Bombay. The provisional assessment order was made ready at Bombay although it was finally made

effective by serving it upon the petitioners in Calcutta. The relevant Customs departments and officials are all at Bombay.

13. Two High Courts, therefore, have jurisdiction to entertain a writ for the present grievances of the petitioners. The High Court at Bombay has jurisdiction and also this High Court. Is it to be left to the petitioner to choose which High Court he will go to?

14. Is it to be left to the petitioner to choose that High Court which has much less connection with the entire bundle of facts making up the cause of action of the writ if he thinks it will more suit his convenience?

15. The answers to both these questions must be in the negative. The wording of Article 226 of the Constitution of India itself clarifies that the High Court would have jurisdiction in case even a part only of the cause of action arise, within its local limits. But there is nothing in that Article to show that if a part of the cause of action has arisen within such limits, the petitioner can approach that High Court as of right, and that the said High Court must, under the Constitution entertain the writ petition there.

16. It is not the choice of the petitioner which is the final deciding factor in this regard. It might be so in cases of institution of suits but it is not so in the matter of issuance of these prerogative writs.

17. Where the question of taking of leave of a Court arises before filing a suit, there the Court might refuse leave where only a slender part of the cause of action has arisen within its local limits. The Court could even rescind the leave later on upon that ground, if the defendant applies subsequently.

18. There is no such clause for taking of leave in Article 226 of the Constitution. The remedy itself is discretionary and so also there rests a further discretion with the High Court, whether it will at all entertain the writ in the first place.

19. The High Court, in appropriate cases, can and should, examine the bundle of facts constituting the cause of action to see if some other High Court can be said to be dominantly connected with the cause of action rather than itself. In case the High Court comes to such a conclusion, then in my opinion, it would be improper for the writ petitioner to proceed in the High Court having a far less, and a mere slender connection with the cause of action. The writ petitioner in that case should be relegated to seek his remedy before that other High Court, having the dominantly larger connection. Just as a litigant is not permitted to choose his judge, so also shall a litigant not choose his High Court in the matter of presentation of his writ application. He shall approach that High Court only which has by far the largest connection with the facts giving rise to his grievance.

20. There might well be cases where the distinction becomes too fine, and two High Courts might both be said to have roughly similar connection with the cause of action. Making too fine, a distinction in these matters, moreover, would work injustice to the petitioner, and the Courts cannot deny relief to a petitioner upon

too strict a decision in these matters. But if the cause of action is such as shows a preponderance of facts connected with the other High Court, and if the respondent authorities also happen to be within the local limits of that other High Court, than the High Court connected with only a small part of the cause of action should unhesitatingly refuse relief to the petitioner and send him elsewhere. It is a salutary principle to follow, as the prospective writ petitioners as well as the prospective respondents will know where approach is to be made, and none will try to bypass one High Court in preference for another. We, the Judges, look upon such preferment with suspicion, and deeply discourage any such tendency in any litigant.

21. I have not heard Mr. Mitra for the respondents on the merits of the case, as the point of jurisdiction appears to me to be a deciding one. Hearing Mr. Nag, however, it did not appear to be that the petitioner has come to Court with any frivolous case. But for the reasons above I am not minded to enter into the merits of the case at all.

22. The conclusion that I have reached, has been reached on the basis of the petition only as the respondents have been unable to file an Affidavit-in-opposition within time. I have heard the writ itself and for the reasons above I would dismiss the same granting the petitioner liberty to approach the appropriate High Court for favour of its consideration.

23. The writ application is, therefore, dismissed without any order as to costs.

24. Stay of operation of this order is prayed for. The same is refused and it is only clarified that along with the dismissal of the writ all interim orders passed herein will also stand immediately vacated.

Petition dismissed.