

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 12.12.2014

+ **W.P.(C) 8595/2014**

M.B. EXIM PVT. LTD.

..... Petitioner

versus

**EXPORT INSPECTION AGENCY, MINISTRY
OF COMMERCE AND INDUSTRY & ORS.**

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Anuj Tyagi and Mr Nishit Agrawal.

For the Respondents : Mr L. R. Khatana for R-1 & 2.
Mr Akshay Makhija, CGSC for R-3.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

“Issue a writ of mandamus directing the Respondents to release the certificates of inspection for the samples of consignments corresponding to invoice no. MB-017/2014-15 and MB-018/2014-15 both dated 11.06.2014, submitted by the Petitioner.”

2. The petitioner is, *inter alia*, engaged in the business of exporting honey and is also a recognized export house. It is alleged by the respondents that the petitioner had exported 120 containers of honey without the certificate of export issued by the Export Inspection Agency-respondent no.1 (hereafter also referred to as the “EIA”). It has been further alleged that such export was in violation of the Export of Honey

(Quality Control, Inspection and Monitoring) Rules, 2002 (hereafter the “Rules”).

3. Pursuant to the aforesaid allegations, respondent nos. 1 & 2 have withheld issuance of inspection certificates in respect of export consignments of honey, which are pending clearance.

4. The principal question to be addressed is whether respondent nos. 1 & 2 had the authority to withhold grant of inspection certificates on account of an alleged violation on the part of the petitioner in respect of past export consignments.

5. Briefly stated the relevant facts necessary for considering the aforesaid controversy are as under:

5.1 The petitioner asserts that during the period 2012-14, the petitioner exported consignments of honey to a buyer in the United States of America. According to the petitioner, the said buyer did not require a certification from any Indian Agency and had also issued a letter to this effect. Admittedly, the petitioner had failed to apply for and obtain the inspection certificates with respect to the said consignments of honey.

5.2 The petitioner received a show cause notice dated 09.04.2014 from the EIA alleging that the petitioner had exported honey without the necessary certificate of export issued by the EIA and calling upon the petitioner to show cause why suitable penal action should not be taken against the petitioner for the above cited violation.

5.3 The petitioner responded to the show cause notice by a letter dated 16.04.2014, *inter alia*, contending that there was no requirement for the mandatory EIA certificate by the US Authorities and all the consignments exported by the petitioner had been cleared at the USA Port/authority. The petitioner further, candidly, submitted that it was unaware of the notification dated 04.03.2002 whereby the Rules had been notified and further assured that it would take due care in the future. At the material time, a consignment of six containers was pending inspection by the EIA and the petitioner requested that the same be cleared.

5.4 The petitioner made several representations to the EIA for certification of its pending consignments. However, the EIA failed and neglected to provide the necessary certificates. The correspondence between the parties indicates that the EIA has been insisting that the petitioner provide the necessary details with respect to the exports of honey, which were made without certification.

5.5 Finally, the petitioner received a letter dated 11.07.2014 which read as under:-

“Sir,

Please find enclosed details of Honey consignment received from one of importing country authority (USFDA). According to the information received, you have smuggled 130 container of honey violating the rules of Govt. of India on Honey. Therefore, you are advised to deposit the penalty amount of Rs.19,79,981/- in the form of demand draft drawn in favour of Export Inspection Agency-Delhi was informed earlier vide this office letter EIA/DEL/Honey-CWI/Alert/2014-15/1125-1127 dated 12.06.2014.

The certificates of inspection of two shipments are ready and shall be issued after receipt of the penalty amount.”

6. I have heard the learned counsel for the parties. The respondents did not seek any opportunity to file a counter affidavit and the learned counsel advanced his arguments.

7. It was contended on behalf of the respondents that the petition ought to be dismissed on the ground that an alternative remedy of appeal under Rule 7 of the Rules was available to the petitioner. The learned counsel further referred to the pleadings and submitted that the same were vague and contradictory. It was pointed out that the petitioner had pleaded that a certificate from the EIA is not necessary and on the other hand sought a direction that the said certificates be issued. The learned counsel, thereafter, referred to the decision of the Supreme Court in **Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing Society, Jaipur and Ors.**: (2013) 5 SCC 427 and submitted that the remedy under Article 226 of the Constitution of India was a discretionary remedy and ought not to be exercised in favour of the petitioner who had, admittedly, exported goods in violation of the Rules.

8. The learned counsel for the petitioner submitted that the action of respondent nos. 1 & 2 in withholding certificates was without authority of law. He pointed out that the only reason for withholding the certificates was the allegation regarding contravention of the Rules in respect of the consignments exported by the petitioner in the past. He contended that inspection certificates could not be withheld with respect to the current consignments, on that ground.

9. The Parliament enacted the Export (Quality Control and Inspection) Act, 1963 (hereafter the “Act”). The Preamble of the Act indicates that the objective of the Act was for “*development of the export trade of India through quality control and inspection*”. Section 17 of the Act empowered the Central Government to make rules to carry out the purposes of the Act. In exercise of the said powers, the Central Government had notified the Rules which came into effect on 04.03.2002.

10. In order to consider the present petition, it is not necessary to examine the controversy whether the past consignments of honey exported by the petitioner were in violation of the Rules. The EIA has already issued a show cause notice calling upon the petitioner to show cause why penal action should not be taken against the petitioner in that regard. The petitioner had responded to the said allegations and it is upon the EIA to pass any order in accordance with law. The learned counsel for the respondent nos. 1 & 2 could not show any provision of law which entitled respondent nos. 1 & 2 to withhold inspection certificates as a punitive measure.

11. The learned counsel for respondent nos. 1 & 2 also could not show any basis or legal provision for the impost of penalty as levied by the letter dated 11.07.2014. He contended that the expression “penalty” was erroneous and, essentially, the EIA was seeking to recover inspection fees payable in respect of the past consignments. I am unable to appreciate the stand of the EIA. It is doubtful whether the EIA can recover inspection fee in respect of past consignments which have admittedly not been inspected by the EIA. However, in the event such fees are payable, it would be upon

the EIA to recover the same in accordance with law, after affording an opportunity for the petitioner to respond to any proposed action. The EIA has to function within four corners of the statute and it is not open for the EIA to act arbitrarily, whimsically or contrary to the provisions of law. The EIA has the statutory duty to inspect and issue certificates, it cannot refuse to discharge its function.

12. In the present case, the learned counsel for the respondent nos. 1 & 2 could not point out any provision in law which entitled the respondent nos. 1 & 2 to withhold the certificates on account of any dispute with respect to past consignments. Admittedly, the petitioner has paid the inspection fees with respect to the consignments that have been submitted for inspection. In the circumstances, it is incumbent upon the EIA to inspect the consignments and issue the necessary certificates.

13. It is also relevant to note that the consignments have been pending clearance for want of the necessary certificates since several months. The petitioner had made repeated representations for certificates to be provided in order that the said consignments could be exported. The EIA had also been put to notice that any delay in export clearance could result in the orders being cancelled. In the circumstances, the action of respondent nos. 1 & 2 in withholding the certificates would amount to dereliction of their duty and is, clearly, irresponsible. The EIA is an agency which is entrusted with carrying on the functions as specified under the Rules and it is their duty to ensure that the same are performed. Any action that respondents may take against the petitioner has to be in accordance with law.

14. In the present case, it is apparent that the action of respondent nos. 1 & 2 in withholding the certificates is patently without authority of law and thus, warrants interference under Article 226 of the Constitution of India. The Supreme Court in *Rajasthan State Industrial Development and Investment Corporation (supra)* had, *inter alia*, held that:

“The primary purpose of the writ is to protect and establish rights, and to impose a corresponding imperative duty existing in law. It is designed to promote justice (*ex debito justitiae*) and its grant or refusal is at the discretion of the court. The writ cannot be granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the respondent. Thus, the writ does not lie to create or establish a legal right but, to enforce one that stood already established. While dealing with a writ petition, the court must exercise discretion, taking into consideration a wide variety of circumstances, *inter alia*, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal. Hence, discretion must be exercised by the court on grounds of public policy, public interest and public good. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice.”

15. Applying the aforesaid principles, in the given facts and circumstances, it is apposite that this Court exercise its jurisdiction to enforce the respondents to perform their duty. In my view it is not necessary for this Court to refrain from exercising its jurisdiction under Article 226 of the Constitution of India on account of existence of an alternate remedy.

16. In view of the above, the writ petition is allowed and the respondents

are directed to issue the inspection certificates for all pending consignments within a period of two weeks from today.

17. It is clarified that the question, whether the exports made by the petitioner in the past were in violation of the Rules, has not been examined and nothing stated herein would preclude the respondents from proceeding against the petitioner in respect of such alleged violation in accordance with law. Needless to mention that all contentions of the petitioner in this regard are also open. No order as to costs.

DECEMBER 12, 2014
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VIBHU BAKHRU, J

