

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 32 OF 2017

VELHO MICROBREW PVT. LTD., THR.
ITS DIRECTORS.,

... Petitioners

Versus

UNION OF INDIA, THR. MINISTRY OF
AGRICULTURE AND 3 ORS.,

... Respondents

Shri Prasheen Lotlikar, Advocate for the petitioner.
Shri Y.V.Nadkarni, Advocate for the respondent no.2.
Shri M.Amonkar, Central Government Standing
counsel for the respondent nos.1 to 3.

Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.

Date:- 11th April, 2017

P.C.

Heard Shri Prasheen Lotlikar, learned counsel appearing for the petitioner, Shri Y.V.Nadkarni, learned counsel appearing for the respondent no.2 and Shri M.Amonkar, learned Central Government Standing Counsel appearing for the respondent nos.1 to 3.

2. The challenge in the above petition is to an order dated 2nd December, 2016 passed by the respondent no.3 in connection with the goods imported by the petitioner.

3. During the course of hearing of the above petition, Shri Amonkar, learned Central Government Standing Counsel

appearing for the respondents no.1 and 3 has brought to our notice the provisions of Chapter V of the Plant Quarantine (Regulation of Import INTO India) Order, 2003 ("Order" for short) to point out that the petitioner have an efficacious alternate remedy to challenge such order before the Appellate Authority. The learned counsel appearing for the petitioner, however, points out that the order itself is illegal and, according to him, the jurisdiction of the Appellate Authority would rest upon the fact that the importer was carrying illegal imports. The learned counsel further submits that as the order itself is illegal, the question of approaching the Appellate Authority would not arise.

It is further pointed out, as such, that the respondent no.3 be directed to issue a Clearance Certificate of the goods which are lying with the respondent no.2.

4. Clause 12 of Chapter 5 of the said Order reads thus:

"12 Appeal (1) If an importer is aggrieved by the decision of the inspection authority regarding the destruction of any plant population, he may appeal to the Plant Protection Adviser within 7 days from the date of communication of the decision giving the grounds of appeal.

(2) It shall be lawful for the Plant Protection Adviser to rely on the observations of the inspection authority and such expert opinion, as he may deem necessary, for deciding the appeal.

(3) The memorandum of appeal under sub-clause (1) shall set out the grounds in successive paragraphs on which the decision is challenge and shall be accompanied by a bank draft in favour of the Plant Protection Adviser and payable at Faridabad, evidencing the payment of fee of Rs.100/-."

5. It is undisputed that the order under challenge in the present petition is a decision of the Inspection Authority regarding the destruction of the goods. In such circumstances, the petitioner are entitled to prefer an appeal in terms of the said Order before the Appellate Authority. As the petitioner have an efficacious alternate remedy to challenge the subject order, the question of invoking our jurisdiction under Article 226 of the Constitution of India, would not at all be justified.

6. During the course of hearing of the above petition, we had given an option to the learned counsel appearing for the petitioner to examine whether by an interim arrangement goods could be released as Shri M. Amonkar, learned Central Government Standing Counsel appearing for the respondent no.3 pointed out that in case of any breach of the provisions of the said Order, the petitioner would be liable to pay a sum of Rs.20,000/- at the highest amount was otherwise ordered to be deposited in this Court. But however, no such arrangement was accepted by the petitioner.

7. Without going into the merits of the rival contentions with regard to the payment or otherwise of the amount claimed by the respondent no.3 as the contentions raised in this petition can be raised before the Appellate Authority under Clause 12 of the said Order, we are not inclined to admit the above petition. As already pointed out hereinabove, the petitioner has an efficacious alternate remedy to get their grievance redressed and as such the above petition stands disposed off.

8. At this stage, at the request of the learned counsel appearing for the petitioner, the amount deposited with the Registry is directed to be refunded to the petitioner.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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