
(1985) 07 GUJ CK 0027
In the Gujarat High Court

Gulabdas Maganlal Ganjawala

APPELLANT

Vs

Narsimhan and Another

RESPONDENT

Date of Decision : 31-07-1985

Acts Referred:

Citation : (1986) CriLJ 467 : (1986) 1 GLR 515

Hon'ble Judges : J.P. Desai, J

Bench : Single Bench

Judgement

J.P. Desai, J.

1-3. x x x x x x x x x

4. It was contended before the learned Sessions Judge that the Collector did not supply copies of any of the documents mentioned in the tentative reply given by the petitioner to the show cause notice and, therefore, the petitioner was not given reasonable opportunity of showing cause and, therefore, the order was liable to be set aside. These contentions did not find favour with the learned Sessions Judge. It is true that the petitioner was given reasonable time to reply to the show cause notice, but the petitioner did send the tentative reply before the date of hearing fixed by the Collector. The learned Sessions Judge took the view that the Collector was not bound to supply copies of the documents demanded by the petitioner. He was of the view that the petitioner was given reasonable opportunity to have his say and, therefore, the grievance made by the petitioner did not have any substance. It is difficult to agree with the view taken by the learned Sessions Judge. Simply because sufficient time was given to the petitioner to reply to the show cause notice and to appear in person for hearing, it cannot be said that reasonable opportunity was given to him even though copies of the panchnama and, other documents though demanded by the petitioner were not supplied to him.

5. Section 6(B) (i) which has a bearing upon the question involved in this revision application reads as under:

Section 6B

(i) No order confiscating (any essential commodity, package, covering or receptacle, animal, vehicle, vessel or other conveyance) shall be made u/s 6A unless the owner of such (Essential commodity package, covering or receptacle, animal, vehicle, vessel or other conveyance) or the person from whom (it is seized).

(a) is given a notice in writing informing him on the grounds on which it is proposed to confiscate the (essential commodity, package, covering or receptacle, animal, vehicle, vessel or other conveyance.).

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the ground of confiscation; and

(c) is given a reasonable opportunity of being heard in the matter.

6. Clause (a) provides for giving a notice and such a notice was given in the present case. Clause (b) provides for giving an opportunity of making a representation in writing within such reasonable time as may be specified in the notice on the ground of confiscation. Can it be said in the present case that opportunity of making a representation was given to the petitioner when copies were not supplied to him even though he demanded the same? An opportunity is to be such as would enable the concerned person to make an effective representation. The petitioner was entitled to know the contents of the panchanama, the contents of the statement of Maheshchandra as also the contents of any other documents on which the Collector was relying upon while taking a decision to confiscate the essential commodity. The petitioner could not make effective representation unless he knew the contents of these documents. It appears that Maheshchandra is the son of the petitioner. But even then the petitioner is entitled to know what is recorded in the statement of Maheshchandra. But leaving aside the statement of Maheshchandra, the petitioner was entitled to know as to what were the contents of the panchanama. He was also entitled to know as to what were the other documents on which the Collector intended to rely upon and what were the contents thereof. The petitioner was, therefore, entitled to the copies demanded by him and as they were not supplied to him, it cannot be said that he was given an opportunity of making representation as required by Clause (b) of Section 6B(1) of the Act. If the Collector felt that the petitioner was not entitled to the copies of the documents asked for by him, he could have called upon the petitioner either to go to the office of the Collector and to peruse the documents and to prepare the copies himself or could have asked the petitioner to pay the charges for the copies. It may be stated here that the petitioner had stated in his tentative reply dated 15-2-1980 that he was ready and willing to pay the charges of copies if he was not entitled to the copies free of cost. The Collector did not give any reply to the tentative reply given by the petitioner to the show cause notice issued by the

Collector. Clause (c) provides forgiving reasonable opportunity of being heard in the matter. The petitioner cannot be said to have been given a reasonable opportunity of being heard in the matter when the copies were not supplied to him nor he was given an opportunity even to have a look into the documents demanded by him in his tentative reply to the show cause notice. So far as the order passed by the Collector dated 6th March 1980 is concerned, the Collector has only stated that the petitioner was called upon to reply within 7 days i.e. before 13th Feb., 1980 and he had not sent any explanation within the prescribed limit. The Collector has stated that the petitioner had sent a letter dated 15-2-1980 which had reached his office after the hearing. He has referred to the contents of the tentative reply of the petitioner dated 15-2-1980. He has not mentioned anything in his order with regard to the demand of copies by the petitioner except referring to what is stated in the tentative reply given by the petitioner. The Collector has stated in his order that the tentative reply dated 15-2-1980 was received on 18-2-1980 after the hearing. As the petitioner had not appeared in person, I fail to understand what hearing could have taken place before the order was passed on 6-3-1980. But the fact remains that the Collector had not passed any order before he received the tentative reply of the petitioner on 18-3-1980. The period of seven days was fixed by the Collector. No such limit is fixed by any statute or rules. In view of this, even if a reply to such show cause notice is not received within the period fixed by the Collector, and mentioned in the notice, it has to be taken into consideration if order is not passed before the receipt of the reply. The Collector, therefore, ought to have fixed another date of hearing after he received the tentative reply of the petitioner on 18-2-80 and intimated the petitioner about the same. He should have supplied the copies to the petitioner either free of cost or on payment of charges before hearing and before taking final decision in the matter. The view taken by the learned Sessions Judge with respect, that the provisions of Section 6B(i) of the Act were complied with, does not appear to be correct. Opportunity which is required to be given by law must be a real opportunity, not an illusory one. When such an opportunity was not given to the petitioner, the order passed by the Collector is required to be quashed.

(Paras 7 to 10 omitted - Ed.)