

SUPREME COURT OF INDIA

Control Print Ltd.

Vs.

Narcotics Control Bureau

(Ranjan Gogoi and N.V.Ramana JJ.)

16.04.2015

JUDGMENT

RANJAN GOGOI, J.

1. The first petitioner is a company registered under the Companies Act, 1956. It is, inter alia, engaged in the business of manufacture of coding and marking machines and consumables like inks and solvents for inkjet printing machines. Amongst others, Methyl Ethyl Ketone (MEK) is one of the raw materials used by the first petitioner in its manufacturing process.

2. Under the provisions of the Narcotic Drugs and Psychotropic Substances (Regulation of Controlled Substances) Order, 2013 (hereinafter referred to as 'the Regulations') the petitioners had submitted an application in form 'K' for grant of No Objection Certificate (NoC) for import of 79.2 metric tonnes of MEK. The said application dated 27.7.2013 was submitted to the Narcotics Commissioner, Gwalior on 07.08.2013. The goods i.e. MEK in 480 drums were dispatched from Taiwan on 27.07.2013 by vessel Zimdjibouti with the port of destination shown as Nhava Sheva Port India. The ship arrived at Nhava Sheva Port, Thane, Navi Mumbai on 12.08.2013. At the request of the petitioners the Customs authorities permitted lodgment of the goods in the customs bonded warehouse. By a letter dated 23.8.2013 of the Central Bureau of Narcotics issued to the petitioners (dispatched on 26.9.2013 according to the petitioners) further information/clarification from the petitioners was sought in the matter for grant of NoC. According to the petitioners, it received the said letter on 08.10.2013 and by reply dated 18.10.2013 the requisite information was supplied alongwith the further information that the goods had been shipped on 27.07.2013 and had landed at the Jawaharlal Nehru Port Trust -Nhava Sheva Port, Thane, Navi Mumbai on 12.08.2013 and were "awaiting for customs clearance purposes." Thereafter, on

29.11.2013 the Central Bureau of Narcotics informed the petitioners that "the matter has been taken up with the Commissioner of Customs (Import), Nhava Sheva to ascertain the status of the material." Eventually, on 11.12.2013 the Commissioner of Customs (Import) informed the office of the Narcotics Commissioner, Gwalior that the goods have been lodged in the customs bonded warehouse pending clearance from the Central Bureau of Narcotics. On 17.01.2014 the goods were seized at the instance of the Narcotics Commissioner apparently on the ground that the same have been imported without proper NoC and a FIR was also lodged. It is in these circumstances that the petitioners had instituted the writ proceeding (Writ Petition No. 900 of 2014) before the Bombay High Court out of which the present special leave petition has arisen. While the writ petition remained pending a letter dated 14.03.2014 from the Central Bureau of Narcotics was received by the petitioner communicating the following decision:

"2. In this context, it is to inform you that you have imported 79.20 MT Methyl Ethyl Ketone into India without a No Objection Certificate from the Narcotics Commissioner. This is in violation of Narcotic Drugs and Psychotropic Substances (Regulation of Controlled Substances) Order, 2013.

3. Hence No Objection Certificate for import of 79.20 MT Methyl Ethyl Ketone from Taiwan against your letter dated 18/10/2013, received in this office on 30/10/2013 cannot be issued as the said material was already imported into India by your firm on 12/08/2013."

3. The petitioner sought an amendment to the writ petition to challenge the said decision contained in the letter dated 14.03.2014. The amendment sought was allowed. By the impugned order dated 30.04.2014 the High Court has dismissed the writ petition on the ground that the petitioner, though aware of the Notification dated 26.03.2013 promulgating the Regulations in question, had imported the goods into India without the requisite NoC. The additional ground on which the High Court thought it proper to reject the writ petition was that a FIR has been filed and under Section 63 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter for short 'the Act') it is the criminal court which should be moved for release of the goods seized under the Act.

4. We have heard Shri F.S. Nariman, learned senior counsel for the petitioners and Shri Ranjit Kumar, learned Solicitor General appearing for the respondents.

5. Shri Nariman has urged that Clause 11 of the Regulations in question, particularly, sub-clauses (1) to (3) read together does not contain any express

prohibition on import of a controlled substance pending grant of NoC by the competent authority. It is further urged that under sub-clause (3) of Clause 11 of the Regulations if NoC is not granted within 21 days from the date of application such grant may be deemed to have been made. According to Shri Nariman, the application in Form K is required to be accompanied by any document of the description mentioned therein in order to show that there is a prior commitment of availability of the controlled substance for import into India. It is further urged that though the respondents were made aware of the fact that the goods have landed in the port of destination within India on 12.08.2013 and at that point of time the application for NoC was still under consideration, the respondents did not take any coercive action and instead continued to process the application filed by the petitioners for grant of NoC. Shri Nariman has also urged that the respondents had seized the goods on 17.01.2014 at which point of time no decision on the grant or refusal of NoC had been made. The rejection/refusal came subsequently i.e. on 14.03.2014. According to Shri Nariman, the goods having been seized on 17.01.2014 the rejection of the application for NoC was a fait accompli. There was no option but to reject. Hence the rejection is not a fair action on the part of the State.

6. In reply Shri Ranjit Kumar, learned Solicitor General has urged that under the Regulations in force import into India of any controlled substance requires grant of prior NoC by the competent authority which, admittedly, was not granted in the present case. In such circumstances, violation of the Regulations and consequential infringement of the relevant provisions of the Act is ex facie apparent. The order of the High Court, therefore, according to the learned Solicitor General, would not call for any interference.

7. Whether under Clause 11 of the Regulations no import of a controlled substance is permissible without a NoC being granted;

Whether absence of refusal to grant the NoC would amount to a deemed grant on the expiry of 21 days of the making of the application in Form K;

Whether the failure of the respondents to take timely coercive steps (seizure etc.) despite knowledge of the landing of the goods in India though the NoC was yet to be granted reflect their understanding of the purport and effect of Clause 11 of the Regulations;

Whether the above should lead to grant of post import NoC in the present case and whether grant of such NoC is consistent with the Regulations;

Whether the seizure of the goods made on 17.1.2014 when the application for grant of NoC was yet to be finalized is contrary to the provisions of the NDPS Act read with the Regulations in force;

Whether the rejection of the application for grant of NOC on 14th March, 2014 was a fait accompli in view of the seizure already made and therefore an unacceptable exercise of State power;

are the multi faceted issues that arise for consideration in the present case.

8. Should we answer the questions indicated above. Though we feel tempted we must refrain. Legal issues need not, nay, should not be answered merely because they have arisen in a given case. The cognate facts must not be ignored. In the present case, as found by the High Court, a FIR in respect of the import made by the petitioners without grant of the NOC had been lodged and was pending. What had really happened is that on 17.1.2014, after the seizure was made, the officer who had seized the controlled substance in question submitted a report to his superior officer, as required under Section 57 of the NDPS Act. On 18.1.2014, after receipt of the report of the seizing officer, the Assistant Narcotics Commissioner (Prevention) Gwalior appended on the said report a note to the effect that Crime Case No.1/2014 is registered in the Headquarter Office, Gwalior and the Seizing Officer was authorized to investigate the matter and file a complaint before the Competent Court, after completion of investigation, if required. Thereafter it appears, an investigation was carried out and on 14.8.2014 a complaint under Section 36A(1)(d) of the NDPS Act was filed before the Special Judge (NDPS Act cases), Ali Baug, District Raigad, Maharashtra for alleged violation of Sections 25A and 38 of the NDPS Act by one Basant Kalra, Managing Director of the First petitioner Company for importing the controlled substance in question without obtaining the NOC required under the Regulations in force. By order dated 22.8.2014 the learned Special Judge has taken cognizance of the offence alleged and has issued process. The said proceeding must be understood to be presently pending before the trial court in the absence of any contrary material or submission on the part of the petitioners.

9. The issues raised by the petitioners are not merely related but are directly in question in the criminal proceeding pending in respect of the same subject matter. If that is so, this Court must not answer any of the said questions, particularly, in the absence of any challenge to the legality and validity of the criminal proceeding before this Court which can arise only out of an order of the forum competent in

law to hear and consider such a challenge. From the materials on record it does not appear that any such challenge has been made till date by the petitioners.

10. In the above circumstances, we are of the view that it would be appropriate for us to refrain from addressing any of the issues raised by and on behalf of the rival parties and instead leave the petitioners with the remedy of taking such appropriate steps in the criminal proceeding, including release of the goods pending trial, as it may be advised.

11. The special leave petition is consequently disposed of in the above terms.