

(1989) 03 CAL CK 0056
In the Calcutta High Court

Case No : Appeal from Original Order No. 88 of 1987 in Matter No. 1390/86

Collector of Customs

APPELLANT

Vs

Jeena and Company

RESPONDENT

Date of Decision : 02-03-1989

Acts Referred:

Customs Act, 1962 — Section 108

Customs House Agents Licensing Regulations, 1984 — Regulation 11, 14, 21, 21(1), 21(2)

Citation : (1990) 26 ECC 232 : (1990) 45 ELT 72

Hon'ble Judges : Padma Khastgir, J; Mohitosh Majumdar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Padma Khastgir, J.—On 21st August 1986 M/s. Jeena & Co. Customs House Agent the writ petitioner No. 1, filed duplicate copy of shipping bill dated 18th August 1986 for shipment of 38 packages of tourist purchases consisting of papier mache valued at 64,700 F.O.B. in the name of one J. Sale, the address of whom was given as Grand Hotel, Chowringhee Road, Calcutta. In the course of examination of the goods it was found that all the 38 packages were cane baskets covered with gunny wrappings. When the said packages at random were opened for inspection it was found that each packet contained several mache of different sizes. However, the weight of the packets were found to be different from one another. Although there were several packets in each basket only approximately about 5/6 were found to be of heavy weight. These packets of heavy weight were opened and it was found that such packets contained hashish (charas) skillfully wrapped with cellophane paper covered with brown paper having yellow noting. Because of such was coating no smell of hashish was emanated outside. At the baskets 193 kg. nett (240 kg. gross) of hashish was found. The international value of the said hashish was approximately rupees one crore fifteen lacs. At the time of such examination of the said goods J. Sale, holder of French passport No. 344/81 was not present. The investigation branch

was immediately put on action and investigation stated in the matter. As a part of such investigation not only the consignor J. Sale was searched for at Grand Hotel as well as at the premises of M/s. Jeena & Co. and also for seizure of incriminating documents in connection thereof. The office of M/s. Jeena & Co. was also searched and several persons including two executives of M/s. Jeena & Co. were interrogated. Summons were issued u/s 108 of the Customs Act. The result of such searches and seizures and/or interrogations revealed that various documents were seized from the office of M/s. Jeena & Co. One Janardan Thakur and K.K. Bhattacharji, two senior personnel of M/s. Jeena & Co. were interrogated. As a result of such investigation it revealed that K.K. Bhattacharji, the officer handling the above-mentioned cargo had put their signatures on the relevant documents. Apart from those documents seized from the office of M/s. Jeena & Co. one piece of rubber stamp of M/s. Doona & Co. of Srinagar was also found inside the drawer of the table of K.K. Bhattacharji of M/s. Jeena & Co. In the course of such investigation u/s 108 it came to the knowledge of the Collector of Customs that the said officers of M/s. Jeena & Co. did not inspect the passport of J. Sale nor did they comply with the conditions as laid down in Regulation 14 of the Customs House Agent Licence & Regulation of 1984. They further did not obtain the letter of authority from J. Sale before proceeding to deal with the matter as clearing agent. As a result of such investigation the appellant gathered that those goods have been despatched by one M/s. M.S. Doona & Co. of Srinagar who issued a challan on 18th August 1986 whereas the date of receipt of the goods by M/s. Jeena & Co. also bears the same date i.e. 18th August 1986. The original invoice which was stated to have been issued by M/s. M.S. Doona & Co. of Srinagar was not submitted to the Customs but instead a separate invoice was prepared in the office of M/s. Jeena & Co. Before exportation of such goods a certificate of the actual origin has to be obtained from the Export Inspection Agency, Calcutta, and such form had to be filled and prepared by the supplier of the goods i.e. M/s. Jeena & Co. In the instant case the said form which was submitted to the Export Inspection Agency, Calcutta, was filled and prepared in the office of M/s. Doona & Co. and one Sri Tapash Kumar Chakraborty had signed for M/s. Doona & Co. and a rubber stamp of M/s. Doona & Co. was put in. As it appeared from such search and seizure in the course of such investigation prima facie revealed that the writ petitioner No. 1 had acted in contravention of the Customs Agents Licence and Regulation of 1984 and according to the appellant also appeared to have aided and abetted to the attempt for illegal exportation of prohibited goods and thereby committed an offence under the Narcotic Drugs & Psychotropic Substances Act, 1985 as well as they have violated the provisions of Customs Act.

2. Under the circumstances two senior personnel of the writ petitioner No. 1 Sri K.K. Bhattacharji and Janardan Thakur were arrested. The Collector of Customs G. Sarengi issued on 26th August 1986 an order suspending the writ petitioner from further acting as a Customs House Agent pursuant to the licence granted to M/s. Jeena & Co. to act as a Customs House Agent with immediate effect. In the

said notice it was stated that a consignment of export cargo (charash) weighing about 230 kg. gross and 193 kg. net valued at approximately 11.50 less which is equivalent to one crore and 15 lacs approximately in the international drug had been seized on 21st August 1986 at shed No. 4 Netaji Subhas Dock, Calcutta. It had further been stated in the said order that M/s. Jeena & Co. acting as the agent on behalf of the exporter J. Sale for clearance of the said consignment from the customs had filed a shipping bill dated 18th August 1986 declaring the contents of the consignment as tourist purchases. Upon preliminary enquiry it was indicated in the said order itself that it appeared that M/s. Jeena & Co. were prima facie involved in the admitted export of the said narcotics in the manner as indicated in the said order itself i.e. that M/s. Jeena & Co. were not in possession of any letter of authorisation issued by the exporter as required under Clause (a) of Regulation 14 of the Customs House Agents Licencing Regulation of 1984. They had not forfeited the passport of the exporter before undertaking the goods on his behalf nor any attempt had been made by M/s. Jeena & Co. to verify the address of the customer. Sri K..K. Bhattacharji, senior cargo executive of M/s. Jeena & Co. handled the consignment and had the original certificate prepared in his office and had it signed by one Sri Tapas Krishna Chakrabarty, who was a transport contractor and handled cargo for M/s. Jeena & Co. It was subsequently stated that during search of the premises of M/s. Jeena & Co. & rubber stamp of the supplier at Srinagar had been recovered which according to the Collector of Customs. Sri G. Sarangi, appears to have been used for embossing the country of origin certificate prepared for the clearance of the aforesaid consignment. It had further been stated in the said order that both Mr. J. Thakur of M/s. Jeena & Co. and Mr. K.K. Bhattacharji had been arrested in connection with the said seizure and had been remanded to Jail Custody by the Judicial Magistrate. On that basis the Collector of Customs stated in the order that M/s. Jeena & Co. had failed to discharge their responsibilities as a Customs House Agent in appropriate manner and also aided and abetted the said attempt to export the said consignment of Narcotics and inasmuch as an action to hold an enquiry was being contemplated. In these circumstances he ordered suspensions of the Customs House Agent Licence granted to M/s. Jeena & Co. to act as a Customs House Agent with immediate effect. It had further been mentioned in the said order until further orders in terms of Clause (2) of Regulation 21 of the said Customs House Agents Licencing Regulation of 1984 was passed. From the order itself it indicates that it was an interim order of suspension in terms of Rule 21. Rule 21 provides for suspension and invocation of licence in the circumstances as enumerated in the said Rule 21. Power had been given to the Collector of Customs to suspend, revoke the licence of Customs House Agent on various grounds including the grounds where the agent fails to comply with any of the conditions of the bond executed by him under Regulation 11. or where the agent fails to comply with any of the provisions of the Regulation or he thinks any misconduct which, in the opinion of the Collector, renders him unfit to transact any business in the Customs Station. In Sub-rule (2) of Rule 21 notwithstanding anything as contained in Regulation (1) the Collector may, in appropriate cases,

where immediate action is necessary, suspend the licence of the Customs House Agent where an enquiry against such agent is pending or contemplated.

3. From the submissions of the Learned Lawyers appearing both on behalf of the appellant and on behalf of the respondents it had transpired that when such order was passed under Regulation 21 by the Collector of Customs it was in the contemplation of the Collector to hold an enquiry. Since then in fact, an enquiry had been held and according to the learned lawyer appearing on behalf of the respondents final order has already been passed wherefrom an appeal had been preferred by the respondent to the authorities concerned. Rule 23 provides for the procedure for suspending or revoking the licence under Regulation 21. Under various Rules and/or Regulations procedure and the method had been provided how such enquiry is to be held. It provides that while the Collector may issue a notice in writing to the Customs agent stating the ground on which it was proposed to suspend or revoke the licence. The agent may submit, within such time as may be specified in the notice not been less than 45 days to give an opportunity to submit the written statement of defence and also to specify whether such Customs House Agent desires to be heard in person and on receipt of such written statement from the Customs House Agent the Assistant Collector of Customs may enquire into the said grounds as are not admitted and in such enquiry the Assistant Collector of Customs shall, in course of enquiry, consider such documentary evidence and may take such oral evidence as may be relevant or material to the enquiry in regard to the grounds forming the basis of the proceedings. The Customs House Agent, under Sub-rule (4) had been given an opportunity to cross-examine the persons examined in support of the grounds forming the basis of the proceedings and then after complying with all such provisions the Collector shall considering the report of the enquiry and representation thereof if made by such Customs Agent, pass such order as he deems fit. Hence, the grounds indicated in the order itself entitle the Collector of Customs to exercise his power under Regulation 21 Sub-regulation (2) inasmuch as this particular statutory power clothes the authority concerned with power to issue immediate action, if necessary, in the facts and circumstances of the case. In the case reported in the *The Vice-chancellor, Jammu University and Another Vs. Dushiant Kumar Rampal*, the learned Judges of the Supreme Court while construing the power of the Vice-Chancellor u/s 13 of the *Kashmir & Jammu Universities Act* observed that although that provision did not talk specifically of an order of interim suspension of a teacher but the width and amplitude of the language of the provisions would clearly include action by way of interim suspension of a teacher, when there is in the opinion of the Vice-Chancellor an emergency calling for immediate action. It further observed that it is not correct to say that an order of interim suspension is a quasi judicial order and in any event, the provision of the said Sub-section (4) of Section 13 of the said Act being insufficiently wide and comprehensive to take within its scope and ambit every kind of action which may be considered necessary by the Vice Chancellor in an emergency and there was no reason why such action should not include

making of an order of interim suspension. In the instant case not only the observation of the learned Judges of the Supreme Court with full force apply to the facts and circumstances of the case but over and above that the specific provision as made in Regulation 21 Sub-regulation (2) for making interim order for suspension also gives wide amplitude and power to the Collector of Customs in a given case to pass such interim order. In the instant case, the case of the respondent was that by passing such interim order for suspension of the licence, the rules of natural justice had been violated inasmuch as no opportunity was given to the respondent of a hearing. Hence, there was a clear violation of the principle as based on the Latin maxim *audi alteram partem*.

4. In the case reported in *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, it was observed that rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. Their aim is to secure justice or to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it. If a statutory provision can be read consistently with the principles of natural justice, the Courts should do so. But if a statutory provision either specifically or by necessary implication excludes the application of any rule of natural justice then the Court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision, the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with the language of the principles of natural justice or not depend upon the express words of the provisions conferring the power, the nature of the power conferred the purpose for which it is conferred and the effect of the exercise of that power. It was further observed that where an appropriate authority *bona fide* forms opinion such authority can pass such order if such authority is clothed with the statutory power to do the same. In the instant case the show cause notice had been given and as indicated earlier, the rule provides for representation being made by the writ petitioner and an opportunity would also be given at such hearing to the writ petitioner to cross-examine the witnesses and/or dispute the documents which may be used by the authorities concerned in support of their charge against the writ petitioner. In the affidavit in opposition filed by the Collector of Customs himself in paragraph 4 he submitted that pending the enquiry the licence of the writ petitioner had been suspended as he was satisfied on the basis of the materials received and/or information gathered in the course of investigation that an attempt for illegal exportation of prohibited goods was made. The investigation revealed that there was *prima facie* evidence warranting initiation of proceedings for revocation of licence of the writ petitioner for contravention of the Customs House Agent Licensing Regulation of 1984 and also because of involvement in an attempt for illegal exportation of prohibited goods. Considering that such allegations were of extremely serious nature, he *bona fide* formed an opinion for immediate suspension of the licence granted to the petitioner pending full enquiry into the matter and as such be justified the order passed on 26th August, 1986.

5. In the writ petition which was moved immediately after the issuance of such order of suspension on 1st September, 1987 the petitioner challenged the vires of Clause 21 Sub-clause (2) of the Regulation. The learned Judge in his judgment did not strike down the said Regulation 21 Sub-regulation (2) on the ground of being in contravention with the constitutional provisions. The respondent although urged that point before the learned trial court, but did not choose to file any cross appeal being aggrieved thereby. Under the circumstances this Court is not called upon to consider as to the vires of Regulation 21 Sub-Regulation (2). Regulation 21 Sub-regulation (2) provides that the Collector may in appropriate cases where immediate action is necessary, suspend the licence of a Customs House Agent in a case where an enquiry against such an Agent is pending or even contemplated. To our mind, such power under Sub-regulation (2) of Regulation 21 has given the Collector a very wide discretionary power to suspend the licence of a Customs House Agent. While taking such action the Collector of Customs is not confined to the grounds as specified in Sub-Regulation (1) but in order to take such action the Collector must be fully satisfied the immediate action is necessary. Although such satisfaction should not be merely on subjective satisfaction of the Collector but the reasons for being so satisfied should be specifically recorded in the order itself. As indicated earlier, the said order was not on merely subjective satisfaction of the Collector but ample reasons had been given in the order itself indicating that he had bona fide exercised his power as provided under Sub-regulation (2) of Regulation 21.

6. In his judgment the learned trial judge referred to the decision reported in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, and relying upon the said judgment held that the exercise of such power should not be made arbitrarily or capriciously even if such power has been exercised by responsible and highly placed persons. The learned Judge further observed that however high and responsible the executive authority may be he is subject to human frailty, and unguided and uncanalised powers vested in such authorities are always likely to be misused or used arbitrarily. Such a general proposition cannot be laid. Each case will have to be decided under the facts and circumstances of each case. In the instant case, to our mind, such wide powers given to the Collector of Customs had not been misused or arbitrarily used. When such power has been exercised for immediate action, the court is debarred from interfering with such order unless the Court is satisfied that the said exercise of power was either arbitrary or was not bona fide. The order passed by the Collector of Customs was not only a speaking order but it also disclosed the grounds which made the Collector of Customs exercise such power being fully conscious about the requirement of the provision.

7. By referring to the case reported in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, the learned Judge observed that in the affidavit-in-opposition fresh reasons have been sought to be assigned by the Collector of Customs to supplement the impugned order suspending the licence of the writ petitioner under Regulation 21 Sub-regulation (2). To our

mind, the grounds that had been indicated in the order itself were sufficient for the Collector of Customs to exercise the powers given to him under the Rule. Even without referring to the affidavit filed by the Collector of Customs, there were sufficient grounds and materials in the order itself which made the Collector of Customs pass such order. Under the circumstances, there was no attempt to get the impugned order validated by additional grounds later brought out in the affidavit filed by the Collector of Customs.

8. On three broad different grounds such licence was suspended, that is, that the writ petitioner failed to discharge the responsibility as a Customs House Agent in a proper manner, they have also aided and abetted Mr. J. Sale in the attempted export of the consignment of narcotics; and also as an enquiry against Jeena & Co. was contemplated.

9. While construing the said rule this court if introduces something which the rules did not provide by allowing a hearing to the parties concerned, to our mind, that would defeat all purpose of the said rule and sub-rule of, exercising powers in cases of emergency, inasmuch as it would paralyse the administrative process or frustrate the need of utmost promptitude in cases where necessity so demands for exercise of such emergent powers. The question of the writ petitioner getting reasonable opportunity of hearing has been provided for in the Rule 23 itself before any final order is passed. It is true that the revocation of the licence may involve civil consequences of a grave nature but that does not entitle the writ petitioner to obtain an order by way of writ petition and stall the entire proceedings and/or action taken under the facts and circumstances as indicated by the Collector of Customs.

10. Reliance made on the decision of the Supreme Court in the case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, in support of the stand that the ground of order cannot be supplemented by letter of explanation is to be examined in the context of the facts of the case. The order itself discloses that the matter could not brook any delay and the ground of immediacy, was also spelt out in the order itself. Therefore, the decision as relied by the learned Court below, in our view, is distinguishable in the facts of the case.

11. The Court is required to look into the matrix of the present case which presents quick succession of events and circumstances warranting the exercise of power under Regulation 21(2) of the Regulation. All the events and circumstances should not be lost sight of. The decision of the Supreme Court in the case of Commissioner of Police v. Gobordhandas Bhanji (supra) has no application to the factual situation here.

12. We are unable to agree with the learned trial Judge that the impugned order is liable to be struck down being violative of the principles of natural justice i.e. audi alteram partem.

13. Under the circumstances; this court is of the view that the impugned order be and is set aside and the appeal is allowed. Stay prayed for is refused.