
(1990) 03 GUJ CK 0005
In the Gujarat High Court

Hiralal Udayram

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 23-03-1990

Acts Referred:

Central Excise Rules, 1944 — Rule 57I

Citation : (1990) 2 GLR 1039

Hon'ble Judges : A.P. Ravani, J

Bench : Single Bench

Judgement

A.P. Ravani, J.—The petitioner is holding licence issued under the provisions of the Gujarat Essential Article (Licensing, Control and Stock Declaration) Order, 1981, as dealer in kerosene. On certain allegations that he had committed breach of conditions of the licence and had contravened the relevant provisions of the Essential Commodities Act, 1955, and the Control Order issued thereunder, proceedings were initiated against him. The original authority ordered to cancel the licence and passed order imposing penalty upon the petitioner. The order passed by the original authority has been confirmed in appeal by the appellate authority. The petitioner preferred revision application before the Government. The same has been rejected without affording an opportunity of being heard to the petitioner. The petitioner has been informed accordingly by letter dated March 1, 1990. Hence the petition.

2. Clause 12 of the Control Order provides for revision to the Government, Clause 12 reads as under:

12. Revision : The State Government may call for and examine the record of any proceedings of licensing authority or the Collector, or the Food and Civil Supplies Controller, Ahmedabad City, as the case may be, for the purpose of satisfying itself as to the legality or propriety of any order passed in such proceedings or as to the regularity of such proceedings and if it shall appear to the State Government that such order or proceedings should be modified, annulled or reversed it may pass such order thereon as it deems fit.

Provided that no order shall be made under this clause unless the person who is likely to be affected thereby has been given a reasonable opportunity of stating his case.

It is contended that there is no specific provision in Clause 12 for affording an opportunity of being heard. Moreover, the Government could have called for the papers of the case suo motu and could have examined the papers. In that case also it would not have been necessary for the Government to afford an opportunity of being heard to the petitioner.

3. The contention cannot be accepted. Absence of specific provision containing principles of natural justice in the rule does not mean that the legislature has intended to exclude the observance of principles of natural justice. On the contrary the legislative intent is manifest in the proviso. The proviso enjoins duty upon the Government to afford an opportunity of being heard to the person who is likely to be affected by the order. Such a person is required to be afforded an opportunity of making representation and stating his case. Thus, if the entire provision of Clause 12 is read in its proper context, the contention that before rejecting the revision application the Government is not required to afford an opportunity of being heard cannot be accepted. On the contrary, as indicated hereinabove the proviso, by necessary implication, enjoins duty upon the Government to afford an opportunity of being heard to the person who has filed revision, and if the order that is to be passed in the revision is against the person who filed the revision before passing such order the person who has filed the revision application is required to be afforded an opportunity of stating his case. Similarly, even when the Government exercises its suo motu powers and on examining the papers if the Government intends to pass any order which is likely to affect any person, then also such person is required to be afforded an opportunity of being heard.

4. In this connection reference may be made to a decision of the Division Bench of this High Court rendered in Special Civil Application No. 4903 of 1989 and other allied matter decided on October 20, 1989 *Torrent Laboratories Pvt. Ltd. Vs. Union of India*, wherein the question arose as regards the interpretation of the provisions of Rule 57-I of the Central Excise Rules, 1944 as it stood prior to the amendment before October 6, 1988. Therein there was no specific provision containing principles of natural justice and observance thereof. Therefore it was contended that the provision of the Rule was contrary to the principles of natural justice, and therefore, illegal and void. Repelling the contention, the Division Bench has held as follows:

The absence of specific provision containing principles of natural justice in the rule does not mean that the provisions of the rule excludes the observance of principles of natural justice. The principles of natural justice is nothing but "fair play in action" No one needs direction from the Parliament that he is required to act fairly. Any one, be he an executive officer, or a judicial officer, who has been conferred with discretionary powers and who is charged with a duty to act

judicially or impartially is bound to act fairly. Therefore, the provisions as regards applicability of principles of natural justice has got to be read into the provisions of the rule, unless it is shown that the legislature has expressly or by necessary implication excluded the observance of principles of natural "justice".

5. In the instant case also there is nothing in the scheme of the entire Control Order or the provisions of the Essential Commodities Act, 1955 to indicate that the legislature has either expressly or by necessary implication intended to exclude the observance of the principles of natural justice. Therefore the contention that since there is no express provision for affording an opportunity of being heard, the Government could take decision without calling upon the party to state its case, has no substance and the same has got to be rejected. In above view of the matter on this short ground alone the petition is required to be allowed.

6. In the result the petition is allowed. The order passed by the Government, produced at Annexure "E" to the petition, dated March 1, 1990 is quashed and set aside. The matter is remanded to the Government with direction to decide the revision application in accordance with law and in the light of the principles laid down and the observations made in this judgment. Rule made absolute accordingly.