Meher and Meher Vs. Board of Trustees of the Port of Bombay

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Court : Mumbai

Decided On : Nov-29-1983

Reported in : 1984(16)ELT217(Bom)

Judge : M.L. Pendse, J.

Acts : Import Trade (Control) Order, 1955

Appeal No. : Misc. Petition No. 2433 of 1979

Appellant : Meher and Meher

Respondent : Board of Trustees of the Port of Bombay

Judgement :

1. The petitioners are a partnership firm carrying on business as ship-chandlers and suppliers of stores to foreign going vessels and foreign diplomats. For the purpose of supplying goods to foreign going vessels and and diplomats, the petitioners import foreign goods, without payment of Import Duty under the saving contained in Para 11(d) of the Import Trade (Control) Order, 1955. The petitioners imported certain stocks of whisky and cigarettes during January 1978. The goods arrived in four consignments in Port of Bombay and the petitioners duty filed in the requisite bills of entry in respect of the four consignments. The last free days in respect of the two consignments was January 21, 1978 and for the remaining two consignments was January 23 and January 24, 1978 respectively.

2. The staff of the Clearing and Forwarding Agents in Bombay Docks went on strike from January 20, 1978 and the strike was over on January 26, 1978. The petitioners claim that they could not clear the goods imported by them because of the strike. The petitioners claim that the striking employees of the Clearing and Forwarding Agents prevented the petitioners to clear the goods with their own staff. The three consignments were cleared on January 28, 1978 and the fourth consignment on January 30, 1978. The consignments were cleared after payment of demurrage charges from the expiry of the last free day in respect of each of the consignment. The petitioners, thereafter on March 21, 1978 addressed a letter to the Docks Manager, Bombay Port Trust, Refund Section, stating that the demurrage was paid for the strike period and the Dock Authorities should grant remission to the petitioners for the charges during the strike period. The claim made by the petitioners was rejected by the respondents by their letter dated April 28, 1978, inter alia, stating that the Board of Trustees had taken a policy decision to grant concession in demurrage fees on account of the strike, only in respect of consignments cleared by the Clearing Agents whose staff was on strike and the petitioners being a private enterprise and their staff not on strike, they are not entitled to remission in demurrage fees. The petitioners thereafter on May 31, 1978 made further representation to the Chairman of the Port Trust on August 26, 1978. The Port Trust authorities by letter dated May 5, 1979 informed the petitioners that their case has been carefully examined and the request for remission cannot be granted. The petitioners have thereafter filed the present petition in this Court on December 10, 1979 and the relief sought is refund of an amount of Rs. 22,171.92 with interest thereon at the rate of 18% p.a. from the respondents.

3. On behalf of the respondents, Shri P.A.H.D.' Sa, Assistant Docks Manager, has filed return sworn on November 25, 1983. The respondents claim that the petitioners are not entitled to seek remission, because in the first instance out of four consignments, two consignments were released by Customs on January 27, 1978 and January 30, 1978 respectively, and that being after the strike was called off, the petitioners cannot complain that they could not remove the imported goods during the period of strike. The respondents also claim that the strike did not affect the petitioners as the petitioners had not engaged any clearing agent for removal

of the goods and the goods were removed by the staff of the petitioners themselves and there was no obstruction to the petitioners to remove the goods even during the strike period. The respondents also claim that the petitioners cannot claim refund of the amount in writ jurisdiction. It was also urged that the relief should be refused to the petitioners on the ground of considerable delay and laches.

4. Shri Chinoy, learned counsel appearing on behalf of the respondents, raised a preliminary objection to the maintainability of the petition on the ground that the petitioners have approached this Court with a considerable delay and therefore have disentitled themselves to seek any relief in writ jurisdiction. There is considerable merit in the submission of the learned counsel. As mentioned hereinabove, the demurrage charges were paid by the petitioners at the time of clearance of the goods, that is on January 28, 1978. The application for remission was made only on March 21, 1978 and the petitioners were informed that such remission cannot be granted on April 28, 1978. In spite of the clear stand taken by the Port Trust authorities, the petitioners chose to make further representation on May 31, 1978 and even that was rejected on May 5, 1979. Still the petitioners did not care to approach this Court for more than seven months from the date of rejection and in these circumstances Shri Chinoy is right in submitting that the petitioners should be non-suited on the ground of laches. In my judgment, the conduct of the petitioners in filing this petition almost after a period of two years from the date of payment of demurrage charges clearly indicates that the petitioners are not prosecuting the remedy expeditiously and with due urgency. The claim made in the petition is for refund of the demurrage charges during the strike period and in my judgment, the preliminary objection raised by the respondents deserves acceptance.

5. Shri Ganesh, learned counsel appearing on behalf of the petitioners, based his claim in the petition on the averments made in paragraph 15 of the petition. The petitioners claim that two firms of ship chandlers, namely M/s. Cawasji Behramji & Co. and M/s. James Connel Provides had filed Misc. Petition No. 178 of 1978 and 177 of 1978 in this Court for the identical reliefs and the respondents granted 80% waiver of demurrage charges to the said firms. The petitioners submit that their

claim is similar to the above two firms and the refusal of demurrage charges to the petitioners amount to hostile discrimination and is violative of Article 14 of the Constitution of India. Shri Chinoy points out that in those two cases, the Port Trust charges were paid on January 20, 1978, that is on the date when the strike commenced, and those two firms had made actual attempts to clear the goods and the goods were in fact loaded in the trucks but were subsequently unloaded by the striking employees, and their case cannot be compared with that of the petitioners. Shri Chinoy also points out that the petitioners had paid the demurrage charges without any protest, but those firms had approached the Court before clearance of the goods and the facts in those two cases were totally different than that in the present petition. There is considerable merit in the submission of Shri Chinoy, and even on merits I was not inclined to grant relief to the petitioners. At the most I might have considered granting some relief to the petitioners in respect of the two consignments which were released by the Customs on January 21, 1978, that is during the strike period, but taking into consideration the small amount which the petitioners might have been able to recover back, in may judgment, it is not fair to disturb the decision of the Port Trust authorities in writ jurisdiction. The petition, therefore, must fail.

6. Accordingly, rule is discharged, but in the circumstances of the case there will be no order as to costs.