

Ashok Kumar Jain vs Union Of India And Ors on 22 September, 2023

Author: Md. Nizamuddin

Bench: Md. Nizamuddin

OD 1, 2, 3, 4

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO 416 of 2021
ASHOK KUMAR JAIN
Vs
UNION OF INDIA AND ORS.

WPO 426 of 2021
DAULAL SARDA
Vs
UNION OF INDIA AND ORS.

WPO 436 of 2021
DAULAL SARDA
Vs
UNION OF INDIA AND ORS.

WPO 464 of 2021
JUVRAJ BOTHRA
Vs
UNION OF INDIA AND ORS.

BEFORE:

The Hon'ble JUSTICE MD. NIZAMUDDIN

Date 22nd September, 2023

Appearance:

Mr. Prabhat Ranjan Dwivedi, Adv.
Mr. Priyankar Saha, Adv.
Mr. Chandan Kumar, Adv..
Mr. Hemant Tiwari, Adv
...For the petitioner
Mr. K.K. Maiti, Adv.
Mr. Tapan Bhanja, Adv.
...For Customs Authority
Mr. Kaushik Dey, Adv.
...for DRI
Mr. Somenath Bose, Adv.
Mr. Utpal Maitra, Adv.
Mr. Raj Sekhar Basu, Adv.
...For added respondent

The Court: Heard learned advocates appearing for the parties and considered their submissions and affidavits-in-opposition filed by the respondent Customs Authority/ respondent no. 2 and by the added respondent Arecanut Research and Development Foundation, Mangalore (hereinafter referred to as ARDF in short).

It has been recorded in the earlier order of this Court dated 15th September, 2023 that the main legal issues raised by the petitioner in these writ petitions are that the ceased betel nuts in question which has been declared as a foreign origin on the basis of a test conducted by ARDF and its report which is not a government approved laboratory and as to whether such test report is acceptable under the law and the second issue relates to violation of principles of natural justice by contending that the Authority concerned who has tested the betel nuts in question was not allowed to be cross-examined by the petitioner and thirdly that complete materials / documents were not provided to the petitioner during the course of impugned adjudication proceeding and on the factual and legal issue as to whether ARDF is a government approved laboratory or not?

The petitioners in support of their contention and on the aforesaid legal issues, have relied on an unreported decision of the Hon'ble Patna High Court dated 24th July, 2013 in Civil Writ Jurisdiction Case No. 3784 of 2013 (Union of India vs. Salsar Transport Company) and relevant portion of the said judgment is as follows :

"From the materials placed on the record by learned counsels for the parties I am also of the view that the sample has not been drawn in accordance with the provisions of Section 47 and Rule 2.4 of the Food Safety and Standards Act and Rules. So far as the reliance on the report by M/s. Arecanut Research & Development Foundation, Mangalore is concerned, the petitioners have totally failed to bring on record any material to show that it is an accredited laboratory by a competent authority under the Act and Rules. Hence no legal liability can flow from the report of such an institution."

The aforesaid judgment was upheld by the Appeal Court by the order dated 25th November, 2013. On the same proposition of law petitioners have also relied on another judgment of the Hon'ble Patna High Court dated 24th January, 2019 in Civil Writ Jurisdiction Case No. 7589 of 2018 (M/s. Ayesha Exports vs. Union of India). The relevant paragraph of the aforesaid judgment being paragraph 12 is quoted hereunder :

"12. Having heard learned Senior counsel for the petitioner and learned Additional Solicitor General of India, this court is of the considered opinion that once the learned coordinate Bench of this court has held that in absence of there being any material to show that M/s. Arecanut Research & Development Foundation, Mangalore is an accredited laboratory by competent authority under the Act and Rules, it's report cannot have a consequence of fastening of any legal liability and 'No legal liability can flow from the report of such an institution' the respondent authorities were not justified in again relying upon the ADRF Mangalore's report to justify the seizure in question. In fact such an attempt of the respondent authorities

would be contemptuous in nature as it is likely to cause harassment to the traders, by not following the judgment of the court."

Mr. Dwivedi, learned advocate appearing for the petitioners submits that against the aforesaid judgment dated 24th July, 2013, department had gone to appeal before the Hon'ble Supreme Court and the SLP was dismissed by the order dated 8th May, 2014 though by the said order question of law was kept open.

Mr. Maiti, learned advocate appearing for the respondents customs authority could not produce any document before this Court to establish that ARDF is a government approved laboratory. He simply relied on the recording in the impugned adjudication order particularly 1.17.8 of the impugned adjudication order and on perusal of which I find that nowhere it is specifically stated therein that the aforesaid laboratory is a government approved laboratory. I also find that the allegation of the petitioner on the aforesaid legal issue is strengthened and fortified by a document annexed to the writ petition being letter dated 4th January, 2018 issued by the Government of India, Directorate of Arecanut and Spices Development, Ministry of Agricultural and Farmers Welfare where in answer to the query no. 4 it has been clearly stated that the aforesaid laboratory is not approved and authorized to carry out such test and determine the origin of betel nuts.

Learned advocate for the ARDF/private respondent's argument supports the legal contention of the petitioner raised in this writ petition that the aforesaid laboratory upon the test of which respondent customs authority has relied is not a government approved laboratory and as such its test with regard to the origin of the betel nuts is not reliable and acceptable.

Considering the facts and circumstances of the case and submission of the parties and the aforesaid judgments of the Hon'ble Patna High Court and the aforesaid letter dated 4th January, 2018 issued by the Ministry of Agricultural and Farmers Welfare and submission of added respondent ARDF, I am of the considered view that the impugned adjudication order based on report by the aforesaid laboratory is not sustainable in law and is liable to be set aside accordingly and the matter is remanded back to the adjudicating authority concerned to pass fresh adjudication order in accordance with law after getting the betel nuts in question tested in a government approved laboratory as Mr. Maiti, learned advocate appearing for the respondent himself has agreed. All the issues raised in this writ petition are kept open for the petitioner to raise the same in course of fresh adjudication proceeding.

With these observations and directions, these writ petitions being WPO 416 of 2021, WPO 426 of 2021, WPO 436 of 2021 and WPO 464 of 2021 stand disposed of.

(MD. NIZAMUDDIN, J.) TR/