

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3458 OF 2021

D. K. Clearing and Shipping Agency
Pvt. Ltd.

... Petitioner

Versus

Union of India and Ors.

... Respondents

Dr. Sujay Kantawala a/w Mr. Anupam Dighe and Ms. Chandani Tanna
i/by India Law Alliance for the Petitioner.

Dr. Vijay H. Kantharia a/w Mr. Ram Ochani for the Respondent Nos. 2
to 4.

Mr. Ashutosh Mishra for the Respondent No.1.

**CORAM: R. D. DHANUKA AND
S. M. MODAK, JJ.**

DATE : 21st FEBRUARY, 2022

ORAL JUDGMENT (*Per R. D. Dhanuka, J.*) :-

. Rule. Mr. Mishra, learned counsel for the respondent no.1 waives service. Dr. Kantharia, learned counsel for the respondent nos. 2 to 4 waives service. By consent of parties, petition is heard finally.

2. The petitioner was granted Custom House Agent License bearing CHA No. 11/970. It was the case of the respondents that the petitioner had illegally sub-let its CHA license which required further investigation. On 11th May, 2009, the respondents ordered suspension of operation of its license with immediate effect. On 2nd July, 2009, the respondent no.2 revoked the suspension and ordered an inquiry against the petitioner.

3. On 12th August, 2009, a notice came to be served upon the petitioner by the Inquiry Officer directing the petitioner to submit a written statement. On 1st October, 2009, the petitioner's advocate requested the respondent no.3 to supply certain documents to enable the petitioner to file a reply to the Articles of Charges. It is the case of the petitioner that the Inquiry Officer neither furnished any documents nor granted any personal hearing. After few years, the petitioner was informed that due to administrative reasons a new Inquiry Officer was appointed to continue the inquiry.

4. On 10th February, 2015, the petitioner through its advocate made a representation and requested the new Inquiry Officer to supply documents. On 19th February, 2015 and 24th February, 2015, the petitioner was served with personal hearing notice stating that a preliminary inquiry was proposed to be held on 24th February, 2015. On 24th February, 2015, the Director of petitioner along with its advocate attended personal hearing and denied the charges raised against them.

5. On 2nd April, 2015, the personal hearing was postponed to 9th April, 2015, where it was requested to postpone the hearing with the request to go through the statement before being examined. The Inquiry Officer asked the presenting officer to send a reminder to the concerned section for procuring relevant documents and adjourn the hearing to 30th April, 2015. On 9th April, 2015 and 9th July, 2015, the petitioner once again requested the Inquiry Officer to furnish documents.

6. Since, the petitioner did not receive any documents or any response to the said letter dated 9th July, 2015, the petitioner filed this writ petition on 19th March, 2021 *inter-alia* praying for quashing and setting aside the proceedings along with order dated 29/2009 dated 2nd July, 2009 and prayed for a writ of mandamus directing the respondent no.2 to withdraw the order dated 2nd July, 2009 to the extent that the regular inquiry under Regulation 22 of CHALR, 2004 be held due to inordinate delay of almost 13 years.

7. Dr. Kantawala, learned counsel for the petitioner invited our attention to the documents annexed to the petition and would submit that the suspension order against the petitioner was already revoked, however with a direction to conduct regular inquiry against the petitioner. Due to the reasons attributable on the part of the respondents, the earlier Inquiry Officer appointed by the respondent was replaced by new Inquiry Officer. The new Inquiry Officer also could not conduct inquiry for several years and also did not furnish any documents. He submits that during the pendency of petition, the Inquiry Officer sent email on 1st July, 2021, furnishing some of the documents requisition made by the petitioner.

8. Learned counsel placed reliance on the unreported judgment of this Court delivered on 14th February, 2022 in Writ Petition No. 2874 of 2021 filed by the ***Bombay Dyeing and Manufacturing Company Limited v/s. Deputy Commissioner of CGST & CX, Div-IX, Mumbai Central GST Commissioner*** and would submit that in that matter also

this Court was pleased to quash and set aside the inquiry proceedings which were pending for long time. He submits that the principles laid down by this Court in the said judgment would apply to the facts of this case.

9. It is submitted by the learned counsel that no purpose would be served by continuing the Inquiry after a long delay attributable on the part of the respondents.

10. Mr. Kantharia, learned counsel for the respondent nos. 2 to 4 on the other hand submits that the suspension order against the petitioner was already revoked long back. It is not the case of the petitioner that there was a violation of principles of natural justice. The present Inquiry Officer has granted an opportunity to the petitioner during the course of the Inquiry. All the documents requisitioned by the petitioner are now supplied. No prejudice would be caused to the petitioner, if Inquiry is allowed to be proceeded.

11. It is submitted that the Inquiry Officer is ready and willing to complete the inquiry expeditiously as may be granted by this Court. He submits that there are no malafides alleged by the petitioner against the Inquiry Officer for not conducting the proceedings for sometime due to administrative reasons.

REASONS AND CONCLUSION :-

12. It is not in dispute that the license of the petitioner was

suspended by order dated 11th May, 2009 and was revoked by order dated 2nd July, 2009. The respondent no.2, however had ordered an Inquiry against the petitioner by the said 2nd July, 2009. In the year 2009, the petitioner itself was served with a notice to submit a written statement.

13. A perusal of the record indicates that the petitioner has repeatedly called upon the respondents to supply certain documents to enable the petitioner to file a reply to Article of Charges. A perusal of the record indicates that between 2009-14, the earlier Inquiry Officer neither supplied any documents to the petitioner nor proceeded with the inquiry. The said Inquiry Officer was replaced by another Inquiry Officer. The petitioner was served with notice and was offered personal hearing only on 19th February, 2015 and 24th February, 2015. Though the petitioner asked for documents to the second Inquiry Officer repeatedly neither any documents were furnished nor any date of hearing was fixed. The petitioner thus filed this petition.

14. During the pendency of this petition, the Inquiry Officer appears to have furnished certain documents but not all the documents requisitioned by the petitioner.

15. This Court in case of ***Bombay Dyeing and Manufacturing Company Limited*** (supra) has considered gross delay on the part of the respondents in proceeding with the show cause notice. In that matter, there was delay of about 16 years in adjudicating upon the show cause notice. This Court in the said judgment held that it is not expected

from the assessee to preserve the evidence/record intact for such a long period to be produced at the time of hearing of the show cause notice. The respondent having issued the show cause notice, it is their duty to take the said show cause notice to their logical conclusion by adjudicating upon the said show cause notice within a reasonable period of time. In view of the gross delay on the part of the respondent, the petitioner cannot be made to suffer.

16. In this case, the record indicates that since 2009 when the regular inquiry was ordered by the Commissioner, hardly any steps are taken by the respondents to proceed with the regular inquiry ordered by the Commissioner. The petitioner had repeatedly called upon the respondents to produce the documents. Neither any documents were produced till 1st July, 2021 nor any regular date of hearing was conveyed to the petitioner except once. In these circumstances, in our view, the petitioner was not expected to preserve the evidence/record intact for such a long period of more than 11 years.

17. We are not inclined to accept the submission made by the learned counsel for the respondents that there was no violation of principles of natural justice. In our view, the inaction on the part of the respondents in not adjudicating upon the show cause notice for a period of 11 years and proposing to pass an order would cause serious prejudice to the petitioner. The principles of law laid down by this Court in case of ***Bombay Dyeing and Manufacturing Company Limited*** (supra) apply to the facts of this case. We do not propose to take any different view in this matter.

18. There is no substance in the submission of the learned counsel for the respondents that no prejudice would be caused to the petitioner, if the inquiry is allowed to be proceeded with at this stage. In view of the gross delay on the part of the respondents, if at this stage the respondents are allowed to proceed with the inquiry, there would be gross injustice to the petitioner.

19. We accordingly pass the following order :-

- (a) Writ Petition is made absolute in terms of prayer clauses (a) and (b).
- (b) Rule is made absolute accordingly.
- (c) There shall be no order as to costs.

[S. M. MODAK, J.]

[R. D. DHANUKA, J.]

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