
(1979) 07 BOM CK 0004

In the Bombay High Court

Case No : Misc. Petition No. 1344 of 1976

General Spares Industries Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 13-07-1979

Acts Referred:

Citation : (1989) 23 ECR 251 : (1989) 43 ELT 52

Hon'ble Judges : P.B. Sawant, J

Bench : Single Bench

Advocate : K.K. Singhvi and A. Hidayatullah, for the Appellant; D.R. Dhanuka, F.H.J. Talyarkhan and C. M. Korde, for the Respondent

Judgement

1. The petitioners are a Private Limited Co., and are inter alia, manufacturers of spares for automobiles, precision parts for internal combustion engines and parts and components for bicycles. On 12-9-1964 they were registered as a small scale industry by the Director of Industries. On 28-4-1970, their registration certificate was amended by the addition of extra manufacturing items which included internal combustion engines, pumps and compressors, diesel engines (all types) and automobiles accessories. During the period 1972-1975, the petitioners were in receipt of Actual User Licences and the R.E.P. licences. On 16-7-1976 the petitioners were given a certificate of Engineering Export Promotion Council Registration-cum-membership.

2. In July 1975, the petitioners imported 12 consignments of thin-walled bearings valued at Rs. 8,00,000/-. However, the Customs Authorities detained the said consignment pending investigation into the validity of the Actual User Licence issued and/or obtained by the petitioners. On 12-8-1975, the petitioners received a letter from the Director of Industries informing them that Items Nos. 1 and 2 in the letter dated 28-4-1970 by which their registration certificate was corrected should be corrected further to read as follows :-

"All types of Diesel Engines and its spares.

Internal combustion engines and its spares."

This meant that the petitioners were entitled to manufacture as per the said registration certificate all types of diesel engines and internal combustion engines with their spares. On 26-8-1975 the Actual User Licence issued to the petitioners was retrospectively amended by adding the words "and spares" to the words "internal combustion engines." In other words pursuant to this retrospective amendment, the petitioners were allowed to import even the spares of internal combustion engines.

3. Subsequently in January 1976 the Customs detained yet another consignment of the petitioners, the consignment being of fuel injection equipments and seamless pipes of the value of Rs. 2,00,000 and Rs. 1,00,000/- respectively. This detention was also pending the investigation into the validity of the licence. Thereafter on 22-1-1976, the Deputy Director (Mech.), Directorate of Industries, Government of India, Ministry of Industry and Civil Supplies, issued a competency certificate to the petitioners whereby it was stated that the petitioners were competent to manufacture approximately 25 pcs. of cranks shafts except final machining.

4. In February 1976, the petitioners imported a further consignment of thin-walled bearings of the value of Rs. 70,000/- approximately which was also detained by the Customs pending investigation into the validity of the licence. Thereafter on 28-2-1976, the Joint Director of Industries, issued a letter to the petitioners cancelling the items mentioned in the letters dated 28-4-1970 and 12-11-1971 and instead including in the registration certificate "Precision machine turned parts on automats and lathes for automobiles, bicycles and internal combustion engines; sub-assembly for bicycles and hydraulic/pneumatic brake assembly for automobiles."

5. Thereafter on 5-7-1976, the Joint Chief Controller of Imports and Exports issued three show-cause notices under clauses 8, 9 and 10(c) of the Imports (Control) Order, 1955, calling upon the petitioners to show cause as to why the licences issued to them should not be cancelled, and fixed the hearing in the matter on 23-7-1976. The petitioners through their Attorneys replied to the show cause notices on 8-7-1976 asking for copies of the adverse reports on the basis of which the Joint Controller had issued the said show-cause notices. The said letter of the petitioners having not been replied to, the petitioners sent their reminder on 23-7-1976 this time also through their Attorneys, and thereafter on 24-7-1976, without prejudice to their rights and contentions raised in their letter dated 8-7-1976, also sent a reply to the show-cause notices.

Monday : 16th July, 1979.

6. Thereafter the two impugned orders dated 17-9-1976 came to be passed by the Deputy Chief Controller of Imports and Exports. By one order, the licences mentioned in the list to the show cause notice dated 5-7-1976 were cancelled and rendered ineffective and by the other order the petitioners were restrained

from receiving import licences, CCPs. and allotment of imported goods through STC/MMTC and any other similar agency for five licensing period viz. from April 1975 - March 1976 to April 1979 - March 1980. It is these orders which have come to be challenged by the petitioners.

7. The short question that has been agitated by the petitioners in this petition is that in the absence of documents on which admittedly the second respondent relied both for issuing the show-cause notices and for passing the impugned orders, they were not granted a reasonable opportunity to meet the case of the respondents pursuant to the show-cause notices issued. Mr. Singhvi for the petitioners in support of his contention that the entire proceedings were vitiated for want of such reasonable opportunity relied upon the decision of the Supreme Court *Sinha Govindji Vs. The Deputy Chief Controller of Imports and Exports and Others*, . In that case the petitioner who was carrying on the business of the manufacturer of celluloid and plastic bangles etc. was granted two licences for the purpose of importing cellulose nitrate sheets for two licensing periods. On getting information that the petitioner had no machinery or equipment at the premises nor did he possess any Municipal licence or factory licence, the Imports and Exports authorities issued a notice to the effect that the Government proposed to cancel the licences granted to him in exercise of powers conferred by clause 9 of the Imports (Control) Order, 1955, unless sufficient cause was shown against such an action. The petitioner replied that as the notice did not disclose on which of the grounds specified in clause 9 the proposed action was sought to be taken, it was not possible to represent effectively against the show cause notice. Thereafter, the Chief Controller of Imports and Exports wrote to the petitioners giving information and said that in view of that information it was clear that the petitioner had obtained the essentially certificate from the Director of Industries fraudulently and by misrepresentation of facts and thereafter had obtained the licences in question. The petitioner was therefore called upon to show cause as to why the further issue of licences be not suspended. Then the petitioner received the orders by which the licences were cancelled. The petitioner challenged the validity of the said orders on the ground that no real opportunity to show cause against the proposed cancellation of the licences was given to him. On the facts and circumstances of that cause it was held that there was a clear violation of the requirements of clause 10 of the Imports (Control) Order, 1955, which embodied the principles of natural justice and that the orders passed against the petitioner must be quashed.

8. As against this, it was contended by Mr. Dhanuka appearing for respondents Nos. 1 to 3 that it was open for the petitioners to attend the hearing which was fixed on 23-7-1976 and place before the 2nd respondent all the material that they had in their possession showing the manufacture of the products in question and pointing out how the allegations in the Show Cause notices on the basis of the material were unwarranted. The petitioners chose not to attend the said inquiry and instead first asked for the documents on which the second respondent relied and then only sent a written explanation and that too a day

after the inquiry was fixed. Since the second respondent had fixed the hearing and called for an explanation from the petitioners and since an opportunity was given to the petitioners to produce all the materials that they wanted to meet the charges in the show cause notices, it could not be said that this was a case of breach of the principles of natural justice. In this connection, he relied upon certain observations made in three decisions viz City Corner Vs. Personal Assistant to Collector and Addl. District Magistrate, Nellore, ; 79 BLR 581 Kanungo and Company Vs. Collector of Customs and Others, M/s. Kanungo & Co. v. The Collector of Customs, Calcutta and others. As far as the first authority is concerned, Mr. Dhanuka relied upon the observation in that case that it is well established that the principles of natural justice do not necessarily conform to a fixed formula, nor is it a procrustean bed into which all proceedings must be fitted. It is not always necessary that the documents asked for should themselves be furnished provided the substance of those documents is furnished, always provided, however, that the summary is not misleading. A regards 59, B.L.R. 581, he relied upon the observations which are as follows :-

"The question of non-disclosure of documents and reports (allegedly against a party) amounting to non-compliance with the principles of natural justice would have to be dealt with on the facts and circumstances of each case and all that the Court had to find out was whether such a non-disclosure had in any way acted to the prejudice of the party or whether the disclosure was necessary on the ground of fair play or just decision of the matter."

9. The next observations in that case are quotations from a decision of the Supreme Court in Civil Appeal No. 1602 of 1967. They are as follows :-

"Before coming to the conclusion that any particular procedure adopted had contravened the principle of natural justice, the Court must be satisfied that the procedure adopted was not conducive to reach a just decision. A party is not entitled as of right to have his attention called to any material that may come before a quasi-judicial tribunal unless the material in question is likely to prejudice his case either directly or indirectly."

10. From Kanungo and Company Vs. Collector of Customs and Others, , the following observations were pressed :-

"We may first deal with the question of breach of natural justice. On the material on record, in our opinion, there has been no such breach. In the show-cause notice issued on August 21, 1961, all material on which the Customs Authorities have relied was set out and it was then for the appellant to give a suitable explanation. The complaint of the appellant now is that all the persons from whom enquiries were alleged to have been made by the authorities should have been produced to enable it to cross-examine them. In our opinion, the principles of natural justice do not require that in matters like this, the persons who have given information should be examined in the presence of the appellant or should be allowed to be cross-examined by them on the statements made before the

Customs Authorities. Accordingly, we hold that there is no force in the third contention of the appellant."

11. I am of the view that the S.C. observations relied upon by Mr. Dhanuka help, rather than go against, the petitioners. Admittedly, paragraph 3 of the show-cause notice issued under clause 9 of the Order stated as follows :-

"And whereas as a result of enquiries made by the Director of Industries, Bombay and the Asstt. Collector of Customs, Bombay it has transpired that you are not in possession of the requisite machinery for the manufacture of Internal Combustion Engines and the machinery which you are having in your factory premises at the given address is only suitable for manufacture of small threaded parts used in bicycle industry and to certain extent in automobile industry. The said items viz. Diesel Engines, Internal Combustion Engines, Auto Parts have also been deleted from the SSI registration certificate granted to you by the Director of Industries, Bombay"

It is thus obvious from this show-cause notice that it was issued on the basis of the inquiries made by the Director of Industries and the Assistant Collector of Customs. Neither the report of the inquiry nor the gist of such inquiries was intimated to the petitioners along with the show-cause notice or at any time thereafter before the impugned orders were passed. It is this report of the inquiries which was asked for by the petitioners by their Attorneys' letter dated 8-7-1976. In spite of this, neither the said report nor even a summary thereof was supplied to the petitioners. On the other hand finding that no such document was forthcoming from the respondents, the petitioners by their letter dated 24-7-1976, offered such explanation as they could in the absence of the said report, to the show-cause notice and made out a case that the allegations made in the show-cause notice were false and that they did have in their possession the requisite machinery and that their registration certificate was valid for the manufacture of the items in questions. In spite of this, the final impugned orders stated that as a result of the enquiries made by the Director of Industries and the Assistant Collector of Customs, it transpired that the petitioners were not in possession of the requisite machinery and that the items were not included in the registration certificate granted to them by the Director of Industries. In the impugned orders, it was also mentioned that the petitioners had failed to refute convincingly the charges mentioned in the show-cause notice and to produce documentary evidence in support of their stand that on various occasion the Officers of the Director of Industries had checked their books with regard to the manufacture of products and that they had made recommendations and issued the revised registration certificate from time to time after a through inspection and this was however an additional ground for the impugned order. However, as stated earlier, one of the two grounds undoubtedly was what was revealed in the inquiries made by the Director of Industries and the Assistant Collector of Customs. In the circumstances it can hardly be argued in the present case that the petitioners were given a reasonable or an adequate opportunity to meet the

show-cause notice and to show cause against the proposed action of cancellation of their licence and of black-listing them for a period of five years when they were not admittedly supplied either with the reports of the Director of Industries and the Assistant Collector of Customs or a proper summary of the same. It is what transpired during these inquiries which was undoubtedly relied upon by the second respondent for passing the impugned orders and thus these enquiries were used to the prejudice of the petitioners. It will have therefore to be held that in the present case, the petitioners were entitled to the report of the said inquiry or at least a proper summary of them before they could be called upon to meet the charges levelled against them. In the circumstances, there was obviously a breach of the principle of natural justice.

12. I have therefore, no hesitation in striking down the two impugned orders dated 17-9-1976 as they are passed without giving a reasonable opportunity to the petitioners as stated earlier. If the second respondent still desires to hold an enquiry, she will do so according to law after following the principles of natural justice as stated above. It is made clear that the petitioner had confined their challenge only to the two impugned orders both dated 17-9-1976 and had not challenged the proceedings adopted by the Customs authorities for challenging which the petitioners' revision proceedings are pending before the proper authorities. The interim order passed by this Court on 11-10-1976 will continue to operate for four weeks from today. The respondents will not dispose of the goods for a period of four weeks from today.

13. The petition is allowed and the rule is made absolute accordingly. In the circumstances of the case, there will be no order as to costs.