

B.K. Rajkumar Vs. Cegat

B.K. Rajkumar Vs. Cegat

SooperKanoon Citation : sooperkanoon.com/828176

Court : Chennai

Decided On : Nov-30-1998

Reported in : 1999(113)ELT60(Mad)

Judge : P.D. Dinakaran, J.

Appeal No. : Writ Petition No. 2122 of 1993

Appellant : B.K. Rajkumar

Respondent : Cegat

Advocate for Def. : M.C. Govindan, Addl. Central Govt. Standing Counsel

Advocate for Pet/Ap. : Mohammed Rafiq, Adv.

Disposition : Petition allowed

Judgement :

ORDER

P.D. Dinakaran, J.

1. Heard.

2. In the above writ petition, the petitioner has prayed for issue of a Writ of Certiorarified Mandamus to call for the records of the first respondent in Order No. 403/92, dated 17-8-1992, in Appeal No. C/813/91/MAS and quash the same, and

to direct the first respondent to condone the delay of 267 days in shipment of the unaccompanied baggage of the petitioner which arrived from Saudi Arabia on 13-8-1991 and release the goods.

3. The petitioner claims that he left for Saudi Arabia on 24-8-1987 a technical job at Al-Sarawat Printing Press situated in Abha Saudi Arabia. As there was a war in Saudi Arabia during August 1990, the petitioner was constrained to leave Saudi Arabia and return to India on 15-10-1990, entrusting the household articles and other goods used by him to his friend at Saudi Arabia, to send them to India. Thereafter, the goods were shifted only on 23-7-1991 from Saudi Arabia, which finally arrived at Cochin on 31-8-1991. When the petitioner sought clearance of his unaccompanied baggages, the respondents refused to give clearance as there was a delay of 267 days in shipment. The petitioner also claimed transfer of residence concession of the goods. On varification, the second respondent, by order dated 24-10-1991, found that the petitioner arrived India on 15-10-1990 itself, but his unaccompanied baggage was shifted only on 8-8-1991, namely after a delay of 267 days, and further found that the explanation offered by the petitioner was not satisfactory for the said delay, and therefore, held that the petitioner, having failed to take adequate steps within the permissible time, refused to grant transfer of residence concession and clearance. Aggrieved by the order dated 24-10-1991, the petitioner preferred an appeal before the first respondent, who by proceedings dated 17-8-1992, confirmed the proceedings of the second respondent dated 24-10-1991. Hence the above writ petition.

4. Mr. Mohammed Rafiq, learned Counsel for the petitioner, contends that the authorities have failed to consider the facts and circumstances of the case that he was constrained to leave Saudi Arabia and reach India on 15-10-1990 in an extraordinary situation of the undisputed war in Saudi Arabia, after entrusting his household goods and other materials to his friends to shift the same to India. After reaching India, he had no access to take any steps to arrange for shipment at Saudi Arabia, except to make request to his friends, who finally obliged to transfer and shift unaccompanied baggages, which reached India on 8-8-1991. In the light of the above undisputed fact, the petitioner cannot be expected to place any other facts or reasons seeking condonation of delay of 267 days.

5. The apart, Mr. Mohammed Rafiq, learned Counsel for the petitioner, also invited my attention that, in similar cases, the respondents themselves, in their proceedings dated 15-3-1991, condoned the delay and granted transfer of residence concession and cleared the goods to one Smt. Noohan Bawkher in their proceedings dated 11-11-1991. Since the fact that the petitioner left India on 24-8-1987 and returned India on 15-10-1990 in view of the war in Saudi Arabia, the respondents ought to have taken into consideration all these facts, as well as the inconvenience and hardships undergone by the petitioner during the said period, and ought to have granted transfer of residence concession and cleared the goods.

6. Per contra, Mr. M.C. Govindan, learned Additional Central Government Standing Counsel, appearing on behalf of the respondents, reiterated the reasons given by respondents 1 and 2 in their respective proceedings and contends that there was a long gap of time for the petitioner in seeking the transfer of residence concession.

7. I have given a careful consideration to the submissions of both sides.

8. In my considered opinion, the fact that the petitioner reached India on 15-10-1990 due to the war at Saudi Arabia, cannot be disputed, in which event, the only cause open for the petitioner is to entrust the matter to his friend or any other third party at Saudi Arabia, with a request to send his goods, which the petitioner had done so. As rightly pointed out by the learned Counsel for the petitioner, the petitioner is not expected to do more than what he did, by requesting his friends to send his goods to India. But, the respondents have not considered the case of the petitioner in the light of the explanation offered by him, and therefore, I am obliged to set aside the impugned orders of the authorities, quash the same, and allow the writ petition as prayed for.

In the result, the Writ Petition is allowed. No costs.

I direct the first respondent to pass appropriate orders within twelve weeks from the date of receipt of this order at the request of the petitioner for transfer of residence concession, as well as clearance of the goods.

