

(2010) 09 MP CK 0045

Madhya Pradesh High Court (Gwalior Bench)

Case No: None

Kanhaialal and
Company a
partnership firm

APPELLANT

Vs

The Central Bureau of
Narcotics, Director
General of Foreign
Trade, Union of India
(UOI)

RESPONDENT

Date of Decision: Sept. 10, 2010

Acts Referred:

- Constitution of India, 1950 - Article 19, 226, 227
- Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 - Section 2

Citation: (2010) 4 MPJR 71 : (2010) 4 MPLJ 323

Hon'ble Judges: Brij Kishore Dubey, J; A.K.Shrivastava, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

A.K. Shrivastava, J.

Feeling aggrieved by the order dated 8th March, 2010 passed by learned Single Bench of this Court in Writ Petition No. 5660/2009 Bora Agri Tech and Anr. v. The Central Bureau of Narcotics and Ors. dismissing the Writ Petition filed under Article 226/227 of the Constitution of India, this appeal has been filed u/s 2(I) of the Madhya Pradesh Uchha Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam 2005.

On going through memorandum of Writ Petition, we find that following reliefs have been sought by the appellant:

a) That this Hon"ble High Court be pleased to allow the present petition with cost and further be pleased to issue Writ of Mandamus and set aside order dated 17.11.2009 Annexure P/2 and P/3 passed by respondent No. 1 and issue direction to respondent No. 1 to immediately register the said contracts as done in normal course without any additional conditions and at par with the Registration Certificates issued for import from Turkey.

b) Appropriate directions may be issued to respondent No. 1 to henceforth respond/reply, within reasonable time, to the letters sent by the petitioners.

c) For such other and further reliefs as this Hon"ble Court may deem fit and proper.

The appellant, who was writ petitioner No. 2 before Writ Court alongwith respondent No. 4, filed the Writ Petition with the averments that they are registered partnership firms and they entered into two contracts on 12-9-2009 i.e., TTHK09030 and TTHK09031 with Tampico Trading (HK) Limited, Hong Kong, for import of Denature White Poppy Seeds of quantity 700 mtns. and 400 mtns, respectively from China. Thereafter, the petitioners vide letters dated 12th September, 2009 submitted an application for registration of contract No. TTHK09030 and TTHK09031 with M/s Tampico Trading (HK) Limited, Hong Kong, for importing Denature White Poppy Seeds to the Central Bureau of Narcotics according to the policy of the Government. Vide impugned letter dated 17-11-2009, the Narcotics Commissioner refused to register the aforesaid contracts. As per Writ Petitioners, the exporters Tampico Trading (HK) Limited, Hong Kong, had a certificate in its possession that it could buy Denature White Poppy Seeds from Gansu Yubazoe Nongken Poppy Seed Biology Company Limited, China, and in spite of that, respondent No. 1 refused to register the contracts which is arbitrary, illegal and violative of Article 19(j) of the Constitution of India. The petitioners further submitted that it is also in violation of the directions issued by the Union of India and as per the EXIM Policy of the Government of India.

The International Narcotics Control Board (INCB) in its Annual Report of the year 1995 expressed its opinion about the trade in Poppy Seeds obtained from opium poppy plants in the countries where poppy cultivation is prohibited. Consequently, it had urged to the respondents-Government to be vigilant in order to ensure that poppy seeds would not be obtained from illicitly cultivated poppy plants. Hence, an international ban was imposed for export of poppy seeds, which is not permitted by the International Narcotics Control Board to borrow illicitly and a certificate of the country of origin is required by a person for the purpose of import of poppy seeds and compulsory registration of contract on the side of the importer has been made compulsory under the EXIM Policy of the Union of India. The Central Bureau of Narcotics is Competent National Authority for the registration of contract for import of poppy seeds and as per the EXIM Policy of the Government the import of poppy seeds has been allowed subject to following conditions:

- (a) Import permitted only from Australia, Austria, France, China, Hungary, the Netherlands, Poland, Slovenia, Spain, Turkey and Czech Republic;
- (b) The importer shall produce an appropriate certificate from the competent authority of the exporting country that Opium Poppy have been grown licitly / legally in that country as per requirements of International Narcotics Control Bureau; and
- (c) All import contracts for this item shall compulsory be registered with the Narcotics Commissioner, Gwalior prior to import

It is the further case of writ petitioners (appellant and respondent No. 4) that they submitted the contracts for registration as per EXIM Policy. The authorities inquired from China about designated agent for exporting poppy seeds and on 2-11-2009, the Chinese authorities informed the respondents that only Gansu Yubazoe Nongken Poppy Seed Biology Company Limited, China, is the designated agent for exporting poppy seeds from China and thereafter on 3-11-2009, the Central Bureau of Narcotics asked the petitioners to submit sources of import of poppy seeds which they sought from a trader, namely, Tampico Trading (HK) Limited, Hong Kong. In response vide letters dated 5-11-2009, the petitioners replied that they were not aware and not concerned with whom their exporter had been sourcing the poppy seeds and the exporters would not disclose the name of the supplier in China. Thereafter the Central Bureau of Narcotics forwarded the contracts which were entered between the petitioners and M/s Tampico Trading (HK) Limited, Hong Kong, for information and the Chinese authorities informed the Central Bureau of Narcotics that the exporters Gansu Yubazoe Nongken Poppy Seed Biology Company Limited, China, did not sign any contract for supply of poppy seeds to M/s Tampico Trading (HK) Limited, Hong Kong. On the basis of the above-mentioned information, the Narcotics Commissioner rejected the request of the petitioners to register the contract with regard to import of poppy seeds.

The learned Writ Court declined to exercise discretionary power for issuance of writ of mandamus commanding respondent No. 1 to execute the contract in favour of writ petitioners on the ground that as per the EXIM Policy, a contract with regard to import of poppy seeds has to be registered by Central Bureau of Narcotics and the import is permitted only from authorized agent of the country. The learned Writ Court further held that since the Writ Petitioners entered into contract for import of poppy seeds with M/s Tampico Trading (HK) Limited, Hong Kong, and not from Gansu Yubazoe Nongken Poppy Seed Biology Company Limited, China, therefore, dismissed the Writ Petition looking to the aim to stop supply of illicit poppy seeds. The learned Writ Court also placed reliance on the decision of Supreme Court [M/s. Ugar Sugar Works Ltd. Vs. Delhi Administration and Others](#), in which it has been held that no fundamental right vests in a citizen in respect to trade intoxicants.

In this manner, this appeal has been filed by the appellant.

The contention of Shri Bansal, learned Counsel for the appellant, is that several documents were placed on record by the appellant (writ petitioner No. 2) that earlier also respondent No. 1 entered into contract with Writ Petitioners for registration of import of poppy seeds which were being supplied by M/s Tampico Trading (HK) Limited, Hong Kong, and further it is borne out that M/s Tampico Trading (HK) Limited, Hong Kong, was collecting those poppy seeds from Gansu Yubazoe Nongken Poppy Seed Biology Company Limited, China, and therefore, different treatment and double standard should not be adopted by respondent No. 1 by not registering the contract vide order dated 17.11.2009. Learned Counsel for the appellant further submitted that matter would have been definitely different if M/s Tampico Trading (HK) Limited, Hong Kong, will not purchase the poppy seeds from Gansu Yubazoe Nongken Poppy Seed Biology Company Limited, China, for the purpose of export and earlier also M/s Tampico Trading (HK) Limited, Hong Kong, was obtaining poppy seeds from authorized agent Gansu Yubazoe Nongken Poppy Seed Biology Company Limited, China, and therefore, order passed by respondent No. 1 dated 17th November, 2009 is arbitrary.

Learned Counsel by inviting our attention to the EXIM Policy, has submitted that prior to import, contracts for the items shall be compulsorily registered, and therefore, without obtaining registration certificate from respondent No. 1 import is impossible, hence, it has been prayed that impugned order of respondent No. 1 dated 17.11.2009, which was placed on record as annexure P/3 before learned Writ Court, be set aside and for the same reasons, the order of learned Single Bench be also set aside by allowing the Writ Petition of the appellant and granting relief prayed in it.

On the other hand, learned Counsel for the respondents argued in support of the impugned order.

Having heard learned Counsel for the parties, we are of the considered view that this appeal deserves to be dismissed.

Admittedly, the appellant did not enter into contract with the authorized agent Gansu Yubazoe Nongken Poppy Seed Biology Company Limited, China. There is nothing on record in order to hold that M/s Tampico Trading (HK) Limited, Hong Kong, is authorized agent of Gansu Yubazoe Nongken Poppy Seed Biology Company Limited, China. Therefore, if respondent No. 1 looking to the aim and object to stop the supply of illicit poppy seeds has not permitted appellant to register the agreement entered by him with M/s Tampico Trading (HK) Limited, Hong Kong, according to us, looking to the controversy in the matter, particularly when the dispute is about registration of contract, it is for the authority/respondent No. 1 to satisfy with the terms and conditions although it is guided by the EXIM Policy.

We do not find any merit in the contention of learned Counsel for the appellant that appellant is ready to furnish undertaking that poppy seeds will be supplied by M/s

Tampico Trading (HK) Limited, Hong Kong, after obtaining from Gansu Yubazoe Nongken Poppy Seed Biology Company Limited, China. Looking to the aim to stop the import of illicit poppy seeds, the discretion vests in the authority itself. Looking to the overall material placed on record if the discretion has not been exercised by learned Writ Court, according to us, learned Writ Court has not committed any error because issuance of writ is a discretionary relief and because learned Writ Court has assigned cogent reasons for not exercising discretion, we decline to interfere in the impugned order, particularly when this is an intra-court appeal.

However, looking to the facts and circumstances of the case, the appellant shall be free to file necessary application before respondent No. 1 for registration of contract if he enters in contract with Gansu Yubazoe Nongken Poppy Seed Biology Company Limited, China. If such an application is filed, the same may be decided by respondent No. 1 in terms of relevant EXIM Policy.

For the reasons stated hereinabove, we do not find any merit in this appeal. The same is hereby dismissed with no order as to costs.