

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2017

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.11148 of 2006

R.A.Knitting
rep by its Partner,
Mr.A.Selvaraj

... Petitioner

Vs.

1.The Union of India,
rep by its Secretary,
Ministry of Textiles
(Exports III Section)
Udyog Bhavan,
New Delhi.

2.Second Appellate Committee,
Government of India,
Ministry of Textiles
(Exports III Section)
Udyog Bhavan,
New Delhi.

3.Office of the Textile Commissioner,
rep by its Director,
New C.G.O. Building,
48, New Marine Lines,
Mumbai 400 020.

4.The Apparel Export Promotion Council
rep by its Director
1, 3rd Street,
Indira Nagar, Tirupur-641 603.

5.Canara Bank,
P.N.Road,
Tiruppur 641 602.

... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondents culminating in the order of second respondent dated 18.01.2005 bearing reference Order No.14/1009/04-Exports-III/829 quash the same and direct the second respondent to

afford the writ petitioner a personal hearing in Appeal Case No.AEPC/2002/5314 and thereafter pass speaking order in merits and in accordance with law.

For Petitioner : Mr.K.Ashok Kumar

For Respondents: Mr.V.T.Balaji, for RR1 to 3
No appearance for RR4 and 5

O R D E R

Heard Mr.K.Ashok Kumar, learned counsel appearing for the petitioner and Mr.V.T.Balaji, learned counsel appearing for the respondents 1 to 3.

2. The petitioner has approached this Court for seeking the following relief,

"To issue a Writ of Certiorarified Mandamus, to call for the records of the respondents culminating in the order of second respondent dated 18.01.2005 bearing reference Order No.14/1009/04-Exports-III/829 quash the same and direct the second respondent to afford the writ petitioner a personal hearing in Appeal Case No.AEPC/2002/5314 and thereafter pass speaking order in merits and in accordance with law."

3. The case of the petitioner is as follows:

The petitioner is the registered partnership and running a textile manufacturing unit, exporting readymade garments. According to them, they are enjoying good reputation in export business of textile garments. In the course of that business, the petitioner had obtained permission as first come first serve quota (FCFS) of Category 5 (sweat shirts). The quota was granted to the petitioner on the basis that a bank guarantee was indeed furnished by the petitioner on 09.04.2003, by a nationalized bank viz., Canara Bank, Tirupur-fifth respondent herein, for a sum of Rs.10,00,000/-. The said bank guarantee has been renewed from time to time.

4. Owing to certain circumstances which were beyond the control of the petitioner, the manufacturing of garments fell short of the quota assigned to the petitioner before the stipulated time. Therefore, the petitioner sought extension in the year 2003 and the extension was granted by the authorities concerned till 11.07.2003. Thereafter, further extension was sought by the petitioner and the same was rejected.

5. In the above said circumstances, show cause notice was issued on 25.03.2004, by the fourth respondent, directing the petitioner to

show cause as to why the earnest money deposit cannot be forfeited for unutilized quota by the petitioner. However, in response to the show cause notice, a representation was made on behalf of the petitioner explaining the reasons for the short fall. However, not considering the same, speaking order was passed on 16.06.2004 by the fourth respondent, forfeiting the amount of Rs.7,59,209/-, thereby confirming show cause notice.

6. Aggrieved by an order passed by the fourth respondent, the petitioner had filed an appeal to the third respondent on 10.07.2004. However, the third respondent while entertaining the appeal, not granted any interim orders during the pendency of the appeal. Having faced with the prospect of forfeiture of the amount, the petitioner had approached this Court by way of separate writ petition in W.P.No.26036 of 2004, this Court has set aside the order passed by the authority concerned, refusing to stay the order for forfeiture. A further direction was issued by this Court to the third respondent to consider the stay application on merits and the forfeiture demanded should not be given effect till the disposal of the appeal.

7. The third respondent finally has confirmed the forfeiture order by proceedings dated 04.11.2004 and against which a further appeal was filed before the second respondent. However, the second appellate committee-second respondent herein, confirmed the order passed by the first appellate committee, third respondent herein, vide proceedings dated 18.01.2005. The said order is put to challenge in the present writ petition.

8. At the outset, the learned counsel appearing for the respondents would submit that he would be satisfied if a direction is issued to the second appellate committee which passed the impugned order dated 18.01.2005, if a personal hearing is afforded to the petitioner. Since according to the counsel, although the personal hearing was sought originally, the same was not granted and therefore, the petitioner suffered grave prejudice by impugned order dated 18.01.2005. According to him, originally notice was issued on 05.01.2005, for hearing by the second appellate committee on 18.01.2005.

9. In response to the same on behalf of the petitioner, by communication dated 12.01.2005, addressed to the second appellate committee, had requested for deferring the hearing in view of certain personal difficulties of attending the hearing on 18.01.2005. However, before passing any orders on the representation, the second appellate committee straight away passed the order on 18.01.2005, in which no reference has been made of the request submitted by the petitioner.

10. In the above circumstances, the learned counsel would pray that the petitioner may be granted personal hearing before the second appellate committee, if such hearing is granted, the petitioner would be in a position to appraise the appellate committee to justify the short utilization of the quota assigned to them. Since there was no proper representation on behalf of the petitioner, the second appellate committee was constrained to confirm the order passed by the first appellate committee. Therefore, he would submit that the personal hearing would make a significant difference both in terms of legal and factual submissions to be made on behalf of the petitioner.

11. Per contra, the learned counsel appearing for the respondents would submit that even earlier, an opportunity was given to the petitioner for personal hearing when the first appeal was preferred and therefore, the petitioner was no way prejudiced by his non appearance on 18.01.2005. According to him, he was granted enough opportunities earlier when show cause notices were issued at every stage and the petitioner was heard.

12. Considering the submissions of the learned counsels appearing for either parties, this Court is of the view that the impugned order passed by the second appellate committee without giving opportunity of personal hearing to the petitioner, without even drawing reference to the specific request made by the petitioner in that regard on 12.01.2005, is incorrect and cannot be sustained. Since according to the petitioner, it would make a specific difference when an opportunity of personal hearing is granted while taking decision in the matter, this Court is in agreement with the submission made on behalf of the petitioner that personal hearing may be granted to the petitioner before any decision is taken by the second appellate committee, determining the right and liability of the petitioner one way or the other.

13. In view of the above, this Court without making any observations on merits and demerits on behalf of the claim of the petitioner directs the second appellate committee-second respondent herein to grant an opportunity of personal hearing to the petitioner and pass orders afresh in the matter after taking note of the submissions from the petitioner.

14. In the said circumstances, the impugned order No.14/1009/04-Exports-III/829 dated 18.01.2005, is set aside. The second respondent is directed to issue notice of personal hearing to the petitioner within a period of one week from the date of receipt of a copy of this order and thereupon, call the petitioner to appear before the second respondent on any designated date fixed by the second

respondent and shall pass final orders in the matter on merits and in accordance with law, not beyond the period of two months thereafter.

15. with the above rulings, the writ petition stands disposed of.
No costs.

Sd/-
ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

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To

1.The Secretary,
The Union of India,
Ministry of Textiles(Exports III Section)
Udyog Bhavan,
New Delhi.

2.Second Appellate Committee,
Government of India,
Ministry of Textiles(Exports III Section)
Udyog Bhavan,
New Delhi.

3.The Director,
Office of the Textile Commissioner,
New C.G.O. Building, 48, New Marine Lines,
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4.The Director,
The Apparel Export Promotion Council
1, 3rd Street,
Indira Nagar, Tirupur-641 603.

5.Canara Bank,
P.N.Road,
Tiruppur 641 602.

+1 cc to MR.K.ASHOKKUMAR, Advocate SR.NO. 76282/17
+1 cc to MR.V.T.BALAJI, Advocate SR.NO. 77068/17

W.P.No.11148 of 2006

SJ(CO)
JK 27/11/17