

GAHC010160922022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/2414/2022

GUJARAT STATE FERTILIZERS AND CHEMICALS LTD.,
HAVING ITS OFFICE AT FERTILIZER NAGAR, 391750-02, DISTRICT
VADODARA, GUJARAT, REPRESENTED BY ITS AUTHORIZED
REPRESENTATIVE, SHRI AMIT S. SHAH, AGED ABOUT 41 YEARS, S/O
SHASHIKANT G. SHAH.

VERSUS

CENTURY PLYBOARDS (I) LTD., AND 5 ORS
A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956, HAVING
ITS REGISTERED OFFICE AT 6, LYONS RANGE, KOLKATA- 700001 AND
FACTORY AT INTER ALIA, VILL- KOKJHAR, PALSARI, DIST- KAMRUP,
ASSAM

2:CENT PLY
A DIVISION OF THE RESPONDENT NO.1 HAVING ITS FACTORY AT
VILLAGE KOKJHAR
MIRJA PALASHBARI ROAD
P.O PALASHBARI, DIST- KAMRUP, ASSAM

3:UNION OF INDIA
THROUGH THE SECRETARY
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE
HAVING ITS OFFICE AT NORTH BLOCK
NEW DELHI- 110001

4:THE UNDER SECRETARY
THE GOVERNMENT OF INDIA
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE
HAVING ITS OFFICE AT NORTH BLOCK
NEW DELHI- 110001

5:DIRECTOR
DIRECTORATE GENERAL OF ANTI DUMPING DUTIES (DGAD)

JEEVAN TARA BUILDING
4TH FLOOR, 5- PARLIAMENT STREET
NEW DELHI-110001

Advocate for the Petitioner : MR P P SARMA

Advocate for the Respondent : ASSTT.S.G.I.

Linked Case : WA/11/2020

GUJARAT STATE FERTILIZERS AND CHEMICALS LTD.
HAVING ITS OFFICE AT FERTILIZERNAGAR
391750-02, DISTRICT VADODARA
GUJARAT

VERSUS

CENTURY PLYBOARDS (I) LTD.
AND 4 ORS
A COMPANY INCORPORATED UNDER THE COMPANIES ACT
1956, HAVING ITS REGISTERED OFFICE AT 6
LYONS RANGE
KOLKATA- 700001 AND FACTORY AT INTER ALIA
VILL- KOKJHAR
PALSBARI, DIST- KAMRUP, ASSAM

2:CENT PLY
A DIVISION OF THE RESPONDENT NO.1 HAVING ITS FACTORY AT VILLAGE
KOKJHAR, MIRJA PALASHBARI ROAD
P.O PALASHBARI
DIST- KAMRUP, ASSAM

3:UNION OF INDIA
THROUGH THE SECRETARY
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
HAVING ITS OFFICE AT NORTH BLOCK
NEW DELHI- 110001
4:THE UNDER SECRETARY

THE GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
HAVING ITS OFFICE AT NORTH BLOCK
NEW DELHI- 110001

5:DIRECTOR

DIRECTORATE GENERAL OF ANTI DUMPING DUTIES
(DGAD), JEEVAN TARA BUILDING
4TH FLOOR, 5- PARLIAMENT STREET
NEW DELHI-110001.

Advocate for : MR P P SARMA
Advocate for : ASSTT.S.G.I. appearing for CENTURY PLYBOARDS (I) LTD.
AND 4 ORS

Linked Case : WA/265/2022

CENTURY PLYBOARDS (I) LTD. AND ANR.
A COMPANY INCORPORATED UNDER THE COMPANIES ACT
1956, HAVING ITS REGISTERED OFFICE AT 6
LYONS RANGE
KOLKATA- 700001 AND FACTORY AT VILLAGE KOKJHAR
PALASBARI, DIST- KAMRUP
ASSAM

2: CENT PLY
A DIVISION OF THE PETITIONER NO.1 COMPANY HAVING ITS FACTORY AT
VILLAGE KOKJHAR
MIRZA PALASHBARI ROAD
P.O PALASHBARI
DIST- KAMRUP, ASSAM
BOTH THE PETITIONERS ARE REP. BY MR. NARENDRA PRATAP SINGH
AUTHORISED SIGNATORY OF PET. NO. 1 AND 2

VERSUS

UNION OF INDIA AND 3 ORS. E
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
NORTH BLOCK
NEW DELHI- 110011

2:THE UNDER SECRETARY TO THE GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE-TRU
HAVING ITS OFFICE AT NORTH BLOCK
NEW DELHI- 110011
3:DIRECTORATE GENERAL OF ANTI DUMPING DUTIES
(DGAD)
JEEVAN TARA BUILDING
4TH FLOOR
5- PARLLAMENT STREET
NEW DELHI-110001.

4:GUJARAT STATE FERTILIZERS AND CHEMICALS LIMITED
FERTILIZER NAGAR
VADODRA 391750
GUJARAT

Advocate for : DR. A SARAF

Advocate for : ASSTT.S.G.I. appearing for UNION OF INDIA AND 3 ORS. E

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

JUDGMENT

Date : 21-06-2023

(S. Mehta, CJ)

1. Heard the learned counsel for the parties.
2. The instant Interlocutory Application has been preferred by the applicant herein seeking leave to file an appeal against the judgment and order dated 26.08.2019, passed by the learned Single Judge, whereby WP(C) No. 6568/2017 preferred by the respondent no. 1 herein was disposed of with certain directions. The appellant herein is concerned with the direction given in paragraph 169 of the judgment, which reads as follows:

“169. In any view of the matter we may also add that if the confidentiality clause under Rule 7 would be applicable in respect of the information provided in the application by the domestic industry under Rule 5(1), the same cannot be stretched to the extent that even the determination by the designated authority as regards the normal value or the export price or the margin of dumping or even the non-injurious price of the domestic industry shall remain confidential to the extent that it will not be revealed at all to any one at any stage, but the ADD would be imposed. As already interpreted Clause 16 requires that the designated authority before giving its final findings to inform all interested parties of the essential facts under consideration which form the basis of its decision. The essential facts in our view would constitute those facts which forms the basis of the decision that the designated authority may arrive at, where such decision would also include the decision to impose the ADD and the determination of the essential parameters thereof i.e. the normal value, export

value and margin of dumping or even the non-injurious price.

We may again add that the requirement of Rule 16 are not subjected to the confidentiality clause of Rule 7, where although Rule 7 begins with a non obstante clause, but such provision being notwithstanding to relate only to Rule 6(2), 6(3), 6(7), 12(2), 14(4) and 17(4) and the non obstante provision does not include Rule 16.”

3. Mr. Pragyan P. Sharma, learned counsel, assisted by Mr. R. Sarma, learned counsel representing the applicant contended that the process for imposition of Anti-Dumping Duty (ADD) on the respondent on import of Melamine was initiated on the complaint of the applicant. It was thus contended that the applicant is indisputably a person aggrieved in the matter. Mr. Sharma further submitted that the direction given by the learned Single Judge in paragraph 169 of the impugned judgment (*supra*) to inform the interested party, i.e. the writ petitioner of the essential facts under consideration, which formed the basis of the decision to impose ADD, would directly infringe upon the confidentiality clause under Rule 7 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (for short “1955 Rules”). He thus urged that the denial of right to file an appeal against the impugned judgment would imply that the confidentiality of the information supplied by the applicant to the designated authority would be impinged at the same time, denying the right to seek legal remedy to the applicant herein. Mr. Sarmah submitted that as per the language of Rule 7, in case the informer, which in the present case is the applicant herein, objects to the disclosure of the information and the designated authority, after due consideration feels that the information/part of the information is essential to be supplied, then, at best, it may entail into drawing of adverse inference against the informer but indisputably no part of the information supplied can be provided without the consent of the informer. He urged that the designated

authority has ruled in favour of the applicant that the entire information provided by the applicant is confidential and, as a consequence, the direction given by the learned Single Judge to provide material extracts of the information to the writ petitioner would clearly mean that the right of the applicant to seek privilege against disclosure is being breached. On these grounds, Mr. Sarmah implored the court to accept the application and to grant leave to the applicant to file an appeal against the impugned judgment and order. In support of his contentions Mr. Sarmah placed reliance on the following judgments:

- (i) In Re Sidebotham: (1880) LR 14 Ch D 458(CA).
- (ii) Regina vs. Liberpool Corporation: (1972) LR 19 QBD 174 (CA).
- (iii) Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra & Ors.: (2013) 4 SCC 465.
- (iv) Jashbhai Motibhai Desai vs. Roshan Kumar, Haji Bashir Ahmed & Ors.: (1976) 1 SCC 671.
- (v) Ramesh Hirachand Kundanmal vs. Municipal Corporation of Greater Bombay & Ors.: (1992) 2 SCC 524.
- (vi) Deputy Commissioner, Hardoi, In Charge Court of Wards, Bharawan Estate vs. Rama Krishna Narain & Ors. (AIR 1953 SC 521)
- (vii) Saraswati Industrial Syndicate Ltd. Vs. Commissioner of Income Tax, Haryana, Rohtak: (1999) 3 DCC 141.

4. Per contra, Dr. Ashok Saraf, assisted by Mr. N. N. Dutta, learned counsel appearing for the appellant/writ petitioner vehemently and fervently opposed the submissions advanced by the applicant's counsel. He urged that the learned Single Judge made a thorough evaluation of the scheme of Rule 7 and Rule 16 of the Rules of 1955 and then came to a well reasoned conclusion that in the final findings of the designated authority dated 19.02.2018, the normal value, export value and margin of dumping, or even the non-injurious price, though relied upon, were screened by obscure asterisk marks. He urged that these very

values were thereafter relied upon by the designated authority to pass the order directly affecting the writ petitioner inasmuch as the Anti Dumping Duty (ADD) was quantified on the basis of these very values. As per Dr. Saraf, veil of confidentiality on these informations could not have been claimed because the same formed the foundation of the order imposing ADD. The disclosure thereof is essential so that the interested/affected party, i.e. the writ petitioner, can put forth submissions for seeking final findings of the designated authority. He further urged that the learned Single Judge considered the purport of confidentiality, i.e. Rule 7(1) vis-à-vis the provisions contained in Rule 16 of the Rule of 1955 and thereafter came to a just and logical conclusion that requirement of Rule 16 is not subject to the confidentiality clause of Rule 7. Dr. Saraf submitted that the view taken by the learned Single Judge expressing reservation about maintaining confidentiality even on the parameters effecting determination of ADD is absolutely justified and, hence, the applicant has no reason to be aggrieved of the said disclosure as it would not cause any legal injury to the applicant. He further urged that a notification dated 18.02.2019 has been issued by the Assistant Director (Cost), which provides for a review to be made at the instance of interested parties if they are aggrieved with the manner and determination of the ADD made earlier. As per Dr. Saraf, in order to avail the remedy of review, access to the parameters, on which ADD was quantified, is essential. He further pointed out that the applicant filed an application for impleadment in the writ petition, which too was not allowed and the applicant was just permitted to act as an intervenor in the writ proceedings vide order dated 15.06.2018, passed in I.A. (Civil) 418/2018. The said order, which has attained finality, concludes that no legal right flows in favour of the domestic industry (applicant herein) so as to implead it as a party in the writ

proceedings. He urged that the order dated 15.06.2018, whereby the application for impleadment filed by the applicant before the writ court was disposed of only by granting it permission to intervene having attained finality, the applicant cannot be allowed to act as a party and file an appeal against the final order of the learned Single Judge. Dr. Saraf further pointed out that the judgment and order dated 26.08.2019 was subjected to review at the instance of the writ petitioner. As per Dr. Saraf, the original judgment merged into the order of review and, hence, the application seeking leave to file appeal has to fail only for the reason that the final order passed in the review application has not been challenged by the appellant in the connected writ appeal. He further urged that if, at all, the applicant intends to buttress its cause, then it can again move an application seeking right to intervene the writ appeal preferred by the respondent herein. On these grounds, Dr. Saraf implored the court to reject the application seeking leave to file appeal.

In support of his submissions, Dr. Saraf placed reliance on the Hon'ble Supreme Court judgment in the case of ***N. Swain and Another vs. B. K. Mohapatra and Others***, reported in ***1970 (3) SCC 321*** and ***Vilas Dadarao Chavan vs. Kiran Ashok Patil Dongaonkar and Others***, reported in ***[2009 (1) Mh.L.J.]***.

5. We have given our thoughtful consideration to the submissions advanced at the Bar and have gone through the material available on record.

6. Firstly we take up the issue whether the applicant herein can be said to be a person aggrieved in this case. In this context, we may note that the applicant may have provided the information which led to the initiation of the enquiry for determination of the ADD, but merely the fact that the information provided by the applicant led to initiation of the proceeding for imposition of ADD by itself

would not imply that the applicant is a person aggrieved in this case. Mr. Sarmah placed reliance on the judgment rendered in the case of ***Jasbhai Motibhai Desai vs. Roshan Kumar, Haji Bashir Ahmed and Others***, reported in **(1976) 1 SCC 671** in support of the argument that the applicant is a person aggrieved in this case. However, we feel that in light of the observations made by the Hon'ble Supreme Court in the case of ***Ayaubkhan Noorkhan Pathan vs. State of Maharashtra & Ors.***, reported in **(2013) 4 SCC 465**, which was also referred to by Mr. Sarmah, the applicant cannot be considered to be a person aggrieved in the legal parlance. The relevant paragraphs of the judgment of the Hon'ble Supreme Court in ***Ayaubkhan Noorkhan Pathan*** (supra) are reproduced herein below:

“9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under [Article 226](#) of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. (Vide : [State of Orissa v. Madan Gopal Rungta](#), AIR 1952 SC 12; [Saghir Ahmad & Anr. v. State of U.P.](#), AIR 1954 SC 728; [Calcutta Gas Company \(Proprietary\) Ltd. v. State of West Bengal & Ors.](#), AIR 1962 SC 1044; [Rajendra Singh v. State of Madhya Pradesh](#), AIR 1996 SC 2736; and [Tamilnad Mercantile Bank Shareholders Welfare Association \(2\) v. S.C. Sekar & Ors.](#), (2009) 2 SCC 784).

10. A “legal right”, means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of

law. The expression, “person aggrieved” does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must therefore, necessarily be one, whose right or interest has been adversely affected or jeopardised. (Vide: [Shanti Kumar R. Chanji v. Home Insurance Co. of New York](#), AIR 1974 SC 1719; and [State of Rajasthan & Ors. v. Union of India & Ors.](#), AIR 1977 SC 1361).”

From the above extracts, it is clear that the Hon’ble Supreme Court has taken an affirmative view that a stranger cannot be permitted to meddle in any judicial proceedings unless the court is satisfied that such person/entity falls within the category of “aggrieved person”, who has suffered legal injury and is entitled to challenge the effect/action of the order in the court of law. It was further observed that the court can enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. “Legal right” means an entitlement arising out of legal rules. Thus, it may be defined as an advantage or a benefit conferred upon a person by the rule of law. The expression “person aggrieved” does not include a person who suffers from a psychological or an imaginary injury.

7. Viewed in light of the aforesaid observations of the Hon’ble Supreme Court in the case of **Ayaubkhan Noorkhan Pathan** (supra), we are of the firm opinion that by any stretch of imagination the applicant cannot be treated to be a person aggrieved, who has suffered a legal injury by the direction of learned Single Bench to disclose the numerical values from the complaint filed by the applicant to the competent authority. That apart, the fact remains that even in the writ proceedings the application filed by the applicant seeking impleadment was not accepted in the terms prayed for and vide order dated 15.06.2018, passed in I.A. (Civil) 418/2018, the applicant was permitted only to act as an

intervenor in the writ petition. The said order was not challenged any further and thus the same has attained finality. Hence, accepting the instant application seeking leave to file appeal would tantamount to granting more leverage to the applicant than what was allowed in the original writ proceedings which, to our mind, is absolutely unwarranted. Moreover, we feel that the direction given by the learned Single Judge in the impugned order is only to provide the numerical values/parameters on the basis whereof the ADD was quantified. These numerical values/parameters cannot be considered as confidential material by any stretch of imagination. The direction given by the learned Single Judge to disclose the parameters to the respondent/writ petitioner was otherwise also essential so as to enable the writ petitioner to avail appropriate legal remedy against the ADD quantified by the designated authority.

8. In view of the above discussion, we are of the firm view that the instant application seeking leave to file appeal is devoid of merit and, hence the same is dismissed. However, the applicant shall be at liberty to seek permission for intervention in the writ appeal filed by the respondent herein, if so desired.

Interlocutory Application stands dismissed with the above observations.

No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant