

(2016) 07 KAR CK 0079

In the Karnataka High Court

Case No : Writ Petition No. 33291 of 2016 (T-TAR)

Wanson Ocean Enterprises (I) P. Ltd.

APPELLANT

Vs

Dy. Commr. of Cus.

RESPONDENT

Date of Decision : 20-07-2016

Acts Referred:

Citation : (2016) 340 ELT 681

Hon'ble Judges : Dr. Vineet Kothari, J.

Bench : Single Bench

Advocate : S/Shri Prabhuling K. Navadgi, ASG, Jeevan J. Neeralgi and Smt. Anupama Hegde, Advocates, for the Respondent; Shri S. Parthasarathi, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

1. In pursuance of the interim directions of this Court, respondent No. 2, the Quarantine Officer, has undertaken the tests at various laboratories on the sample of the frozen fish imported by the petitioner from Oman, which consignment was detained as the same was imported without the relevant Sanitary Import Permit (SIP).

2. The petitioner has approached this Court with the case that the said SIP was not required in the present case as the relevant notification does not include the word "fish" separately. This Court passed an interim order in the first instance on 16-6-2016 and after hearing both the parties, the said order came to be modified on 5-7-2016. Both the interim orders are quoted below for ready reference;

Order dated 16-6-2016

"The writ petition has been filed by the petitioner aggrieved by the communication, Annexure - "B" of the Deputy Commissioner of the Customs on 6-6-2016 directing the Deportation/Destruction of Frozen Fish imported by the petitioner for human consumption under BE No. 5161011, dated 5-5-2016 from Muscat on the ground that Sanitary Import Permit (SIP) was not obtained in

advance by the concerned Authority by the petitioner for import of such Frozen Fish from Muscat Sultanate of Oman and therefore, the consignment either deserves to be deported back or to be destroyed.

Learned Counsel for the petitioner submits that the requirement of obtaining SIP applies only to livestock as enumerated in the Notification dated 16-10-2014 as reproduced in the representation of the petitioner, Annexure - "A" dated 18-5-2016, read with the Notification dated 16-10-2001 (page 26 of the writ petition) by which the Central Government has notified that the words "livestock product" shall cover products, eggs and seeds of all aquatic animals including fish, crustaceans and molluscs and therefore, no such requirement of obtaining advance SIP could be insisted upon by the Respondent Authority much-less ordering the deportation/destruction of the consignment.

He also submitted that in the previous such imports of Frozen Fish, instead of insisting upon the advance SIP for that purpose, the petitioner itself offered the sample for checking of the Frozen Fish to avoid health hazard to the consumers within our country India and the petitioner is ready and willing to offer the samples of the present consignment imported by it also for such sampling and medical testing in the authorised laboratory.

He further submitted that the impugned communication/order Annexure - "B" has been passed by the Deputy Commissioner without giving any opportunity of hearing to the petitioner and so also, no such opportunity of hearing or notice was given to the petitioner by the Quarantine Officer, before giving the communication dated 3-6-2016 to the Deputy Commissioner that advance SIP though required in the present case was not obtained by the petitioner.

Having heard the learned Counsel for the petitioner, prima facie, even while Section 128 of the Act provides for appeals to the Commissioner (Appeals), in such cases is applicable to the present case but since the impugned communication directing the deportation or destruction of the consignment imported by the petitioner cannot be said to be an administrative order but essentially is quasi judicial order and the same was passed without giving any opportunity of hearing to the petitioner, despite the availability of the alternative remedy by way of appeal, in the circumstances of the case and in view of an urgency of the matter, it requires interference by this Court under Article 226 of the Constitution of India.

Hence, Admit.

Issue notice to the respondents.

Heard for interim relief also.

In the facts and circumstances of the case, it is directed that the operation of the impugned order, Annexure - "B" dated 6-6-2016 shall remain stayed, subject to the following conditions :

(i) That the petitioner shall permit and allow the first Respondent/Deputy Commissioner and Quarantine Officer to undertake the lab test or medical examination of the samples of the imported consignment in question and if after such examination, a requisite health certificate is issued by the concerned Quarantine Officer, not finding any adverse elements in the imported consignment, which may be likely to cause any health hazard to the consumers of the said Frozen Fish in India, then, the clearance of the consignment in question may be issued, subject to the payment of the applicable Customs duty in favour of the petitioner.

(ii) If any adverse medical report is given by the concerned competent Officer, then the first Respondent/Deputy Commissioner is expected to pass appropriate speaking orders in this regard for not giving the clearance in question and the copy of the same may be placed on the record of this Court along with the reply affidavit of the respondent through their Counsel before the next date.

(iii) A period of two weeks is allowed to the parties for the aforesaid purpose.

List this case again on 5-7-2016."

Order dated 5-7-2016.

"The learned Counsel for the respondents submits that the concerned State Laboratory at Chennai will need at least ten days time to undertake the test of the samples of the frozen fish imported by the petitioner in the present case in pursuance of the orders passed by this Court on 16-6-2016 and they undertake to expedite the said process of testing for 10 or 12 diseases which ought to be tested for the fish imported by the petitioner from Oman and this is required to be done by ensuring public safety in the matter.

2. The learned Counsel for the petitioner has agreed that, if the report of the concerned Laboratory is furnished within a period of ten days from today, the petitioner will co-operate in the matter and the samples for that purpose may be taken from the consignment imported by the petitioner and once the report is received, the appropriate directions for the release of the consignment be made.

3. In view of the aforesaid submissions at the Bar, let this case again be listed before the Court on 18-7-2016. By that time, the respondents will definitely complete all the requisite formalities and testing and will furnish their report to the petitioner as well as before this Court. The necessary orders for release of the consignment as per the previous order dated 16th June, 2016 will be passed on the next date.

Before the next date, the respondents will also file their statement of objections, with an advance copy to the learned Counsel for the petitioner, and the learned Counsel for the petitioner may file rejoinder to the same and thus the pleadings should be completed before the next date.

Put up on 18-7-2016."

2. The respondent No. 2 has filed a memo dated 18-7-2016, in which, it is inter alia stated that upon the tests being carried on the samples produced by the petitioner, the fish in such samples were found to be free from diseases for which the tests were carried on and, therefore, the consignment can be released to the petitioner. However, the learned Assistant Solicitor General appearing for respondent No. 2 submitted that the expenditure incurred for undertaking the tests to the extent of Rs. 13,000/- and odd may be directed to be paid by the petitioner, since at the instance of the petitioner the said tests were carried out. The relevant paragraphs 1, 2 and 3 of the memo are quoted below for ready reference;

"It is respectfully submitted that pursuant to the order dated 16-6-2016 and 5-7-2016 passed by this Hon''ble Court directing the respondents to test the consignment (frozen fish) under question for pathogens and to furnish the report before this Hon''ble Court, the respondent No. 2 had requested for testing the consignment (frozen fish) with the following laboratories;

- (i) The Central Institute of Brackish Water Aquaculture (CIBA), Chennai.
- (ii) The Central Institute of Fisheries Education, Mumbai.
- (iii) The ICAR-National Bureau of Fish Genetic Resources, Lucknow.
- (iv) The Central Institute of Fisheries Technology, Cochin.

2. It is submitted that among them, the Central Institute of Brackish Water Aquaculture (CIBA), Chennai and the Central Institute of Fisheries Education, Mumbai have expressed their inability to carry out the tests listed under the Office International Epizooties (OIE) by the World Organisation of Animal Health. The ICAR-National Bureau of Fish Genetic Resources, Lucknow, by its report dated 16-7-2016 has certified that the consignment is free from 5 OIE listed diseases. The Central Institute of Fisheries Technology, Cochin by its report dated 15-7-2016 has certified that the consignment under question is free from pathogens with respect to the general microbiological parameters regarding the frozen fish.

3. It is submitted that the said reports are placed on record at Document No. 1 and Document No. 2 respectively, as directed by this Hon''ble Court, and it is prayed that further orders may be passed in the instant matter. The petitioner may be directed to bear the costs incurred by the respondent No. 2 for carrying out these tests pertaining to the consignment, in the ends of justice and equity."

3. In view of this, the question of interpretation and applicability of the notifications of requirement of Sanitary Import Permit being there or not in the present case, has become academic and need not be decided by this Court at this stage.

4. Therefore, while leaving the said academic question open, the present writ petition is disposed of, with a direction to the respondents to release the

consignment in question of the imported frozen fish of the petitioner immediately, subject to payment of the incidental expenses of the laboratory tests carried out by the respondents, under the interim orders passed by this Court in the present writ petition filed by the petitioner, for which the requisite bills and vouchers would be supplied to the petitioner. However, the payment of incidental expenses will not come in the way of immediate release of the consignment, which should be done immediately. No costs of litigation.