

THE HIGH COURT OF DELHI AT NEW DELHI

CW No.6535/2001 & CM No.11212/2001

Judgment delivered on 04.09.2003

PEARL GLOBAL LIMITED

.....Petitioner

- versus -

UNION OF INDIA & ORS.

.....Respondents

Advocates who appeared in this case:

For Petitioner : Mr A. Maitri

For Respondent No.4 : Mr Kuljeet Rawal

CORAM:-

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment? ✓
2. To be referred to the Reporter or not? ✓
3. Whether the judgment should be reported in Digest? ✓

BADAR DURREZ AHMED, J (ORAL)

1. In this writ petition, the petitioner has sought for the quashing of the impugned order dated 14.08.2001 passed by the Second Appellate Committee whereby the petitioner's claim that it was prevented from meeting its revalidated quota obligation by virtue of *Force Majeure* conditions was rejected.

2. At the first instance, the petitioner was issued a show cause notice and a speaking order was passed by the AEPC (respondent no.4 herein) on 30.08.1996. It is pertinent to note that as per the Garment Export Entitlement Policy, the AEPC is not empowered to go into the question of *Force Majeure* conditions and it is only to be taken up at the stage of First Appeal before the Textile Commissioner. Being aggrieved by the order of the AEPC dated 30.08.1996, the petitioner preferred the First Appeal before the Textile Commissioner which was disposed of by an order

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dated 31.08.2000. It is an admitted fact that the petitioner could not fulfil its export obligations, as a result of which the AEPC forfeited an amount of Rs11,88,616/- being the forfeiture amount in terms of legal undertaking.

3. Under the Garment Export Entitlement Policy, a person who is unable to meet the export obligation, is entitled to the benefit of exemption from forfeiture if he is able to show that he was prevented from meeting his export obligation by virtue of some *Force Majeure* condition. In this particular case, the petitioner pleaded that the process and delivery schedule of the garments were affected due to disruption in transport of raw materials for the purpose of garments as well as low attendance of labour because of floods during September/October 1995 and also that the buyers had refused to accept the late delivery. The only evidence that has been produced, if that can be called evidence at all, are the press clippings between the dates of 01.09.1995 and 09.09.1995 which indicate that in Northern India and, in particular, in and around Delhi region there was a substantial rainfall leading to a flood-like situation. The dates are important inasmuch as what is being urged in the present case is not with respect to the original quota obligation but in respect of the revalidated quota obligation which could only arise after 01.10.1995. Apart from the aforesaid newspaper clippings, no other evidence was produced before the authorities below. On the basis of the submissions made by the petitioner, the First Appellate Committee came to the conclusion that the circumstances as stated to exist did not constitute a *Force Majeure* condition and thereby the appeal was rejected. However, since the petitioner had exported more than 75% of the overall quota of its obligation, as per the policy it was entitled to proportionate benefit insofar as forfeiture amount was concerned.

4. Being aggrieved by this order in appeal passed by the First Appellate

Committee of the Textile Commissioner, the petitioner preferred a Second Appeal before the Second Appellate Committee. The Second Appellate Committee, after going through the papers and written submissions of the petitioner and after hearing the parties, i.e., representatives of the petitioner as well as of the AEPC, came to the conclusion that there was no necessity for any interference with the orders of the First Appellate Committee and accordingly, they rejected the appeal.

5. Being aggrieved by the said rejection by the Second Appellate Committee on 14.08.2001, the petitioner has filed the present writ petition. Two things are clear. Firstly, this Court, in exercise of its writ jurisdiction under Article 226 of the Constitution, does not sit as a Court of Appeal and is not required to see the evidence and come to a conclusion based on the evidence. All that is necessary to be seen is whether the decision making process is not faulty. It is also to be seen as to whether there is any jurisdictional error or an infirmity of such a nature as would amount to a perverse finding. In the present case, upon examination of the records, it is clear that such situations do not exist and, therefore, no interference is called for. Secondly, it is to be noted that apart from the newspaper clippings the petitioner did not submit any evidence in support of its claim that it was prevented by *Force Majeure* conditions to meet its export obligations. The petitioner did not submit any attendance register nor did it submit the delivery receipts or GRs as they are popularly known, nor did it submit any meteorological reports to show the effect of the rainfall in Delhi. All the units of the petitioner, I am informed by the learned counsel for the petitioner, are situated in and around Delhi. Two of its units are in Naraina and one is at Gurgaon.

6. Another point which is also to be noted and which was raised by Mr Kuljeet Rawal the learned counsel appearing on behalf of respondent no.4 was that

the original quota was, in any event, to be fulfilled by 30.09.1995. The rains or the floods, which the petitioner alleged, has already occurred on or about 01-09th September, 1995. Thereafter, the petitioner sought a revalidated quota which he could only seek after 01.10.1995. The revalidated quota was to be exported by 31.12.1995, subject to the conditions of legal undertaking etc. In this petition, we are concerned with the non-fulfilment of the export obligation under the revalidated quota. There is no evidence produced by the petitioner to show any disruption in transport facilities due to floods or rains in the period beginning 01.10.1995 till 31.12.1995. Thus, according to learned counsel appearing on behalf of respondent no.4, in any event, the petitioner has no case whatsoever. I am in agreement with the submissions of the learned counsel for respondent no.4.

4. In any event, no jurisdictional error or error in the decision making process has been pointed out and, therefore, no interference is called for by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution. The writ petition as well as the CM are dismissed. There shall be no orders as to costs.

Badar Durrez Ahmed
BADAR DURREZ AHMED
JUDGE

September 04, 2003.
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