



Darshan Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.13761 OF 2024
IN
WRIT PETITION NO. 13967 OF 2024

Rizu Kalra and Anr. ..Applicants

In the matter between

Rizu Kalra and Anr. ..Petitioners

VS.

The Union of India and Anr. ..Respondents

Mr Jas Sanghavi i/b PDS Legal, for the Applicants.

Ms Sangeeta Yadav i/b Mr Karan Adik, for the Respondents.

CORAM **M.S. Sonak &
Jitendra Jain, JJ.**

DATED: **17 October 2024**

PC:-

1. Heard learned counsel for the parties.
2. By this interim application, the applicants seek leave to amend the Writ Petition in terms of schedule one.
3. Mr Sanghavi, learned counsel for the applicants, submitted that the main petition has yet to be admitted. He submits that the amendments seek to record events subsequent to the institution of this petition. He submits that such amendments are necessary for adjudicating all the issues that arise in the matter. He submits that the multiplicity of proceedings would be avoided by granting amendments.

4. Mr Sanghavi, by relying upon the decision of the Punjab and Haryana High Court in **Shri Ram Agro Chemicals Pvt. Ltd. Vs. Union of India and others**¹ submitted that a hearing is a pre-requisite for granting an extension under section 28 (9) of the Customs Act, 1962. He submits that this was not granted.

5. Ms Yadav learned counsel for the respondents submitted that the original petitioner had challenged the show cause notice. However, since there was no interim relief, the show cause notice was adjudicated, and the order dated initially 18 April 2024 Has been passed. She submits that applicants seek to challenge this order by amending the petition. She submits that the applicants have a remedy of appeal against the original main order dated 18 April 2024. She further submits that this amendment should not be allowed, and the main petition should be disposed of by relegating the applicants to avail of the alternate remedy. She relies on the decision of the Hon'ble Supreme Court in **PHR Invent Educational Society Vs. UCO Bank and Others**² in support of her contention. She submits that this Writ Petition should not be entertained unless the statutorily provided alternate remedies are exhausted.

6. We have considered the rival submissions.

7. In our opinion, this amendment will have to be allowed while keeping open the issue of alternate remedy now raised by Ms Yadav. The amendments are not merely to challenge the original order dated 18 April 2024 but also to challenge the Chief Commissioner's extension order dated 14 April 2023, by which time for completing the adjudication was extended.

¹ 2019 SCC Online P&H 4918

² Civil Appeal arising out of SLP (C) No. 8867 of 2022 decided on 10 April 2024

8. Mr Sanghavi pointed out that the applicants learned about this extension order dated 14 April 2023 only after noticing a reference to the said order in the order dated 18 April 2024. He submitted that this extension order dated 14 April 2023 was never communicated to the applicants, and no hearing was given to the applicants before it was made. He submitted that this extension order dated 14 April 2023 cannot be questioned in an appeal, and therefore, a petition under Article 226 of the Constitution of India is the only remedy.

9. Accordingly, we are allowing this application, but we kept open the objection based on the alternate remedy. If we ultimately find that Mr Sanghavi's contention regarding the extension order dated 14 April 2023 is not correct, we will have to consider whether the applicants should be relegated to avail of the alternate remedy of appeal.

10. Necessary amendments are to be carried out within two weeks from today. Re-verification is essential and should be carried out. A copy of the amended petition to be served upon respondents.

11. The interim application is disposed of in the above terms.

12. All concerned to act on an authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)