

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.1845/2014

Kale Implex Private Ltd, through its Director and others ..vs.. Union of India, through
its Secretary, New Delhi and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. M. G. Bhangde, Senior Advocate with Mr. A. K. Somani and
Mr. M. M. Agnihotri, Advocates for petitioners.
Mrs. M.Chandurkar, Standing Counsel for respondent nos.1,2, 9 & 10
Mr. A. Joshi, A.G.P. for respondent nos. 3 to 8.

CORAM : B. R. GAVAI & V. M. DESHPANDE, JJ.

DATE : OCTOBER 7, 2016

The present petition has been filed by the petitioner with a prayer that the communication addressed by respondent no.7 are beyond their powers under the provisions of the Drugs and Cosmetics Act, 1940.

When the matter was heard by this Court on the last date, we had brought to the notice of the learned Government Pleader a communication dated 05.06.2014 which is at Annexure XXV to the petition, which was issued by the Deputy Director General (International Relations & Global Business) to the Chief Postmaster General, Maharashtra Circle, Mumbai. It will be pertinent to reproduce the paragraphs 3, 4 and 5 of the said communication, which are as under:

“3. It is mentioned that checking and interception of international articles is provided in Sub paras 10.4 and 10.5 under para 10 Procedure in

case of Postal Exports of Chapter 17 of Central Board Excise and Customs Manual 2014 and in Foreign Post Guide Part-II of Department of Post, para 180 under Section IX Customs Control.

4. *As per the extant rules Assistant Drug Controller (ADC) attached to customs authority is the competent authority in this regard. Any authorities of State government of Maharashtra or any other state authorities do not have any jurisdiction. The raid and seizure of foreign articles by said Drug Inspector is illegal. Hence, the orders issued by the Maharashtra seem to put adverse effect on postal business.*

5. *In this regard it is requested to take up the matter with State Government and start booking of foreign registered letters/EMS. Advice from Ministry of Law and Justice, Department of Legal Affairs, Mumbai, if necessary, may be taken in this regard.”*

Perusal of the said communication would reveal that as per the rules in existence, the Assistant Drug Controller attached to customs authority is the competent authority in this regard. It is also stated that the authorities of State Government of Maharashtra or any other State authorities do not have any jurisdiction. It is also stated that the raid and seizure of foreign articles by said Drug Inspector is illegal. Hence, the orders issued by the Maharashtra seem to put adverse effect on postal business.

It will be relevant to refer to the judgment of the Apex Court in **D.Ramakrishnan ..vs.. Intelligence Officer, Narcotic Control Bureau; (2009) 14 SCC 603.** Their Lordships in paragraph 14 of the judgment observed thus:

“14. Section 80 of the Act provides that the provisions of the Act or the Rules made thereunder are in addition to, and not in derogation of the Drugs and Cosmetics Act, 1940 or the Rules made thereunder. The Drugs and Cosmetics Act, 1940 does not deal with exports. The provisions of the Customs Act do. The licensees, therefore, were thus, required to comply with the specific requirements of the Act and the Rules. It is not denied or disputed that the appellant neither applied for nor granted any authority to export by the Narcotic Commissioner or any other officer who is authorised in this behalf.”

(Emphasis supplied)

Thus, it is held that the Drugs and cosmetics Act, 1940 does not deal with the exports. The provisions of the Customs Act do.

Faced with this situation, the learned Government Pleader had made a statement that insofar as the exports are concerned, the State Government would not interfere with the business of the petitioner in exporting their products. She had further submitted that there are gross violations of the terms and conditions of the license.

She had further submitted that the respondent-authorities of the State Government reserve their rights to take action against the petitioner for breach of the condition of the license. We had adjourned the matter so as to enable the State Government to file an affidavit to that effect.

It will be relevant to refer to the affidavit of one Mr. Mohan Govndrao Kekatpure, Assistant Commissioner (Drugs), Food and drugs Administration, Nagpur dated 05.10.2016. In the said affidavit, it is stated thus:

“1. ...It is submitted that the Food and Drugs Administration (Maharashtra State), Mumbai shall continue to permit the petitioners to run their respective business in accordance with the express terms and conditions of the respective licenses granted to them. The Food and Drugs Administration (Maharashtra State), Mumbai reserve their right to take appropriate action against the present petitioners for breach and/or violation of any terms or conditions pertaining to the said licenses granted to them.”

It can thus be clearly seen that Their Lordships have held that the provisions of the Drugs and Cosmetics Act, 1940 are not applicable to the exports. So also, the State Government has also stated in the affidavit that the Food and Drugs Administration (Maharashtra State), Mumbai shall continue to permit the petitioner to run their respective businesses in accordance with the express terms and conditions of the respective licenses granted to them.

Only the right reserved is to take appropriate action against the present petitioner for breach and/or violation of the terms and conditions pertaining to the said licenses.

In that view of the matter, we find that the grievance of the petitioner no more survives. The writ petition is, therefore, disposed of in terms of the affidavit filed by the State as well as the observations made hereinabove.

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