(1967) 03 DEL CK 0013

In the Delhi High Court

Case No : C.W. No. 257-D of 1960

Jagannath Kashinath Kavalekar APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 30-03-1967

Acts Referred:

Citation : AIR 1967 Delhi 121 : (1967) CriLJ 1497

Hon'ble Judges : S.K. Kapur, J

Bench : Single Bench

Advocate : Mahinder Narain and Rameshwar Nath, for the Appellant; Parkash Narain, for the Respondent

Judgement

(1) On 6th May, 1954, Ramlal Amritalal Parekh and Amritalal Lalbhai Parekh were intercepted by the Customs Officers near the Marine Lines Station, Bombay and their search resulted in recovery of 90 bars of gold weighing 10 tolas each. On further enquiry the Customs Officers found that one Pal Dhungal was the agent in Bombay of the petitioner, a resident of Goa, for receiving and disposing of gold sent to him. As result of the enquiries proceedings were initiated against various persons, including the petitioner and show cause notices issued to them. By order dated 9th April, 1957, the Additional Collector of Customs, Bombay directed confiscation of 1400 tolas of gold, which had been disowned by all the persons concerned u/s 167 (8) of the Sea Customs Act, 1878. A personal penalty of Rs.1,89,000/- was also imposed on the petitioner under the aforesaid provision. The petitioner aggrieved by the order of the Additional Collector of Customs, preferred an appeal to the Central Board of Revenue, which was dismissed on 15th August, 1958. The Central Board of Revenue passed a non-speaking order which reads:-

"All the arguments put forth in the appeal and at the time of the personal hearing have been carefully considered, but the Board sees no reason to interfere with the order (Original) passed by the Additional Collector of Customs, Bombay." A revision petition filed by the petitioner before the Central

Government was also rejected by a very brief order reading:-

"The Government of India have carefully considered the revision application but see no reason to interfere with the order in appeal passed by the Central Board of Revenue, New Delhi". The petitioner thereafter filed the present writ petition challenging the aforesaid three orders.

(2) Although the point that the Central Board of Revenue and the Central Government ought to have given reasons while disposing of the appeal and the revision respectively was not clearly taken in the petition, the learned counsel for the petitioner having failed in his attempt to cover the said point by one or other of the grounds mentioned in the petition, sought permission to raise their point. Since the point arises on the face of the orders and no further materials are required for disposing of this contention, I permitted the learned counsel to argue it. Since I am in agreement with the arguments of the learned counsel that the orders of the Central Board of Revenue and the Central Government deserve to be quashed, because of the absence of reasons, it is not necessary to pronounce on the other points urged by the learned counsel for the petitioner as he agrees that all those points will be available to him in appeal before the Central Board of Revenue when the same is taken up for hearing again. The question, Therefore, arises whether the Central Board of Revenue and the Central Government were required to pass speaking orders giving reasons for the rejection of the appeal and the revision. In Bruusgaard Kiosteruds Dampskibs Aktieselskab Vs. The Secretary of State for India in Council, , the Bombay High Court expressed the view that an order could not be set aside merely because it gave no reasons. The matter has been considered several times by their Lordships of the Supreme Court as well as by this Court. The latest decision of the Supreme Court, is Bhagat Raja v. Union of India, Civil Appeals Nos. 2596 and 2597 of 1966, D/-29-3-1967 (SC). In this case the Supreme Court was dealing with a revision before the Central Government under the Mines and Minerals (Regulation and Development) Act, 1957. In revision the Central Government affirmed the order of the State Government by a brief order.

(3) For the proper appreciation of the decision, it is necessary to read the order in that case:-

"New Delhi,

the 22nd June, 1966.

XX XX

I am directed to refer to your revision application dated 14-12-1964 and letter dated 28-1-1966 on the above subject and to say that after careful consideration of the grounds stated therein, the Central Government have come to the conclusion that there is no valid ground for interfering with the decision of the Government of Andhra Pradesh rejecting your application for grant of mining lease for asbestos over an area of Ac. 113-50 in Brahmanapalli village, Cuddapah

District, Andhra Pradesh. Your application for revision is, Therefore, rejected".

It would, Therefore, be seen that the order of the Central Government affirmed the order of the State Government. The provision of law conferring the right of revision on the Central Government is more or less to the same effect as the power of the Central Government under the Sea Customs Act, 1878, at least for the purposes of the present controversy. Their Lordships in this observed:-

"It was argued that the very exercise of judicial or quasi-judicial powers in the case of a tribunal entailed upon it an obligation to give reasons for arriving at a decision for or against a party. The decisions of tribunals in India are subject to the supervisory powers of the High Court, under Article 227 of the Constitution and of appellate powers of this Court under Article 136. It goes without saying that both the High Court and this Court are placed under a great disadvantage if no reasons are given and the revision is dismissed curtly by the use of the single word "rejected" or "dismissed". In such a case, this Court can probably only exercise its appellate jurisdiction, satisfactorily by examining the entire records of the case and after giving a hearing come to its conclusion on the merits of the appeal. This will certainly be very unsatisfactory method of dealing with the appeal. Ordinarily, in a case like this, if the State Government gives a sufficient reasons for accepting the application of one party and rejecting that of the others, as it must, and the Central Government adopts the reasoning of the State Government, this Court may proceed to examine whether the reasons given are sufficient for the purpose of upholding the decision. But, when the reasons given in the order of the State Government are scrappy or nebulous and the Central Government makes no attempt to clarify the same, this Court, in appeal may have to examine the case denovo without anybody being the wiser for the review by the Central Government. If the State Government gives a number of reasons some of which are good and some are not and the Central Government merely endorses the order of the State Government without specifying those reasons, which according to it are sufficient to uphold the order of the State Government, this Court, in appeal, may find it difficult to ascertain which are the grounds which weighed with the Central Government in upholding the order of the State Government. In such circumstances, what is known as a `speaking order'' is called for". Again, after discussing the earlier decision of the Supreme Court it was said:-

"Take the case where the Central Government sets aside the order of the State Government without giving any reasons as in Harinagar Sugar Mills'' case AIR 1967 SC 1969. The party who also loses before the Central Government cannot know why he had lost it and would be in great difficulty in pressing his appeal to the Supreme Court and this Court would have to do the best it could in circumstances which are not conducive to the proper disposal of the appeal. Equally, in a case where the Central Government merely affirms the order of the State Government, it should make it clear in the order itself as to why it is affirming the same. It is not suggested that the Central Government should write out a judgment as Courts of law'' are wont to do. But we find no merit in the contention that an authority which is called upon to determine and adjudicate upon the rights of parties subject only to a right of appeal to this Court should not be expected to give an outline of the process of reasoning by which they find themselves in agreement with the decision of the State Government". In Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others, the Supreme Court expressed the view that since the powers of the Central Government u/s 111 of the Companies Act, 1956 (before its amendment in 1960) were subject to review by the Supreme Court under Article 136 of the Constitution, it was incumbent on the Central Government to reasons in support of its order. This view was affirmed in Sardar Govindrao and Others Vs. State of Madhya Pradesh, . Then came the decision in Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI), , K. Subba Rao, J. (As his Lordship then was) drew a distinction between a Court and an administrative tribunal and expressed his view in the following words:-

"Ordinarily, the appellate or revisional tribunal shall give its own reasons succinctly but in case of affirmance where the original tribunal gives adequate reasons, the appellate tribunal may dismiss the appeal or the revision, as the case may be, agreeing with those reasons. What is essential is that reasons shall be given by an appellate or revisional tribunal expressly or by reference to those given by the original tribunal. The nature and the elaboration of the reasons necessarily depend upon the facts of each case. In the present case, neither the Stage Government''s nor the Central Government''s order discloses the reasons for rejecting the application of the appellant. In the circumstances the Central Government''s order is vitiated, as it does not disclose any reasons for rejecting the revision application of the appellant". His Lordship felt that reasons were necessary as the power to decide without giving reasons may result in an abuse and the requirement as to the statement of reasons will prove an effective restraint on such an abuse. Two of their Lordships Bachawat and Mudholkar Jj, came to the conclusion that the revising authority having found no valid grounds for interference was not bound to give fuller reasons. Their Lordships said -

"There is a vital difference between the order of reversal by the appellate authority in that case Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others, , for no reason whatsoever and the order of affirmance by the revising authority in the present case". Again, in Nandram Hunatram, Calcutta Vs. Union of India (UOI) and Another, , their Lordships of the Supreme Court did not in the circumstances of that case, set aside the order of the revisional authority even though no reasons had been given. It was observed -

"In these circumstances, it is quite clear that the action of the State Government was not only right but proper and this is hardly a case in which any action other than rejecting the application for revision was called for and a detailed order was really not required because after all the Central Government was merely approving of the action taken in the case by the State Government, which stood completely vindicated. The order of the Central Government, is clearly sustainable on the material and it is not said that anything has been withheld from us. The action of the State Government far from being arbitrary or capricious was perhaps the only one to take and all that the Central Government has done is to approve of it". This case was distinguished in Bhagat Raja''s case on the ground that reasons for the action taken were so obvious that it was unnecessary to set them out. The matter was considered by K.S. Hegde , C.J., in Prem Nath Mayor v. S. Venkatesan (Civil Writ No. 180-D of 1959), D/-27-1-1967 (Delhi). The opinion expressed in that decision is also in favor of the necessity for reasons. The learned Chief Justice observed,

"The revising authority as well as the superintending authority must get sufficient material from the order of the Board to satisfy themselves that the Board has in fact applied its mind to the questions of law and fact taken before it. That is absolutely necessary to compel the Board to discharge its legal duties. otherwise the revisional power conferred on the Government and the superintending power of this Court would become meaningless". This case dealt with the provisions of the very same Act with which I am concerned. The necessity to give reasons has been variously put, as requirement of natural justice, or to ensure that the concerned authority applies its mind to the matter or to prevent the provisions as to appeals and revisions being rendered nugatory by the authorities making out orders. It has also been suggested that in a case like this where a right has been given to the petitioner to appeal to the Central Board of Revenue and then file a revision before the Central Government, the obvious intention of the Legislature is to require the subordinate authorities to making a speaking order. Moreover when an authority is required to decide some matter and the decision depends upon the existence or non-existence of certain facts, that authority must in its order show as to whether or not those facts exist. In the absence of reasons it is impossible by the Courts exercising appellate powers, or the powers of superintendence, to see whether or not the authority was influenced by any extraneous considerations. The practice of making summary orders will, in effect, reduce the provisions as to appeal and revision to silence. When the order of an authority is made subject to scrutiny by an appellate or revisional authority, the Legislature obviously intends to make that right effective. If the authority does not give reasons it amounts, in substance, to depriving the party of the right of appeal or revision. The requirement that quasi-judicial tribunals should give findings is the requirement for guarantee that the decision shall be rendered by such tribunals according to the evidence and the law rather than arbitrarily or on extra-legal considerations.

Such speaking decisions serve the additional purpose, where provisions for appeal or revision are made, of apprising the parties and the reviewing tribunal of the factual basis of the action of such tribunal so that the parties concerned and the reviewing tribunal may determine whether or not the case has been decided upon the evidence and the law or on the contrary, upon arbitrary or extra-legal considerations. When a decision is not accompanied by findings that speak, the reviewing tribunals are deprived of their powers of deciding whether the order under review follows, as a matter of law, from the facts stated as its basis, and also, whether the facts so stated have any substantial support in the evidence. It is for this reasons that the necessity of giving reasons, is termed as something far from technicality. Insistence upon reasons effectively ensures against Star Chamber methods, to make certain that justice shall be administered according to the facts and law. It will not be very far-fetched to say that the right of a party to know the reasons, for the decision, be it judicial or quasi-judicial, is one of the principles of natural justice.

(4) The order of the Collector is made subject to appeal before the Central Board of Revenue. Such appeal is open both on facts and law. The order u/s 188 of the Sea Customs Act passed in appeal is further subject to revision by the Central Government u/s 191 thereof. If the Central Board of Revenue while hearing an appeal u/s 188 of the said Act does not give any reasons it is impossible for the Central Government to effectively exercise the powers of revision. Again it is impossible to know what reasons weighed with the Central Board of Revenue in dismissing the appeal. The purpose of the Legislature in conferring a right of revision against the order made u/s 188 of the said Act cannot be rendered nugatory by the appellate authority''s resorting to the method of short cut to justice. The Central Board of Revenue in this case does not even say whether it agreed with each and every finding of the Additional Collector and with the appreciation of evidence by him or it agreed only with the conclusions reached by the Additional Collector. It is not impossible that the Board of Revenue may have agreed only with the conclusion of the Additional Collector and that agreement my itself be based on some extrinsic circumstances. All the reasons have remained in the mind of the Central Board of Revenue and the Courts exercising powers of superintendence are thus driven only into the realm of conjectures.

It is also not impossible that the Board may have agreed with some findings and not with the others arrived at by the Additional Collector and yet reached the same conclusion as the Additional Collector. If the Central Board of Revenue had disclosed those reasons, the Central Government not have agreed with the same. This is the circumstances of the present case, has resulted in no hearing of the appeal at all and also shows lack of application of mind by the Central Board of Revenue. For these reasons, I must hold that the order of the Central Board of Revenue deserves to be quashed. Then arises the question of necessity on the part of the Central Government to give reasons. So far as the present case is concerned it may not be necessary to consider that question, because the Central Government has also by a non-speaking order merely affirmed the order of the Central Board of Revenue which, as, I have discussed above, has been arrived at without any proper hearing of the appeal.

Whether or not the Central Government while exercising revisional powers u/s 191 of the said Act should give reasons will depend on facts and circumstances of each case. The Central Government is the final authority under the said Act and its decisions are subject to scrutiny by the Supreme Court under Article 136 and by this Court under Article 227 of the Constitution. It is, Therefore, proper that the Central Government should invariably, indicate, even though briefly, the reasons for coming to its conclusion. But where the appellate authority exercising powers u/s 188 of the said Act give reasons for its decision and the revisional authority approves of the reasons, the powers of appeals by the Supreme Court and of superintendent by this Court can be effectively exercised by checking the reasons adduced by the Central Board of Revenue and testing whether each one of them is correct or not If those reasons given by the appellate authority are upheld and the revisional authority has approved of those reasons, or, in other words, incorporated those reasons into its own order by reference, the order of the Central Government may not be said to suffer from any infirmity.

There may however, be cases where the appellate authority gives four or five reasons and some of them may not be sound or are extraneous to the cause dealt with. In that case, if the Central Government passes a non-speaking order it will become difficult to find out as to whether the Central Government affirmed the order of the appellate authority in agreement with the sound reasons or with the unsound ones. It is in such cases that the difficulty of the higher Courts in exercising appellate or supervisory powers may arise for it may then be said that the party concerned has not had the real benefit of the right of revision. Since the order of the Central Board of Revenue suffers from the infirmity indicated above, this petition must be allowed and the orders dated 15th August, 1958, of the Central Board of Revenue, and dated 29th March, 1960, of the Central Government quashed. The appeal will now be heard and disposed of by the Central Board of Revenue in accordance with law. Having regard to the circumstances of the case there will, however be no order as to costs.

(5) Petition dismissed

