

(2014) 01 CAL CK 0093

Calcutta High Court

Case No: G.A. Nos. 2584-2585 of 2013, APOT No. 417 of 2013 and W.P. No. 475 of 2012

C.C. (Airport and Admin.)

APPELLANT

Vs

Ravindra Kamalakant Sukla

RESPONDENT

Date of Decision: Jan. 24, 2014

Acts Referred:

- Customs Act, 1962 - Section 146(1), 146(2)

Citation: (2014) 305 ELT 379

Hon'ble Judges: Tapash Mookherjee, J; G.C. Gupta, J

Bench: Division Bench

Advocate: S.B. Saraf and T.M. Siddiqui, Advocate for the Appellant; S.N. Bhattacharjee and Amritalal Chatterjee, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. After hearing the learned advocates for the parties and after going through the grounds made in the application for condonation of delay, we condone the delay. Accordingly, the application, being G.A. No. 2584 of 2013, for condonation of delay is allowed.

2. The subject matter of challenge in this appeal is a judgment and order dated 9th October, 2012 passed by sister Banerjee, J. by which the following order was passed:

The impugned orders cannot be sustained and the same are set aside and quashed. The application of the License shall be disposed of within 60 days from the date of communication of this order in the light of the observations made above. It is made clear that the petitioner shall be deemed to have passed the examination under Regulations 8 of CHALR, 2004 if, as contended by the petitioner, he has passed the examination under Regulation 9 of CHALR, 1984 irrespective of the Commissionerate from which he might have cleared the examination. It hardly need be mentioned that the petitioner will have to be granted a license if he is otherwise

entitled and there are no cogent reasons in law for withholding the license.

3. Aggrieved by the order, the Commissioner of Customs has come up in appeal.

4. Mr. Saraf, learned Advocate for the appellants, submitted that the writ petitioner-respondent No. 1 obtained the requisite qualification under the 1984 Regulations in the year 1991. He is a resident of Mumbai, but he could not get licence from the Mumbai Commissionerate. He applied pursuant of notice of vacancy issued by the Calcutta Commissionerate. He does not have requisite qualification under the 2004 Regulations and therefore, the learned Trial Court should not have passed the order under challenge.

5. Mr. Bhattacharjee, learned advocate appearing for the writ petitioner-respondent No. 1, submitted that the writ petitioner-respondent No. 1 has the requisite qualification. He passed the necessary examination conducted u/s 146(1) of the Customs Act. He submitted that once the respondent No. 1 obtained the necessary qualification, his right to practice in any part of the country cannot, be denied. He also drew our attention to the views expressed by the Apex Court in the case of [Sunil Kohli Vs. Union of India \(UOI\)](#), in Paragraph 16 of the judgment which reads as follows:

16. The matter deserves to be considered from another angle. The Regulations framed by the Board u/s 146(2) of the Customs Act are in the nature of delegated legislation. The language of that section and other provisions of the Customs Act do not indicate that the Board is empowered to make Regulations with retrospective effect. Therefore, the 2004 Regulations would operate prospectively and would not in any manner affect the eligibility and entitlement of those who had qualified the examination held under the 1984 Regulations for grant of licences to act as Customs House Agents. The saving clause contained in the opening paragraph of the 2004 Regulations unmistakably show that while enacting the new Regulations, the Board did not want to adversely impact the right of those who had qualified the examination held under the 1984 Regulations because the nature of the examinations envisaged under the two sets of Regulations is substantially similar.

6. Mr. Bhattacharjee submitted that it has authoritatively been laid down that by framing Regulations 2004, the Board did not want to adversely impact the right of those who had qualified themselves in the examination held under the Regulations, 1984. He submitted that this law laid down by the Hon"ble Supreme Court was sought to be violated by the appellants and the learned Trial Court had directed the authorities to treat him as a person duly qualified to apply. He submitted that the order under challenge is as such unexceptionable.

7. We have considered the rival submissions advanced by the learned advocates and are of the opinion that considering the views expressed by the Hon"ble Supreme Court in the case of Sunil Kohli (supra), it is not possible for the appellants to refuse to give licence to the writ petitioner-respondent No. 1 on the specific plea that he is

qualified under the Regulations, 1984 and not under the Regulations 2004.

8. For the aforesaid reasons, we are of the option that this appeal is without any substance and is, therefore, dismissed. The application for stay, being G.A. No. 2585 of 2013, is also, thus, disposed of.