

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on : 12.09.2013

Judgment pronounced on : 17.09.2013

+ W.P.(C) 4201/2010

MAGNUM AVIATION (UK) LTD.

..... Petitioner

Through: Mr Ashim Vachher, Mr Pawash
Piyush, Advs

versus

PAWAN HANS HELICOPTERS LTD. & ORS.

..... Respondent

Through: Mr Lalit Bhasin, Ms Ratna D.
Dhingra and Ms Bhavna Dhami, Advs.

CORAM:
HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

The respondent-Pawan Hans Helicopter Limited (PHHL) placed an order with the petitioner company – M/s Magnum Aviation (UK) Ltd. (hereinafter referred to as the UK Company) for import of two “RMI Board for Civil Aircraft – Avionics”. The goods were to be shipped CIF and the petitioner was responsible to deliver the same to PHHL. The petitioner company procured the goods from M/s South East Aerospace of Australia. However, the said company, instead of shipping to PHHL, shipped them to M/s Magnum Aviation Private Limited (hereinafter

referred to as Indian Company). Since the petitioner was responsible to ensure delivery of the goods to PHHL, it requested the Indian Company to arrange for the clearance of the consignment for onward delivery to PHHL. One Santosh Kumar of the Indian Company was entrusted with the job of getting the consignment cleared from customs. It would be pertinent to note here that PHHL was entitled to claim exemption from the custom duty in respect of the above referred goods. Mr. Santosh Kumar in order to get the goods cleared from customs without payment of customs duty, forged an undertaking purported to be executed by Shri Ramesh Chand of PHHL and submitted the same to the Customs Department. He not only got a forged rubber stamp of PHHL prepared from the market without any authorization in this regard, but also forged the signatures of Mr. Ramesh Chand on the said documents. He also forged signatures of an PHHL official on the declaration form under Rule 10 of Customs Violation Rules and a declaration form showing the name of PHHL as importer of the goods. In his statement recorded under Section 108 of the Customs Act, Mr. Ramesh Chand stated that the aforesaid act was conducted by him out of his own negligence and ignorance without any instructions from the company he was working

with. Vide order dated 6.11.2009, the Additional Commissioner of Customs imposed duty of Rs.1,16,615/- on the Indian Company besides penalty of Rs.1.15 lac under Section 112 of Customs Act. He also imposed, penalty of Rs.20,000/- each on Mr. Santosh Kumar and PHHL.

2. Vide order dated 9.3.2010, the Deputy General Manager of PHHL directed de-registration of the petitioner company from the list of suppliers of PHHL and banned it from doing business dealings in future with PHHL. Aggrieved from the said order, the petitioner preferred a W.P(C) No.2042/2010. Vide order dated 26.3.2010, this Court recorded the statement of the counsel for PHHL stating that the show-cause notice would be issued to the petitioner along with the documents relied upon by them. The counsel for the PHHL stated that if such a notice was received, the petitioner will file a reply thereto within ten days. The writ petition was disposed of in terms of the said statement with further directions to PHHL to fix a date for hearing the petitioner and then pass a final order on the show cause notice. The petitioner was granted liberty to seek appropriate remedies as available to it in law, if aggrieved with the said decision.

3. Vide show cause notice dated 1.4.2010, issued by Deputy General Manager (Material), PHHL required the petitioner UK Company to show cause as to why it should not be de-registered from the list of suppliers and why its registration be not withdrawn. The petitioner responded to the show cause notice vide reply dated 15.4.2010. Vide order dated 7.6.2010 passed by the Chairman and Managing Director of PHHL, the petitioner – UK Company was de-registered from the list of registered vendors/suppliers, for a period of five years. Being aggrieved from the said decision, the petitioner filed this writ petition seeking quashing of the aforesaid order dated 7.6.2010 and restoration of its registration.

4. When this writ petition came up for hearing on 17.8.2010, the Court was informed that the Appellate Authority in this matter would be the Board of Directors. The Court, therefore, directed that the petitioner shall file a proper appeal before the said Appellate Authority and a decision taken by the Board after giving personal hearing to the petitioner would be communicated to it within one week of the said decision being taken.

5. Vide order dated 8.11.2010, the Board of Directors of PHHL dismissed the appeal filed by the petitioner. The writ petition was then amended so as to challenge the said order as well.

6. Impugned orders were assailed by the learned counsel for the petitioner on the following grounds; (i) the show cause notice was issued by the Deputy General Manager, who in view of the guidelines dated 30.7.2009 on “Banning Business Dealings”, was not competent to issue such notice (ii) the petitioner has been deprived of the right of second appeal to the Board since its first appeal itself was heard by the Board in view of the impugned order dated 7.6.2010 having been passed by the CMD of PHHL (iii) there was no misconduct on the part of the petitioner company and, therefore, the banning was not justified and (iv) the period of banning is highly excessive.

7. As regards the first contention, Mr. Lalit Bhasin, the learned counsel for PHHL submitted that the guidelines on “Banning Business Dealings” came into force much later after transaction with the petitioner-UK Company and they are applicable only to the persons who enter into Integrity Pact with PHHL and also agreed to be bound by the said guidelines. The learned counsel for the petitioner did not dispute that the

aforesaid guidelines came into force after order had been placed by PHHL and the goods had been cleared by the Customs. Admittedly, the petitioner-UK Company did not enter into an Integrity Pact with PHHL. Since the guidelines came into force at a much later stage, there could be no question of the petitioner agreeing to abide by the said guidelines. I, therefore, find merit in the contention of Mr. Bhasin that the aforesaid guidelines were not required to be applied while issuing the show cause notice and passing the impugned orders dated 7.6.2010 and 8.11.2010.

8. Moreover, on a perusal of the aforesaid guidelines, I find no merit in the contention that the Deputy General Manager of PHHL was not competent to issue show cause notice to the petitioner- UK Company. The only requirement of the guidelines is that the proposal to initiate banning should be approved by the Competent Authority. This is not the requirement of the guidelines that the show cause notice itself should be signed by the Competent Authority. Under the guidelines, the Competent Authority would be Executive Director/ General Manager (Engineering) and CMD, PHHL shall be the Appellate Authority whereas the Board of Directors of PHHL would be the Second Appellate Authority, for banning throughout entire PHHL. A perusal of the reply to the counter

affidavit would show that the show cause notice dated 1.4.2010 as well as additional show cause notice dated 26.4.2010 to the petitioner company were issued only after the same were approved by the respondent no.2, who is none other than the CMD of the PHHL. If Executive Director/ GM who holds position inferior to that of CMD, could approve issue of show cause notice, the CMD being the higher authority could certainly approve initiation of banning proceedings and/or issue of show cause notice to the petitioner-UK Company. The banning order also came to be passed by the CMD of PHHL and being a authority higher than the Executive Director/ General Manager, he was competent to pass such order. It is true that on account of the banning order having been passed by CMD, the petitioner was deprived of filing a second appeal but, that to my mind, would not be material, considering the order passed by this Court on 17.8.2010, which expressly directed appeal to the Board of Directors, thereby leaving no scope for a second appeal. In any case, as noted earlier, the banning guidelines were not at all applicable in the case of the petitioner, the same having come into force at a much later date and on having been agreed to by the petitioner. In any case, the appeal of the petitioner having been considered by the Board, which is the second

appellate authority, under the guidelines, no prejudice to the petitioner was caused due to denial of one appeal. I, therefore, find no merit in the first two contentions raised by the learned counsel for the petitioner.

9. As regards the third contention, it is petitioner's own case that it had requested the Indian Company to take steps for clearance of the consignment with the Customs. The Indian Company, therefore, was acting as an agent of the petitioner-UK Company in the matter of clearance of the consignment from the Customs Department. Admittedly, Mr. Santosh Kumar who forged the stamp of PHHL and signatures of its official was an employee of the Indian Company, which was acting as an agent of the petitioner – UK Company in the matter of release of the consignment. Therefore, for all intents and purposes, Mr. Santosh Kumar was acting as an agent/ representative of the petitioner – UK Company while pursuing the matter with the Customs Department. It is true that there is no evidence of the petitioner-UK Company having instructed or permitted Mr. Santosh Kumar to forge the stamp of PHHL and the signatures of its officers, but that would hardly be material since being principal, the petitioner – UK Company cannot escape to suffer the liability for the illegal act of its agents, though it may not be criminally

liable for the offences committed by him. The Customs Department imposed a penalty of Rs.20,000/- on PHHL without there being any lapse on the part of the said company solely on account of misconduct committed by Mr. Santosh Kumar who at the relevant time was acting as an agent of the petitioner – UK Company in the matter of clearance of the consignment. The penalty certainly brought a bad name to the PHHL.

10. During the course of arguments, the learned counsel for the respondent drew my attention to a letter dated 12.6.2003 written by Mr. Inder Kumar Bisnoi, Managing Director of the petitioner- UK Company to PHHL, whereby S-241, Panchsheel Park, New Delhi was stated to be the India office of the petitioner company. He also drew my attention to another communication dated 12.6.2003 from the petitioner- UK Company stating therein that the Magnum Aviation (India) also got F-Category approval from DGCA. In yet another communication of even date, the petitioner – UK Company gave address of Magnum Aviation as its representative office in India. In his statement under Section 108 of the Customs Act, Mr. Santosh Kumar described the petitioner company as their parent company. He also stated that since they had no knowledge of this shipment, he had made inquiries in his office from their parent

company in UK, which was the shipper in the case. Thus, the stand taken by Mr. Santosh Kumar was that the petitioner – UK Company is the parent company of the Indian company. In fact, in a letter sent to PHHL on the letterhead of the petitioner – UK Company, Mr. Santosh Kumar described him as Manager (Shipping) of the petitioner company. There could be no reason for Mr. Santosh Kumar to falsely claim to be the Manager with the petitioner – UK Company in this letter dated 4.11.2008 which was sent much before this consignment got stuck with Customs Department. This letter in fact clearly shows that Mr. Santosh Kumar was an employee of the petitioner company though he simultaneously would be an employee of the Indian Company.

11. A perusal of letter dated 12.6.2003 sent to PHHL would also show that one Director of the petitioner company was also a Director of Indian Company. Mr. Inder Kumar Bisnoi, Managing Director of the petitioner company was a Director of the Indian Company, though he claims to have been appointed with effect from 7.4.2008. The declaration in this regard was filed only on 1.7.2010 which indicates that the said resignation could be antedated by him. The commonalty of the Director is to be viewed in the light of the statement of Mr. Santosh Kumar claiming

the petitioner – UK Company to be a foreign company of the Indian Company and the UK Company giving address of the Indian Company as its India office address. This finds further corroboration from the fact that Mr. Santosh Kumar was working not only with Indian company but also with UK Company and even the logos appearing on the letterhead of the petitioner – UK company and the Indian Company was same.

12. As held by the Apex Court in **Patel Engineering Ltd. versus UOI** [(2012) 11 SCC 257], the State which has the right to enter into contract with any person also has a right to decline to enter into a contractual relationship with a person for a legitimate purpose. On course, the State even in such matters must necessarily act fair, reasonable and without being actuated by malafide. However, the Court will not interfere with the decision not to enter into a contractual relationship with a person unless it finds that the decision taken in this regard was wholly arbitrary, perverse or illegal. When an order of blacklisting/ banning a person for a limited period is passed after giving a show cause notice and opportunity of hearing to the person concerned, the Court would not be justified in substituting its own decision over the decision of the State except in cases mentioned above. In the facts and circumstances of the case, as discussed

hereinabove, the order passed by the CMD and upheld by the Board of Directors of PHHL cannot be said to be illegal, arbitrary or perverse in nature so as to call for interference by the Court.

13. As regards the period of ban, the learned counsel for the petitioner submitted that the said order has already been in force for more than three years, which cannot be said to be **inadequate**, considering the nature of allegations. In this regard, he drew my attention to the letter dated 29.10.2008 sent by the M/s South East Aerospace of Australia to the Assistant Commissioner of Customs admitting the mistake on its part by shipping goods to a wrong address instead of shipping it to PHHL. He also submitted that the requisite stamp duty and penalty has already been paid by the petitioner company.

During the pendency of this writ petition, the Court permitted the petitioner to make a representation to the Board of Directors of PHHL to reduce the period of banning from five years to a lesser period. In terms of the liberty granted by this Court, the matter was considered by the Board of Directors which, however, decided not to reduce the period of banning. As noted earlier, in such matters, the Court cannot substitute its own view for the view of the Competent Authority unless the said view is

shown to be wholly arbitrary, unreasonable or perverse. In the facts and circumstances of the case, particularly considering the extent Mr. Santosh Kumar had gone for the purpose of getting the consignment cleared, the view taken by the CMD of PHHL, which has been confirmed by the then Board of Directors cannot be said to be unreasonable or arbitrary so as to call for an interference by the Court. Moreover, considering that Shri Santosh Kumar had personal interest in the matter and therefore no incentive to go to the extent of forging stamp of PHHL and signatures of its officials, there is a reasonable probability of the senior management of the petitioner having given nod to what Mr. Santosh Kumar did, to get the consignment released. I, therefore, find no good ground to reduce the period for which the petitioner company has been banned from dealing with PHHL.

14. I also feel that the petitioner has not disclosed the true state of affairs to the Court since it took the stand that it has no linkage with the Indian Company whereas the true state of affairs as reflected in the statement made by Mr. Santosh Kumar and various documents sent by the petitioner company to PHHL reflect otherwise and clearly indicate a close connection between the two companies. This is yet another reason, I

do not find it appropriate to interfere with the decision taken by the respondent.

For the reasons stated hereinabove, I find no force in this petition and the same is hereby dismissed. There shall be no orders as to costs.

V.K.JAIN, J

SEPTEMBER 17, 2013/*rd*

