

(1975) 09 DEL CK 0004
In the Delhi High Court
Case No : Civil Writ Appeal No. 1636 of 1973

Bhatnagar and Co.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 19-09-1975

Acts Referred:

Citation : (1976) RLR 36

Hon'ble Judges : H.L. Anand, J

Bench : Single Bench

Advocate : Harbans Singh, Urmila Kapoor and Rekha Sharma, for the Appellant;

Judgement

H.L. Anand, J.

(1) Petitioner Co. was issued 8 licenses during 1963-67. On 1-1-72, a show cause notice was issued that licenses were not properly utilized. A writ, being C.W. 999/72 was filed. Appellate authority meanwhile set aside debarring order as there was no proper opportunity. Petition became infructuous. Petitioner was given fresh show cause notice. He repeatedly asked for reports on which the notice was based. His requests were neither accepted nor rejected and he carried impression that these were under consideration. He received debarring order in which it was mentioned that giving reports was not necessary, as he knew the basis on which the reports were based. Petitioner filed writ. After giving above facts in detail, Judgment para 4 onwards is :-

(2) By the show-cause notice of July 19, 1973, the attention of the petitioner was directed to 8 import licenses said to have been issued to the petitioner between November 1963 to December 1967 and the petitioner was required to show-cause why action should not be taken against the petitioner and its directors under clause 8 of the Imports (Control) Order, 1955 to debar them from receiving further licenses etc. on the allegation that on the basis of the reports received from the Drug Controller, Delhi that the petitioner had not utilised the raw material imported against actual user licenses in the manufacture of drugs,

the authority believed that the goods imported by the petitioner against the said licenses had not been "properly utilised in terms of the conditions imposed on & applicable to the licenses in question" so as to attract the provisions of clause 8 (f) of the Imports (Control) Order, 1955. The charge against the petitioner being based, on the respondent's own showing, on the report or reports of the Drug Controller, Delhi, more reference to the report in the show-cause notice or the reproduction of the gist of it in it, would not disentitle the petitioner to copies of these reports particularly when according to the show-cause notice, the Drug Controller had reported that the petitioner had in fact "not utilised the raw materials.....in the manufacture of drugs" while the graveman of the charge was that the imported goods had " not been properly utilised in terms of the conditions imposed on and applicable to the licenses." Prima facie there is a distinction between non- utilisation of the Tdw material and improper utilisation of it. It is also significant that there were 8 licenses which were spread over a period from November, 1963 to December, 1967. The show cause notice gave no indication as to the year or the license to which the report or reports of the Drug Controller related. Although copies of these reports were never supplied to the petitioner learned counsel for the respondent has placed on record copies of these reports. These are five reports which are apparently a part of the chain of correspondence that has been going on between the Drug Controller and the Imports and Export authorities. The first of these is of January 9, 1968 which is a reply to a letter of January 4, 1968, from the Chief Controller of Imports and Exports. This makes out that the petitioner had neither independent premises of its own nor equipment but was utilising the facilities offered by the parent firm for manufacture of its products. It then proceeds to set out the total production capacity of the parent firm and gives certain quantity of the drug consumed in 1966 and in 1967 in the manufacture of tablets on behalf of the petitioner. It then states that "during the year 1968 the parent firm did not manufacture any drug for M/s. Bhatnagar and Co. Pvt. Ltd." This report makes no mention of pre-1966 period or the period subsequent to 1968. The next letter in the chronological order is of January 8, 1970 which again is a reply to a letter from the Joint Chief Controller of Imports and Exports. This letter also gives the figure of certain raw material having been consumed in 1966 and 1967 for the manufacture of tablets on behalf of the petitioner and states that during the year 1968 and 1969 the parent firm did not manufacture any drug for the petitioner, The next is a letter of January 29, 1971 which again is a reply to a letter from the Joint Chief Controller of Imports and Exports. This letter again reiterates the consumption in 1966 and 1967 and points out that no information was available as to what had been done about the unused stock and as to whether they were stored The next letter is of June 22, 1971 and is to the effect that the petitioner had not utilised the imported material in the manufacture of drugs and had declined to give requisite information regarding the place where the stock was kept. The last in the series is of April 7, 1972 which again recounts the consumption in 1966 & 1967 in the manufacture of tablets and expresses ignorance of information regarding the consumption or utilisation of the other

imported raw material. It cannot be disputed that these letters have very important bearing on the question with regard to the non-utilisation or improper utilisation of the imported goods. The gist of these letters given in the show cause notice could not be said to have reflected substantially the contents of these letters. Some of the references in the report appeared to support the contention of the petitioner while by inference it may be possible for the petitioner, on the basis of these reports, to contend that by implication there had been no non-utilisation or improper utilisation in respect of the part of the period covered by the aforesaid licenses. These reports also do not specifically deal with the different licencing periods. The petitioner could not, have, Therefore, given an effective reply to the show cause notice unless copies of these reports or other material or information which were sought to be used against the petitioner had been supplied to the petitioner and it could not, Therefore, be said that in the absence of such disclosure, the petitioner had a reasonable opportunity of being heard.

(3) There is another aspect of the matter which is equally, if not more, important. In response to the earlier show cause notice the petitioner had made a specific request by its letter of January 18, 1972 for copies of the reports, particulars and other information being supplied to the petitioner to enable the petitioner to submit an effective reply to the show-cause notice. This was neither acknowledged nor replied to. When the second show cause notice was issued the petitioner reiterated this request by the petitioner's communication of August 9, 1973. This was also neither acknowledged nor replied to. When a personal hearing was fixed for October 12, 1973, the petitioner admittedly sent a letter of October 9, 1973, which was received by the office on the same date in which the petitioner reiterated its earlier request. This was also neither acknowledged nor replied to. While the petitioner was, Therefore, waiting to either receive the copies of the documents, particulars and information sought to be used against the petitioner and forming basis of the charges, or at least a communication rejecting the petitioner's request, the petitioner was instead sent a surprise packet containing a debarring order. The rejection of the prayer for copies in the course of the order itself was hardly of any avail. If the authority concerned thought that the petitioner was not entitled to the copies, particulars, or other information sought by it repeatedly and could make an effective representation without such a facility, the least expected of the authority was to have decided that question before fixing a date for personal hearing and in any case, before making a final order behind the back of the petitioner. The authority should have informed the petitioner that the petitioner was not entitled to the material sought for by it and should submit its reply to avail of the personal hearing so that the petitioner could decide for itself as to the course to be followed by it. In the absence of any reply to the various communications of the petitioner, the petitioner was justified in assuming that the request was receiving attention and the matter would not, Therefore, be proceeded with. It could not Therefore, be said that in the circumstances, the petitioner had been given a reasonable

opportunity of being heard.

(4) Learned counsel for the respondent made a very valiant attempt to support the impugned order on the ground that the manner in which the petitioner had utilised the imported goods was a fact which was peculiarly within the knowledge of the petitioner and there was, Therefore, no necessity of any further disclosure being made to the petitioner because it was essentially for the petitioner to satisfy the authority that the conditions subject to which the import had been allowed, had been satisfied and the petitioner had not contravened any of the conditions of the licenses. To my mind, this contention is wholly unsustainable because the show-cause notice did not merely require : the petitioner to satisfy the authorities as to the manner in which the petitioner has utilised the goods but made a specific charge of improper utilisation, purporting to base it on certain reports which had emanated from the Drug Controller, The petitioner was, Therefore, entitled to know what those reports were and what was the precise charge which the petitioner was required to meet and what material was sought to be used against the petitioner. Assuming, however, that it was nevertheless for the petitioner to establish the the proper utilisation of the goods, it could still not be said that the petitioner had been given a reasonable opportunity because of the manner in which the proceedings were completed.

(5) The only other question that requires consideration is whether the relief which must follow from the conclusion arrived at by me above should be refused to the petitioner because the petitioner admittedly did not avail of the alternative remedy of a statutory appeal. The rule of the exhaustion of other alternative and effective remedies "is not an absolute bar to the exercise of jurisdiction by this Court under Article 226 of the Constitution of India although the existence of such a remedy and the fact that the aggrieved person has not availed of it, are matters which this Court is entitled to consider while exercising its jurisdiction. The rule of exhaustion of alternative remedy is also not an immutable rule of universal application but is subject to certain well-recognised exceptions .One of the exceptions is where the impugned order has been made in the present case, where the petitioner was denied a reasonable opportunity of being heard. In any event, whether the petitioner should be refused the relief because the petitioner had another effective and efficacious remedy available which has not been availed of should ordinarily be considered while issuing a rule nisi. If at that time the discretion was exercised in favor of the petitioner in spite of the existence of the statutory remedy, of which the Court would be presumed to be aware of, it would be unfair to throw out the petitioner on that ground after it has remained pending for months and in some cases for years. In most of such cases, the alternative remedy would meanwhile have become illusory because of efflux of time.

(6) In the result, the petition succeeds. The impugned order of October 30. 1973 (Annexure "H") debarring the petitioner for four licencing periods is quashed. The authorities would, however , be at liberty to proceed against the petitioner

on the basis of the existing show cause notice and make such orders that they may be entitled in law after giving the petitioner a reasonable opportunity of being heard in the light of the aforesaid observations.