HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.24234 of 2015
Date of Decision : November 19, 2015

M/s Trackon Couriers Pvt. Ltd., New Delhi .... Petitioner

Versus

Permanent Lok Adalat, Karnal and ors. .... Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present:- Mr. Ajay Ghangas, Advocate,
for the petitioner.

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HARINDER SINGH SIDHU, J.

The petitioner, which is a courier company, has filed the instant petition praying to quash the order dated 5.5.2015 (Annexure P-3) passed by learned Permanent Lok Adalat, Public Utility Services, Karnal, vide which the application moved by respondent No.2 under Section 22-C of the Legal Services Authorities Act, 1987 (in short 'the Act, 1987') was allowed and the petitioner company was directed to pay a sum of Rs.43,240/- on account of loss suffered by respondent no.2 due to non delivery of the parcel containing about 6.5 kg of medicines worth Rs.43,240/- before the expiry date of the said medicines i.e. July, 2015.

The aforesaid medicines were dispatched vide bill dated 23.8.2013 and receipt No.340197775 for Hoogly, West Bengal from Karnal through the petitioner company. When the consignment was not delivered to the addressee nor returned to the petitioner, written complaints about the non-delivery of the said medicine packet were sent through E-mails but to no avail.

Aggrieved, respondent No. 2 filed application under Section 22-C of the Act, 1987.

In the written statement filed by the petitioner before Learned Permanent Lok Adalat, the receipt regarding consignment of medicine dated 23.08.2013 was admitted. It was stated that the consignment sent by respondent No.2 had been taken into custody by the Sales Tax Department at Calcutta as the VAT Form 51, the bill and other relevant documents had not been provided by respondent No. 2. It was stated that the consignment would be released on production of relevant documents by respondent No.2. It was also stated that information regarding the goods having been taken into custody by the Sales Tax Department at Calcutta was immediately sent to respondent No.2. Accordingly, it was pleaded that there was no lapse or deficiency in service on the part of the petitioner-company.

Taking into consideration the fact that the expiry date of the medicines was July, 2015 and the petitioner company had taken the stand that the goods had been taken into custody because the VAT form No.51, the bill and other relevant documents were not made available to it by respondent No.2, the Learned Permanent Lok Adalat advised the parties to take steps for release of the packet of the medicines from the Sales Tax Department at Calcutta. The petitioner undertook to provide a copy of the notice served upon it by the Sales Tax Department at Calcutta and also to assist respondent No.2 in getting the medicines released from the custody of the authorities. This fact was recorded in the order of the Permanent Lok Adalat dated 17.04.2014, When the matter came up for hearing on 5.5.2014, respondent No.2 complained that the petitioner-company had failed to carry out the directions contained in the order dated 17.4.2014. It was stated that neither copy of the notice was provided to the respondents nor any cooperation was extended to get the medicines released at Calcutta.

On the other hand, on behalf of the petitioner company it was stated that respondent No.2 had not personally gone to Calcutta, but had sent some unknown person. The case was again adjourned to enable the parties to resolve the matter and to get the medicines released in accordance with the order dated 17.04.2014. However, the efforts did not succeed. The learned Permanent Lok Adalat concluded that the conduct of the petitioner-company was not appreciable as it did not render the requisite assistance and cooperation in getting medicine packet released. Accordingly, it was held that compensation be given to respondent No.2 by the petitioner-company for the loss suffered by him, on account of non-delivery of the parcel containing medicines within the expiry date July, 2015. Learned Permanent Lok Adalat in its order dated 5.5.2015 has held as under:-

"The perusal of the proceedings conducted on different dates, as reproduced above, indicates that the petitioner took every step to get the medicines released so that the same can be delivered to the consignee. This Adalat also took keen interest in the matter and directed the respondents to take proper steps and to help the petitioner in getting the delivery of the medicines from the sales tax department after completing all the formalities. It appears from the proceedings that the conduct of the respondents was not appreciable. The parcel was taken into custody by the sales tax department from the custody of the respondent company. It was the respondent company which was in possession of the relevant documents which could facilitate the release of the articles from the sales tax department. Only respondent company could help the petitioner in seeking release of the parcel. The petitioner was unable to approach the sales tax authorities in the absence of any relevant document for getting the parcel released. For the reasons best known to it, the respondent company did not take any interest in the matter rather created hindrance in the act of release of the parcel by the sales tax department as it did not provide the requisite documents to the petitioner which were required for the purpose.

It is contended on behalf of respondents that there is no document on the file to show that the medicines worth Rs.43,240/- were sent by the petitioner through the courier to Hoogly. Nor any disclosure was made regarding this fact while booking the parcel nor the conditions mentioned on the back of Ex.R3 were complied with and thus the respondent company is not liable to reimburse the petitioner for the cost of the medicine allegedly sent through the courier. The stand taken by the respondents appears to be justified. The fact is that the petitioner deals in supply of the medicines. He has been using the service of respondents very frequently. When the parcel was seized by the tax department the petitioner approached the respondents and disclosed the relevant fact that the parcel contained medicines. When the party appeared before this Adalat, it became more than clear that the petitioner had sent the medicines to Hoogly through the courier service of respondents. This Adalat issued directions on different dates to the respondents to provide proper assistance to the petitioner so that he can take delivery of the medicines from the sales tax department after completion of the formalities as per law. The respondents did not provide such assistance, taking shelter under one pretext or the other. The concerned papers issued by the sales tax department at the time of seizure of the medicines, were with the respondents. The petitioner was unable to approach the tax authorities in the absence of such documents. Act of the respondents not handing over those papers to the petitioner and by not providing any assistance to him in the matter, handicapped the petitioner's steps for

> seeking delivery of the parcel. Though, the petitioner was not entitled to claim the price of the medicines allegedly sent through the courier but when all the facts became clear and respondents failed in their duty to provide necessary assistance to the petitioner then they can rightly be accused of deficiency in service which has resulted into the loss of the medicines worth Rs.43,240/- as parcel containing these medicines has not been released by the sale tax department authorities due to the fact that the respondents did provide any assistance in the matter. In such circumstances, the respondents are certainly liable to compensate the petitioner for the loss suffered by him on account of non-delivery of the parcel containing medicines with expiry date of July, 2015."

Learned counsel for the petitioner has contended that there was no fault on the part of the petitioner-company and in fact, the consignment was taken into custody by the Sales Tax Department because the VAT form No.51, the bill and other relevant documents were not provided by respondent No.2 and, thus, there was no negligence or lapse on the part of the petitioner-company.

This argument of learned counsel for the petitioner cannot be accepted in view of the findings recorded by learned Permanent Lok Adalat, wherein, it has been specifically held that the petitioner did not render the required assistance to respondent no.2 to enable him to get the parcel of medicines released from the custody of the Sales Tax Department. The relevant documents based on which the medicines could be released were in possession of the petitioner-company. which were not made available to respondent No. 2.

A specific finding regarding the conduct of the petitioner has been recorded by the Ld. Permanent Lok Adalat which led to loss to respondent No.2 and thereafter compensation has been awarded. I do not find any illegality in the aforesaid Award warranting interference of this Court.

Dismissed.

19.11.2015 **(Harinder Singh Sidhu)**
dinesh/ **Judge**