

(1991) 08 CAL CK 0006

In the Calcutta High Court

Case No : Constitutional Writ. Original Side Matter No's. 5483, 2919 and 3029 of 1989

Yogi Industries Private Limited and Another and Hindusthan Photo Films (Manufacturing) Co. Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-08-1991

Acts Referred:

Industries (Development and Regulation) Act, 1951 — Section 29B(1)

Citation : (1991) 37 ECR 177

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Judgement

Susanta Chatterji, J.—As agreed by the learned Counsel appearing for the respective parties all the 3 (three) matters viz. Matter No. 5483 of 1989 (Yogi Industries Private Limited and Anr. v. Union of India and Ors.) and Matter No. 2919 of 1989 (Yogi Industries Private Limited v. Union of India and Ors.) and Matter No. 3029 of 1989 (Hindusthan Photo Films (Manufacturing) Company Limited v. Union of India and Ors. are taken up for final hearing analogously and/or simultaneously. This judgment is intended to dispose of all the aforesaid 3 (three) cases.

2. It appears that in the first writ petition Yogi Industries Private Limited, a Company and the petitioner No. 2 being one of the shareholders of the said Company have prayed inter alia for declaration that the petitioners are deemed holders of a valid industrial licence under the Industries (sic)(Development and Regulation) Act, 1951 and in terms of the Press Note dated 29.9.1988 and entitled to the benefit of the Notification Nos. 216788-Cus. dated 6.6.1988 (sic) and 252/88-Cus. dated 16.9.1988 and alternatively for consideration and disposal of the petitioner's application for such licence in order to allow the petitioners to import Jumbo Rolls of Photo sensitized material such as "X-ray Films", and "Photographic Colour Papers" etc., at a concessional rate of customs duty by availing the duty of Notification No. 216/88-Cus. dated 7.7.1988 and

252-Cus. dated 16.9.1988.

3. It is stated in detail that the petitioner Company has been registered as a Small Scale Industrial unit by the Directorate of Cottage and Small Scale Industries, Government of West Bengal and has been granted as a permanent SSI Institution. It is placed on record that on or about 18.7.1986 the Central Government issued a notification being S.O. No. 428(E) in exercise of powers u/s 29B(1) of the said Act whereby the Central Government amended the notification dated 16.2.1973 by adding the item in Schedule IV of the said notification after existing Entry No. 10- "11. Slitting/confectioning of being sensitized material from Jumbo Rolls". It is highlighted that Section 29B(3) of the Act provided that the provision of the said Act shall apply, so far as may be, in relation to the issue of licence or permission to any industrial undertaking referred to in Sub-section (2) as they apply in relation to issue of a licence or permission to a new industrial undertaking. The petitioner Company is alleged to have written repeatedly to the Secretary, Ministry of Industries, Department of Industrial Development and other concerned authorities to expedite the issuance of COB Licence but there has been no responsibility. According to the petitioners, they have fulfilled all the conditions for grant of a licence as required under the said Act and Rules, there can be no reason for refusal to grant such licence to the petitioners. They are alleged to be seriously aggrieved for illegal and arbitrary refusal on the part of the respondents to grant necessary licence to enable the petitioners to obtain the benefit of the exemption notification as indicated above.

4. The second writ petition filed by the said petitioners viz. Yogi Industries Private Limited and one of its shareholders have prayed inter alia for declaration that the petitioners are not required to obtain any industrial licence under the Industries (Development and Regulation) Act, 1951 and for a Writ of Mandamus commanding the respondents to refrain from insisting on the petitioners having a licence under the said Act for the purpose of carrying on manufacturing activity and alternatively to forthwith a COB to the petitioners in respect of items of photo sensitized materials including X-ray films and also alternatively consider and dispose of the petitioners' application for such licence. It is stated with emphasis that the petitioners employ less than 15 number of persons in the unit of the Company and as such the said unit of the petitioner Company cannot be said to be a factory within the meaning of the said Act. Since it is not a factory, it was no obligation for the petitioner Company to obtain a licence or a registration either u/s 10 or u/s 11 since the petitioner Company cannot be said to be either a newly industrial undertaking or an existing industrial undertaking. The notifications have no application to the petitioner Company in the facts and circumstances of the present case inasmuch as the petitioner Company is not required to obtain any licence or registration under the provisions of the said Act.

5. The third application has been filed by Hindusthan Photo Films (Manufacturing) Company Limited for a Writ of Mandamus commanding the respondent No. 1 Union of India, the respondent No. 2 the Collector of Customs,

Calcutta and the respondent No. 3 Yogi Industries Private Limited to forthwith stop all illegal import of PSM by the respondent No. 3 and the authorities concerned should seize and/or confiscate of PSM illegal import by the respondent No. 3 Yogi Industries Private Limited. The petitioner has sought for appropriate writ to command the respondent Nos. 1 and 2 to take proper steps against the respondent No. 3 under the provisions of the Industries (Development and Regulation) Act, 1951, Customs Act, 1962, Import and Export (Control) Act, 1947 and Import (Control) Order, 1955. It is alleged that Yogi Industries Private Limited has no right to import the PSM materials and steps taken by the said respondent are wholly irregular and illegal and there should be seizure and confiscation of the materials already imported.

6. Upon perusal of all the materials on record and having heard in details, the argument advanced on behalf of Yogi Industries Private Limited, Hindusthan Photo Films (Manufacturing) Company Limited and Union of India, it appears that by virtue of Rule 15(1) of the registration and licence of Industrial Undertaking Rules, 1952, all applications for licence were required to be made by the existing industries within 3 (three) months of the date of the notifications. Yogi Industries Private Limited came to this Court claiming that it should be treated as a holder of a licence under the said Act and to allow the said Company to import Jumbo Rolls PSM on concessional rate of customs duty by availing of the benefit of Notification No. 216/88-Cus. dated 7th July, 1988 and 252/88-Cus. dated 16.9.1988. In an interlocutory matter, the case was made by the Appeal Court from the Order dated 30th July, 1989. An appeal was disposed of on 4th August, 1989 by granting relief to the respondent No. 3 to file a fresh writ petition.

7. Mr. Anindra Mitra appearing for Yogi Industries Private Limited has made 3 (three) specific submissions before this Court. He has submitted that the first petition filed by Yogi Industries Private Limited was filed under certain misconception inasmuch as Yogi Industries Private Limited is not expected to obtain any licence regard being had to the facts and circumstances of the case. In view of the nature of the business and the persons engaged does not necessary to obtain any licence. Secondly, if the goods have been imported erroneously the same may be allowed to be redeemed on payment of usual charges and penalties instead of confiscation. Thirdly, the PSM materials being imported may be allowed to be utilized by allowing the said Company to comply with all the necessary formalities excepting there is no necessity of obtaining any licences. Being a registered SSI Unit employing less than 50 persons, there is no necessity to obtain licence for receiving benefits under the notifications as indicated in their writ petitions.

8. Mr. Section Pal appearing for the Hindusthan Photo Films has strongly argued that Yogi Industries Private Limited can be permitted to approbate and reprobate. Any unequivocal terms, there is prayer for declaration that the petitioners should be granted licence and there are clear and unambiguous admissions that Yogi Industries Private Limited employs a large number of people

and there is illegally withholding grant of licence. According to him, these clear admissions have not properly been explained. He has drawn the attention of the Court that the steps taken by Yogi Industries Private Limited to import the Jumbo Rolls and PSM materials irregularly and illegally and the respondent Nos. 1 and 2 viz. Union of India and Collector of Customs should take effective steps to seize and confiscate those materials in accordance with law and Yogi Industries Private Limited should not be permitted to obtain the delivery of the goods which is wholly unwarranted and uncalled for.

9. Mr. N.C. Roychowdhury appearing for Union of India has, however, submitted that all necessary steps as required to be taken have been taken and there should not be any allegation by either of the parties in the manner as done in the 3 (three) writ petitions.

10. The Court has specially heard all the learned Counsel appearing for the respective parties and it appears that a short point has arisen for effective adjudication of the matters in dispute inasmuch whether Yogi Industries Private Limited needs any licence to import PSM materials for obtaining the benefits under the notifications as disclosed in the writ petitions. Two self-contractual stands have been taken by the Yogi Industries Private Limited. In the first petition, it demands of an issuance of necessary licence. In the second petition, it is placed on record that it does not require any licence. The Writ Court is not the forum to decide any dispute of question of fact. Admission of any party unless properly explained remains binding upon the party concerned. It is a settled principle of law that suits may come and go may be dismissed or may be withdrawn but admission remains for ever and binding upon the parties unless properly explained under which context it has been said. In the present case, there are claims and counter-claims that one point of time Yogi Industries has stated clearly that they have fulfilled all the conditions for obtaining necessary licence and it has to be appreciated as to how the same position can be distinguished by permitting them to take up another stand that it is not a factory nor an industrial undertaking for obtaining necessary licence to get the benefits of the connected notifications. In view of the materials on record, this Court is of the clear view that Yogi Industries Private Limited cannot be permitted to import the items and to obtain benefits under the notifications without obtaining the necessary licence under the Act. Since, certain items have been imported without licence, the laws of the land have got to be followed as a matter of force. The consequence will follow for importing the items not in accordance with law. The question of redemption and for release of the goods on payment of dues and penalties have not to be considered in the proper perspective by the authorities concerned, nothing for the Court to indicate in either course which is not warranted by law.

11. For the foregoing reasons, this Court does not find any merit in the writ petitions filed by Yogi Industries Private Limited and those are dismissed without costs. Since the writ petitions filed by Yogi Industries Private Limited fail, the

application filed by Hindusthan Photo Films (Manufacturing) Company Limited is disposed of with this observation that the respondent Nos. 1 and 2 will proceed in accordance with law against the PSM imported by Yogi Industries Private Limited. It is, however, made clear that Yogi Industries Private Limited is neither a deemed licence-holder nor they do not require any licence. Any application for grant of licence will have to be considered by the authorities concerned upon fulfilment of all terms and compliance with all the formalities by Yogi Industries Private Limited. All the three cases are disposed of accordingly. All interim orders are vacated. There will be no order as to costs.