
(1988) 10 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No. 3867 of 1987

Atlas Exporters and another

APPELLANT

Vs

K.V. Irriraya, Accie.

RESPONDENT

Date of Decision : 12-10-1988

Acts Referred:

Citation : (1989) 25 ECR 57 : (1989) 40 ELT 3

Hon'ble Judges : Ashok Agarwal, J

Bench : Single Bench

Judgement

1. This petition seeks to challenge the order dated the 27th July 1987 passed by the respondent No. 1, the Additional Chief Controller of Imports & Exports. By that order the respondent No. 1 reviewed the order dated the 25th November 1986 passed by the respondent No. 3, the Export Commissioner passed in the appeal filed by the petitioners. By the appellate order, the decision of the respondent No. 4, the Director of the Appeal Export Promotion Council deregistering the petitioners as exporters of readymade garments was set aside. By the impugned order dated the 27th July 1987, the order of the respondent No. 4 deregistering the petitioners was restored.

2. The petitioner No. 1 firm was registered as merchant exporters with the Apparel Export Promotion Council, the respondent No. 4. For the year 1984 the petitioner No. 1 was allotted certain quota under the 1984 Export Policy. The petitioners under that policy were required to export readymade garments of the prescribed value on or before the prescribed dates which fell on the 7th, 10th and 14th May 1984. Since the petitioners were not successful in effecting the exports within the stipulated dates, it is the case of the petitioners that they, on the 9th of May 1984 applied to the Bombay office of the respondent No. 4 for extension of the period up to 31st May 1984. According to the petitioners, this extension was granted and they effected the exports within the extended period.

3. On the 5th of January 1985 the petitioners learnt from a press report appearing in the Economic Times that their registration had been suspended by

the respondent No. 4 pending investigation into the alleged forgery of rubber stamps of the respondent No. 4 Council while procuring the order of extension. The petitioners filed in this Court Writ Petition No. 28 of 1985. By an order dated the 11th January 1985 this writ petition Writ Petition No. 28 of 1985. By an order dated the 11th January 1985 this writ petition was dismissed. The petitioners carried an appeal being Appeal No. 24 of 1985 and the same was dismissed by the Divisions Bench of this Court on the 22nd January 1985.

4. On the 14th January 1985 the petitioners were served with a show cause notice calling upon them to show cause as to why the petitioner No. 1 should not be deregistered. By order dated the 16th February 1985 the respondent No. 4 passed orders deregistering the petitioner No. 1 under para 61(i)(b) of the Hand Book of Import-Export Procedures. By this order the petitioner No. 1 was deregistered for one year, from the 31st December 1984 to 30th December 1985. Being aggrieved, the petitioners preferred an appeal to the respondent No. 2. By order dated the 28th June 1985 the Export Commissioner of the respondent No. 2 set aside the order dated the 16th February 1985 and directed the respondent No. 4 to hold de novo proceedings. On the 30th December 1985 the Director of the respondent No. 4 passed an order affirming the earlier order of deregistration. Since this order had been passed without affording a hearing to the petitioners, the respondent No. 4 on the 1st of April 1986 issued fresh notice to the petitioners. After affording a hearing, the Director of the respondent No. 4 by his order dated 10th April 1986 confirmed the earlier order of deregistration. The said order confirmed the earlier finding that the petitioners were guilty of forgery in the matter of procuring the extension of time for effecting the export. Being aggrieved, the petitioners preferred an appeal under para 155(1) of the Hand Book to the respondent No. 2 and the Export Commissioner, the respondent No. 3 by his judgment and order dated the 25th November 1986 was pleased to allow the appeal of the petitioners and set aside the order to deregistration dated the 10th April 1986. Being aggrieved, the respondent No. 4 on the 10th January 1987 filed a Review Application under paras 155(2) read with 156 of the Hand Book. A notice of the hearing of the Review Application was served upon the petitioners on the 16th April 1987 but it is grievance of the petitioners that the notice did not contain a copy of the Review Application. By the impugned order dated the 27th July 1987 the Addl. Chief Controller of Imports & Exports, the respondent No. 1 allowed the Review Applications, set aside the order dated the 25th November 1986 passed by respondent No. 3 in appeal and confirmed the order dated the 10th April 1986 of the respondent No. 4 deregistering the petitioners for a period of one year from 31st December 1984 to 30th December 1985. On the 24th August 1987 the petitioners approached the Chief Controller of Imports & Exports, the respondent No. 2 seeking to invoke his general power of review and set aside the impugned order of 27th July 1987. Since the petitioners received no response, they filed the present petition.

5. Mr. Raval, the learned Counsel appearing on behalf of the respondent No. 4 raised preliminary objection in regard to the territorial jurisdiction of this Court.

According to him, the impugned order was passed by the respondent No. 1 after the petitioners have been heard in Delhi. The entire cause of action arose in Delhi. Merely because the said order was received by the petitioners in Bombay, that would not afford jurisdiction on this Court for the exercise of the jurisdiction under Article 226 of the Constitution of India. He placed reliance on the case of Motipur Sugar Factory Ltd. and Another Vs. Joint Secretary, Govt. of India, Ministry of Industry and Others, wherein it was observed :

"..... that the registered office of the petitioner company is in Bihar and the said Motipur Sugar Factory is in Bihar. By the impugned order, the management of the said factory has been taken over by the respondents in Bihar. The order u/s 18AA has also been passed by the Central Government at Delhi and the Gazette of India is also published from New Delhi. It is true that the order u/s 18AA becomes effective after the publication in the Gazette of India but there is no manner of doubt that despite the requirement of publication of the Order u/s 18AA of the Act the Gazette of India and despite the fact that sale of such Gazette is made in different parts of India, such publication of the Gazette with circulation all over India does not constitute the said order as an order also passed in other parts of India. In my view, the publication in the Official Gazette may be a requirement of the Statute for giving effect to the said order but the same does not alter the character of the order passed in New Delhi. A company may have various branches in different parts of India wherefrom some business transaction may be effected concerning the said company but the existence of such branch offices in different parts of India will not be the decisive and governing factor for conferring jurisdiction. In the facts of the case, there is no manner of doubt that the management of Motipur Sugar Factory in Bihar was sought to be taken over pursuant to an order passed u/s 18AA and other consequential orders passed thereafter. All such orders were passed outside the territorial jurisdiction of this Court. Simply because a copy of the order has been forwarded by the Bihar State Sugar Corporation Limited to the Managing Director or other Directors at Calcutta, it cannot be held that a part of the cause of action has arisen in Calcutta and as such this Court has jurisdiction to entertain the writ petition."

6. Mr. Raval further relied upon the case of State of Rajasthan and Others Vs. Swaika Properties and Another, , wherein, in proceeding under the Land Acquisition Act initiated in respect of land situated in Rajasthan, notices were served on the owner in West Bengal. It was held that mere service of notice does not give rise to the cause of action in West Bengal and hence the Calcutta High Court had no jurisdiction to entertain the petition challenging the acquisition. Further, reliance was placed on the case of Collector of Customs, Calcutta Vs. East India Commercial Co. Ltd., wherein it was held that.

"..... once an order of an original authority is taken in appeal to the appellate authority which is located beyond the territorial jurisdiction of the High Court, it is the order of the latter authority which is the operative order after the appeal is

disposed of, and as the High Court cannot issue a writ against the appellate authority for want of territorial jurisdiction it would not be open to it to issue a writ to the original authority which may be within its territorial jurisdiction once the appeal is disposed of....

"When an appeal is made, the appellate authority can do one of three things, namely, (i) it may reverse the order under appeal, (ii) it may modify that order, and (iii) it may merely dismiss the appeal and thus confirm the order without any modification. In all these three cases after the appellate authority has disposed of the appeal, the operative the original order is the order of the appellate authority whether it has reversed the original order or modified it or confirmed it. In law, the appellate order of confirmation is quite as efficacious as an operative order as an appellate order to reversal or modification. Therefore, if the appellate authority is beyond the territorial jurisdiction of the High Court, it seems difficult to hold even in a case where the appellate authority has confirmed the order of the original authority that the High Court can issue a writ to the original authority which may even have the effect of setting aside the order of the original authority when it cannot issue a writ to the appellate authority which has confirmed the order of the original authority. In effect, by issuing a writ to the original authority setting aside its order, the High Court would be interfering with the order of the appellate authority which had confirmed the order of the original authority even though it has no territorial jurisdiction to issue any writ to the appellate authority."

7. In my judgment, there is no merit in the contention of Mr. Raval that this Court has no jurisdiction to entertain the present petition. In the first case of Motipur Sugar Factory, *supra*, it is apparent that no cause of action had arisen within the jurisdiction of the Calcutta High Court. The impugned order taking over the affairs of the Sugar Factory had been passed in Bihar. The registered office of the sugar factory was situated in Bihar. The impugned order had been passed by the Central Government in Delhi and was published in the Gazette of India which was also published at Delhi. By the impugned order, the sugar factory situated in Bihar was closed down. On these facts it was held that merely because the copy of the impugned order was forwarded to the Directors at Calcutta, or that the Company had Sales Office at Calcutta, could not confer jurisdiction on the Calcutta High Court to exercise writ jurisdiction under Article 226 of the Constitution of India. In the second case relied upon by Mr. Raval, viz. *M/s. Swaika Properties, supra*, the land situated at Rajasthan had been acquired. Merely because the notice of acquisition was served upon the owner in West Bengal, the same was held to be insufficient to confer jurisdiction on the Calcutta High Court to exercise its powers under Article 226. The Notification for acquisition had become effective the moment it was published in the official gazette as thereupon the notified lands becomes vested in the Government free from all encumbrances. In these circumstances it was held that the entire cause of action arose in Rajasthan and the Calcutta High Court would not exercise its jurisdiction under Article 226 merely on the ground that the notices of acquisition

had been served on the owners in West Bengal. In regard to the third case viz. East India Commercial Company, supra, it is enough to observe that the same related to a point of time prior to the 15th and 42nd Constitutional amendments whereby Clauses 1A and 2 respectively were introduced. The observations contained in this case will, therefore, have no application to the facts of the present case.

8. In the present case, it will have to be noticed that petitioners are carrying on business in Bombay. Under the relevant Export Policy, the petitioners were engaged in the Business of exporting readymade garments to U.S.A. This business of export was being carried on in Bombay. In view of the provision of Article 226(2), the short question that will have to be decided is whether the cause of action to file the present petition either wholly or in part arises within the territorial jurisdiction of this Court. It is true that the impugned order has been passed by the respondent No. 1 in Delhi. However, all the consequences that flow from that order are visited upon the petitioners in Bombay. By that impugned order, the petitioners' business of export being carried on in Bombay are vitally affected. It must, therefore, be held that a part of the cause of action has arisen in Bombay. In my view, therefore, this Court will have the jurisdiction to entertain and try this petition. In the case of *Damomal Kausomal Raisinghani Vs. Union of India and Others*, a Division Bench of this Court on similar facts held that this Court has jurisdiction. The impugned order in that case had been passed outside the jurisdiction of this Court. The authority passing that order was also located outside its jurisdiction. Placing reliance on the 15th constitutional amendment which is identical to Clause (2) of Article 226 brought about by the 42nd constitutional amendment, it was held :

"Even assuming that this order was made by the third respondent in New Delhi, there can hardly be any doubt that the effect of this order fell on the petitioner at Ulhasnagar where he resides. It is also not in dispute that the proceedings that would be taken against the petitioner in consequence of the impugned order would be by officers located within the territories in relation to which this Court exercise jurisdiction."

In this view of the matter, it will have to be held that this Court has the jurisdiction to entertain and try this petition.

9. Mr. Chagla, the learned Counsel appearing on behalf of the petitioners submitted that no application for review can lie at the instance of respondent No. 4. According to him, on a proper construction of Para 155(2) of the Hand Book of Import & Export Procedures, it was only the person aggrieved by the decision of the Appellate Authority who could approach the Chief Controller of Imports & Exports, the respondent No. 2 for review. The Apparel Export Promotion Council, the respondent No. 4 could not be termed as a person aggrieved. The respondent No. 4 is the registering authority as also the authority who had passed the order deregistering the petitioners. The respondent No. 4 may be a party not satisfied with the order passed in appeal, but it cannot be a party

aggrieved. A party aggrieved was only the party whose rights had been adversely affected. Hence, the review application at the instance of the respondent No. 4 was not maintainable and consequently, the impugned order passed in the said review proceedings was non-est. Mr. Chagla further submitted that the general power of review as contained in Para 156 was similar to the power of review contained in Para 155(2). In other words, the power of review under Para 156 is circumscribed by power under Para 155(2) this power of review under Para 156 cannot be invoked at the instance of the respondent No. 4. It could be exercised only for granting relief to a person aggrieved of the type contemplated in Para 155(2). Reliance was placed on the decision of R. v. London Sessions Appeal Committee reported in (1951) 1 All E L R 1032 wherein it was observed :

"By S. 25(1) of the London County Council (General Powers) Act, 1947, it is provided :

"Any person aggrieved by the refusal of a borough council to register him as a registered street trader or to grant or renew an annual licence or by the cancellation by a borough council of his registration as a registered street trader or by the revocation or variation by a borough council of an annual licence or by any prescription made by a borough council under S. 21(5) (annual licences) of this Act may appeal to a petty sessional court and on any such appeal the court may confirm reverse or vary the decision of the borough council and may award costs...."

By S. 64 :

"Any person deeming himself aggrieved by any conviction or order by a court of summary jurisdiction under any provision of this Act may appeal to the next practicable court of quarter sessions under the according to the provision of the Summary Jurisdiction Act."

"In my opinion, for several reasons, the borough council was not given an appeal by S. 64. First, wherever "borough council" is mentioned in this Act it is always mentioned as the "borough council" and persons who may be affected by the orders of a council are mentioned as a "person". The right of appeal given by S. 64 is to "any person deeming himself aggrieved". In view of the structure of the Act and the expressions used in the earlier sections, if it had been intended to give a borough council an appeal, I should have expected that the Act would have said : "Any person or any borough council deeming themselves aggrieved." Secondly, I do not think that it can be said that, because the borough council's decision has been reversed by the magistrate, that makes the borough council a person aggrieved for the purpose of S. 64. The words of the section are not "any person affected by any order", but "any person aggrieved by any order". I am willing to assume for the purpose of the present case, although I am not convinced of it, that the magistrate's decision reversing the decision of the council may be regarded as an order. The decision reads : "It is ordered that the

decision (of the council) be reversed". The best definition of the expression "aggrieved" is in *Exp. Sidebotham. Re Sidebotham* (3), where JAMES, L.J. said 14 Ch. D. 465 :

"But the words "persons aggrieved" do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A "person aggrieved" must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of somethings, or wrongfully refused him something, or wrongfully affected his title to something."

It cannot be said that the borough council comes within those words.

In *R. v. London County Keepers of the Peace & JJ.* (4), which was concerned with the questions whether the prosecutor in a quasi-criminal case under the Highway Act, 1835, was a person aggrieved, the court held that he was not and had no right of appeal under S. 105 of that Act. It was put that he might be annoyed at finding what he thought was a breach of the law was not a breach, but, LORD COLEBRIDGE, C.J., said 25 Q.B.D. 361 :

"The section does not give an appeal to anybody but a person who is by the direct act of the magistrate "aggrieved" - that is, who has had something done or determined against him by the magistrate." Under the statute we are now considering the court of summary jurisdiction has to take into account the same matters as the borough council, and, if the court thinks cancellation of the licence is not justified, it can restore the licence to the street trader. If the court refuses to grant a licence, the street trader is a person aggrieved, because his livelihood is affected, and an order is made directly affecting him. In my opinion, the order did not directly affect the council in such a way as to make it a "person aggrieved" within the meaning of the section. For these reasons, I think London Sessions were right in holding there was not appeal given to the council, and, therefore, this application for an order of mandamus should be refused."

10. In my view, having regard to the provisions of Para 155(2), it will have to be held that the representation to the Chief Controller of the Imports & Exports which is contemplated is a representation by a person aggrieved. In my view, a person aggrieved, cannot be equated with a party who is not pleased with an order passed. It has to be a person whose rights have been adversely affected. This is clear from the reliefs which can be granted by the Chief Controller of Imports & Exports under Clause (2). He may either himself deregister the exporter or restore registration or he may direct the registering authority to re-register such exporter or restore his registration. The reliefs do not contain a relief in favour of a party in the position of the respondent No. 4 who is the registering authority. These reliefs do not contemplate deregistration of the exporter or cancellation of registration of an exporter at the instance of the respondent No. 4. It is, however, not possible to accept the contention of Mr. Chagla that the general power of review contained in Para 156 is circumscribed

by the power contained in Para 155(2). The said para empowers the Chief Controller of Imports & Exports either on his own motion or otherwise to call for the records of any case pending with or decided by an officer subordinate to him and pass such orders as he may consider fit and just. It has to be noted that for exercising the power under Para 155(2), an application for review is required to be made within a period of 45 days from the date of the receipt of the communication containing the decision against which the representation is made. No such fetters are found in the exercise of power of review contained in Para 156. In my view, the general power of review as contained Para 156 is wide enough so as to be exercised either suo motu or at the instance of a person aggrieved or a party like the respondent No. 4 who is not satisfied with the order. The power of review contained in Para 156, therefore, cannot be restricted as being capable of being exercised only at the instance of an aggrieved exporter. Hence, the impugned order of the respondent No. 1 cannot be successfully assailed on the ground that the same was exercised at the instance of the respondent No. 4.

11. Mr. Chagla next contended that the power of review contemplated in Para 155(2) and 156 is exercisable by the Chief Controller of Imports & Exports. The impugned order, however, was passed by respondent No. 1, the a Additional Chief Controller of Imports & Exports. According to Mr. Chagla, this power of review can be exercised by the Chief Controller himself and by none at all. He pointed out that Para 155(1) provided an appeal to an exporter who is not satisfied with a decision of the registering authority either refusing to register him or deregistering him. Such an appeal lies to the Chief Controller of Imports & Exports or to an officer authorised by him in this behalf. The power of review contained in Clause 155(2) is provided only to the Chief Controller of Imports & Exports and not to an officer authorised by him as provided in Para 155(1). Similarly, the power of review contained in Para 156 is exercisable by only the Chief Controller of Imports & Exports and not by an officer authorised by the Chief Controller. According to Mr. Chagla, the power of review was a discretionary power and hence was personal to him i.e. to the Chief Controller of Imports & Exports. This power was not capable of being delegated. The impugned order not having been passed by the Chief Controller of Imports & Exports, is without jurisdiction. Mr. Chagla alternatively submitted that the Additional Chief Controller who had passed the impugned order was not an officer authorised by the Chief Controller of Imports & Exports to perform the functions under Para 156. The petitioners had specifically asserted this position in the petition and the same has remained uncontroverted.

12. In my judgment, there is considerable merit in the above contentions. Though the appellate authority contemplated in Para 155(1) included the Chief Controller of Imports & Exports as also an officer authorised by him in this behalf. The provisions of Para 155(2) and 156 contemplate the Chief Controller of Imports & Exports alone as the competent authority to exercise powers therein. The powers of review are seen essentially discretionary in nature and can be

exercised by the very authority which has been conferred with the said power. Such an authority cannot be validly delegated.

13. Mr. Raval sought to take resort to the definition of the term "Chief Controller of Imports & Exports" contained in the Exports (Control) Order, 1977. The said definition includes the Additional Chief Controller, Export Commissioner in the office of the Chief Controller, the Joint Chief Controller, a Deputy Chief Controller, Asstt. Chief Controller and Controller of Imports & Exports. In my judgment, there is no justification in importing the definition of the Chief Controller of Imports & Exports as contained in the Exports (Control) Order, 1977 while construing the provisions contained in the various Paras of the Hand Book. No provisions of the Paras of the Hand Book have been pointed out so as to justify the inclusion of the definition of the Chief Controller of the Imports & Exports contained in the Export (Control) Order, 1977 in the relevant Paras of the Hand Book dealing with the provisions of appeal and review. In this view of the matter, it will have to be held that the power of review which is contemplated in Paras 155(2) and 156 is exercisable by the Chief Controller of Imports & Exports alone. Had it been the intention confer the said power on an officer other than the Chief Controller of Imports & Exports, nothing was simpler than to provide for the same specifically, Hence, it will have to be held that the impugned order passed by the respondent No. 1 is without jurisdiction and is liable to be set aside.

14. Mr. Chagla next contended that the respondent No. 1 has clearly exceeded his jurisdiction in exercising the powers of review contained in Para 156. The powers of review, according to Mr. Chagla can be exercised only in cases contemplated under Order 47 Rule 1 or u/s 115 of the Code of Civil Procedure. The respondent No. 1, however, had virtually exercised appellate powers. He had reappreciated the facts and the evidence and had interfered even on findings which were essentially discretionary in nature. Placing reliance on the judgment and order dated the 25th November, 1986 passed by the respondent No. 3, Mr. Chagla pointed out that the appellate authority had found on a careful perusal of the record, that there was no conclusive evidence to establish the guilt of the exporter. The appellate authority had found that the request of the exporter though received in the Apparel Exports Promotion Council was not officially processed but this did not establish that the guilt lay at the door of the exporter. The possibility of an irregularity on the part of an employee of the Apparel Export Promotion Council cannot be entirely ruled out. Since no collusion between the exporter and any employee of the Apparel Export Promotion Council had been established, it was difficult to conclude mala fide on the part of the exporter. There was not strong motive which could have prompted the exporter to undertake a forgery which could lead to such severe repercussion. Apparently, the quota was available and if the exporter's application had been officially processed, he would have perhaps got the extension as well in the normal course. With the aforesaid observations, the appellate authority had thought it fit to give the benefit of doubt to the petitioners and set aside the order of deregistration. The order passed by the respondent No. 1 could hardly be an

order of review. It was in substance an order arrived at on a reappraisal of the entire facts and the evidence on record. Such order passed on examining the merits and demerits of the case was in excess of the powers of review contained in Para 155(2) and 156.

15. In my judgment, there is considerable merit in the above contention. A perusal of the impugned order makes it clear that the respondent No. 1 had reappraised the facts and evidence and arrived at a finding contrary to the one arrived by the respondent No. 3 in appeal. The respondent No. 3 was entitled to reappraise the facts and the evidence as he was entertaining appeal. That was, however, not the function of the reviewing authority exercising jurisdiction under Paras 155(2) or 156.

16. In the case of Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi, , it was observed to the effect that an application for review is entertained only on a ground mentioned in Order XL VII, Rule 1 of the Code of Civil Procedure, and in a criminal proceeding on the ground of an error apparent on the face of the record. Whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except "where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility."

17. In the case of Bibi Nazma v. R. P. Sinha reported in AIR 1954 Pat 43, it was observed :

"There an application for review can, in certain circumstance, be entertained if there is error of law appearing in the body of the decree or when there is any fresh or new matter discovered after the passing of the decree. The scope of the power of review in English Courts has been discussed in "Charles Bright & Co. v. Sellar" (1904) 1 KB 6(B), where the history of procedure in England has been explained.

"It is manifest, therefore, that the expression "review" has a well known legal significance, and S. 26(2), Administration of Evacuee Property Act must be constructed in the context and background of the CPC where the same expression has been used. It is a familiar rule of construction that when the legislature has deliberately used a term which has a known legal significance in law, it must be taken that the legislature has attached to that term that known legal significance [see - "L.P.E. Pugh v. Ashutosh Sen" AIR 1929 PC 69(C)]. In our opinion the expression "review" used in S. 26(2), Administration of Evacuee Property Act must be constructed not in a grammatical sense but it must be construed to have the same legal meaning a sub 0.47. R. 1, Civil P.C. If this view is right, it follows that Mr. R. P. Singh had no jurisdiction to review the order of his predecessor, Mr. S. N. Ray, in absence, of any fresh material or in the absence of any mistake or error apparent on the face of the record. In this view of the matter, the petitioners would be entitled to writ of certiorari for quashing the

order of Mr. R. P. Singh dated 18-12-1952, on the ground that he acted in excess of his jurisdiction."

18. In this view of the matter, it will have to be held that the respondent No. 1 had clearly exceeded his jurisdiction of review while passing the impugned order. Hence, the order is liable to be set aside.

19. Mr. Raval, however, submitted that Para 156 empowered the Chief Controller of Imports & Exports to pass such order as he may consider fit and just. The aforesaid para contained in the Hand Book relates to Export Policy which deals with the economy of the country in the matter of earning a foreign exchange. The said provisions have been made in the interest of the nation. It was, therefore, not proper to restrict the interpretation of the various of Paras. In my judgment, there is no merit in this contention. If it was the intention of the said paras of the Hand Book to give an extended or unlimited powers, nothing prevented the conferring of power of a second appeal. Indeed, an appeal at the instance of the Department could as well have been provided for. Since what is provided for is the power of review, one will have to construe the said power according to its well accepted meaning. It will, therefore, not be possible to enlarge the power of review to that of an appeal as sough to be contended by Mr. Raval.

20. Mr. Raval further submitted that the relevant Paras, and Para 156 in particular, empowered the Chief Controller to pass such orders as he may consider fit and just. The respondent No. 1 in exercise of this power has passed the impugned order which according to him was fit and just in the facts and circumstances of the case. Since such a power was there and the vires of the said power was not challenged, the exercise of that power also cannot be challenged. Reliance was placed on the case of State of Orissa and Others Vs. Harinarayan Jaiswal and Others, , wherein it was observed :

"S. 22 of the Act confers power on the Government to grant to any person on such conditions and for such period as it may think fit the exclusive privilege of selling in retail any country liquor. Section 29 empowers the Government to accept payment of a sum in consideration for the grant of any exclusive privilege under S. 22 either by calling tenders or by auction otherwise as it may be general or special order direct. The powers conferred on the State Government by S. 22 and S. 29 are absolute powers. As seen earlier, the validity of those provision has not been challenged before us. Under S. 29(2) the Government had power to dispose of any of the exclusive privileges mentioned in S. 22 either by calling for tenders or by auction or otherwise as it may be general or special order direct. That being the amplitude of the power of the Government, we fail to see how the Government can be said to have conferred on itself arbitrary power under Clause (6) of its order made on January 6, 1971, when it provided that :

"No sale shall be deemed to be final unless confirmed by the State Government who shall be at liberty to accept or reject any bid without assigning any reason

therefor."

The power that the government reserved for itself under that clause is nothing than what was conferred on it by the legislature under S. 22 and S. 29 of the Act. It is not possible to challenge the validity of the order made without challenging the validity of S. 29 itself."

21. In my judgment, there is no merit in the aforesaid contention. It is true that the petitioners have not challenged the vires of Para 156. What has been contended is in respect of the nature of the power that can be exercised under Para 156. I have already held above, that this power cannot be equated with the power of an appeal. The respondent No. 1 having exercised that power had clearly exceeded the jurisdiction of the general power of review conferred upon him by the said Para.

22. Mr. Raval finally contended that the petitioners are guilty of forgery. They had used false rubber stamps on the shipping bills to indicate the grant of extension of time for export. Such facts adversely affected the economy of the country. This was, therefore, not a fit case for exercise of the discretionary jurisdiction under Article 226. Mr. Raval sought to take me through different pieces of evidence to enable me to arrive at the finding that the petitioner was guilty of forgery. In my judgment, it would not be open to me sitting in the writ jurisdiction under Article 226 to embark upon re-appreciation of evidence and fall into the same error which the respondent No. 1 has fallen while exercising powers of review. It will, therefore, not be open for me to hold as it might have been permissible had I been a Court of Appeal to reappraise the evidence and arrive at a finding that the petitioners are guilty of forgery. In my view, since I have held, that the respondent No. 1 was not the proper authority who could exercise the power of review and I have further held that the respondent No. 1 had exceeded this power of review, it will have to be concluded that the impugned order passed by the respondent No. 1 dated 27th July 1987 is liable to be struck down. Consequently, the order dated the 25th November 1986 passed by the respondent No. 3 will have to be restored.

23. In the result, the petition succeeds. Rule is made absolute in term of prayer Clause (a). In the fact and circumstances of this case, there will be no orders as to costs.

Mr. Dalal appearing on behalf of the respondent No. 4 prays for stay of my order for a period of four weeks in order to enable him to prefer an appeal. Mr. Jhangiani appearing for the petitioners strongly object by contending that the petitioners' entitlement for the quota for the year 1988-89 shall be adversely affected.

24. My aforesaid order to stand stayed for a period of four weeks from today.