

(1968) 12 CAL CK 0004
In the Calcutta High Court
Case No : Matter No. 257 of 1967

Bibhuti Bhusan Bag and another

APPELLANT

Vs

I.J. Rao and others

RESPONDENT

Date of Decision : 11-12-1968

Acts Referred:

Customs Act, 1962 — Section 110, 110(2), 124
Electricity Act, 1910 — Section 4(1)

Citation : 73 CWN 340

Hon'ble Judges : S.C. Ghose, J

Bench : Single Bench

Advocate : S.D. Banerjee, for the Appellant; G.P. Kar and A.K. Banerjee, for the Respondent

Final Decision : Allowed

Judgement

S.C. Ghose, J.—This is an application which was made by the petitioner inter alia for the issue of a writ of or in the nature of certiorari to the first respondent requiring him to transmit and certify to this Court the records of the proceedings had before him in respect of the notices to show cause bearing numbers SW(IV) (T)/52/66 p. & S/12/(IV)/T/52/ 66 p. dated December 16, 1966; issue of a Writ of or in the nature of prohibition prohibiting the respondents and each of them from enforcing or from taking any step to enforce or taking any step under or continuing any proceedings under the aforesaid notices or any of them or from giving any effect to the same or to any order or orders that may be made thereon that may be made thereon, issue of a writ of or in the nature of mandamus commanding the respondents and each of them to forbear from taking any step under the said notices or from taking or continuing any proceeding in pursuance of the said notices or giving any effect to the said notices or from giving any effect to any order that may be made on the said notices; issue of a writ of or in the nature of Mandamus commanding the respondents and each of them to restore and return to the petitioners the typewriters and the calculating machines seized from them and obtained by the

respondents and to remove the seals placed on the machines lying at the petitioner No. 1's shop window and to return to the petitioners the documents seized from the petitioners. Between 1961 and 1965 the petitioners acquired possession of about 200 typewriters, adding and calculating machines, all of foreign make. The modus operandi of the petitioners in acquiring the said goods were as follows : The petitioners used to contact Indian crew of sea-going vessels. The petitioners requested the said crew to purchase goods in foreign countries as per instructions of the petitioners out of the money to be obtained by the said crew on account of their salary. The said crew would bring back the said goods to Calcutta at the time of their return and would clear the said goods from the Customs as part of their personal baggage free of duty. The petitioners would pay the price of the said goods to the said crew of the said vessels against delivery of the same. The petitioners would also provide from time to time during the so-journ of the said crew in foreign lands, monies to the members of the family of the said crew. In this way, the petitioners were in possession of various typewriters adding and calculating machines, when on May 7, 1966, the business place of the petitioners at 8/2, Hastings Street, Calcutta, was searched and 54 pieces of typewriters adding and calculating machines were seized. Various documents including diary, letters and other papers were also seized by the Customs authorities on that date. Various goods were found to be in broken condition at the said place at the time of search and were put under seal and directed to be kept by the owners.

2. The said raid and search of the said place of business of the petitioners were made upon receipt of information from Messrs. Typewriters and Stationery Private Limited of 124, Netaji Subhas Road, Calcutta, who published advertisements in the Statesman for sale of typewriters and calculating machines "just imported."

3. Upon raid of the said premises of business of the said Messrs. Typewriters and Stationery Private Limited on May 5, 1966 the Customs authorities seized 15 pieces of typewriters adding and calculating machines and were informed that the same were purchased from one R. N. Bagh, petitioner No. 2.

4. On November 3, 1966, the Additional Collector of Customs extended the period for giving notice under clause (a) of section 124 of the said Act under proviso to sub-section (2) of section 110 of the Customs Act. The period of six months prescribed for giving notice under clause (a) of section 124 of the Customs Act expired on November 7, 1966. The petitioners were served with notices under clause (a) of section 124 of the said Act. on December 16, 1966. During the period December, 1966, to April, 1967, the petitioners obtained extension of time to show cause to the aforesaid notices given to them under clause (a) of section 124 of the Customs Act. On April 13, 1967, the present application was moved and rule nisi in terms of the prayers mentioned above were issued. The said rule nisi was served upon the respondents. The respondents duly filed affidavits-in-opposition to the said rule nisi and the

petition. The petitioners have filed their affidavit-in-reply. The matter has now come up before me for final hearing. Two questions fall to be considered by me in the instant application. They are : (1) could the Collector of Customs extend the time as he had purported to do under the proviso to sub-section (2), of section 110 of the Customs Act, 1962, without hearing the petitioner ? (2) Is the said order extending the period under the said proviso valid or binding inasmuch as the same was not served upon the petitioners within a period of six months of the seizure of the said goods ?

5. For the aforesaid purposes, we have to consider section 110 of the Customs Act, 1962, and especially the proviso to sub-section (2) of the said section. Section 110 of the Customs Act, 1962, provides as follows:

(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods : Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized: Provided that the aforesaid period of six months may on sufficient cause being shown, be extended by the Collector of Customs for a period not exceeding six months.

(3) The proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act.

(4) The person from whose custody any documents are seized under subsection (3) shall be entitled to make copies thereof or take extracts there from in the presence of an officer of Customs.

6. To decide the first question, it is necessary to consider whether the function of the Collector of Customs in extending the time under the said proviso was an entirely administrative act or a quasi-judicial act. According to Mr. Kar, the said act of the Collector was a purely administrative act depending upon the subjective satisfaction of the Collector and as such no hearing was warranted to be given to the petitioner before the order for extension was made by the Collector. In the case of (1) *Vasnatal Ranchhoddas Patel and Others Vs. Union of India and Others*, , it was held that *ex parte* extension of the period before the expiry of six months under the proviso to sub-section (2) of section 110 of the Customs Act was valid. In the said case it was not contended that such extension made in violation of the principles of natural justice, was invalid. In the case of (2) *Charandas Malhotra Vs. Assistant Collector of Customs and Superintendent Preventive Service and Others*, , it was held by a Division Bench of this court consisting of Sinha, C.J. and A. K. Mukherjee, J. that extension of the period under proviso to sub-section (2) of section 110 after the expiry of the period of

six months from the seizure of the goods without hearing the party whose goods had been seized was void. It was observed by the learned Chief Justice in delivering the judgment of the Bench as follows, to wit:

In the present case, both the extensions were made *exparte*. It is said that officials of the Customs Department found that they had either not completed the enquiry or not completed the report of the enquiry (on this point there is considerable conflict of evidence), and therefore an application is said to have been informally by way of a note given by some officers or others and placed before the Additional Collector of Customs and he merely endorsed his approval. In the present case, even if the first extension on the 18th September, 1963, was justified, the *exparte* order made on 20th February, 1964 cannot be justified.

Notice u/s 124 must be given within six months of the seizure of the goods. If it is not so given then the goods have to be returned. Upon the expiry of the six months, or any extended time under the proviso, a right for the return of the goods vests in the person from whose possession they were seized * * * *. The actual order for extension was made nearly a month afterwards. By such extension, the vested right was being taken away. So, we have two things to consider. Firstly, a vested right was being taken away and secondly, an order can be made under the proviso to subsection (2) only if there was "sufficient cause" shown for such extension. If the Collector of Customs has to consider whether the cause shown was sufficient or not, and especially as it affected a vested right, he was necessarily called upon to deal with the question, with a judicial approach in the sense that he would have to hear the pros and cons from all parties affected and then come to a decision as to whether the cause shown was "sufficient" so as to warrant the taking away of a vested right. In my opinion under such circumstances, a determination requires a judicial approach and cannot be done *exparte*.

Although Sinha, C.J. in the aforesaid case was not concerned with an order made prior to the expiry of six months from the seizure of the goods, the observation of the learned C.J. quoted above was that in order to come to a finding as to sufficient cause" as contemplated by the said proviso to the said sub-section the pros and cons of the matter have to be considered and the parties have to be heard.

7. It appears that right to get back the goods if no notice u/s 124 of the Customs Act is served and goods are confiscated accrues in favour of the owners of the goods on the expiry of six months from the date of the seizure.

8. Therefore, every act done for the purpose of preventing the return of such goods to the owner thereof or for postponing the right of such owner to get back the goods seems, to me, to be an act prejudicing such owners right to property.

9. In the case of a purely administrative decision there is no obligation to consider the contentions of the parties involved in the subject-matter of such decision. Nor is there any obligation to consider the evidence. In such cases,

decision is based entirely on the discretion of the authority who make the decision, either on the ground of expediency or policy. But in a case where the law requires an authority to make a judicial approach the decision of the said authority shall be judicial or quasi judicial (see (3) *Province of Bombay Vs. Kusaldas S. Advani and Others*,). In (4) *Radeshyam Khare and Another Vs. The State of Madhya Pradesh and Others*, it was observed by Subba Rao, J. (as his Lordship then was):

The duty to act judicially may not be expressly conferred but may be inferred from the provisions of the statute. It may be gathered from the cumulative effect of the nature of the rights affected, the manner of the disposal provided the objective criterion to be adopted, the phraseology used, the nature of the power conferred or the duty imposed on the authority and other indicia afforded by the statute. In short a duty to act judicially may arise in widely different circumstances and does not possibly or advisedly lay down a hard and fast rule or an inexorable rule of guidance.

10. Now what is the phraseology used by the legislature in the said section and in particular in the said proviso to sub-section (3) of the said section ? The legislature has laid down that the said period of six months "on sufficient cause being shown" may be extended by the Collector of Customs, In the case of (5) AIR 1949 136 (Privy Council) , section 4(1) of the Indian Electricity Act, 1910, came to be considered by their lordships of the Judicial Committee of the Privy Council. The said section provides as follows:

The Provincial Government may, if in its opinion the public interest so requires, revoke a licence in the following cases namely (a) where the licensee in the opinion of the Provincial Government makes wilful and unreasonably prolonged default * * * *.

11. It was held by the Judicial Committee that there was nothing in the said section to suggest that the opinion of the Government would be subject to objective tests. "In terms the relative matter is the opinion of the Government not the ground on which the opinion is based. The language leaves no room for the relevancy for a judicial examination as to the sufficiency of the ground on which the Government acted in forming an opinion." In the said case the "phraseology" of the said section is different. But it appears to me that in the instant case the language of the proviso to the sub-section (2) of section 110 of the said Act requires the Collector of Customs to examine the sufficiency of the causes shown in order to enable the Collector to extend the period only upon "sufficient cause being shown." Therefore, in my, opinion, the power to extend does not depend upon the subjective condition of the mind of the Collector of Customs but, according to the statute, must be based on the objective condition of the sufficiency of the causes. Power to extend does not depend on grounds of expediency or policy. In the premises, the "phraseology" of the statute, in my opinion, entails a judicial approach to the question to be made by the Collector of Customs in arriving at the decision to extend or not to extend period in

accordance with the provisions of the proviso to sub-section (2) of section 110 and that, in my opinion, casts an obligation upon the Collector of Customs to act judicially or quasi judicially in the matter of extending the time in terms of the proviso to the said sub-section. The aforesaid conclusion, in my opinion, is also supported by the observation of the said Division Bench and specially the observation of Sinha, C.J., quoted above and in particular the following:

***** an order can be made under the proviso to sub-section (2) only if there was "sufficient cause" shown for such extension. If the Collector of Customs has to consider whether the cause shown was sufficient or not, and especially as it affected a vested right, he was necessarily called upon to deal with the question, with a judicial approach, in the sense that he would have to hear the pros and cons from all parties affected and then come to a decision as to whether the cause shown was "sufficient" so as to warrant the taking away of a vested right. In my opinion, under such circumstances, a determination requires a judicial approach, and cannot be done ex parte.

12. I have underlined the relevant passage in the judgment quoted above. In my opinion in passing the said order of extensions ex-parte behind the back of the petitioners and without hearing them, the respondents violated the principles of natural justice. Therefore the said order must be held to be bad. In the case of (6) Upendralal Vs. Smt. Narainee Devi Jha, , it was held that power under proviso to section 110(2) of the said Act is merely administrative and is not based on any reasoning. With the greatest respect to the learned Judges I am unable to agree.

13. The said purported order extending the aforesaid period of six months on 3rd November, 1966 was not communicated to or served upon the petitioners until December 16, 1966. In the case of (7) Nripendra N. Majumdar Vs. N.M. Bardhan and Others, , it was held that where an order is made which affects the rights of a person the order must be communicated to such person in order to make it complete and effective. The date of the order is the date on which it is made known to the affected party. In the instant case the said order dated 3rd of November, 1966, extending the period of six months under the aforesaid proviso was certainly an order which affected the rights of the petitioners. In that view of the matter the said order could not become effective until the said order was communicated to the petitioners. The said order was communicated to the petitioners only on the 16th of December, 1966, i.e., after the expiry of the period of six months from the date of seizure. In the premises, I am of the view that the said order was made on the day when it was communicated to the said petitioners, i.e., on the 16th December, 1966, i.e., after a right to get back the goods seized became vested in the petitioners. In the case of (8) Director of Supplies and Disposals Vs. Member, Board of Revenue, Government of West Bengal, , a Division Bench of this Court consisting of Lahiri, C.J. and Bachawat, J. approved of the aforesaid decision of Nripendra Nath Mazumdar v. M. N. Bardhan, (supra), and observed as follows :

* * * * where the order of the Board of Revenue was not pronounced in open court, the date of passing of the order is the date on which the order was communicated to the parties and not the date on which the order was actually signed by the Member, Board of Revenue without notice to the assessee.

In the case of (9) Shri Bhagwan and Another Vs. Ram Chand and Another, , it was held that the authorities or bodies which are given jurisdiction by statutory provisions to deal with rights of citizens should act judicially in dealing with matters entrusted to them. "An obligation to act judicially may also in some cases, be inferred from the scheme of the relevant statute and its material provisions. In such a case, the authority or body must act in accordance with the principles of natural justice before exercising its jurisdiction and its powers; the obligations to follow the principles of natural justice need not be expressly imposed. Power to determine questions affecting the rights of citizens, would impose the limitation that the power should be exercised in conformity with the principles of natural justice." For the aforesaid reasons I am of the view that the said purported extension dated 3rd November, 1966, was illegal and bad and must be quashed. I direct that the rule be made absolute. Although the petitioners succeed in this application inasmuch as the petitioners were smuggling in goods of foreign make in violation of the provisions of Customs Act I do not make any order as to costs.

Operation of the order is stayed for 8 weeks from today.