(1963) 05 P&H CK 0070

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 195 of 1962

Amir Singh — APPELLANT

Vs

The Government of India and Others — RESPONDENT

Date of Decision : 31-05-1963

Acts Referred:
Sea Customs Act, 1878 — Section 167(8)

Citation : (1963) 05 P&H CK 0070

Hon'ble Judges : P.C. Pandit, J

Bench : Single Bench

Advocate : B.S. Chawla, for the Appellant; C.D. Dewan, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

P.C. Pandit, J.—This is a petition under Article 226 of the Constitution filed by Amir Singh, proprietor of Messrs. Sunder Singh Amir Singh. Goldsmiths, Faridkot, challenging the legality of the order passed by the Collector of Central Excise and Customs, New Delhi, confiscating two gold bars, weighing 110 tolas, 4 mashas 3 rattis u/s 167(8) of the Sea Customs Act, 1878 (hereinafter referred to as the Act'' read with section 19 of the same Act, made applicable by section 23-A of the Foreign Exchange Regulation Act, 1947.

2. On 11th January 1957 at about 8 in the evening, on information having been received earlier, the customs preventive party apprehended the petitioner at Amritsar Railway Station. Oil his personal search, the following articles were recovered :

(i) Two bars of gold weighing 110 tolas 4 mashas and 3 rattis.

(ii) one pair of bangles weighing 1 tola 10 mashas and 3/4 ratti, and

(iii) Indian currency worth Rs. 1,163/-.

According to the allegations of the petitioner, in January 1957 he had received an order from His Highness the Raja of Faridkot for manufacturing a number of silver articles, which had to be delivered at an early date. For the purpose of executing this order, he had gone to Amritsar for purchasing silver and for securing services of some technical hands, who were required for the manufacture of these articles. After having been apprehended, he was taken to a police-station by the customs officials and was subjected to inhuman methods of investigation. He was, consequently, obliged to sign certain documents, purporting to contain the substance of interrogation made by the said officials. Next day, when the petitioner was still in their custody, in compliance with their orders, his Munim, Moti Ram, had brought the papers and the account-books of his firm from Faridkot for their inspection. He was also forced to affix his signatures to another document. Later on, the petitioner was released and he sent telegrams to the higher authorities stating that his and his Munim''s signatures on certain documents were obtained by force by the Customs officials. The Assistant Collector, Land Customs, Amritsar, was, therefore, annoyed with the petitioner and he issued a show-cause notice to him u/s 178-A of the Act, calling upon him to prove that the gold seized from him was not smuggled one. In reply to this notice, the petitioner produced oral evidence of respectable witnesses and unimpeachable documentary evidence, which conclusively established that the gold in question had been acquired by him by lawful means. The petitioner also made a written request that he should be given a personal hearing before the case was decided. As a result, Shri R. Parshad, Collector of Customs, New Delhi, gave a personal hearing to him on 10th January 1958, when all the documentary and oral evidence was sifted by the said Collector and he found that the entries in the books and the contents of the affidavits of respectable persons, which had been filed by him, "were authentic". After the hearing was over, the Collector informed the petitioner that the orders would be communicated to him in due course. In the meantime, Shri R. Parshad was transferred and Shri B.D. Deshmukh was appointed in his place. On 12th July 1958 he passed the impugned order without affording any hearing to the petitioner. While deciding the case against him, he pressed into service the statements of two persons, namely, Dharam Pal and Tek Chand, who were never examined or produced in the presence of the petitioner and he had no opportunity to cross-examine them. Against this order, the petitioner filed an appeal before the Central Board of Revenue, New Delhi, who dismissed the same without giving any opportunity to the petitioner of being heard. Thereafter, the petitioner filed a revision petition u/s 191 of the Act to the Central Government. The same was also rejected on 6th July, 1961 without hearing the petitioner. This order was actually received by the petitioner in August 1961. Thereupon, the present writ petition was filed on 26th December, 1961.

3. In the return filed by the respondents, it was stated that the petitioner was arrested at about 8 in the evening of 11th January, 1957 from the Rickshaw Stand, outside the Railway Station, Amritsar. Prior to his arrest, there was information with the Customs authorities that the petitioner was carrying

smuggled gold. On the search of his person, the above mentioned articles were recovered. On being questioned, the petitioner made a lengthy statement to the effect that he had brought ornaments from Faridkot to Amritsar and had them melted from the shop of one Dharam Pal in Amritsar with a view to purchase silver from the sale proceeds of the melted gold. Dharam Pal, who was then along with the petitioner, was immediately questioned as to the correctness of the petitioner''s statement. He denied any knowledge about the possession of these ornaments by the petitioner. He also stated that he had not melted any gold brought by the petitioner. In fact, his shop did not deal with the melting of ornaments. The petitioner was released at about midnight. He appeared on the following day along with his Munim, Moti Ram, and his books of account with a view to convince the Customs authorities that regular entries in respect of the gold, which was seized from him, existed therein. The entries were examined and the statement of the Munim was also recorded. Moti Ram stated that the entries in respect of the gold in question had been made in the books of account on the morning of 12th January, 1957 at the. instance of the petitioner. It was denied that any coercion or undue influence was exercised at the time of the recording of the statements of the petitioner and his Munim. The petitioner gave another statement on 12th January, 1957 to the effect that he had brought gold ornaments weighing about 50 tolas from Faridkot and had purchased an equal quantity of gold from one Tek Chand Dalai of Amritsar. This statement was made by him, apparently, because he found that his previous statement could not be sustained in view of deposition of his Munim, Moti Ram. The Customs authorities then immediately contacted Tek Chand in the presence of the petitioner. He, however, denied having sold any gold to the petitioner on 11th January, 1957. It was true that on 15th January, 1957 the petitioner made a complaint to the Collector, Central Excise, Delhi, about the maltreatment meted out to him. This complaint, however was duly investigated and was eventually found to be baseless. On 1st February, 1957 a show-cause notice was issued to the petitioner, to which he sent a reply through his counsel. No documentary evidence was, however, filed by him along with his reply dated 13th February, 1957. The petitioner had asked for a personal hearing and the same was granted by Shri R. Parshad, the then Collector, Central Excise, on 10th January, 1958. During the course of this personal hearing, the petitioner placed on record some documents in the form of affidavits. He was accompanied by his Advocate, Shri M.M. Sharma, who was duly heard. After hearing, Shri R. Parshad on the same day made a detailed note of the points raised by the petitioner''s counsel and of the answers made by the petitioner to the questions put to him. Shri R. Parshad was later on transferred and Shri B.D. Deshmukh came in his place, who passed the impugned order on 12th July, 1958, after having duly considered the note prepared by his predecessor along with the other material placed on the record The seizure of the gold was on the basis of reasonable belief founded upon the existence of prior information that the petitioner was in possession of smuggled gold. It was further stated that at the time the petitioner''s appeal was heard, he was present along with his counsel and full opportunity was given to him to present his case. It was not necessary, under the law, to hear the petitioner before his revision petition was disposed of by the Central Government.

4. Learned counsel for the petitioner confined his arguments to the following two points :

Firstly, he contended that he was not heard by the Collector, who passed the impugned order. It was true that Shri R. Parshad had given him a personal hearing, but since the order of adjudication was passed by Shri B.D. Deshmukh, under the law, it was necessary that he should have also personally heard him.

Secondly, he submitted that the impugned order had been based on the evidence of Dharam Pal and Tek Chand, who were never examined in the presence of the petitioner, and he, consequently, had no opportunity to cross-examine them.

On these two grounds, it was submitted that the impugned order was opposed to all principles of natural justice.

5. As regards the first ground, the provisions of the Act do not provide that a personal hearing has to be given before the Collector passes an order u/s 182 of the Act. Since the present proceedings are undoubtedly of a quasi-judicial nature, it is incumbent on the Customs authorities to follow the elementary rules of natural justice and give an aggrieved party an opportunity of being heard before an order is passed against him. Admittedly, in the present case, the petitioner along with his counsel was heard by Shri R. Parshad at considerable length and he filed certain documents in support of his case. It is evident from the written statement filed by the respondents that detailed notes of the arguments of the petitioner''s counsel and of the replies given by the petitioner to the questions put to him by the Collector were prepared by Shri R. Parshad and placed an the record. The mere fact that this officer was later on transferred and the final decision was given by Shri B.D. Deshmukh, who had, admittedly, gone through the detailed notes prepared by his predecessor and the other documentary evidence produced by the petitioner, would not vitiate his order on the ground that he himself had not personally heard the petitioner. In these circumstances, it cannot be said that the principles of natural justice have been violated. Moreover, it is significant to mention that the petitioner has not been able to show that he has been prejudiced in any way by the passing of the impugned order without his being personally heard by Shri B.D. Deshmukh. Further, it is clear from the appellate order of the Central Board of Revenue that the petitioner had never made it a grievance that the order of adjudication was unsustainable in law, because it had not been made by the Collector, who had heard him personally. Learned counsel for the petitioner strongly relied on the judgment of the Supreme Court in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, , in which it was held : "Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear-up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned

argument to accept his point of view. If one person hears and another decides, then personal hearing becomes as an empty formality. We, therefore, hold that the said procedure followed in this case also offends another basic principle of judicial procedure." This authority has no application to the facts of the instant case. Their Lordships of the Supreme Court were dealing with a case under the Motor Vehicles Act, wherein the relevant provisions imposed a duty on the State Government to give a personal hearing. In that case, the hearing was given by the Secretary of the Transport Department and final order had to be passed by the Minister concerned, who had actually done so. It was, under these circumstances, that the above mentioned observations were made. The present is not a case of that type. Here, the Collector, (Shri R. Parshad), who had to pass the final order, had himself given a personal hearing to the petitioner and had prepared detailed notes of his counsel''s arguments and the answers given by the petitioner to the questions put to him. These notes were duly considered by the succeeding Collector (Shri B.D. Deshmukh) along with other material on the record before he passed the impugned order. Under these circumstances, there was no violation of the principles of natural justice, especially, when it has not been shown that the petitioner had been prejudiced in any way. In this very authority, the learned Judges of the Supreme Court have held that "the rules of natural justice vary with varying constitutions of statutory bodies and the rules prescribed by the Legislature under which they had to act and the question whether in a particular case they had been contravened, must be judged not by any pre-conceived notion of what they may be, but in the light of the provisions of the relevant Act." It is pertinent to mention that in the present case, no witnesses had been examined by Shri R. Parshad, whose demeanour had to be observed. The enquiry in this case had been made by the Assistant Collector and other subordinate officials and the same was placed before the Collector along with the petitioner''s reply to the show-cause notice issued to him. The detailed notes of the arguments of the petitioner''s counsel were prepared by Shri R. Parshad, which, as already mentioned above, were duly taken into consideration by Shri B.D, Deshmukh. In the present case, therefore, I am of the view that the petitioner had been given a proper hearing before the impugned order was passed and no prejudice has been caused to him by Shri Deshmukh''s not personally hearing him.

6. As regards the second contention, I have gone through the order of the Collector and find that it is not based on the statements of Dharam Pal and Tek Chand. The Collector had held that the petitioner had been giving contradictory explanations from time to time regarding the possession of these smuggled goods. If his explanation was a genuine one, he could have told the truth in the very first instance and. there was no necessity for him to change his stand later on. On the basis of the prior information received by the Customs authorities, they had a reasonable belief that the petitioner was carrying smuggled goods and, therefore, he was arrested and the goods were seized. Under the provisions of section 178-A of the Act, it was then for the petitioner to prove that the goods

in his possession were not smuggled ones. Immediately, after his arrest, he gave an explanation that he had brought the ornaments from Faridkot and had got them melted from the shop of Dharam Pal with a view to purchase silver with the sale proceeds thereof. Dharam Pal, who was with the petitioner at that time, was immediately questioned in order to test the correctness of the petitioner''s explanation. He stated that he had never melted these ornaments. On the next day, that is, 12th January, 1957, the petitioner changed his position and stated that he had brought ornaments weighing 50 tolas from Faridkot and had purchased on equal quantity of gold from Tek Chand, Dalai of Amritsar. The Customs authorities then examined Tek Chand in the presence of the petitioner, This was also done to test the veracity of the petitioner''s statement. Tek Chand also denied having sold any gold to the petitioner on 11th January, 1957. Thus, it would be seen that the statements of both these persons were recorded in the presence of the petitioner. Dharam Pal was in the company of the petitioner when the latter was arrested and the statement of Tek Chand, according to the return filed by the respondents, bears the signatures of the petitioner in token of his having heard the same. It is also significant to mention that the petitioner did not ask the Collector to examine these witnesses in his presence. In any case, he could have produced them in defence, if he so desired.

7. As I have already mentioned above, the Collector was not depending upon the evidence of these two persons in making the order of confiscation and he himself had not recorded their statements. These had been recorded at the enquiry stage, before the show-cause notice was issued to the petitioner, in order to verify the statement made by the petitioner himself with regard to these witnesses.

8. There is, thus, no force in this contention as well.

9. The result is that this petition fails and is dismissed. In the circumstances of this case, however, I will leave the parties to bear their own costs.

