
(2011) 05 GAU CK 0018
In the Gauhati High Court
Case No : WA No. 152 of 2006

Union of India (UOI)

APPELLANT

Vs

Md. Esa Ali

RESPONDENT

Date of Decision : 18-05-2011

Acts Referred:

Citation : (2011) 3 GLT 100

Hon'ble Judges : Madan B. Lokur, C.J.; A.C. Upadhyay, J

Bench : Division Bench

Advocate : D.C. Chakraborty, C.G.C, for the Appellant; D. Sengupta, for the Respondent

Final Decision : Dismissed

Judgement

A.C. Upadhyay, J.—Appellant has challenged the judgment and order dated 16.02.2006, passed by learned Single Judge in WP(C) No. 657 of 2000, whereby a direction was issued to the Appellants to pay a sum of Rs. 1,50,000/- as costs of the seized goods and compensation for mental torture caused to writ Petitioner/Respondent.

2. We have heard Mr. D.C. Chakraborty, learned C.G.C. for the writ Appellant-Union of India. None appeared on behalf of the Respondent.

3. The facts, leading to filing of this writ appeal, may be stated, in brief as follows:

The Petitioner/Respondent, in course of his business, sent 61 bags of beetle nuts on 03.07.1999, along with 25 Nos. of bamboo mats from his residence at Dibrugarh to his own house at Manchachar District, Dhubri through his brother. The aforesaid goods were carried in truck bearing Registration No. AS-06-A-4566, together with all necessary valid documents of the vehicle. While transporting the aforesaid goods, the said truck loaded with the goods was checked at different check gates, and the authority concerned of the check gates had also issued necessary certificates and permits regarding the genuineness of

the goods in the truck. Finally, when the truck with the aforesaid items reached the check gate at Meghalaya, on 04.07.1999, the Inspector of the concerned Check Gate, after due verification, allowed the vehicle to proceed towards its destination at Mancachar. The Inspector also issued necessary verification certificates, certifying that the goods and the documents were duly verified and found to be genuine.

4. On its way to Mancachar Circle, the said vehicle with goods was stopped by the Assistant Commandant of BSF Mancachar near the PWD road at Kukurmara, suspecting that the goods would be exported to Bangladesh through Mancachar-Mahendragang area. The Assistant Commandant, BSF, Mancachar Circle, seized all the goods in the vehicle of the Petitioner and handed over the truck along with the goods aforesaid to the Inspector, Land Custom Station, Mancachar, Dubhri District.

5. The Inspector of Land Custom Station, Mancachar, stated to have demanded a sum of Rs. 40,000/- from the driver of the truck. It has been further alleged that the Inspector threatened to detain the goods and arrest the persons in the vehicle. However, subsequently, the Respondent No. 2 took a sum of Rs. 1,500/- as a token amount to release all the persons in the vehicle. However, though, no case was registered, the Respondent No. 2 surprisingly continued to detain the vehicle along with the goods. On 05.07.1999, a public notice was issued declaring the goods to be unclaimed seizure under the Customs Act. It is in these circumstances, Respondent approached this Court by filing a WP(C) No. 3380 of 1999, against the aforesaid notice of the Appellant authority. This Court by its order dated 22.09.1999 in WP(C) No. 3380 of 1999 issued directions as follows:

After hearing the learned Counsel for the parties and on perusal of the materials on records, without deciding the question of law raised in these writ applications, I feel that the interest of justice required that the truck in question i.e., AS-06-A-4866 belonging to the Petitioner Gagan Deo Shah in CR No. 4030/99 shall be returned to him within a period of 7(seven) days from the date of receipt of the order. The owner of the truck shall furnish a bond of Rs. 50,000/- (fifty thousand) along with an undertaking that the truck in question shall be produced before the authority as and when required by the Custom authority in connection with any case/action that may be initiated by the authority or in connection with any criminal case.

61 bags of bettlenut along with 25 nos of bamboo mats seized belonging to Md. Esa Ali, the Petitioner in CR No. 3380/99 shall be returned to him on furnishing a bond of Rs. 15,000/-(fifteen thousand). This is required as these are perishable goods.

6. The aforesaid order of the learned Single Judge in WP(C) No. 3380 of 1999, specifically directed the present Appellant to return the goods seized by them to the Petitioner/Respondent on furnishing a bond of Rs. 15,000/-. However, when the Petitioner Respondent approached the concerned Appellant authority, for

return of the seized goods and also furnished the security bond, for release of the vehicle in question, the Respondent authority refused to do so.

7. Ultimately, the Petitioner/Respondent filed statutory appeal before the Commissioner of Customs, North Eastern Region, Shillong, against the unauthorized seizure of the Tata Truck as well as the goods in question by the customs authority. The Commissioner of Customs, North Eastern Region, Shillong, by its order dated 26.02.2002 in CCP/NER/54/2002, directed release of the said Tata Truck to its owner, as well as the goods i.e. 61 bags of raw beetle nuts and 25 Nos. of bamboo made mats to the Petitioner/ Respondent.

8. In spite of repeated request, for releasing the seized goods in question, the Appellant authority refused to comply with the orders passed by this Court and also the final order passed by the Commissioner of Customs, North Eastern Region, Shillong. As a consequence of which, the seized goods got totally damaged and destroyed.

9. In such a situation, the Petitioner filed a writ petition being WP(C) No. 657 of 2000, claiming compensation to the tune of Rs. 1,50,000/-, only being the cost of seized goods as well as the mental torture and harassment meted out to the Petitioner Respondent during the entire episode. The Respondent Appellant contested the writ petition by filing affidavit-in-opposition stating therein that the Respondent authorities are not liable to pay compensation towards the costs of seized damaged goods along with the expenses incurred by the Petitioner, including the compensation for mental torture only on the ground that the release of the seized goods was delayed due to filing of a Misc. application by them on 15.10.1999, before the High Court, for clarification of the type of security and bond to be executed by the Petitioner/Respondent, for release of the goods indicated, in terms of judgment and order passed in WP(C) No. 3380 of 1999.

10. Learned single Judge in the impugned order observed that the miscellaneous application as referred to above by the Appellant was never moved in the Court and further observed that mere filing of an application would not serve any purpose, since the Appellant authority did not indicate any clear and cogent reason for refusing to release the seized goods in terms of the order passed by the Court.

11. The learned Single Judge, after due consideration of the facts and circumstances, and upon hearing the learned Counsel for the parties by the impugned judgment and order, directed the Appellant authority to pay a sum of Rs. 1,50,000/-, by way of compensation, for loss of the said seized goods and for mental torture and harassment caused to the Petitioner-Respondent.

12. By filing this writ appeal, the Appellants contended that the seizure in respect of the goods in question was made in accordance with law, therefore, even if, there was damage to the articles seized, no responsibility would be attributable to the Respondent/Appellant authority and no compensation can be awarded.

13. It is apparent that a specific direction was issued to the Respondent Appellant authority to return the goods seized by them by obtaining a security bond of Rs. 15,000/-. However, the order passed by this Court was not carried out without any cogent reason. Over and above, the Commissioner of Customs, North Eastern Region, also passed an order on 26.02.2002, for releasing the goods and vehicle to the owner, which only reveals and reflects that the seizure was illegal. Indolence of the Appellant authority in taking immediate necessary action to save the goods is writ large. Undeniably, the goods, in question, got damaged due to apathy on the part of the authority concerned. Apparently, if the goods would have been returned to the Petitioner/Respondent at the right earnest, in response to the direction issued by the learned single Bench of this Court, the goods would not have been damaged. Consequently, the Respondent would not have suffered any loss. The loss suffered by the Respondent is solely due to the irresponsible attitude of the Appellant authority and blatant defiance of the direction issued by the learned Single Judge in WP(C) No. 3380 of 1999.

14. The grounds canvassed by the Appellants counsel that the loss and damage to the goods was not caused due to the fault of the officers of the Department, but due to non-listing of the application filed by the Department, for clarification of the order passed in WP(C) No. 3380 of 1999, do not at all appeal to us. However, fact remains that due to mishandling of the entire situation and inaction on the part of the Appellants, the goods got damaged and consequently, the Respondent had to sustain loss and injury, for which he has been rightly held to be entitled to adequate compensation.

15. In Nagendra Rao v. State of A.P. reported in AIR 1994 2663 : 1994 SCC (6) 205 a question arose for consideration before the Hon'ble Supreme Court, as to whether seizure of the goods in exercise of statutory powers, under the Act, immunizes the State, completely, from any loss or damage suffered by the owner. Whether confiscation of part of the goods absolves the State from any claim for the loss or damage suffered by the owner for the goods, which are directed to be released or returned to it. While deciding the issue in question Hon'ble Supreme Court, by discussing the decision rendered in Basavva Kom Dyamangouda Patil v. State of Mysore Observed as follows:

Similarly, in Basavva Kom Dyamangouda Patil v. State of Mysore³³, the question arose regarding powers of the Court in indemnifying the owner of the property which is destroyed or lost whilst in the custody of the Court. The goods were seized from the possession of the accused. They were placed in the custody of the Court. When the appeal of the accused was allowed and goods were directed to be returned it was found that they had been lost. The Court, in the circumstances, held: (SCC pp. 361-62, para 6) "It is common ground that these articles belonged to the complainant/Appellant and had been stolen from her house. It is, therefore, clear that the articles were the subject matter of an offence. This fact, therefore, is sufficient to clothe the Magistrate with the power to pass an order for return of the property. Where the property is stolen, lost or

destroyed and there is no prima facie defence made out that the State or its officers had taken due care and caution to protect the property, the Magistrate may, in an appropriate case, where the ends of justice so require, order payment of the value of the property.

33. Therefore, where the goods confiscated or seized are required to be returned either under orders of the court or because of the provision in the Act, this Court has not countenanced the objection that the goods having been lost or destroyed the owner of the goods had no remedy in private law and the court was not empowered to pass an order or grant decree for payment of the value of goods. Public policy requires the court to exercise the power in private law to compensate the owner where the damage or loss 33 B. K. Patil v. State of Mysore, 1977 CriLJ 1141 is suffered by the negligence of officers of the State in respect of cause of action for which suits are maintainable in civil court. Since the seizure and confiscation of Appellant's goods was not in exercise of power which could be considered to be act of State of which no cognizance could be taken by the civil court, the suit of the Appellant could not be dismissed

16. In State of Bombay (Now Gujarat) Vs. Memon Mahomed Haji Hasam, , Hon"ble Supreme Court observed that "the power to seize and confiscate was dependent upon a customs offence having been committed or a suspicion that such offence had been committed. The order of the Customs Officer was not final as it was subject to an appeal and if the appellate authority found that there was no good ground for the exercise of that power, the property could no longer be retained and had under the Act to be returned to the owner. That being the position and the property being liable to be returned there was not only a statutory obligation to return but until the order of confiscation became final an implied obligation to preserve the property intact and for that purpose to take such care of it as a reasonable person in like circumstances is expected to take".

17. In Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, it has been held by the Hon"ble Supreme Court that the High Court is at liberty to exercise its judicial discretion under Article 226 of to give effective relief especially when a party is claiming to be aggrieved by the action of a public body or authority and it need not relegate a party to seek "relief by a somewhat lengthy, dilatory and expensive process by a civil suit", merely because a question of fact is raised.

18. In view of the above discussions, the Petitioner/Respondent was entitled to all the seized articles, in question. However, admittedly, the seized goods, in question, got damaged and destroyed, consequently, it could not be returned to the Petitioner/Respondent. Therefore, the award of compensation made by the learned single Judge in the impugned order is reasonable and justified.

19. In view of what has been discussed above, we are of the opinion that there is no merit in the appeal and we do not find any reason to differ with the decision of the learned Single Judge. Accordingly, the appeal stands dismissed. However,

in the facts and circumstances of the case, we pass no order as to costs.