(2003) 03 DEL CK 0063

In the Delhi High Court

Case No : Civil Writ Petition No. 8266 of 2002

Subham Goodwill (P) Ltd. APPELLANT

Vs

Commissioner of Customs and Others RESPONDENT

Date of Decision : 13-03-2003

Acts Referred:

Citation : (2003) 26 PTC 377 : (2004) 1 RAJ 377

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Anuradha Salhotra and Nippu, for the Appellant; Maninder Singh and Abhinav Mukherji for Respondent No. 1, Anita Bhargava and Rakesh Munjal and Sanjeev Kumar, for Respondent Nos. 3, 4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—The petitioner in this writ petition is seeking direction against first respondent namely, Commissioner of Customs, Hand Container Depot, Tuglakabad, New Delhi to release its consignment and to permit the petitioner to remove the said consignment from customs without let or hindrance. The direction is also sought against first respondent to compensate the petitioner all the moneys paid by the petitioner towards demurrages or ground rent to NLS Agency (India) Pvt. Ltd., and/or to the Container Corporation of India and/or any other person for any other charges whatsoever arising from the delay in releasing the consignment to the petitioner.

2. As would be clear from the prayer clause, the petitioner has imported certain goods, but as the respondent No. 1 did not clear the same this petition has been filed with aforesaid prayers. The facts which emerge from the petition and counter-affidavits of the respondents may be recapitulated.

3. The petitioner is a Private Limited Company incorporated under the Indian Companies Act and in or about the end of August, 2002, it had purchased candies from the Balloon Company, Bangkok, Thailand for import into India. The

consignment was imported through M/s. NLS Agency (India) Private Limited under container number and SCZU 7613074/20 (Bill of Lading No. DNABKK020800752). This consignment arrived at Delhi at the office of Commissioner of Customs, Inland Container Depot, Tuglakabad on October 3, 2002. The petitioner paid the required import duty vide cheque dated 9.10.2002 and entrusted the job of clearing the consignment to respondent No. 5. However, goods were not cleared by the Commissioner of Customs on arrival of these goods. Reason given in the counter-affidavit is that a simple thereof was taken for checking as to whether the goods confirmed to the Notification No. 44(RE-2000)/1997-2002 dated 24.11.2000 dealing with the packaging of goods imported and Notification No. 3(RE-2001)/1997-2002 dated 31.3.2001 read with public notice 51/01 of Customs C. No. VIII/CD/ICD/6/AG/458/01 (issued by Commissioner of Customs), -issued by the Ministry of Commerce and Industry, Department of Commerce, u/s 5 of the Foreign Trade (Development and Regulation) Act, 1992 read with paragraph 1.3 and 4.1 of the Export and Import Policy, 1997-2002. After drawing the sample the same was sent to Central Food Laboratory (CFL), Ghaziabad. Report dated 22.10.2002 was received from CFL, Ghaziabad as per which certain violations of the Prevention of Food Adulteration Rules (PFA Rules) were found relating to misbranding of the goods. On receiving this report, respondent No. 1 dis-allowed the clearance of the goods pending compliance with the provisions of PFA Rules, 1955. Thereafter the petitioner vide letter dated 3.12.2002 approached the respondent No. 1 for permission to de-stuff the container and transfer the goods to the warehouse to save demurrage as well as for completing the formalities of PFA Rules as pointed out in the CFL report. This permission was granted by respondent No. 1 on the same day. Subsequently, petitioner also complied with the requirement under the PFA Rules as per the Notification 3/01 read with 51/01 by putting the required information on the packets via stickers. On completion of these formalities respondent No. 1 issued "out of charge" order on 18.12.2002 which entitled the petitioner to clear the imported goods for home consumption after settlement of its dues with the CHA as well as with the company providing the container.

4. However, it may be noted that simultaneously some other developments were taking place. Respondent No. 2 informed respondent No. 5 that consignment in question could not be cleared as candies contained therein under the trademark COR-RAZON were deceptively similar to the trademark CORAZON which is registered trademark of respondent No. 3, namely, General Candy Company Ltd. in Thailand. It appears that an F.I.R. was lodged against the petitioner on 16.10.2002 in respect of aforesaid consignment alleging violation of registered trademark of respondent No. 3 and the allegation was that goods imported vide aforesaid consignment were deceptively similar to that of respondent No. 3 and were sought to be passed of as the goods of respondent No. 3. As per the complaint of respondent No. 3 which is one of the leading manufacturers, dealers and suppliers of confectionery products including candies under its trademark CORAZON which is being used in Thailand as well as other countries. The said

trademark and wrapper/label which bears an artistic work is widely used in India and the trademark CORAZON is also pending with the Registrar of Trade Marks since March 6, 2002. This complaint further alleged that the design/artistic work of the label/wrapper was wholly artistic including the logo, style etc., in which the trademark CORAZON was represented therein. The wrap-per/label/Sachet containing the original artistic work, design, layout the getup, inter-alia containing the trademark CORAZON written in the artistic style and device of "Heart" represented in artistic manner against the background containing golden coloured ribbons moving here and there. The device of strawberries shown in the label are also of red colour. The said label was prepared by one Mr. Waravit Larpboisuth Sak, a Thai national for the complainant company and was first published by the complainant company in the year 1998 in Thailand. The said wrapper is an artistic work within the meaning of Section 2 of Copyright Act and is entitled to be protected as such. It was further submitted in the complaint that Thailand and India both are Members of Berne Convention relating to protection of copyrights and India having ratified the same, the copyrights of each other and that of their nationals and citizens is also those works which are first published in their countries are protected in both the countries. In these circumstances, respondent No. 3 sought protection by virtue of provisions of International Copyright Order of 1999.

5. On examination of this complaint by the Police Authorities and prima facie finding that candies imported by the petitioner with similar wrapper/label and trademark CORRAZON are deceptively similar in all respects with the wrapper/ label and trademark of the respondent No. 3 and is, Therefore, an offence punishable u/s 63 of the Copyright Act, this complaint was transformed into FIR No. 565/02 dated 16.10.2002 in the Police Station, Okhla Industrial Area, New Delhi and investigation of the case was taken up by the Police Authorities. On the same day request letter was sent by the Police Authorities to Commissioner of Customs to detain the container imported by the petitioner. When Police Authorities came to know that respondent No. 1 was taking steps to release the consignment, a letter dated 22.11.2002 was addressed to respondent No. 1 requesting to handover the possession of the goods to the Police Authorities. On December 12, 2002 Shri Sandeep Sethia and Smt. Rajee Sethia both Directors of the petitioner company applied for anticipatory bail before the Court of Sessions, New Delhi in the aforesaid FIR No. 565/02, Police Station, Okhla Industrial Area, New Delhi and anticipatory bail was granted. Another request was made by the Police Authorities to respondent No. 1 on December 19, 2002 to handover the possession of the goods in question to the Police Authorities which was followed by request dated January 16,2003. It appears that possession of the goods has now been taken over by the Police Authorities.

6. In view of the sequence of events noted above, prayer made in the writ petition virtually becomes infructuous. The first respondent has already released the goods which are now in the custody of Police Authorities. These goods are now subject matter of FIR No. 565/2002, Police Station, Okhla Industrial Area,

New Delhi in respect of which investigations are pending. Therefore, the relief prayed for by the petitioner cannot be granted to the petitioner in this writ petition.

7. Learned counsel for the petitioner, however, tried to argue that powers of this Court under Article 226 of the Constitution of India were wide enough to grant relief and direct the authorities to release the goods. She referred to the judgment of Supreme Court in the case of Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, and particularly emphasised the following observations contained in the said judgment:

"This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself. To say this is not to say that the High Courts can function arbitrarily under this Article. Some limitations are implicit in the article and Ors. may be evolved to direct the article through defined channels. This interpretation has been accepted by this Court in T.C. Basappa Vs. T. Nagappa and Another, and P.J. Irani Vs. The State of Madras, ."

8. There is no dispute that High Court has wide powers to issue writs under Article 226 of the Constitution of India to reach injustice wherever it is found. However, there are self imposed limitations on exercise of these powers which are to be exercised in appropriate cases. These restraints upon the exercise of this extraordinary and unlimited discretionary power are self-imposed limitations, as a matter of prudence, propriety and policy. [See : Additional Secretary to the Government of India and Others Vs. Smt. Alka Subhash Gadia and Another, ; C.A. Abraham, Uppoottil, Kottayam Vs. The Income Tax Officer, Kottayam and Another, H. B. Gandhi v. Gopi Nath and Sons . In Dwarka Nath case (supra) the writ petition was dismissed by the High Court in liming on technical ground that affidavit filed in support of the writ petition was highly unsatisfactory and the facts given are incomplete and confused. The Court observed that in such circumstances, in stead of dismissing the writ petition in limini, an opportunity

should have been given to the said petitioner to cure the defects in order to loose substantive justice.

9. In the present case, machinery under the criminal law has been invoked at the instance of the respondent No. 3. Police is seized of the matter and investigation is underway. Prima facie it has been found that the act and petitioner amounts to offence u/s 63 of the Copyright Act.

10. It may be stated at this stage that learned counsel for the petitioner sought to argue that there was no such infringement of copyright and trademark of respondent No. 3 by the petitioner. However, it would not be appropriate for me to deal with this aspect in this writ petition when this issue is not directly involved for determination. It would be more so, as any observations made by me on the merits of this controversy, may adversely affect either party, namely, petitioner and/or respondent No. 3 who have to get their respective claims adjudicated in criminal proceedings and/or civil proceedings, if launched. For this reason, other judgments cited by the learned counsel for the petitioner, namely, Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, ; Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others, and Sheo Ratan Upadhya Vs. Gopal Chandra Nepali and Another, shall also have no bearing on the facts of the present case.

11. It may be mentioned that the petitioner is not remediless. The petitioner may make appropriate application to the concerned Metropolitan Magistrate/Additional Sessions Judge under whose jurisdiction the proceedings are pending for appropriate directions for the release of the goods in question. The petitioner can also file civil suit and seek necessary directions in this respect. It is stated at the cost of repetition that this issue does not fall for consideration in the present petition. The scope of present petitioner was limited. The petitioner came to this Court on the allegation that in spite of petitioner''s fulfilling all formalities, respondent No. 1 was not giving appropriate customs clearance and releasing the goods: Insofar as respondent No. 1 is concerned, it has released the goods. The Police has taken custody of goods in exercise of its powers contained in the provisions of Criminal Procedure Code. If the petitioner wants to challenge the said action of the Police Authorities as illegal, it would be open to the petitioner to take out appropriate proceedings in this behalf.

12. With the aforesaid observations and liberty reserved for the petitioner, this writ petition is dismissed.

13. No costs.

