
(1964) 05 CAL CK 0012
In the Calcutta High Court
Case No : Matter No. 105 of 1955

Dulichand Kheria and Others

APPELLANT

Vs

Collector of Central Excise and Land Customs

RESPONDENT

Date of Decision : 27-05-1964

Acts Referred:

Constitution of India, 1950 — Article 226
Lands Customs Act, 1924 — Section 5(3)
Sea Customs Act, 1878 — Section 167(8), 19

Citation : AIR 1965 Cal 156 : (1965) CriLJ 292

Hon'ble Judges : D.N. Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Sinha, J.—The facts in this case are shortly as follows: In this case, we are concerned with two partnership firms, Tarachand Shivkumar and Dulichand Kasiprosad. There are four partners in the first named firm, and five partners in the latter. Dulichand and Kasiprosad are the common partners. On or about 9-9-1954, the customs authorities in Calcutta advertised in the local papers inviting tenders for the purchase of 218 maunds 20 seers, approximate gross weight, of seized betel-nuts lying in the textile godown of the Customs House, Calcutta. On or about 21st September, 1954 Tarachand Shivkumar offered to purchase the goods and on the 23rd September, 1954 the goods were sold to them. Between 27th September, 1954 and the 1st October, 1954, 103 bags were delivered to the said firm by the customs authorities. It is stated that on 1st October, 1954 Tarachand Shivkumar made over 45 bags out of the said consignment, to a third party for processing and grading.. It is further stated that out of the goods so processed and graded, Tarachand Shivkumar sold 25 bags to Dulichand Kasiprosad, who are the petitioners before me, and they sent the goods, namely, 25 bags, to Howrah Station for being despatched to one, of their constituents in Uttar Pradesh, On the 22nd October, 1954 while these goods were at the Howrah Station, they were seized by the Land Customs Officer. On

the 14th December, 1954 Tarachand Shivkumar wrote to the Collector of Customs stating that they understood from their buyers Dulichand Kasiprosad that 25 bags of betel nuts sold by them had been seized by the Land Customs Officer. .They then proceeded to state as follows:

"In this connection we would like to remind you that the above goods, sold by us to them, were purchased by us from you on competitive tender held on 23/9/54. Moreover, the Inspectors of your office have inspected our books as well as our godowns and are satisfied with the same. As such, we do not find any valid reason for the detention of the above goods, so much as, our buyers have withheld the payment of our Bill simply on this reason."

2. They asked for release of the goods. On the 16th December, 1954 Dulichand Kasiprosad wrote to the Collector of Customs asking for release of the goods. On the 18th December, 1954 notice to show cause was issued "by the Superintendent of Central Excise and Land Customs, Central Preventive Circle, Calcutta, to the petitioners, a copy of which is included in annexure "A" to the petition. In that notice, it is stated that there was reason to believe that 25 bags of betelnuts weighing 48 mds. 10 seers had been imported by the petitioners from Pakistan into India without a valid permit or a valid import trade control licence and thereby an offence had been committed u/s 5 of the Land Customs Act, 1924 and Section 19 of the Sea Customs Act, 1878. The notice called upon the petitioners to show cause why penal action should not be taken against them for the said offence and why the said goods should not be confiscated. The notice further stated as follows:

"All evidence, documentary or otherwise, in your possession should be produced in support of your explanation within the period specified above failing which the case will be decided ex parte.

You should state at the same time whether you desire to be heard in person or through your legal representative in your defence by the said authority. On receipt of your reply, if necessary, & time and date will be fixed and communicated to you."

3. On the 22nd December, 1954 a letter was written on behalf of the petitioners to the Superintendent, Central Excise and Land Customs. As it has figured prominently in the argument of the learned counsel appearing on behalf of the respondents I set out below the relevant part of it:

"Dear Sir,

Reminding you again of your letter No. . . of 18th December and our last letter and subsequent to the conversation the undersigned had with you, we regret very much to note that no final reply has been received by us as the captioned subject.

In the interim our representative had also an interview with Sri T.C. Seth who also assured us that the decision is likely to be taken very soon. Since then, it is

very much regretted that no reply has been received by us.

Under the circumstances, we shall feel highly obliged if you will be kind enough to take up this matter with all the seriousness and send us the release order at your earliest."

On the 13th January, 1955 the petitioners wrote another letter to the Collector of Customs inter alia stating as follows:

"In the interim we also received a show cause Memo No..... of 18th ultimo from the Superintendent of Central Excise and Land Customs G.P.C. Calcutta, reply of which was also given to him vide our letter of the 22nd ultimo enclosing therewith the true copy of our letter addressed to you on 16th ultimo as referred above. Our representatives had regularly been calling to the Superintendent Office and discussed about the matter but no satisfactory results came out. Now we have been informed by them that necessary enquiries have already been completed long ago and decision relating to this is likely to be taken in due course."

4. On the 10th February, 1955 the Collector of Central Excise and Land Customs, Calcutta, passed an order, a copy of which is annexure "B" to the petition. It is stated in the order that acting on information that a consignment of contraband betel nuts was likely to be booked from Howrah Railway Station on or about 22-10-54, an officer of Central I Preventive Circle went to the Howrah goods shed No. 6 and seized 25 bags of betel nuts; of which the petitioners were the consignors. The consignors stated that the goods had been purchased from Tarachand Shivkumar who in turn purchased the same at Land Customs auction sale. It is stated that samples were drawn from the goods under seizure as well as from the remaining stock of confiscated betel nuts, a portion of which was purchased by Tarachand Shivkumar, so as to ascertain whether the goods in both cases pertained to the same lot. The Collector of Customs proceeds to state as follows:

"On examination of the samples, two local reputed dealers have stated that the betelnuts, in both the cases, are of Pakistan origin but that the goods involved in the present case are fresh and not moth-eaten while the goods representing the stock of Tarachand Shivkumar are old and moth-eaten.

I have also personally examined samples of the seized betelnuts and of the betelnuts belonging to Tarachand Shivkumar. While the sample of seized nuts does not show a single hole made by borers, the other sample is found to contain a number of nuts showing holes through "borers" action. It is, therefore, obvious that the seized nuts do not pertain to the stock purchased by Messrs. Tarachand Shivkumar from Land Customs auction sale."

5. The Collector held that the seized betelnuts had been unlawfully imported into India from Pakistan, in contravention of various statutory provisions, and an order was made confiscating the seized betelnuts u/s 167(8) of the Sea Customs

Act. The owners were given the option of paying a fine of Rs. 4,800/- in lieu of confiscation. In case the option was exercised, the petitioners were to pay all incidental charges involved in the seizure and detention of the goods. It is against this order that this application is made.

6. It will appear from the facts set out above that two dealers had made reports after checking samples supplied to them by the Customs Authorities. No particulars were given in the order. It now appears that two local dealers,-- Ramnarayan Nandy, Nityananda Nandy and Satish Chandra Rana, Sarat Chandra Rana--were each given two sealed packets of betelnuts, and after examining them they gave written reports dated 22nd November, 1954, copies of which have now been placed on record and marked as Exts. 2 and 3. The first-named dealer stated that they found that one of the sealed packets contained "moth-eaten and old" betelnuts, whereas in the other packet the nuts were "fresh and not moth-eaten". They further stated that--"the quality and origin of the nuts are same". The second dealer stated that--"the betelnuts of both the packets are Same in quality, nature and origin," but the betelnuts contained in one packet were not "washed and coloured as in the case with nuts under seal No. Central Excise 154". It was further stated that the betelnuts under seal No. Central Excise 154 were "worm-eaten" which was not the case with the betelnuts in the other. packet.

7. Neither of these reports were disclosed to the petitioners and they did not know of the contents of the said reports.

8. The point made before me on behalf of the petitioners is that there has been a violation of the rules of natural justice. The Collector of Customs considered the reports made ex parte, and relied on materials prejudicial to the petitioners without drawing their attention to the same. Looking at the two reports, there can be no doubt that anybody in the position of the petitioners showing cause, could not satisfactorily deal with the matter without being apprised of the contents thereof. The case of the petitioners is that the original goods had certainly been brought over from Pakistan. They were, however, sold by the Land Customs to Tarachand Shivkumar, who then sent some of bags to be processed and graded. This involves washing, colouring and other processes. It is argued that even if the original goods contained betelnuts which were spoilt by borers, the process of grading meant that these damaged betelnuts would be separated and the unspoiled ones washed and coloured. It is the definite case of the petitioners that the goods were out of the same lot as was purchased by Tarachand Shivkumar. In both the reports, there are observations favourable to the petitioners. It is definitely stated that the goods were of the same quality and origin as the sample taken from the confiscated goods in the custody of the Land Customs authority. This fact was not brought to the notice of the petitioners. Nor was it taken into account by the Collector of Customs in making his order. Besides, there seems, to be some apparent conflict. One of the reports shows that one of the samples was "moth-eaten". The other report shows that in one of

the packets the betelnuts were "worm-eaten". The English language does not say that moths are worms. But even if we do violence to the English language and take them as meaning the same thing, it is obvious that the reports contained statement of facts prejudicial to the petitioners but they had not been disclosed to the petitioners at any stage. Mr. Kar on behalf of the respondents has not argued that under normal circumstances, materials relied upon should not be disclosed. He, however, says that in the facts and circumstances of the instant case, they need not have been disclosed. His argument is briefly as follows; He says that in the show-cause notice dated 18th December, 1954 the petitioners were asked to state whether they desired to be heard in person or through their legal representative in their defence, The petitioners did not claim a personal hearing, or a hearing at all. All that they did was repeatedly to state that they wanted an early decision. Learned counsel further pointed out that the letter of 13th January, 1955 shows that the petitioners had been informed that certain "enquiries" had been completed but they did not ask for any reports given as a result of any such enquiry. Therefore, they had not the right to be apprised of the reports given by the local dealers and that there has been no violation of the rules of natural justice, I do not think that it is a fair interpretation of the facts to say that the letter dated 13th January, 1955 shows that the petitioners were apprised of the reports of the local dealers. The letter of Tarachand Shivkumar to the Collector of Customs dated 14th December, 1954 states that inspectors from the office of the Land Customs Office inspected the books of Tarachand Shivkumar as well as their godowns and were "satisfied with the same". It appears from the letter of the petitioners dated 22nd December, 1954, to the Superintendent, Central Excise, that after the show cause notice was received, the representative of the petitioners had met the Superintendent and had conversation on the subject. Also, they had an interview with Shri T.C. Seth, Collector of Central Excise and Land Customs. It is clear to me that "enquiries" mentioned in the letter dated 13th January, 1955, referred to the enquiries made by the customs authorities from Tarachand Shivkumar. In any event, there is nothing to show that the petitioners were apprised of the fact that any opinion of local experts had been taken. These opinions are partly in favour of the petitioners and had they known about them they would have been in a position to avail themselves of that support. I shall now proceed to examine the legal position. This has been clearly explained by the Supreme Court in *Amba Lal v. Union of India*, AIR 1961 SC 264. That was also a case under the Sea Customs Act. The Assistant Collector of Land Customs, Ajmer, gave notice to the appellant to show cause why certain goods seized from him should not be confiscated u/s 167(8) of the Sea Customs Act read with Section 8 of the Land Customs Act, The appellant showed cause, but an order was made confiscating the said goods with an option to the appellant to redeem the confiscated goods within four months upon payment of a sum of Rs. 25,000/-. In addition, a penalty of Rs. 1000/- was imposed, over and above the payment of import duty leviable on the item, together with all charges. Aggrieved by the said order, the appellant preferred an appeal to the Central Board of Revenue which agreed with the Collector and the

appeal was dismissed. A revision was filed before the Central Government which was also dismissed. Thereupon, the appellant filed a writ petition under Article 226 of the Constitution in the High Court of Punjab which also failed and thereafter an appeal was preferred to the Supreme Court. Subbarao, J. said as follows:

This Court has held that a customs officer is not a judicial tribunal and that a proceeding before him is not a prosecution. But it cannot be denied that the relevant provisions of the Sea Customs Act and the Land Customs Act. are penal in character. The appropriate customs authority is empowered to make an inquiry in respect of an offence alleged to have been committed by a person under the said Acts, summon and examine witnesses, decide whether an offence is committed, make an order of confiscation of the goods in respect of which the offence is committed and impose penalty on the person concerned, see Sections 168 and 171-A of the Sea Customs Act and Sections 5 and 7 of the Land Customs Act. To such a situation, though the provisions of the Code of Criminal Procedure or" the Evidence Act may not apply except in so far as they are statutorily made applicable, the fundamental principles of criminal jurisprudence, and of natural justice must necessarily apply. If so, the burden of proof is on the customs authorities and they have to bring, home the guilt to the person alleged to have committed a particular offence under the said Acts by adducing satisfactory evidence. In the present case no such evidence is forthcoming; indeed there is no little of evidence to prove the case of the customs authorities."

9. I next come to another decision of the Supreme Court which deals with the position of domestic tribunals exercising quasi-judicial functions and obtaining information and materials from enquiry. The legal position in such cases has been discussed in *State of Mysore Vs. S.S. Makapur*, . Aiyar, J. said as follows:

"For a correct appreciation of the position, it is necessary to repeat what has often been said that tribunals exercising quasi-judicial functions are not Courts and that therefore they are not bound to follow the procedure prescribed for trial of actions in Courts nor are they bound by. strict rules of evidence. They can, unlike Courts, obtain all information material for the point; under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in Court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case but where such an opportunity hail been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in Courts."

10. It was held that in a case where a witness was not examined in the presence of a party, it was sufficient if a copy of his statement was given to the party and the witness was tendered for cross-examination. It was held that although the rule which laid down the procedure was not bad, yet the procedure adopted in

that particular case was in violation of the rules of natural justice. It has been argued that in the present case a personal hearing was offered but the petitioners did not ask for a personal hearing. What is meant by the expression, "personal hearing" has been laid down by the Supreme Court in *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, . "Personal hearing" said Subba Rao, J. "enables the authority concerned to watch the demeanour of the witness and clear up his doubts during the course of argument, and the party appearing to persuade the authority by reasoned argument to accept his point of view."

11. Let us now consider the present case in the light of the authorities mentioned above. The Collector of Customs hearing the show-cause notice is an administrative Tribunal of a quasi-judicial nature. The charges are that the petitioners have committed offences which are punishable by confiscation and fine and the proceedings are, therefore, penal in nature. In such a case, it has been held that the onus lies on the customs authority to establish the guilt of the accused. As domestic tribunals, they are entitled to make enquiries from various channels, but if they wish to use the result of such enquiries to the prejudice of the accused, such results must be made known to the accused and he must be given opportunity to deal with the same. Otherwise there would be a violation of the rules of natural justice. In the present case, we find that originally the goods were smuggled. The confiscated goods were sold to Tarachand Shivkumar by the Customs authorities. The question is whether the goods seized in Howrah, as consigned by the petitioners, belonged to the same lot. The Collector of Customs has not been alive to the fact that it is the case of the parties that Tarachand Shivkumar had sent some of the goods for processing and grading. That process involves washing and colouring, and it is only normal that in the process of grading the damaged or worm-eaten pieces would be separated from the good ones, which alone would be washed and coloured. The reports of the local exports were taken, even before the show-cause notice was issued. But no mention was made therein of the reports or their content. I have mentioned above that the reports were partly in favour of the petitioners. Both the dealers found that the goods seized from the petitioners were of the same quality and origin as the original goods. Only, the goods seized were washed and coloured and without any boring by worms, where- as the other sample contained betelnuts which were unwashed, uncolored and bored by worms. If this was disclosed to the petitioners they might have had an explanation. In fact, they might have explained the process of washing and colouring. If the onus lies upon the customs authorities as in a criminal prosecution, to establish beyond doubt the guilt of the accused, now have they discharged the same? It being in evidence that the original goods were of the same origin and quality with the seized goods, and it being in evidence that Messrs. Tarachand Shivkumar had sent some of the goods to be graded and washed, and it being the petitioners' case that the goods which were seized were part of the said goods which underwent the process of grading and washing, the mere fact that one of the

samples contained betelnuts which were either "moth-eaten" or "worm-eaten" and the other did not, but were found to be washed and coloured, has not proved the case of the prosecution beyond doubt. On the other hand, it shows the probability of the defence being true. In this case, what has happened was that immediately upon the seizure of the goods the customs inspectors had inspected the godowns of Tarachand Shivkumar, who at once wrote a letter to the Collector of Customs placing on record that these inspectors were satisfied. Perhaps because of this, the petitioners did not actually ask for a personal hearing, but it is in evidence that their representative met the customs authority and had talks with them. The fact that the petitioners did not ask for a personal hearing meant that the customs authority could proceed ex parte. But this did not warrant the use of materials prejudicial to the petitioners which were not disclosed to them. In my opinion, in the facts and circumstances of this case, there has been a clear violation of the rules of natural justice and that justice has not been done. Mr. Kar has laid stress on the point that the petitioners were eager to have a decision and since they did not ask for a hearing, he argued that the customs authorities had done nothing illegal in obtaining the reports and relying on them. He said that if the petitioners had asked for a personal hearing these reports" would have been disclosed to them. In my opinion, that is not an answer which is acceptable. Whether the petitioners asked for a personal hearing or not, if materials are to be used against the petitioners of which they were not aware, and which contained matters prejudicial to them, the same must be disclosed, whether a personal hearing has been asked for or not. Because a personal hearing has not been asked for, it is all the more reason why such materials should be disclosed, and an opportunity given to the petitioners to deal with them.

12. For the reasons given above, this application must succeed. The Rule is made absolute and the order of the Collector of Central Excise and Land Customs, Calcutta, dated 10th February, 1955 is quashed and/or set aside by a writ in the nature of certiorari and there will be a writ in the nature of mandamus directing the respondents not to give effect to the same. The respondents may, however, if they are so minded, proceed with the show-cause notice in accordance with law. There will be no order as to costs.