
(1985) 01 CAL CK 0034
In the Calcutta High Court
Case No : C.R. No. 13784 (W) of 1976

Bijoy Gopal Bhattacharya

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-01-1985

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1986) 9 ECC 337

Hon'ble Judges : Umesh Chandra Banerjee, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Umesh Chandra Banerjee, J.—This application under Article 226 of the Constitution is directed against the issuance of a show cause notice, as also the order of confiscation and penalty by the adjudicating authority u/s 78 of the Gold (Control) Act.

2. The facts relating to issuance of show cause notice reveal that in pursuance of a search and seizure effected at the petitioners' premises at South Bishnupur, Police Station Mandir Bazar, Dist. 24-Parganas on 2nd May, 1973, the Gold Control Authority seized gold and gold ornaments weighing 2687.00 grams valued at Rs. 50,000 consisting of manufactured, prepared, polished, processed primary gold and gold ornaments and also certain number of plastic boxes bearing inscription Bashaspati Dokan and thereafter the names of the petitioners. Subsequently a show cause notice was issued on 8th October, 1973 under Sections 8(1), 11(1)(a) and (b) and Section 27(i) of the Gold (Control) Act, 1968 requiring the writ petitioners to show cause as to why an order of confiscation u/s 71 of the Act of 1961 as also penalty u/s 74 should not be imposed on each of the petitioners. The show cause notice also detailed the basis of the notice being the allegation of charges as also the evidence as recorded.

3. On 29th October, 1973, the petitioners by a letter required copies of detailed

inventory list, copy of search warrant as also copy of any other document on which reliance was to be placed by the adjudicating authority. The petitioners also wanted to inspect the plastic boxes. The reply to the aforesaid letter is of some consequence, as the main plank of the petitioners' contention centered round the complaint of violation of the principles of natural justice and as such relevant extract of the same is set herein below-

....

True copies of the search authorisation and of your initial statement and of the statement of Shri Krishna Saran Bhattacharjee, your son dated 2-5-1973 are enclosed herewith as requested for in your letter under reference. A copy of your son's statement dated 9-7-1973 has already been taken by him under receipt on the same date. In this connection I may point out that the search authorisation was shown to you before and after the search in token of which you have put your signature on the said document.

As regards furnishing of an inventory of the goods seized I am to inform you that a copy of the panchanama containing the inventory of the goods was furnished to you on the very date of seizure. It is, however, open to you to apply to the adjudicating authority at the time of hearing of the case, for inspection of the seized gold. You may also inspect the plastic boxes at the time of personal hearing.

As regards para. 3(3) of your letter under reference you are requested to specifically state what other documents you require.

Personal hearing will be granted to you by the adjudicating authority before decision of your case on receipt of your reply to the show cause notice.

....

4. There is no dispute in regard to the factum of a detailed hearing before the adjudicating authority.

5. Mr. R.N. Das appearing for the writ petitioners strenuously contended that the respondent-authority ought to have made available the inventory list of the seized items. No complaint was however lodged at the time of hearing before the authority even though the petitioners were represented by two learned advocates. In my view, on the basis of the available records, question of violation of natural justice does not and cannot arise in the instant case. Observance of the doctrine of audi alteram partem is one of the most salutary principles of law for the purpose of administration of justice except however where it is expressly or by necessary implication excluded. Prof. Wade "On Administrative Law" observed that the requirement of natural justice must depend on the facts and the circumstances of the case, the nature of the enquiry, the situation under which the tribunal is acting, the subject matter to be dealt with and so forth....? This view also finds support in the decision of the Supreme Court in the case of K.L. Tripathi Vs. State Bank of India and Others, . In a sense justice demands a fair

opportunity to the offender, even assuming at its highest, deserving or not. But in the facts of this case no such complaint can be made. The reply to the letter dated 29th October, 1973 was categorical and negates the contention.

6. Further, sufficient safeguard has been engrafted in the Gold (Control) Act and no violation was also ascribed in the case under consideration.

7. The other contention of Mr. Das is in regard to show cause notice and violation of Section 11(1)(a) and Section 11(1)(b) of the Gold (Control) Act. Section 11(1) (a) provides that no person save as otherwise provided in the Gold (Control) Act shall make, manufacture, prepare or process any primary gold and Section 11(1) (b) provides that no person shall make, manufacture, prepare, repair, polish or process any ornaments except as provided in the Act. In the show cause notice it was alleged that the writ petitioners did in fact prepare, polish and process primary gold weighing about 75 grams and gold ornaments weighing altogether 2612.00 grams. In the allegation of charges it has been specifically mentioned that the primary gold recovered were in the form of small pieces of brand new strips for use in regard to the manufacture of gold ornaments. It was further alleged that most of the new ornaments recovered were multiple in number and the balas being hollow without any lac inside indicative of that they were not completely manufactured and were yet to be used and have been kept for sale to the customers. The earrings, neck-chains and churis were new and multiple in number indicating that they were also kept for sale. Some of the rings were in incomplete state with stone yet to be set.

8. Mr. Das contended that the finding in regard to the primary gold is incorrect and the same being jurisdictional issue the writ courts can and ought to interfere in regard thereto. In order to appreciate the contentions one needs to consider the definition of primary gold as laid down in the Gold (Control) Act. Section 2(r) defines primary gold and means gold in unfinished or semi-finished form and includes ingots, bars, block, slabs, billets or foils. The definite finding of the Collector that the gold recovered were in the form of small pieces of brand new strips for use in the manufacture of gold ornaments cannot in my view be questioned in this forum. Mr. Das placed strong reliance on the decision of the court in the case of Sumanlal Parekh and Others Vs. Collector of Central Excise and Customs, W. Bengal and Others, wherein T.K. Basu, J. held that it is undoubtedly for the gold control authorities to decide the collateral question of fact, namely, whether the article in respect of which the proceedings are sought to be initiated is primary gold or not within the meaning of the Act. Basu, J. thereupon went on to say that it is only upon a correct finding of that collateral fact that the authorities can assume jurisdiction to invoke the provisions of the Act for the purpose of initiation of proceeding therein. It was held in that decision that the fact whether article in question is primary gold or not is clearly jurisdictional fact upon a correct finding on which the assumption of jurisdiction by the authorities will depend. In the facts of that case it appeared in the seizure list the description of the goods seized was "yellow metal said to be gold in form

of churi." The question arose whether those churis can be termed to be primary gold or ornaments within the meaning of the Act as the consequences were different if it is otherwise. Upon inspection of the churis in court Basu, J. came to a finding of fact that the said churis were ornaments. In the present set of facts there is no such possibility as there exists a definite finding. The decision therefore is clearly distinguishable on facts and as such is of no assistance to Mr. Das. The other decision relied upon by Mr. Das is the decision of Nemichand Bhansali Vs. Superintendent of Central Excise (Preventive) Raipur and Others, . In my view the said decision has no manner of application in the facts of the case under consideration. The adjudicating authority has considered the entire set of facts and the circumstances and upon consideration of the facts and circumstances of the case, came to a finding that the gold ornaments and the small pieces of primary gold could not be kept for reasons stated by the writ petitioners but it was definitely meant for sale to the others. The plea of licence under Bengal Money Lenders Act and the deposit of gold ornaments by borrowers as also subsequent failure to redeem the ornaments were considered by the adjudicating authority and the writ court ought not to interfere in the matter of the definite findings of fact by the adjudicating authority. There is no question of any error of law apparent on the face of the record. It is well settled principle of law that writ court's intervention is required only in the case of an error of law or an error apparent on the face of the record which can be termed to be an error of law. It is also well settled that even if the writ court comes to a different conclusion it ought not to interfere inasmuch as the writ court ought not to sit on appeal over the decisions of the adjudicating authority under the law. In my view there is no error of law nor any error apparent on the face of the record which can be termed to be an error of law.

9. In that view of the matter this application fails. The rule is discharged. All interim orders are vacated. There will however be no order as to costs.,

10. Stay of operation of the order, as prayed for, is granted for a period of one week from date.