
(1953) 03 CAL CK 0026
In the Calcutta High Court
Case No : Matter No. 123 of 1952

Haji Sattar and Another	Vs	APPELLANT
Joint Chief Controller of Imports and Exports and Another		RESPONDENT

Date of Decision : 03-03-1953

Acts Referred:

Constitution of India, 1950 — Article 226
Imports and Exports (Control) Act, 1947 — Section 3

Citation : AIR 1953 Cal 591

Hon'ble Judges : Bose, J

Bench : Single Bench

Advocate : Santosh Kumar Basu, for the Appellant; G.P. Kar, for the Respondent

Final Decision : Dismissed

Judgement

Bose, J.—This is an application under Article 226 of the Constitution and Section 45, Specific Relief Act, for a writ in the nature of certiorari for quashing certain orders made by the respondents refusing to grant import licences for cloves and betel-nuts and also for a writ in the nature of mandamus directing the respondents to deal with and consider certain applications of the petitioner's firm for import licences for cloves and betel-nuts, on merits and in accordance with law.

2. The petitioner No. 1 Haji Sattar has been carrying on the business inter alia of importers and wholesale dealers for the last 17 years under the name and style, of Haji Sattar Haji Pir Mohammed. The principal place of business of the said firm is at 23, Amratola Lane Calcutta. The petitioner No. 1 is the owner of the said premises and while in Calcutta he resides at the said premises. The said firm has branches at Bombay, Madras, Kanpur, Agra, Delhi, Bhatinda, "Vizianagaram, Cochin, Calicut, Jamnagar, Penang & Singapore. The petitioner No. 1 lives at various places and manages the business of the firm through managers or agents. Until recently, one Essa Kaji Baud was the Manager of the petitioner No. 1 but on or about 18-8-1950 the petitioner No. 2, Adam Kara has been appointed

as the agent of the petitioner No. 1 for managing the said business in the State of West Bengal. It is alleged that the petitioner No. 2 is also a working partner of the said firm Haji Sattar Haji Pir Mohammed and is remunerated by a share of profits thereof.

The case of the petitioner No. 1 is that he was born of Indian parents in the State of Saurashtra and owns extensive Immovable properties at various places in India. He is a member of the Indian Chamber of Commerce, Muslim Chamber of Commerce, Indian Produce Association and other associations at Calcutta and is recorded as a voter in the municipal and Parliamentary Electoral Rolls for the constituency comprising the said premises No. 23, Amratola Lane, Calcutta. The firm of the petitioners is assessed to Income Tax under Indian Income Tax Act and also to Sales Tax under the West Bengal Sales Tax Act. The petitioner" No. 1 pays rates and taxes to the Corporation of Calcutta with respect to his property at 23, Amratola Lane and also holds trading licence granted by the said Corporation of Calcutta.

From the year 1933 to 1946, the petitioner No. 1 imported various goods including foodstuffs, spices, mineral oils, yarns, salt, sugar etc., and the value of such imports was about Rs. 50 lakhs per every accounting year. Since 15-8-1947, the petitioner's firm as an Established Importer on various goods applied for and regularly obtained in the usual course import licences or quotas for various goods for import through the port of Calcutta, till the half-yearly period January-June 1951. There were two applications made for import licences for the period January-June 1951--one for importing cloves from Zanzibar to Calcutta and the other for importing betel-nuts from Penang and Singapore to Calcutta. The said applications were made on 4-1-1951 and 6-2-1951 respectively. In response to these applications an import licence dated 1-2-1951 for cloves and an import licence dated 9-3-1951 for betel-nuts were granted by the respondents in favour of the said firm of the petitioners. Subsequently, upon request of the petitioners, the respondents duly validated both the above licences for double the value of the goods specified therein and extended the validity of the licences by six months.

On or about 9-6-1951 the Deputy Custodian (Judicial) of Evacuee Property at Lucknow declared the petitioner No. 1 as an evacuee under the Administration of Evacuee Property Act 1950 (31 of 1950) and the said firm of the petitioner was declared as evacuee property. As a result thereof the petitioners have ceased to carry on any business in Saurashtra, Kanpur, Madras, Travancore-Cochin and Uttar Pradesh. On 21-9-1951 the firm of the petitioners applied for supplementary import licences for the period July-December 1951 for importing cloves from Zanzibar and for importing betel-nuts from Penang and Singapore. The respondents, however, by their letters dated 3-10-1951 and 26-10-1951 refused to grant the said supplementary licences on the ground that the petitioner No. 1 had been declared an evacuee and his said firm had been declared evacuee property under the said Administration of Evacuee Property

Act. The petitioners thereafter applied for reconsideration of the matter but this was not done. On 30-4-1952 the said firm again applied for import licence for betel-nuts for the period January-June 1952 but by a letter dated 13-6-1952 the respondents rejected the application on the ground that the firm had been declared defunct under the Evacuee Property Act. On 14-7-1952 the firm again applied for import licence for betel-nuts for the period July-December 1952 but the said application was not considered by the respondents.

It is stated that before rejecting the petitioner's application for import licence an opportunity should have been granted to the petitioners to make representations and to be heard in respect of the matter and the orders refusing the licence are bad as they are based on extraneous and irrelevant considerations and in violation of the principles of natural justice. It is further stated that it is incumbent upon the respondents to consider the pending applications on merits and in accordance with the rules and regulations governing the matter and to grant the licences asked for by the petitioners.

3. Mr. Santosh Kumar Basu, the learned Advocate for the petitioners has contended that the petitioners' firm as an Established Importer has a right to get the import licences applied for, and as the conditions precedent for getting the licences have been satisfied, the respondents had no justifiable reasons for refusing the licences. Mr. Basu has referred to the Gazette of India (Extraordinary) Publication of the Public Notice No. 101 dated 15-12-1950, and argues with reference to Paragraph 4(a) of Section 1 and Para. 23 of Section II thereof (Page 631) that established importers are entitled to be allotted quotas of licences based on their past imports. It is also submitted by Mr. Basu that the applicant for the licences having duly complied with the procedure for obtaining such licences and having presented the applications which are complete in all respects, there is no scope for the respondents to refuse to grant the licenses asked for. Mr. Basu points out that the only grounds on which licences can be refused are in cases which fall within Paras. 8 and 9 (Page 633) or when there is non-compliance with the requirements of Paras. 11, 12, 13, 14, 15, 16, 17, 35 and other paragraphs of the Public Notice.

4. Mr. G. P. Kar who appears on behalf of the respondents has contended on the other hand that the petitioners have no legal right to get a licence as a matter of course, but the matter of granting and refusing licences rests entirely in the discretion of the licensing authorities and unless it can be established that the discretion has been exercised in bad faith, the petitioners have no right to maintain this application or to invoke the jurisdiction of this Court under Article 226 of the Constitution. Mr. Kar has placed reliance on the case of -- "Veerappa Pillai Vs. Raman and Raman Ltd. and Others, (A) and a decision of a Bench of this Court in -- "Director of Consumer Goods v. Roy Brothers", Appeal No. 101 of 1952 D/- 19-12-1952 (B).

In the case of -- "Director of Consumer Goods v. Roy Brothers", (B) Lahiri and Guha Roy JJ. held that the firm of Roy Brothers who carried on the business of

manufacture of an adhesive substance known as P. B. Clay and required a certain quantity of cement for such business could not claim a permit for a monthly quota of cement as a matter of right, and, in that view, of the matter came to the conclusion that no application under Article 226 was maintainable at the instance of the firm of Roy Brothers who moved this Court for the issue of a Writ in the nature of Mandamus. The learned Judges relied on the case of -- The State of Orissa Vs. Madan Gopal Rungta, (C) in which it has been held that the existence of a right is the foundation of the exercise of the jurisdiction of the Court under Article 226 of the Constitution . The learned Judges also relied on --"Veerappa Pillai"s case (A)" which lays down that

"the issue or refusal of permits under the Motor Vehicles Act is solely within the discretion of the Transport Authorities and it is not a matter ; of right. No one is entitled to a permit as of right even if he satisfies all the prescribed conditions."

Now Sections 42, 48 and 60 of the M. V. Act correspond substantially to the Notifications dated 1-7-1943 and dated 6-3-1948 printed in Appendices "A" and "H" (i) and (ii) of the Red Book. The reasonings of Lahiri J. should therefore apply to the case before me, though no doubt there are slight differences between the facts in that case and the case before me.

5. In view of the aforesaid decisions, I have no other alternative but to hold that the petitioners in the case before me have no legal right which can form the foundation of an application under Article 226 of the Constitution and hence this application must fail on this ground alone.

6. Mr. santosh,Kumar Basu also contended that the orders of the respondents refusing the licences asked for, being based on extraneous or irrelevant considerations this Court has power to interfere with and cancel such orders and to direct the respondents to deal with the applications of the petitioners for licences according to law. Mr. Basu has argued that if the procedure prescribed for granting licences is not complied with or there is any breach of any condition of licence or an applicant for licence is guilty of any acts or conduct in relation to the licences or in relation to the carrying on of the import business, which make him unfit to be the holder of a licence, or in other words is guilty of acts and conduct as are envisaged in paragraph 3 of Chapter VIII (page 51) of the Handbook of Rules and Procedure relating to import Trade Control published by the Ministry of Commerce and Industry, Government of India in 1952 (Small Red Book), then refusal or cancellation of licence on any such ground may be held to be justified. But as the respondents have not refused licence on any such ground but on the ground that the firm of the petitioners is an evacuee property and that it is a defunct firm, the respondents have taken into consideration extraneous and irrelevant matters and have thus exceeded their jurisdiction and have not acted within the four corners of the Statute by which their rights, powers and duties are defined.

It appears to me that this contention of Mr. Basu is not without substance. Some

of the Rules and procedure as appearing in the Handbooks published from time to time by the Government of India have statutory force but some are merely departmental instructions issued by the Ministry concerned with the regulation and control of Import trade. It is clear that some of the rules and procedure have been brought into existence in exercise of the power contained in Section 3 of the Imports and Exports (Control) Act, 1947. Section 3 confers power on Central Government to make Orders containing provisions for prohibiting, restricting or otherwise controlling the various matters or things mentioned in Sub-sections (a), (b) & (c) of that Section. The various Appendices in the Small Red Book of 1952 printed at pages 56-112, 113-139, 140-141- 158-160 and being Appendices A, B, C & H refer to the Statutory notifications issued under the Defence of India Rules and u/s 3 of Act 17 of 1947 and Section 4A of Act 18 of 1949. The Public Notices issued from time to time and published in the official gazette do not however appear to have any statutory force but they are merely departmental instructions issued for the guidance of the licensing authorities and the public and as indicating" the policy and scheme of the Government relating to Import Trade Control. The notifications referred to in Appendix H(i) and Appendix H(ii) of the Small Red Book which have undoubtedly statutory force show that the powers and rights of the licensing authorities with regard to the matters of granting, refusing and cancelling of licences, are defined in these notifications. The Notification No. 2 ITC/48 of the Ministry of Commerce dated 6-3-1948 (Appendix H (i) pages 158-159 Small Red Book) sets out the circumstances and conditions under which a licence may be refused, it does not appear that the notification provides for refusal of a licence on the ground that an applicant for licence has been declared an Evacuee.

The sole ground on which the applications of the petitioners have been refused, appears to be that the branch arms of the petitioners at Kanpur and other places outside West Bengal have been declared to be Evacuee property and as such the firm which carries on business in West Bengal must also be deemed to be an Evacuee property and as having become defunct. This is a ground of refusal which is not contemplated by the Notification No. 2 I.T.C./48 dated 6-3-1948. If an applicant can be refused licence because he is an evacuee, an Englishman or any foreigner who is not a citizen of India can be refused license because of their foreign nationality. But such a thing was never contemplated by the relevant statutes or Notifications. In my view therefore the refusal must be held to be bad. See -- Basanti Rice Mill Vs. C.S. Maitra, (D).

It has been held that

"if the tribunal has exercised discretion bona fide not influenced by extraneous or irrelevant considerations and not arbitrarily or illegally the Courts cannot interfere; they are not a Court of appeal from the tribunal but they have power to prevent the international usurpation or mistaken assumption of a jurisdiction beyond that given to the tribunal by law & also the refusal of their true jurisdiction by the adoption of extraneous considerations in arriving at their

conclusion etc....over such tribunals."

Per L. J. Farwell, in -- "Rex v. Board of Education" (1910) 2 K. B. 165. See also , - "Sharpe v. Wakefield" (1891) A C 173 ; . -- "Reg v. Gotham" (1898) 1 Q B 802; -- "Reg v. St. Pancras Vestry" (1890) 24 Q B D 371 and -- "Sadler v. Sheffield Corporation" (1924) 1 Ch 483 . Mr. Kar referred to three decisions of the Supreme Court reported in -- Veerappa Pillai Vs. Raman and Raman Ltd. and Others, (A)"; -- Parry and Co. Ltd. Vs. Commercial Employees' Association, Madras, (J) and -- Ebrahim Aboobakar and Another Vs. Custodian General of Evacuee Property, (K) and contended that the case before me is one in which there has been at the most a wrong view of law taken by the respondents with regard to the construction of the scope and implications of the Administration of Evacuee Property Act, but it is not a case of excess or want of jurisdiction and consequently the principles enunciated by the Supreme Court in the three cases apply to this case and this Court therefore cannot convert it self into a court of appeal and substitute its own discretion in place of the discretion exercised by the respondents even if such discretion has been wrongly exercised by the respondents.

It appears to me however that the present case is a case of excess of jurisdiction, but as I am bound to hold in view of the decision of this Court in -- "Appeal No. 101 of 1952 in O. S. Matter No. 208 of 1951 (Cal) (B)" that the petitioners have no legal right, I am unable to give any relief to the petitioners in this case. It may be noted however that the Madras High Court in the case of -- C.S.S. Motor Service, Tenkasi and Others Vs. The State of Madras and Another, (L) has pointed out that the case of -- "Veerappa Pillai (A)" upon which reliance is placed by this Court in -- "Boy Brother's case (B)" was a pre-constitution case and the observations made by the Supreme Court must be limited to cases under M. V. Act arising before the Constitution.

7. Mr. Santosh Kumar Basu placed reliance on -- Hooson Kasam Dada (India) Ltd. Vs. Custodian of Evacuee Property and Others, (1) (M) to show that the opinion formed by the respondents that the Calcutta firm of the petitioners is an Evacuee property, is wrong, and consequently the ground or reason put forward for refusing the licences is not a valid or substantial one. It is not necessary, however, for the purpose of this case to decide the question whether the opinion of the respondents is erroneous or not. Even assuming it to be the correct view of the scope of the Administration of Evacuee Property Act, the act of the respondents in rejecting the applications for licences on such ground must be held to be one which is outside the four corners of the Notification No. 2 I.T.C./48 dated 6-3-1948 which governs the matter of refusal of licences.

8. It was contended by Mr. Basu that the rules and" procedure governing the grant of licences show that in exercising the powers and functions of granting or refusing licences the respondents act judicially or quasi-judicially and as the orders of refusal have been passed without giving an opportunity to the petitioners to put forward their case, there has been violation of the principles of

natural justice and so the orders of refusal are bad. Reference is made, to various provisions in the Red Book to show that the application for license is treated as a claim, evidence has to be produced in support of the claim, the licensing authorities have to consider such evidences, they have to decide whether affidavits can be accepted in any particular case, they have to decide whether there has been contravention of any rule or regulation in any particular case, and these are said to be matters which indicate that a judicial approach is necessary.

It appears to me that in the matter of granting or refusing licences the respondents discharge only administrative functions. There is nothing in the Statutes governing the matter which indicate that there is a duty cast upon the respondents either expressly or impliedly, to act judicially or quasi-judicially. In refusing or cancelling a licence the respondents are taking merely executive action to deny or withdraw a privilege because they believe that the applicants are unfit to hold or retain" a licence. See -- *Nakkuda Ali v. M. P. Des Jayaratne*, 54 C WN 883 (PC) .

9. In the case of -- "*Shell Co. of Australia v. Federal Commissioner of Taxation*" (1931) A C 275 referred to by Mr. Kar, Viscount Dunedin in attempting to determine the question "what is exercise of judicial power" observed as follows:

"The authorities are clear to show that there are many tribunals with many of the trappings of a Court which nevertheless, are not courts in the strict sense of exercising judicial power." (page 296).

Later on at page 297 the Judicial Committee enumerated some negative propositions to show that even exercise of certain specific powers which are ordinarily exercised by a Court does not by itself constitute an exercise of judicial power. The propositions set out are as follows:

"(1) A tribunal is not necessarily a Court in this strict sense because it gives a final decision (2) Nor because it hears witnesses on oath (3) Nor because two or more contending parties appear before it between whom it has to decide. (4) Nor because it gives decisions which affects the rights of subjects (5) Nor because there is an appeal to a Court (6) Nor because it is a body to which a matter is referred by another body. See -- "*Rex v. Electricity Commissioners*" (1924) 1 K. B. 171."

These observations were made in deciding the question whether a Board of Review set up under the Commonwealth Income Tax legislation was a court exercising judicial powers in the strict sense. Although a quasi-judicial body is not bound to act in accordance with strict rules of judicial procedure but can act on principles of administrative policy or convenience, there must be an express or implied duty imposed by Statute to act judicially or quasi-judicially. There is, as I have pointed out, no such statutory obligation upon, the respondents. The provisions relating to production of evidence etc. referred to by Mr. Basu in the

Red Book have no statutory force but they are merely departmental instructions, issued in order to enable the licensing authorities to satisfy themselves as to the fitness of the applicants to get the licenses asked for.

10. It is not necessary to say anything more on this point except that there was no duty cast upon the respondents to give any hearing to the petitioners before refusing the applications for licence and so there has been no violation of the principles of natural justice in the present case.

11. Mr. Kar has submitted that the petitioner No. 2 has no right or authority to maintain this application under Article 226 of the Constitution either for self or on behalf of the petitioner No. 1. There is dispute as to the status of the petitioner No. 2 in the firm Haji Sattar Pir Mohammed. The petitioner No. 2 claims to be a working partner. The decision of this question depends on the real intention and conduct of the two petitioners in relation to the firm and without further materials and evidence the question cannot be satisfactorily determined in this application. The petitioner No. 2 has also placed reliance on a Power of Attorney executed by the petitioner No. 1 in his favour. Mr. Kar has submitted that the Power of Attorney is not wide enough to cover an application under Article 226 of the Constitution. As it is not necessary for the disposal of this case to decide this question as to the maintainability of this application I express no opinion on this point.

12. In the result this petition fails. The Rule is discharged. I make no order as to costs.