

Yogesh Kalidas Shah

Vs

Union of India and Others

SLP (C) No. 13973 of 1992

(M.N. Venkatachaliah, S.C. Agarwal, Dr. A.S. Anand JJ)

17.11.1992

ORDER

1. We have heard Shri Salve, learned senior counsel for the petitioner, Shri R. K. Jain, learned senior counsel for the Bombay Port Trust and Shri P. H. Parekh, learned counsel for the auction-purchaser (respondent 5).
2. The grievance of the petitioner is that pending customs clearance, the goods which were held by the Port Trust, were put up by the port authorities for sale on November 22, 1991 for the recovery of the port-charges. The sale elicited an offer of Rs. 32,22,000 for the goods which in two lots "EE 4000" and "EE 4022" were said to contain "ball-bearings". That sale was, however, not confirmed as in the meanwhile the petitioner appears to have cleared the port-charges then due. The goods were again put up for auction on May 26, 1992 under what is called Walk-in Tender Scheme. This time Rs. 20,37,000 were offered by respondent 5. On June 8, 1992, the Customs authorities required the Bombay Port Trust to withdraw the goods from auction until further instructions from the Customs. But the Port Trust did not relent. On July 2, 1992, the Chairman of the Port Trust confirmed the sale.
3. The insistence of Shri Parekh, appearing for the auction-purchaser, on retaining the benefit of the sale is quite understandable as the goods which fetched an offer of Rs. 32,22,000 were knocked down in favour of respondent 5 for Rs. 20,37,000. We do not want to go into the problems of lack of coordination between the Customs authorities on the one hand and the port authorities on the other whether the latter could ignore the intimation of the former for deferring the sale. It would appear that the sale dated May 26, 1992 under the "WITS" was for the recovery of the port charges which, according to the petitioner, was in the neighbourhood of rupees one lakh fifty thousand.
4. The auction-purchaser has deposited Rs. 2,03,700 which represents 10% of the price of Rs. 20,37,000 and that sum of Rs. 2,03,700 is lying with the port authorities from May 26, 1992. It would indeed be unconscionable to allow the sale to assume finality. It is difficult to appreciate as to how the port authorities found this offer acceptable to them.
5. We set aside the sale of lots EE 4000 and EE 4022 held on May 26, 1992 in favour of respondent 5 and direct the port authorities to release the goods to the petitioner against payment of the port charges claimed by the port authorities. The goods will be released upon production of evidence of customs clearance. It is however proper that Rs. 2,03,700 deposited by the auction-purchaser be refunded to him by the port authorities. Respondent 5 will also be entitled to a solatium which we quantify at a lump sum of Rs. 30,000 which the petitioner shall pay by means of a crossed bank draft drawn on a nationalised bank in favour of respondent 5 and delivered to Shri Parekh, his

learned counsel, within two weeks from today.

6. The receipt for payment of this Rs. 30,000 to respondent 5 shall be produced before the port authority at the time of the release of the goods. The goods shall be released by the port authorities within one week of payment of port-charges and tender of the requisite documents. The payment of the Port charges now shall be as claimed by the Port Trust. However, the petitioner is at liberty to make a claim for refund upon production of Detention Certificate. We, however, do not say anything on the merits of the proposed claim, which shall be dealt with in accordance with law.

7. Writ Petition No. 1562 of 1992 pending in the High Court of Bombay is, at the request of the petitioner, withdrawn to this Court and disposed of finally as having become infructuous. The petitioner shall pay to respondent 5 costs which we quantify at Rs. 2,500.

8. The special leave petition is disposed of accordingly.

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