(1957) 02 PAT CK 0022

In the Patna High Court

Case No : Misc. Judl. Case No. 316 of 1954

Gajanand Periwal and Another APPELLANT

Vs

Collector of Central Excise and Land Customs RESPONDENT

Date of Decision : 12-02-1957

Acts Referred:

Constitution of India, 1950 — Article 227
Foreign Exchange Regulation Act, 1947 — Section 23A, 8, 8(1)
Sea Customs Act, 1878 — Section 167(8), 183

Citation : AIR 1957 Patna 508 : (1957) 5 BLJR 344

Hon'ble Judges : Ramaswami, C.J;Raj Kishore Prasad, J

Bench : Division Bench

Advocate : Shivanugrah Narain and C.B. Sahay, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Ramaswami, C.J.—In this case the petitioners have obtained a rule from the High Court calling upon the respondents to show cause why a writ in the nature o? certiorari should not be issued to quash an order dated 24th of November, 1953, made by the Collector of Central Excise, confiscating 3,600, chinese dollars u/s 167 (8) of the Sea Customs Act read with Section 23A of the Foreign Exchange Regulation Act. Cause has been shown by the learned Government leader on behalf of both the respondents to whom notice of the rule was ordered to be given.

2. The petitioners carry on business at Kalimpong in the State of West Bengal. On 2nd of July, 1952. Dipchand, a servant of the petitioners, was arrested at Thakurganj railway station for carrying 3,600 Chinese dollars. The entire quantity of Chinese dollars was also seized from Dipchand on the same date and later on the Customs Authorities at Kishun-ganj took charge of the Chinese dollars. On 12th of June, 1953, a notice was issued by the Collector of Central Excise, asking the petitioners to show cause why the Chinese dollars should not be confiscated

u/s 167 (8) of the Sea Customs Act, read with Section 23-A of the Foreign Exchange Regulation Act.

It was explained on behalf of the petitioners that they had not imported the dollars into India, but they had purchased the dollars at Kajimpong for consideration from three persons to whom the dollars had been released on payment of a redemption fine. It was stated on behalf of the petitioners that, 1,030 dollars were purchased from one Chhiring Wangdi, to whom the dollars were released by the Assistant Collector of Central Excise at Kalimpong on 22nd of May, 1952.

As regards the rest of the silver dollars it was explained that the petitioners had purchased them from two persons, Karchey Bhutia and Wangchuk Bhuttia. The explanation offered by the petitioners was rejected by the Collector of Central Excise and on 24th of November, 1953, he passed an order confiscating the entire quantity of silver dollars u/s 167 (8) of the Sea Customs Act, read with Section 23-A of the Foreign Exchange Regulation Act. The Collector of Central Excise, however gave an option to the petitioners to redeem the silver dollars on payment of a sum of Rs. 3,600/- along with the incidental charges and also on production of a "no objection'''' certificate from the Reserve Bank of India within three months of the date of the order.

3. It was argued on behalf of the petitioners, in the first place that the order of the Collector of Excise dated 24th of November, 1953, is illegal because he had no authority to impose the condition that the petitioners should produce a "no objection" certificate from the Reserve Bank of India. It is contended on behalf of the petitioners that the imposition of this condition is illegal and the order of the Collector of Central Excise dated 24th of November, 1953, must be quashed for this reason. In my opinion, there is no substance in this argument. Section 167 (8) of the Sea Customs Act is in the following terms:

''''167. The offences mentioned in the first column of the following schedule shall be punishable to the extent mentioned in the third column of the same with reference to such offence respectively :

offence. Section of this Act to which off- once has reference Penalties

* * * * *

8.

If any goods, the importation or exportation of which is for the time being prohibited or restricted by or under Chap. IV of this Act, be imported, into or exported from the States contrary to such prohibition or restriction, or

If any attempt be made so to import or export any such goods or,

if any such goods be found in any package produced to any officer of customs as containing no such goods, or if any such goods or any dutiable goods be found either bsfore or after landing or shipment to have been concealed in any manner or board of any vessel within the limits of any point in the States or if any goods the exportation of which is prohibited or restricted as aforesaid, be brought to any wharf in order to be put on board of any vessal for esporation contrary to such prohibition or restriction.

18 & 19

Such goods shall be liable to confiscation any person concerned in such offence shall be liable to a panalty not exceeding three times the value of goods, or not exceeding one thousand rupees."

4. Section 183 of the Sea Customs Act states : "Whenever confiscation is authorised by this Act the officer adjudging it shall give the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit."" But Act 8 of 1952, which amended the Foreign Exchange Regulation Act (Act 7 of 1947) provides that the provisions of the Sea Customs Act would apply with regard to the restrictions imposed by Sub-sections (1) and (2) of Section 8 of the Foreign Exchange Regulation Act (Act 7 of 1947) and all the provisions of the Sea Customs Act shall have effect accordingly, except that Section 183 thereof shall have effect as if for the word "shall" therein the word "may"" were substituted. It is necessary in this connection to quote Section 9 of the Amending Act (Act 8 of 1952):

"9. Insertion of new Sections 23-A and 23-B in Act 7 of 1947. After Section 23 of the Principal Act the following sections shall be inserted, namely:

23-A. Application of Sea Customs Act, 1878. Without prejudice to the provisions of Section 23 of to any other provision contained in this Act, the restrictions imposed by Sub-sections (1) and (2) of Section 8, Sub-section (1) of Section 12 and Clause (a) of Sub-section (1) of Section 13 shall be deemed to have been imposed u/s 19 of the Sea Customs Act, 1878, (8 of 1878) and all the provisions of that Act shall have effect accordingly, except that Section 183, thereof shall have effect as if for the word ''shall'' therein the word ''may'' were substituted.

X X X X X"

5. It was argued on behalf of the petitioners that there is no provision in Section 183 of the Sea. Customs Act which authorised the Collector of Central Excise to impose any condition on the exercise of the option. This argument is certainly right and there is nothing in the language of section 183 of the Sea Customs Act which confers authority on the Collector of Central Excise to impose a condition. But the important point is that Section 183 of the Sea Customs Act has to be read in the context of Section 8 and Section 23-A of the Foreign Exchange Regulation Act and also of Section 19 and Section 168 of Sea Customs Act. Section 8(1) of the Foreign Exchange Regulation Act (Act 7 of 1947) is to the following effect:

"8. (1) The Central Government may, by notification in the official gazette order, that, subject to such exemptions, if any, as may be contained in the notification, no person shall, except with the general or special permission of the Reserve Bank and on payment of the fee, if any, prescribed, bring or send into British India any gold or silver or any currency notes or bank notes or coin whether Indian or foreign."

I have already quoted Section 23-A which was newly inserted in Act 7 of 1947 by Section 9 of the Amending Act (Act 8 of 1952). Section 19 of the Sea Customs Act is as follows :

"19. The Central Government may from time te time by notification in the Official Gazette, prohibit or restrict the bringing or taking by sea or by land goods of any specified description into or out of the States across any customs frontier as defined by the Central Government."

6. It is also necessary to refer to the notification of the Central Government dated 25th of August, 1948, made u/s 8 (1) of the Foreign Exchange Regulation Act. The notification is to the "following effect:

"New Delhi, 25th August, 1948. No. 12 (11) F.1/48. In exercise of the powers conferred by Sub-section (1) of Section 8 of the Foreign Exchange Regulation Act, 1947, (7 of 1947), and in supersession of the notification of the Government of India in the late Finance Department No. 12(1) F.1/47, dated 25th March, 1947, the Central Government is pleased to direct that, except with the general or special permission of the Reserve Bank, no person shall bring or send into the provinces of India from any place outside the sub-continent of of India or from any place in the French or Portuguese territories in India.

(a) any gold coin, gold bullion, gold sheets or gold ingot, whether refined or not or

(b) any silver bullion, any silver sheets or plates which have undergone no process of manufacture subsequent to roiling, or any uncurrent silver coin."

7. It is necessary to construe the language of Section 183 of the Sea Customs Act in the background of Section 8 and Section 23-A of the Foreign Exchange Regulation Act (Act 7 of 1947) and the notification of the Central Government dated 25th of August, 1948, made in the exercise of the powers conferred u/s 8 (1) of the Foreign Exchange Regulation Act (Act 7 of 1947). If Section 183 of the Sea Customs Act is so construed, it is manifest that the Collector of Central Excise had the authority to say that the petitioners would have the option of redeeming the Chinese dollars only on production of a "no objection" certificate from the Reserve Bank of India. In my opinion the condition imposed by the Collector of Central Excise is not illegal and the argument presented by learned Counsel for the petitioners on this point must fail.

8. The next argument on behalf of the petitioners is that in passing the order of confiscation on 24th of November 1953, the Collector of Central Excise took into account a report of the Assistant Collector of Central Excise stationed at Kalimpong stating that, 1,030 Chinese silver dollars were released to Chiring

Wangdi on 3rd of July, 1952. In view of this report the Collector of Central Excise rejected the explanation of the petitioners that they had purchased 1,030 dollars from Chiring Wangdi. The contention was put forward on behalf of the petitioners that the report of the Assistant Collector of Kalimpong was received by the Collector of Centra! Excise after the petitioners had showed cause and after arguments were heard.

The report of the Assistant Collector of Kalimpong was not shown to the petitioners and no explanation was asked from petitioners regarding the contents of that report. It is contended on behalf of the petitioners that the Collector of Excise was not entitled to use the report of the Assistant Collector of Kalimpong behind the back of the petitioners and to base the order of confiscation thereon. It was submitted by learned Counsel that there has been a violation of the principle of natural justice and the order of the Collector of Central Excise dated 24th of November, 1953, was made without jurisdiction.

9. In my opinion, the argument of learned Counsel on behalf of the petitioners on this point is well founded and must be accepted as correct. On a perusal of the order of the Collector, dated 24th of November, 1953, it is manifest that the explanation of the petitioners has been rejected solely on the ground that the Assistant Collector of Kalimpong had said in his report that, 1030 Chinese silver dollars were released in favour of Mr. Chiring Wangdi on 3rd of July, 1952. The Collector of Central Excise considered that the explanation of the petitioners for their possession of the Chinese dollars at Thakurganj on 2nd of July, 1952, could not, therefore, be accepted as true.

The report of the Assistant Collector of Kalimpong was, therefore, highly prejudicial to the petitioners and it was the duty of the Collector of Central Excise to give a fair opportunity to the petitioners to correct or contradict the statement contained in the report of the Assistant Collector of Kalimpong. This view is supported by a decision of a Division Bench of this High Court in Gopi Kishore Prasad Vs. State of Bihar, . It was held in that case that a person should not be condemned on ex parte Statements and no order of removal or discharge should be passed against a Government servant unless he has been given a real and effective opportunity of refuting the statements upon which his notice of discharge is based.

In that case a Government servant on probation was served with a notice of show cause against discharge, and he was ultimately discharged without showing him the confidential reports on which the notice of discharge was based and without giving him an opportunity of meeting the allegations. It was held in the circumstances of that case that there was a violation of the principles of natural justice and the order of discharge was illegal and with- out jurisdiction. The principle has been clearly put by Lord Loreburn in Board of Education v. Rice, 1911 AC 179 (B), as follows :

"Comparatively recent statutes have extended, if they have got originated the practice of imposing upon departments or officers of State the duty of deciding or determining question of various kinds. In the present instance as in many others, what comes for determination is sometimes a matter to be settled by discretion involving no law. It will, I suppose, usually be of an administrative kind, but sometimes it will involve matter of law as well as matter of fact, or even depend upon law alone. In such cases the Board of Education will have to ascertain the law and also to ascertain the facts.

I need not add that in doing either they must act in good faith and fairly listen to both sides; for it is a duty lying upon every one who decides anything. But I do not think they are bound to treat such a question as though it were a trial. They have no power to administer an oath, and need not examine witnesses. They can obtain, information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view."

In the circumstances of the present case I hold that there has been a violation of the principle of natural justice and the order of the Collector of Central Excise, dated 24th of November, 1953, made u/s 167 (8) of the Sea Customs Act, read with Section 23-A of the Foreign Exchange Regulation Act, must be held to be an order made without jurisdiction.

10. For these reasons I would in exercise of the authority conferred upon the High Court under Article 227 of the Constitution set aside the order of the Collector of Central Excise, dated 24th of November, 1953, and direct that the case should be reheard by the Collector of Central Excise, who, after giving an opportunity to the petitioners to meet the statements made in the report of the Assistant Collector of Kalimpong deal with the case and make a fresh order in accordance with law. I would accordingly allow this application, but I do not propose to make any order as to costs of the hearing of this application.

Raj Kishore Prasad, J.

11. I agree.