

**THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 01.02.2021****CORAM****THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN****WP(MD) No. 11621 of 2020****WEB COPY**

P. Saravanan

... Petitioner

Vs.

The Commissioner of Customs,  
Customs House, New Harbour Estate,  
Tuticorin - 628 004.

... Respondent

**Prayer:** Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondent to give "G" Card License to the petitioner within a time frame fixed by this Court based on the petitioner's representation dated 06.08.2020.

For Petitioner : Mr. R. S. Sivaram

For Respondent : Mr. B. Vijay Karthikeyan

**ORDER**

Heard the learned counsel for the petitioner and the learned standing counsel appearing for the respondent.

2. The petitioner is a customs house agent and "H" card holder. The petitioner's grievance is that in response to the notification issued by the respondent, he took part in the written examination and oral examination conducted under Customs Brokers Licensing Regulations-2013 in the year 2014. The petitioner had scored 51 marks in the written examination. However, he has scored only 34 marks in the oral examination. The petitioner was declared as failed vide proceedings dated 03.11.2014 issued by the respondent. The petitioner thereafter took part in the oral examination held in the subsequent year 2016. The result of the said oral examination was also went against the petitioner. The petitioner thereafter represented to the respondent seeking issuance of G-Card. Since the same was not considered, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner apart from reiterating the contentions set out in the affidavit filed in support of the writ petition, placed heavy reliance on the order dated 11.03.2020 made in WP(MD) No. 14425 of 2019. The prayer made in this writ petition is strongly opposed by the respondent. The



respondent has filed a counter affidavit. The learned standing counsel for the respondent reiterated the contentions set out in the counter affidavit.

4. The learned standing counsel would point out that the order dated 11.03.2020 made in WP(MD)No.14425 of 2019 may not have a bearing on the case on hand, because, it pertained to the examinations held under 2018 Regulations. He pointed out that the case on hand involved 2013 Regulations. He also strongly pointed out that the writ petition is liable to be dismissed for more reasons than one. Even according to the petitioner, the cause of action sprang in the year 2014. The writ petition was filed only on 09.09.2020. Thus, there is a gap of six years between the arising of cause of action and the filing of the writ petition. He wanted this Court to summarily throw out the writ petition on the ground of laches. It is not as if the petitioner knocked the doors of this Court immediately after the cause of action arose. He took part only in a subsequent oral examination conducted in the year 2016. That by itself showed that the petitioner had given up whatever rights that may be founded on the original cause of action. According to him, even on merits, the petitioner has not made out a case.

5. I carefully considered the rival contentions and went through the materials on record. The relevant regulation for our purpose would be Regulation No.17(7) of the Customs Brokers Licensing Regulations, 2013. It talks about the issuance of 3 cards, namely, F, G and H. Those who passed the examination referred to in Regulation 6 will be given F Card. Those who passed the examination referred to in Regulation 17 Sub-regulation (3) will be given G Card. The learned standing counsel would point out the difference between 2013 and 2018 Regulations in this regard. While 2018 Regulations specifically employs the expression "written examination", Regulation 17(3) of the 2013 Regulation merely talks about "the examination". He would therefore argue that this would include both written and also oral examination.

6. In my view, this submission of the learned standing counsel is not correct. Regulation 6 and Regulation 17(3) & 17(7) of the 2013 Regulations will have to be read together. Regulation 6 of 2013 Regulations reads as under :

"6. Examination of the applicant.-

(1) An applicant, who satisfies the requirements of regulation 5, shall be required to appear for a written as well as oral examination conducted by the DGICCE:

Provided that an applicant who has already passed the examination referred to in regulation 9 of the Custom House Agents Licensing Regulation, 1984 and regulation 8 of the Custom House Agents Licensing Regulation, 2004



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shall not be required to appear for any further examination.

(2) The written examination shall be conducted on specified dates in month of January of each year for which intimation shall be sent individually to applicants in advance before the date of examination and the result of the said examination shall be declared by end May each year.

(3) The applicant who is declared successful in the written examination shall be called for an oral examination on specified dates in month of June of each year, the result of which shall be declared in the month of July of each year.

(4) The applicant shall be required to clear written examination as well as oral examination.

(5) An applicant who fails to clear the oral examination within two years from date of declaration of result of the related written examination, shall be treated as having failed in the examination.

(6) An applicant shall be allowed a maximum period of seven years from the date of original application within which he shall pass both written and oral examinations and no further extension shall be granted.

(7)....."

Regulation 17 (3) & (7) of 2013 Regulations reads as under :

"17. Employment of persons. -

(3) The person referred to in sub-regulation (1) shall, within four attempts from the date of his appointment, pass an examination conducted by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, and the examination shall be such as to ascertain the adequacy of knowledge of such person regarding the provisions of the Act subject to which goods and baggage are cleared through Customs.

(7) The Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall issue a photo-identity card to every person employed by a Customs Broker, -

(i) in Form F in case he has passed the examination referred to in regulation 6;

(ii) in Form G, in case he has passed the examination referred to in sub-regulation (3);

(iii) in Form H, in case he has not passed the examination referred to in sub-regulation (3); and every such person shall, at all times when he transacts the work



at the Customs Station, carry photo identity card with him and produce it for inspection on demand by any officer of the Customs Station "

While Regulation 6 talks about written as well as oral examination, Regulation 17(3) talks only about an examination. Regulation 17(3) does not talk of conducting both examinations. On the other hand, it employs the expression "an examination". As per Oxford Advanced Learner's Dictionary New 9<sup>th</sup> Edition, "an" only refers to what is singular in nature. When Regulation 17(3) talks about a pass in "an examination", it can only mean one examination. It is seen from 2013 Regulations that an F Card holder is expected to pass both the examinations written as well as the oral examination while the G Card holder must pass only one examination.

7.This Court is also justified in looking to the practice adopted by the other commissionarates. The learned counsel for the petitioner submitted that other commissionarates used to conduct only one examination, namely, written examination. I therefore hold that the respondents ought not to have conducted the oral examination or made the petitioner to participate in the same. The moment the petitioner passed the examination referred to in Sub-regulation 3 of Regulation 17, he ought to have been issued with the "G Card". It was an illegal omission on the part of the respondent.

8.Now comes the question of laches. There is much said to be against the petitioner. The petitioner did not straightaway come to this Court after succeeding in the written examination. Instead, he chose to take part in the oral examination. This is a point that can be put against the petitioner. He also took part in the oral examination in the year 2016. He chose to come this Court in the second half of 2020. Though I find considerable force in the contention of the learned standing counsel, I must also observe that the doctrine of laches is a self imposed restraint exercised by the courts.

9.Courts will invoke the doctrine of laches and non-suit the petitioner if allowing the writ petition would cause prejudice to the rights of the respondent or third parties. If the respondent had altered his position, the petitioner will not be justified in mounting a challenge after an unreasonable period of delay. But, in the case on hand, there is no question of prejudice to the respondent. The question to be posed is this whether the respondent was justified in denying issuance of G Card to the petitioner in the year 2014. If the answer is in the affirmative, at least in the year 2020, the damage must be repaired.

10.It is in this view of the matter, I hold that the doctrine of laches cannot be invoked against the petitioner. The respondent is directed to issue G Card to the petitioner since he has passed



the written examination held in terms of Regulation 17(3) of 2013 Regulations. Such a card will be issued to the petitioner within a period of eight weeks from the date of receipt of copy of this order. The writ petition is allowed. No costs.

Sd/-

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Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

**Note :** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

**To:**

The Commissioner of Customs,  
Customs House, New Harbour Estate,  
Tuticorin - 628 004.

+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate ( SR-2694[F] dated 02/02/2021 )

**WP(MD)No.11621 of 2020**

**01.02.2021**

RK (23.04.2021) 5P 3C