

M/S Sawhney Export House Vs. Union of India and Others

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Court : Delhi

Decided On : Sep-05-2001

Reported in : 2002(139)ELT276(Del)

Judge : Mr. Mukul Mudgal, J.

Appeal No. : CW No. 1390/99 and CM 3948/00

Appellant : M/S Sawhney Export House

Respondent : Union of India and Others

Advocate for Def. : Mr. Kuljeet Rawal, Adv.

Advocate for Pet/Ap. : Party in perso

Disposition : Writ petition dismissed

Judgement :

Mukul Mudgal, J.

1. The petitioner who has discharged his lawyer now appears in person and sought an injunction against the encashment of bank guarantee given by the petitioner in order to avail of his quota entitlement under First Come First Service Scheme (FCFS). Rather than deal with the interim application, I am dealing with the writ petition in view of the orders of this Court dated 9th of October, 1996.

2. In the said Order of 9th October, 1996, the Division Bench of this Court held as follows:

'In other similar writ petitions which came up before another division bench the factual position was similar. The Bench took notice of the differing reason given by the parties at various stages and dismissed the writ petitions. The Court observed as follows in that batch:-

'We have been taken through the various orders passed by the authorities below. The said orders reveal that the petitioners had taken different grounds and advanced different reasons for their inability to utilise the full quota allotted in their favor.

In that batch, the writ, petitions were dismissed. In those cases the petitioner had given & taken different reasons for different stages, as in the case before us. Following the judgment of the division bench, this writ petition is dismissed.'

3. The same situation also exists in the present petition because at various stages of the pleadings, the petitioner has taken different stands for invoking the 'Force Majeure clause'. In certain pleas, the petitioner has taken the plea of communal riots whereas in certain occasions the plea of cargo backlog at the airport has been taken by the petitioner and it is rather surprising that the petitioner has pleaded the factory fire in

its supplier's premises. Apart from the reasons given in the Order dated 9.10.1996, passed in CW. 2661/95 & CM. 4511/96, the Force Majeure Clause is applicable only qua the petitioner's factory. The invocation of the said clause for a fire in the premises of the petitioner's supplier cannot, therefore, give any benefit to the petitioner.

4. The petitioner has also sought to rely orally in Court upon a Letter which according to him had granted relief on account of eruption of communal riots after the Ayodhya development from 1992. This letter is dated 23rd August, 1996 and was addressed to the petitioner. The petitioner submitted orally in Court today that this letter came to his knowledge very recently. It is difficult to believe that a letter dated 23.8.1996 was not in the knowledge of the petitioner. Accordingly, the reliance by the petitioner on the said Letter is wholly uncalled for. The petitioner has also sought to rely upon a judgment of the Hon'ble Supreme Court reported as M/s Dhanrajamal Gobindram Vs M/s Shamji Kalidas & Co. 1961 (3) SCR 1020. The said judgment construed the 'Force Majeure' clause to mean that it could save the performing party from the consequences of anything over which he has no control. I fail to see how any reliance can be placed on the aforesaid judgment, because in the present case the clause of Force Majeure specifically restricted it to the petitioner's premises and the petitioner has inter alia pleaded that there was a fire in this supplier's factory.

5. In this view of the matter, there is no merit in the writ petition which is accordingly dismissed. Since the petitioner has taken different stand in the pleadings, I was inclined to impose the costs but as the petitioner is appearing in person, there shall be no orders as to costs.

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