(1991) 08 BOM CK 0053

In the Bombay High Court

Case No : Writ Petition No. 1952 of 1991

Sunita Plastic Industries — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 14-08-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Contempt of Courts Act, 1971 — Section 10

Citation : (1992) 58 ELT 201

Hon'ble Judges : M.L. Pendse, J;A.V. Savant, J

Bench : Division Bench

Advocate : Shri H.R. Shetty and Mr. J.P. Pochkhanwala, for the Appellant; Shri Manoj Sanklecha and Shri K.C. Sidhwa, for the Respondent

Judgement

Pendse, J.—By this petition filed under Article 226 of the Constitution of India the petitioners are challenging legality of order dated February 25, 1991 passed by Additional Chief Controller of Imports & Exports. The petition came up for admission before us on June 26, 1991 and by a speaking order we directed notices to be issued to Petitioner No. 1 firm and its partners under the Contempt of Courts Act to show cause why the partners should not be committed for committing contempt of the Supreme Court by openly flouting the interim order and disposing of the imported material. The notice also directed the partners to show cause why the partners should not be prosecuted for playing fraud upon the Court and cheating the Customs Authorities in disposing of the imported material.

Against order dated June 26, 1991 issuing notice to show cause why action under the Contempt of Courts Act and for prosecution should not be taken, the petitioners preferred SLP No. 11017 of 1991 before the Supreme Court. In the Petition, to which our attention was invited by Shri Pochkhanwala, learned counsel appearing on behalf of the petitioners, on....... several inaccurate statements were made, but we need not set out the same in the present judgment. It is unfortunate that the draftsman of the SLP should have made allegations against the Court without any foundation whatsoever and more so when the petitioners did not care to....... the Leave Petition. The SLP was dismissed by the Supreme Court by order dated July 31, 1991 and thereafter the present petition along with the notice was placed before us on Monday, August 12, 1991.

2. When the petition reached for admission and for hearing of the notice, Shri Pochkhanwala appeared on behalf of the petitioners, and after the matter was argued for about half an hour, on our enquiries as to whether the petitioners desire to file any affidavit to show cause to the notice issued, stated that the affidavit would be filed on next date, that is Tuesday, August 13, 1991. On August 13, 1991 the petitioners did not file any affidavit, but Shri Pochkhanwala tried to point out certain facts which are nowhere on record, in justification of what was done by the petitioners in spite of the specific order passed by the Supreme Court. We made it clear to Shri Pochkhanwala that we will not hear any arguments on facts when the petitioners have not cared to file affidavit. Shri Pochkhanwala then took instructions from the petitioners, who were present in Court, and stated that the affidavit will be filed and the matter should be kept back till to-day. Accordingly, we adjourned the matter. To-day Shri Pochkhanwala did not appear and Shri Shetty appeared on behalf of the petitioners and stated that the petitioners do not desire to file any affidavit. It is obvious from the manner in which the proceedings are conducted that the petitioners are not fair to the Court and are obviously trying to suppress relevant material or had no courage to state on affidavit what they desire their counsel to state orally. With this state of affairs we have to examine whether action under the Contempt of Courts Act or prosecution against the partners of the firm is called for. Before we advert to that aspect, it is necessary to set out the facts which gave rise to filing of the petition.

3. M/s. Prakash Conductors, Bangalore, had obtained Replenishment Licence dated July 4, 1984 for a sum of Rs. 12,69.876/- for import of aluminium/ aluminium rods. The licence issued by the Joint Chief Controller of Imports and Exports was transferable and was transferred by M/s. Prakash Conductors to M/s. Vina Commercial Corporation, who in turn transferred part of the licence of value of Rs. 9,30,000/- to petitioner No. 1 firm. The transfer in favour of petitioner No. 1 firm was effected on May 18, 1985. Though the licence was not valid for import of Butyle Acrylate, the petitioners imported 72 Metric Tonnes of Butyle Acrylate for full value of the licence. The petitioners filed bill of entries for clearance with the Customs Authorities, Bombay on June 12, 1985. The Customs Authorities declined to clear the goods because the licence was not valid. The petitioners thereupon filed Writ Petition No. 11773 of 1985 in the Supreme Court against Union of India, Chief Controller of Imports and Exports, Joint Chief Controller, Bangalore and Collector of Customs, Bombay seeking that direction should be issued to the Collector of Customs, Bombay for clearance of the imported goods. The partnership firm and the partners declared in the petition before the

Supreme Court that the firm was the actual user of Butyle Acrylate and the firm was registered with the Directorate of Industries, Bombay on September 21, 1976 for manufacture of plastic molted articles and plastic imitation jewellery. Possibly on the strength of the claim made by the firm and the partners, the Supreme Court by interim order dated August 16, 1985 directed the Collector of Customs, Bombay to release the goods imported by the petitioners on payment of duty, but specifically observed :

"But the goods will not be permitted to be sold until further order of this Court."

Taking advantage of the interim order passed by the Supreme Court, the petitioners cleared 72 Metric Tonnes of Butyle Acrylate and thereafter by openly flouting the order of the Supreme Court disposed of the entire quantity between September 2, 1985 and March 15, 1986 to as many as 60 parties.

4. On January 10, 1990 the Additional Chief Controller of Imports and Exports served notice under Clause 10 of the Imports (Control) Order, 1955 as amended on the petitioners to show cause why action under Clause 8 and Section 4-L and Section 4-I of the Imports & Exports (Control) Act, 1947 should not be taken against the petitioners. The show cause notice sets out that the licence was for import of aluminium/aluminium rods and the petitioners imported Butyle Acrylate against the said licence though not permitted. The notice further sets out that the licence was not endorsed under Paragraph 138 of the Import Policy for import of Butyle Acrylate and therefore the Customs Authorities did not permit clearance. The show cause notice then sets out how the petitioners approached the Supreme Court and made a claim that the petitioners are the actual users of Butyle Acrylate. The show cause notice then sets out that the Butyle Acrylate, which was cleared in pursuance of the order passed by the Supreme Court, was disposed of by the petitioners between September 2, 1985 and March 15, 1986 to as many as 60 customers in violation of the specific order passed by the Supreme Court. The show cause notice sets out the bill numbers and date of the sale, the quantity, the amount received by the petitioners and the party to whom the goods were sold. The show cause notice then sets out that the action of the petitioners attracts penal provision of Clause 8 of the Imports (Control) Order and Section 4-I of the Imports and Exports Act. The petitioners were called upon to furnish the information as per the proforma enclosed and to show cause why action should not be taken.

The petitioners were called upon to file their reply and the petitioners by their letter dated January 23, 1990 denied the allegations and claimed that they could not submit documents called for by the office by several letters as the same were seized by the Officers of the Central Bureau of Investigation. The petitioners sought personal hearing, but asserted that the hearing should be given only after the case was decided by the Central Bureau of Investigation and after the documents are released in favour of the petitioners. The Office of the Chief Controller of Imports and Exports again called upon the petitioners to file their reply and appear for personal hearing on October 16, 1990. The petitioners did not appear and informed that they cannot attend the personal hearing as the documents were still in the custody of the C.B.I. Several further opportunities were given, but the petitioners did not file any reply and merely claimed that documents seized by the C.B.I. are not available. The Chief Controller then called upon the petitioners to produce seizure memo of the documents seized by the C.B.I., but the petitioners did not care even to produce copy of the seizure memo to indicate which documents were seized by the C.B.I. It was obvious to the Controller that the petitioners had no answer whatsoever to the facts disclosed in the show cause notice, including that the entire imported consignment was disposed of in violation of the specific order of the Supreme Court. Faced with this situation, the Additional Chief Controller ultimately passed the impugned order dated February 25, 1991 holding the petitioners guilty of violating Clause 8(1) and (d) of the Imports and Control Order as well as violation of Section 4-K of the Imports and Control Act. The Additional Chief Controller directed that the firm and the partners should be debarred from receiving any import licence, CCPS, obtaining allotment of imported goods from any canalising agencies or from importing any goods from February 6, 1991 to March 31, 1993 upto 50% of their allotment. The fiscal penalty of Rs. 10 lakhs was also imposed on the firm and the partners.

5. Though an appeal is provided against the order passed by the Additional Chief Controller of Imports and Exports before the appropriate authority mentioned in Section 4-M of the Imports and Exports (Control) Act, the petitioners did not avail of the said opportunity but filed the present petition on June 12, 1991 under Article 226 of the Constitution of India.

6. Initially Shri Mehta appeared on behalf of the petitioners and argued the petition for admission, but we declined to examine the submissions as prima facie we felt that the petitioners are guilty of committing contempt of the Supreme Court and are also guilty of cheating the customs authorities by clearing the imported goods and disposing it of in violation of the Supreme Court order. We therefore directed notice to be issued to the petitioners to show cause why action under Contempt of Courts Act should not be taken as well as the petitioners should not be prosecuted for an offence of cheating.

To-day we called upon Shri Shetty to argue the petition on merits, but Shri Shetty submitted that in absence of availability of the documents which are seized by the C.B.I. and in absence of any affidavit by the petitioners, it is not possible to challenge legality of the impugned order. Even though Shri Shetty did not advance submissions in support of admission of the petition, we have carefully gone through the entire petition and we find that no case whatsoever is made out for admission of the petition. We are not at all impressed by the submission that the petitioners could not have filed an effective reply to the show cause notice or attended personal hearing without the documents seized by the C.B.I. As rightly pointed out by the Additional Chief Controller nothing prevented the petitioners from obtaining copies of the documents which were seized by the

C.B.I. No efforts whatsoever were made to secure such copies. It was also open for the petitioners to request the Chief Controller to send for the documents from the C.B.I. for their perusal. It is obvious that the petitioners had no desire whatsoever to co-operate with the investigation undertaken by the Chief Controller and possibly because the petitioners had no answer whatsoever to the charges levelled. The Chief Controller had given show cause notice setting out in extenso the manner in which the imported goods were disposed of, though the clearance was secured from the Supreme Court on the basis that the petitioners are the actual users. The petitioners could have easily examined any of the purchasers whose name along with the date of transfer, quantity transferred and the amount of consideration was clearly set out. In our judgment, the petitioners are guilty of serious misdemeanour and the penalty imposed by the Additional Chief Controller of Imports and Exports is extremely lenient. Indeed we are wondering why the Department did not prosecute the petitioners for cheating the Department. We are unable to find any ground to entertain the petition in exercise of our writ jurisdiction and accordingly we summarily dismiss the petition.

We wish to make it clear that both the notice and the petition was placed on our Board and both the counsel were well aware that the petition will be taken up for admission and the notice also will be disposed of at the same time.

7. As regards the notice to show cause why action should not be taken under the Contempt of Courts Act, 1971, Shri Shetty invited our attention to Section 10 of the Act and urged that High Court can take action for contempts in respect of subordinate courts but cannot take action for commission of contempt of the Supreme Court. Shri Sanklecha, learned counsel appearing on behalf of the Department, on the other hand submitted that Section 10 does not oust the power of the High Court to take action under the Contempt of Courts Act even in respect of the contempt of another High Court or of the Supreme Court. We are not sure as to whether it is permissible for the High Court to punish for the contempt of the Supreme Court and we think it is not necessary to determine that question in the present proceedings. We are not inclined therefore to take action against the petitioners did committing contempt of the Supreme Court though we are satisfied that the petitioners did commit contempt of the Supreme Court by flouting the specific order dated August 16, 1985. The petitioners did not file any affidavit nor brought to our attention any fact to establish that they had not flouted the order of the Supreme Court.

As regards the notice to show cause why the petitioner firm and its partners should not be prosecuted in criminal court for playing fraud upon the Court and cheating the Customs Authorities, after considering all the pros and cons of the matter, we feel that it is not desirable that this Court should direct institution of the prosecution. Though we are prima facie satisfied that the petitioners and the partners are guilty of playing fraud upon the Court and cheating the Customs Authorities, it is for the Customs Authorities to determine whether any prosecution should be launched against the firm and the partners. In these circumstances, the notice issued against the petitioners to show cause why action under the Contempt of Courts Act should not be taken and why the firm and the partners should not be prosecuted is discharged.

8. Accordingly, the notice to show cause stands discharged.

9. The Petition is summarily dismissed. We direct the petitioners to pay sum of Rs. 2000/- to the respondents as costs of the present proceedings.

