
(2023) 12 BOM CK 0061

Bombay High Court

Case No: Writ Petition No. 15875 Of 2023

K. Raj & Company &
Anr

APPELLANT

Vs

State Of Maharashtra &
Ors

RESPONDENT

Date of Decision: Dec. 19, 2023

Hon'ble Judges: G. S. Kulkarni, J; Jitendra Jain, J

Bench: Division Bench

Advocate: Prakash Shah, Jas Sanghavi, Yash Prakash, Mihir Mehta, Shruti D. Vyas, P. N. Diwan, Shyam Walve, Pratik Karande, Brijesh Pathak, Aditya Talpade, Prasad P. Surve

Final Decision: Disposed Of

Judgement

1. This petition assails the seizure of the petitioners goods while they were being transported as cleared from the JNPT, in pursuance of our order

dated 4 November 2023 passed on Writ Petition No.12757 of 2023. The seizure at the hands of the respondents has taken place on 11 December

2023 as seen from Exhibit-Ã¢â¬ÅAÃ¢â¬Å (page 29) which is the subject matter of challenge before us.

2. Mr. Shah, learned counsel for the petitioners has drawn our attention not only to our order which we have noted above, but also, to the prior order

passed by a coordinate Bench of this Court (Nitin Jamdar & Sarang V. Kotwal, JJ.) on Writ Petition No.2241 of 2021 filed by the petitioners along

with other proceedings dated 13 December 2021, passed against the present respondents, wherein, this Court had considered the petitioners case in

regard to the petitioners dealing with the goods in question, namely Ethanol and had held that these goods in no manner fell under the provisions of the

Bombay Prohibition Act, so that the State Excise Authorities could exercise any jurisdiction. It is overlooking such clear position in law as held in such

proceedings, the impugned seizure has taken place.

3. We had heard this petition in the morning session. On considering the orders passed by this Court, we requested Ms. Shruti Vyas, learned

Additional Government pleader to take instructions in regard to the actions of the respondents as assailed, and accordingly placed the proceedings, to

be called out in the afternoon session.

4. The proceedings were accordingly, called out for hearing in the second session, for Ms. Vyas to inform the Court the stand, the department would

intend to take. However before Ms. Vyas would make her submission on the instructions, she had received, not only to our grave surprise but also to

the surprise of Ms. Vyas, we find that there are two intervenors who have appeared before us, one is represented by Mr. Brijesh Pathak, Advocate

who states that he is representing one MSB Chemical Limited, which is stated to be a company under the Companies Act 2013, through its Vice

President (Operations) Mr. Shailendra Save. The other intervenor is represented by Mr. Sham Valve, Advocate who represents Laboratory Solutions

India, which is stated to be an HUF through its Karta Mr. Hemanshu Rach, having its office at Princess street, Mumbai. The intervention applications

are tendered and are taken on record to be registered. Copies of the same are also handed over to the advocate for the petitioners.

5. The contentions on behalf of the intervenors as urged before us, in supporting the seizure is shocking to say the least, namely that the imports of the

ethanol by the petitioner is adversely affecting the intervenors business interest, as if to contend that, the seizure in question at the hands of the Excise

Officers is at the behest of such persons.

6. We are surprised at such approach of the intervenors as also the nature of the intervention application which is received in a short span of two

hours, that is after we passed over, the proceedings in the morning session. In this context, to buttress the petitioners' case of an illegal seizure, we

may refer to the additional affidavit and exhibits thereto as placed on record on behalf of the petitioners, by Mr. Shah, learned counsel for the

petitioners which are newspaper reports, titled as under:

“Free Press Journal dated 12 December 2023 (Exhibit-1).

Navi Mumbai: State Excise seizes 28,000 Litres of illicit Ethanol Misdeclared As Lab Chemicals at Nhava Sheva Port, Exposes Customs Lapses.

Times of India dated 13 December 2023 (Exhibit-2). State excise dept seizes 28K litres of ethanol, 1 arrested

7. The photographs in one of such report (Exhibit-1) reflects the seizure of the petitioners goods namely of the ethanol boxes, alongwith the State

Excise Officers and other persons, on the background, as if some contraband is seized by these officers in making a wide publicity of such seizure.

The contents of the newspaper report qua the petitioners also appear to be quite disparaging. We would wonder as to who could provide such

information, and whether such information is at all correct, and that too, on the backdrop of the orders passed by this Court permitting the said goods

to be cleared.

8. We also find that there is a newspaper report in the Times of India, in regard to the seizure of the petitioners goods as permitted to be cleared by

this Court as also clearly referring to the petitioners and recording of one arrest in such case.

9. Now coming to the instructions as received by Ms. Vyas, we would proceed to record the same. On instructions of Mr. Prasad Surve, Divisional

Dy. Commissioner, State Excise, Konkan Division, Thane, who is present in the Court Ms. Vyas states that the State Excise Department does not

intend to continue with the seizure of the goods, and that the vehicle as apprehended and the goods of the petitioners seized on 11 December 2023

would be forthwith released. We accept such statement as made by Ms. Vyas. We accordingly direct, that the goods (Ethanol) belonging to the

petitioners as seized by the respondents alongwith the vehicle shall forthwith be released to the petitioners.

10. However, as to what has transpired before the Court in the second half, namely the surfacing of the intervenors would not permit our judicial

conscience to simplicitor close the proceedings by accepting the statement as made by Ms. Vyas as noted hereinabove.

11. Considering the materials as placed on record and the stand now taken on behalf of the department, it appears that insofar as the seizure of the

goods as cleared under our orders passed by the Court are concerned, petitioners appear to have clearly suffered, not only at the behest of the

respondents on their official accord but at the behest of the vested interest of private players, at whose instance it prima facie appears to us that the

seizure in question has taken place. The petitioners have suffered at the hands of the excise department, not only in regard to the illegal detention of its

goods as directed to be cleared by this Court but also in regard to their market standing and their reputation.

12. It prima facie appears, from what has been urged before us on behalf of the intervenors, as also seen from the contents of the newspaper reports

and the wide publicity which has been given to the seizure in question, labelling the petitioners to have indulged in illegal activities in dealing with

ethanol, that this is clearly at the behest of the petitioners' competitors.

13. We are thus, of the prima facie opinion, that the concerned Excise officials involved in the seizure in question, appears to have not acted bonafide

and as the law would mandate them to act. Prima facie they appear to have abused the powers vested in them under the Bombay Prohibition Act, in

taking such brazen illegal action against the petitioners, contrary to the orders passed by this Court in permitting clearance and trading in the goods by

declaring that the goods in question do not fall under the purview of the Bombay Prohibition Act. The petitioners stand maligned in the eyes of the

public, apart from damaging of the petitioners' business interest and the public image the petitioner would wield. Such a situation as brought about

by the illegal seizure at the hands of the Excise officers would amount to not only a gross illegality but bring about a situation of absolute lawlessness in exercise of solemn public duties by such officials.

14. Once there were orders passed by this Court and the same were binding, it was not permissible for the State Excise officers that without

verification of all materials, they could resort to such drastic actions as assailed by the petitioners, merely for the reason that they have been conferred

powers under the Bombay Prohibition Act. When law confers such drastic powers on the officers, it would also cast an onerous duty, for such powers

to be exercised with great caution and responsibility, and only in public interest. As noted above in the facts of the case there can be no reason for the

Excise officials to resort to the impugned actions, except to cater to the private interest of third parties. Any public servant vested with such serious

powers as conferred on them in law, cannot be expected to abuse such powers.

15. We, accordingly, direct the Additional Chief Secretary, Government of Maharashtra, to hold an inquiry into the conduct and the role of the officials

who were instrumental in the seizure of the petitioners goods in question and who were responsible to defeat the orders passed by this Court. Not only

the involvement of all these officers but the involvement of the private parties at whose behest such seizure was undertaken also needs to be inquired

into, so that the trust and confidence of the traders like the petitioners in the rule of law in undertaking their business activities, is restored and re-

enforced.

16. The Additional Chief Secretary, would also look into the insinuations as recorded in the newspaper reports and the intricate details and the

allegation they contain against the petitioners, merely because the petitioners were dealing with the goods in question, that too as permitted under the

orders of this Court. This more particularly as observed by this Court that the petitioner is dealing in such goods since last 50 years.

17. We cannot countenance the officers of the Excise Department acting in such illegal and highhanded manner. There are rules and regulations

pertaining to seizure, they cannot be a party to any vilification campaign and to damage the business standing and reputation of the traders, in the

manner in which the concerned Excise Officials have resorted in the present case, as if the petitioners' case was an established case of the

petitioners dealing with any contraband. It was certainly most objectionable for the officers to pose themselves in photographs in projecting that the

petitioners were dealing in prohibited goods. This is certainly neither a part of their duties, nor permissible under the Bombay Prohibition Act or under

the Rules under which they were supposed to act.

18. Thus, when it was a clear case that the goods in question were not prohibited goods and which were being dealt by the petitioners lawfully, the

Excise Officials disregarding all canons of law, could not have painted the petitioners as some criminals.

19. The above facts raises a very serious concerns in regard to the actions of the concerned Excise officials which, in our prima facie opinion, are

worrisome to the administration apart from being serious. If as to what we have expressed, even to a limited extent is true and correct, we would

doubt whether the concerned officers are even fit to be called as public servants and continue in Government service. In our opinion, any highhanded

and illegal approach on the part of such officials, infringing the fundamental rights of the citizens is required to be enquired and taken to the logical

conclusion by holding an appropriate inquiry as the law would mandate.

20. In the event, the Additional Chief Secretary is of the opinion that there is sufficient material in regard to the involvement of the concerned officials,

the Additional Chief Secretary shall issue necessary orders to initiate such appropriate actions, civil and criminal, against the concerned officials as the

law may mandate.

21. Let the inquiry to be held by the Additional Chief Secretary be completed within a period of three weeks from today and the report of the inquiry

be placed before this Court on the adjourned date of hearing.

22. Needless to observe that at the interim stage of the inquiry, in the event, there is a prima facie material to proceed against any of the concerned

officials departmentally, the Additional Chief Secretary may move the State Government to pass appropriate orders, even to suspend such officials

pending inquiry. It would be permissible to the Additional Chief Secretary to record the statements of any person including that of the petitioners, if so

necessary. Any statement as may be recorded shall form part of the report to be filed before this Court.

23. The goods shall be released without the department waiting for a copy of this order, as the officer concerned is present before the Court.

24. The substantive prayers in the petition would not require any further adjudication in view of the statement as made on behalf of the respondents in

regard to release of the petitioners' goods.

25. The petition is accordingly disposed of.

26. For compliance, list the proceedings on 9 January 2024 (HOB).