(1993) 07 CAL CK 0036

In the Calcutta High Court

Case No : Writ Appeal No. 518 of 1988

Jagatbandhu Mukherjee APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 02-07-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 19
Customs House Agents Licensing Regulations, 1984 — Regulation 11, 4, 5, 5(2), 5(3)
Sea Customs Act, 1878 — Section 146(2), 202, 202(2)

Citation : (1995) 79 ELT 33

Hon'ble Judges : Shyamal Kumar Sen, J;Ajit Kumar Sengupta, J

Bench : Division Bench

Advocate : N.C. Roy Chowdhury, Saroj Kumar Poddar and Rajlakshmi De, for the Appellant;

Judgement

Shyamal Kumar Sen, J.—This appeal arises out of the judgment and order dated 29th June, 1988, passed by the learned Single Judge in a writ application moved by the Federation of Freight Forwarders'' Association in India and also Calcutta Clearing Agents'' Association and some of its office bearers challenging the validity of the provisions of the Customs House Agents Licensing Regulations, 1984 (hereinafter referred to as the Regulation 1984).

2. The writ petitioners Nos. 1, 2 and 3 are the holders of the Customs House Agents Licence on permanent basis. The validity of the said regulation was challenged by them, inter alia on the several grounds mentioned in the writ petition.

3. It has been contended on behalf of the writ petitioners, inter alia, that under the provisions of Section 146(2)(c) it was not open to the Board to make a regulation creating two categories of agents - one permanent and other temporary and as such the same was ultra vires. It was further contended that by the impugned regulation if the untrained persons are appointed as agents it would open a flood gate and that would create a good deal of complication and

unequal would be treated as equal in this regard. There is no demand in the trade and as such this would take away the business which was being done by the existing permanent agents. It was further contended that regulation was not published in the Official Gazette and as such the same did not see the light of the day in the eye of law. It was further contended that no appointed date was fixed in this behalf as a consequence thereof the respondents have acted illegally in issuing a Public Notice on 9th April, 1984 inviting fresh applications on the basis of the new regulation. By the said notice dated 9th April, 1984, the applications were invited on the basis of the said regulation within 30th April, 1984. The said period had already expired. This writ application was pending for a long time with interim order of injunction.

4. It appears, however, that the learned Single Judge''s attention was drawn on behalf of the added respondent to a Division Bench judgment of Delhi High Court in the case of Federation of Customs House Agents'' Association v. Union of India and Ors. in CW. No. 1186 of 1984, dated 1st February, 1985. The Division Bench of the Delhi High Court in that case considered the validity of the Customs House Agents Licensing Regulations, 1984 which was under challenge and that the Division Bench of the Delhi High Court rejected the said writ application after overruling the points raised in the writ application challenging the validity of the said regulation. The Delhi High Court held that the said notification was not issued in violation of the provision of Article 14 of the Constitution of India, and that the scheme introduced by the said regulation was not unusual and/or unreasonable. It was further observed in the said judgment that if the contentions of the petitioners were upheld, in that event a kind of ''closed shop'' would be created in favour of the existing Customs House Agents. It was observed by the Delhi High Court that the provisions for granting temporary licence and thereafter granting regular licence on the basis of the examinations held in this behalf was reasonable.

5. It has been contended before the learned Single Judge on behalf of the added respondent that the writ petitioners have no locus standi to maintain this writ application and in support of their contention relied on a decision of the Supreme Court of India in the case of Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, wherein the Supreme Court held that a rival in trade had no legal right to invoke the writ jurisdiction which had the effect of perpetrating a monopoly in favour of the petitioner.

6. The learned Judge accepted the said contention and held, inter alia, as follows :-

"Further, in my view, in order to maintain the writ application the petitioner has to establish that some of the legal rights of the petitioner have been infringed. In the instant case the petitioner was carrying on the business on the basis of the old regulations and that the old regulations have been repealed and a new regulation had been promulgated in the year 1984. In this particular case the petitioners and others who are carrying on business were conferred rights under the regulation and they cannot have any independent right devoid of regulation. When rights have been created under the regulation it is well within the jurisdiction of the authority concerned to change the regulation and/or to repeal the regulation. So, it does not violate any of the provisions of Part III of the Constitution of India and/or it does not fall beyond the scope of the rule making power. By this regulation the petitioner''s and the existing agent''s right had not been taken away and/or interfered with. On the contrary, a scheme had been framed under which temporary licence could be granted to the applicant, who fulfils the conditions laid down in regulations 5 and 6 and a holder of a temporary licence can get a permanent licence if he could successfully pass at the examination. The petitioners are not affected at all by the regulation but the petitioners, it appears, intended to create a monopoly in the trade to the exclusion of new which has been described by the Delhi High Court as creating a kind of ''close shop'' which is on the face of it arbitrary and contrary to public policy. Accordingly, I hold that the petitioners have no locus standi to challenge the validity of the regulation concerned. I also fully agree with the decisions of the Delhi High Court cited by Mr. Bose."

7. While disposing of the said matter the learned Judge further held as follows :

"In my view, the provisions for the publication in the Official Gazette is a directory provision and not mandatory. In order to ascertain whether a provision is mandatory or directory, the test is what is the consequence that would follow for non-compliance. In the instant case nothing is provided. Accordingly, it must be held on provision regarding the publication in the gazette is a directory provision and consequently non-publication of the gazette does not affect the validity of the said regulation. Secondly, it is also established on the principle that no date is specified on the regulation. It must take effect from the date when it is promulgated. Accordingly, all the contentions raised by Mr. Roy Chowdhury are overruled. The writ petition is dismissed. All interim orders are vacated.

There will be no order as to costs."

8. It appears from the facts on record that the system of appointing clearing agents was in vogue since the inception of Sea Customs Act in 1878 but in those days no regulations had been made. The regulation was for the first time framed in 1956. But it was brought into force with some amendments in the year 1960 after consulting with the different Customs House Agents'' Associations of different ports in India, 1965 Regulations were more or less the same as those of 1960. Thereafter, the same were again reframed in 1965. In 1984 the said regulations were drastically changed and in certain cases in contrast to earlier provisions of 1956, 1960 and 1965.

9. That the number of Clearing Agents in Calcutta who hold licences to carry on this trade of Clearing and Forwarding Agents is about 120. In Bombay, the said licence holders are numbering about 500.

10. That the number of existing clearing agents in any port particularly in Calcutta had a direct relation with the total volume of traffic to be handled in Calcutta Port. It may be mentioned here that the total volume of traffic in Calcutta Port has been prior to 1989, 11 million tonnes. But it has been reduced drastically from 11 million tonnes to a little more than 4 million tonnes in 1983, the licence holders remaining almost the same. Between 1956 and 1983 the local Customs Authorities used to issue new licences only to fill up the vacancies caused by death, retirement and/or suspension or closure of business of a particular Clearing and Forwarding Agent and during this period of 28 years only on two occasions the vacancies occurred and it was filled up by new licences. In the middle of 1983 although the volume of traffic was severely reduced, the number of licence holders increased in Calcutta by 13 and in Bombay by about 70 only to fill up the vacancies, caused by death, closure and/or suspension.

11. The Customs House Agents Licence Regulations, 1965 contained provisions for granting licence to an applicant for being Customs House Agent. The method of granting of such licence was generally to invite applications by the Collector of Customs by means of notice affixed on the Notice Board of the Customs House and also by advertisement through Press and there was a form in which the said application had to be made. For the purpose of making an application certain conditions had to be fulfilled by the applicant before the grant of licence which has been incorporated in Regulation 6 of the said Regulations.

"Regulation 6. - Certain conditions to be fulfilled by the applicant before the grant of licence. - An applicant for a licence shall -

(a) furnish to the Collector of Customs satisfactory evidence as to his respectability, reliability and financial status;

(b) produce satisfactory evidence to the Collector of Customs that he would be in a position to muster sufficient clientele and business in the event of his being granted the licence;

(c) furnish an income tax clearance certificate."

12. Then the application for licences was to be scrutinised and the Collector of Customs used to make enquiries for verification of the particulars set out in the application and he had to make also such other enquiries as it might be necessary including enquiries about the respectability, reliability and financial status of the applicant. Number of licences to be granted always depended on the volume of import and export business transacted through that Customs House and it might be determined according to the volume of business by the Collector of Customs. On being satisfied as to the fitness of an applicant for holding licence under the Regulations, the Collector of Customs used to arrange for him or in the case of a firm or a person on behalf of the firm or Company, as the case might be, to be examined with a view to ascertaining their knowledge of Customs law and procedure and their fitness to render proper services to importers and exporters. The examinations were oral and written according to

prescribed syllabus and [were] to be conducted by the Collector of Customs or by a Committee of Officers of Customs to be appointed by him for the purpose. For the purpose of examination 16 subjects had been prescribed and there is also provision by which the Collector of Customs ought to satisfy himself whether the applicant possesses satisfactory knowledge of English or the local language. But the knowledge of Hindi will be considered as additional or desirable qualification, in case of the persons dealing with the work exclusively in the Docks. The Collector of Customs shall reject an application if the applicant fails to pass examinations prescribed under this regulation for the grant of a licence or if the vacancy existing at the time did not justify the grant of such licence to the applicant or the applicant is not considered suitable due to any other reasons to be stated in writing.

13. That upon grant of a licence to an applicant, the applicant was to execute a Bond and furnish security and surety before he is allowed to join a profession of a Clearing and Forwarding Agent. The licence remained valid for a period of one year and if in the meantime the licence holder was found to work satisfactorily, it may be extended and renewed for a period of 3 years and thereafter every year. The original licence would be granted on payment of a fee of Rs. 50/-. It has been submitted that before the licence is renewed, the Collector of Customs ought to satisfy himself about the financial solvency of the applicant and would require production of an Income Tax Clearance Certificate. Now, renewal of licence under the said Rules might be refused by the Collector of Customs if the minimum volume of business prescribed by the Assistant Collector of Customs in that behalf had not been transacted by the applicant as Customs House Agents during the period to which the licence relates and this licence was never transferable.

14. In 1966, the Government of India appointed a Customs Study Team tinder the Chairmanship of Shri Dwarkanath Tiwari, the observations and recommendations on the Clearing Agency System which have been accepted by the Government read as follows :

"9.13 The Customs Law and the Customs Procedure are matter of detail and it has generally been found convenient both by trade and by the Department to have persons specializing in the work of customs clearance attended to it on behalf of the traders. A system of licensed Clearing Agents is in vogue in all customs formations. Clearing Agents may also employ clerks and other staff to attend to this work who are also required to obtain customs approval to function as such. Licences are issued after the test to see that the persons being licensed to do the work are familiar with customs procedures. The regulations also provide procedures to furnish lapses against the Customs House or against the importers and exporters.

9.14 The Clearing Agents form an important link between Customs and trader in the matter of customs clearance. The study of the causes for the delayed filing of bills of entry and delays at some of the other stages of customs clearance suggested that generally the clearing agents are not adequately equipped to render efficient service. The deficiencies seem to be inefficient management, lack of knowledge of relevant laws and procedures by the amendment, inadequate staff and of law calibre, a tendency to take more work than can be satisfactorily handled, inadequate guidance to importers and poor initiative in obtaining customs clearance. Occasionally irregular practices also seem to be indulged in by some either to the detriment of customs interests or at the cost of trading public.

9.15 It is, therefore, necessary to ensure better performance by clearing agents and their staff by adopting the following measures :-

(i) The Clearing Agency rules should be tightened to provide effective control over the clearing agents. In particular strict tests for [grant] of licence or approval to conduct Customs House business should be held. Provision should also be made for imposition of monetary penalties in cases which call for action but not such severe as suspension or cancellation of licence.

(ii) To implement these improved controls, an adequate unit should be set up on each Customs House.

(iii) Clearing Agents'' Association should be encouraged to arrange their affairs like a disciplined guild with a code of conduct, fair scales of charges, arrangements for training their staff and [regulations] regarding employing unqualified or undesirable persons etc.

The Tiwari Committee''s recommendations, which were accepted by Govt. of India, recommended stricter control, stricter testing of knowledge etc."

15. That the drastic change made in the Regulations of 1984 is that an applicant shall be granted a licence by the Collector of Customs although the said applicant might not have possessed the professional or technical qualification necessary for carrying on the business of Clearing and Forwarding Agent in the Customs Station. In terms of the present regulation No. 6 the following conditions are to be fulfilled by the applicant:

"The applicant or the persons referred to in clause (b) of Sub-regulations (2) and (3) of Regulation 5, as the case may be, shall prove to the satisfaction of the Collector that he;

(a) has the experience of work relating to clearance of goods through the customs for a period of not less than one year and

(b) the applicant has financial viability supported by a certificate issued by a Scheduled Bank or such other proof acceptable to the Collector evidencing possession of assets of the value of not less than Rs. 1 lac in the case of applicants for the grant of licence in respect of any one of the Customs Stations at Bombay, Calcutta, Madras, Cochin, Kandla, Goa, Mangalore, Tuticorin or Visakhapatnam and not less than Rs. 50,000/- in case of each of the other

Customs Stations, situated at places other than those specified above.

Provided that in cases where a Collector''s jurisdiction extends to more than one Customs Station, the Collector may issue one licence for all the Stations or more than one such Stations to be specified in the licence, waiving the need for separate compliance of the provisions of clauses (a) and (b) above for such additional Customs Stations. The Collector may also waive the need for separate compliance of the requirement of Regulation 11 in such cases.

Provided further that in places where there is more than one Collector exercising jurisdiction over different Customs Stations and Customs House Agents licensed under Customs House Agents'' Licensing Regulations, 1965 have been operating, in the said Customs Stations on the basis of one licence, it shall be open to such agents to obtain a temporary licence under Regulation 8 from the Collector, other than the one who has issued them existing licence, without being required to comply with the requirements of Regulation 6 in regard to financial viability or the requirements as to fresh deposit in terms of Regulation 11."

16. In this regulation provision for granting temporary licence had been introduced provided applicant satisfies the conditions laid down in regulations 5 and 6. Now these conditions are that the applicant - if it is a firm or a Company should have an employee who might have possessed experience of work relating to clearance of goods through the Customs for a period not less than one year and the applicant has financial viability supported by a certificate issued by a Scheduled Bank or such other of the value not less than one lakh in the case of applicants for the grant of licence in respect of any one of the Customs Stations at Bombay, Calcutta, Madras, Cochin, Kandla, Goa, Mangalore, Tuticorin or Visakhapatnam and not less than Rs. 50,000/- in case of each of the other Customs Stations situated at places other than those specified above.

17. This privilege of possessing a temporary licence without being technically and/or professionally qualified has been extended to the applicants under 1984 Regulations in preference to those existing clearing agents who were duly possessing licences under 1965 Regulations being found technically and professionally qualified. Under the new Regulations, an applicant may be given a licence to carry on this trade and they had been placed on similar footing with the existing qualified licence holders and thereby unequals have been made equals which is not permissible under Article 14 and 19(l)(a)(6)(i) of the Constitution

18. The holder of a temporary licence in the case of an individual and the person or persons who will be actually engaged in the clearance of goods through the Customs on behalf of a firm or a Company shall be required to qualify in examinations at the earliest opportunity. Such person or persons shall be eligible to appear in the examinations as soon as a temporary licence is granted and shall be permitted to avail of [three chances] within a period of two years from the date of issue of the said licence on payment of a fee of Rs. 250/- for such

examination. The particular provisions of granting temporary licence to applicants who are not technically and professionally qualified to carry on that business have been given preference to the existing licence holders in contravention of Articles 14 and 19(i)(g) of the Constitution. The Regulations 8 and 9 therefore are ultra vires Articles 14 and 19 of the Constitution.

19. Over and above this, there is no provision to obtain an Income Tax Clearance Certificate which was necessary to obtain licence under the Regulations of 1965. Even after passing the examination under the old regulations a licence holder was to establish his bonafide by handling the minimum volume of work prescribed for them.

20. The Regulations of 1984 introduce temporary licence which has been made with some oblique and/or ulterior motives and there has been a colourable exercise of power and a fraud on the power of making regulations which overlaps motive, passions and satisfactions in the attainment of ends beyond the sanctioned purposes of power by simulation or pretention of gaining a legitimate good. As such, these regualations are bad where the true object is to reach an end different from the one for which the power is entrusted, go ahead by extraneous considerations but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by consideration outside those for promotion of which the power is vested, every one calls it colourable exercise and as undeceived by illusion.

21. In terms of the said Regulations some undesirable elements will have uncontrolled entry as Agents and this will affect the quality of service and that will in turn affect seriously the public and the Government. Inexperience and lack of expertise will cause severe hold up in export shipments and import clearances with the existing standard of morals inside the services and with the influx of a large number of undesirable elements as Customs House Agents will result in large scale evasion of import duty and other serious irregularities. Customs House is not a place where persons can be allowed to learn profession or to take a chance.

22. In our opinion the old rules, therefore, subserve a very salutary and necessary principle and they are designed to advance public interest inasmuch as it is necessary to regulate and control a clearing agent who is dealing with the very valuable property of another. A person in such a high fiduciary position must of necessity be subjected to strict control. The licensing authority must see that person acting on the faith of the assurance of the licence Act properly and in terms of the strict rules. It is well known that many underhand practices are common at Customs Houses and the Customs Authorities have to be vigilant in preventing them. It is no longer unknown to the people of India that in Bombay and Calcutta the unscrupulous people in Dock Area created an underground world of smuggling and corruption in which undesirable antisocials are ruling. The respondents must, therefore, see that they do not issue licence to wrong type of persons and in the interests of revenue and more so in the interests of

persons who employ licensed agents, these rules have been framed. Looking at the old rules it may be said generally that they were absolutely necessary "though they were strict and their strictness would be felt only by the persons who are not otherwise dishonest.

23. In our opinion the regulations framed in 1984 providing for temporary licence will only allow persons who are not qualified to carry on specialized type of work involved in the performance of duty of a clearing agent. In the regulations of 1965 number of Licensees to be determined under regulations at a Customs House was controlled by the Collector of Customs having regard to the volume of import and export business transacted in that Customs House and the number to be required to handle those business was determined from time to time by the said Collector as per regulation No. 8 of 1965. The reasons and relevance for granting licence is no longer to be considered by the Collector. Now a Collector without considering the volume of trade and traffic in a particular Customs Station may according to his sweet will and without rhyme or reason increase or decrease the number of licence holders which may not have any relevance to the volume of business to be transacted through a particular Customs Station.

24. The regulations of 1984 in so far as the same provides for licensing the Customs House Agents have been so liberal, uncontrolled, arbitrary and unconstitutional that it will make unequals equal to the members belonging to the highly technical profession of clearing agents without any proper education and technical knowledge. An applicant who might have possessed assets worth a lakh by any means fair or foul and in some cases assets worth Rs. 50,000/- may claim to obtain a licence as a Customs House Agent. Honesty, ability, experience and standing in the Society have been no criterion for the purpose of holding a licence. In old regulations Income Tax Clearance Certificate and two character certificates which give some respectability and reliability in the society was one of the necessary conditions for an application for the licence. That condition is absent in the present regulations of 1984. The technical and legal knowledge coupled with proficiency and experience which were needed for granting a licence to an application under the old regulations are not necessary in the present regulation of 1984. Any person without passing the test of technical and legal knowledge might have applied for a licence of a Clearing Agent provided he can show the assets worth Rs. 1,00,000/- or Rs. 50,000/-, as the case may be. Nor the regulations of 1984 considered the determination of number of licence holders to be necessary for a particular Customs Station in view of the volume of traffic.

25. The regulations of 1984 for the licensing of Customs House Agents have been published in the Gazette, a notification No. 85 was issued by the Central Board of Excise and Customs, New Delhi on March 19, 1984. The said notification was circulated by the office of the Collector of Customs, Calcutta, by their Memo No. 98 dated 12-4-1984. Soon thereafter, by another order issued from the office of the Collector of Customs, Calcutta dated 12-4-1984, a public notice was given

inviting applications from the intending applicants for the grant of licence in the Calcutta Customs House and it was further directed therein that the applications should reach the Customs House, Calcutta on or before 30-4-1984. In the said public notice, two conditions have been laid down for the satisfaction of the Collector of Customs. If the Collector of Customs is satisfied that the applicant (i) has the experience of work relating to clearance of goods through the Customs for a period of not less than one year and (ii) has financial viability supported by a scheduled bank or such proof acceptable to the Collector of Customs, Calcutta evidencing possession of assets of the value of not less than one lakh.

26. A certificate of experience can be procured by inducement, although he may have none in the matter from any person connected with this type of work and it is also not difficult to show the assets of Rs. 1,00,000/-, no matter if those assets had been earned by any unscrupulous means.

27. The Collector of Customs has no power and/or authority to exceed the directions given in the regulations of 1984. It has been clearly indicated in that regulation that the Collector may invite applications for the grant of a licence to act as Customs House Agent in the month of January every year by means of a Notice affixed on the notice board as well as through publication in at least two newspapers having circulations in the area specifying therein the last date of receipt of application. Such application shall be for clearance work within the jurisdiction of the said Collector. In view of the Regulation 4 the Collector of Customs has no authority to invite application in a month other than January every year. So this notice in April, 1984 is without any authority of law and against the mandate of the statutory regulations.

28. Similar provisions under the Sea Customs Act were challenged before the Supreme Court in the case of Chandrakant Krishnarao Pradhan and Another Vs. The Collector of Customs, Bombay and Others,

In the aforesaid case there were two separate writ petitions being Nos. 80 and 80A of 1960 filed by the two petitioners. One petitioner held a permanent licence and the other a temporary licence renewable trienialiy, to work as Dalals at New Customs House, Bombay. In the other petition also, petitioner Nos. 1 to 50 hold permanent licences and the petitioner Nos. 51 to 99 hold temporary but renewable licences. Some of the permanent licences were issued in 1936, and some of the temporary licences were issued as far back as 1944. These licences, whether permanent or temporary, were issued u/s 202 of the Sea Customs Act, 1878 prior to its amendment by the Sea Customs (Amendment) Act, 1955 (Act 21 of 1955). They were issued after a brief enquiry and subject to the fulfilment by the applicant of the following conditions :

"(1) He must produce at least 2 certificates of character each from a Justice of Peace and other persons, of known respectability.

(2) He must certify that he has not been convicted of any criminal offence.

(3) He must declare that he will have no claim to any accommodation in the Custom House.

(4) He must also give a security of Rs. 2000 in cash or Government paper having an equivalent market value and execute a Bond for Rs. 2000 on a fifteen rupees Stamp Paper in the attached form."

(2) In 1955, by amending Act, Section 202 was substituted by another Section. The section now reads as follows :

"202. (1) With effect from such date as the Central Government may, by notification in the Official Gazette specify, no person shall act as an agent for the transaction of any business relating to the entrance or clearance of any vessel or the import or export of goods or baggage in any Custom House unless such person holds a licence granted in this behalf in accordance with the rules made under Sub-section (2).

(2) The Chief Customs Authority may make rules for the purpose of carrying out the provisions of this Section and in particular, such rules may provide for -

(a) the authority by which the licence may be granted under this Section and the period of validity of any such licence;

(b) the form of the licence and the fees payable therefor;

(c) the qualifications of persons who may apply for a licence;

(d) the restrictions and conditions (including the furnishing of a security by the licensee for his faithful behaviour as regards the Customs House regulations and officers) subject to which a licence may be granted;

(e) the circumstances in which a licence may be suspended or revoked; and

(f) the appeals, if any, against an order of suspension or revocation of a licence, and the period within which such appeals shall be filed.

(3) As a result of the enactment of this section the original licences, whether permanent or temporary, would have become ineffective after the date to be specified by the Central Government. It became necessary for the petitioners and others to apply for licences granted in accordance with the rules framed under Sub-section (2). These rules were framed, and public notices were issued inviting applications; but the dates were postponed till the rules were published in the Gazette on May 14, 1960. It is not necessary to refer to the prior history of these rules and to the . many representations that were made, as they are not relevant. On June 18, 1960, a Public Notice (No. 87) was issued fixing June 25, 1960 as the last date for making applications for the new licences, and the persons affected were informed that the operation of the new licences under the rules would commence on July 14, 1960. On June 27, 1960, the writ petition Nos. 80 and 80A of 1960 were filed followed by Writ Petition Nos. 81 and 116 to 213 filed on July 12, 1960. An ex parte ad interim stay of the revocation of the

existing licence was obtained from this Court and subsequently, the respondents undertook to issue to the petitioners special temporary licences renewable yearly till the disposal of these petitions."

29. In the aforesaid two petitions only the Rules are challenged as in [breach] of the fundamental rights under Articles 14 and 19 of the Constitution and also as being in excess of the rule-making power conferred by Sub-section (2) of Section 202. Of Form ''C prescribed under the Rules for taking security from the approved agents is also questioned as being in excess of the power to make rules and contrary, in certain respects, to the Sea Customs Act, itself.

30. Paragraph 9 of the said judgment at page 207 of the said report while dealing with Rules 6(a), (b) and (c), the Supreme Court observed as follows :-

* * * * * 31. While dealing with Rule''s 9 and 10 in paragraphs 11 and 12 at page 208, the Supreme Court observed as follows;

* * * * * 32. Rule 10 is the next subject of attack. It provides that the Customs Collector shall reject an application for the grant of a licence (a) if the candidate fails to pass the examination, or (b) the number of vacancies do not justify the grant of such licence, or (c) the applicant is not otherwise considered suitable. Objection is taken to cl. (c), it is said to confer a very wide discretion on the Customs-Collector, and reference is made to Sub-rule (2) in which it is provided that no appeal shall lie from the order of the Customs-Collector rejecting an application. It is further pointed out that in July, 1960, the Rules were amended by the addition of Rule 25 under which an appeal is to lie to the Chief Customs Authority against every order of the Customs-Collector (i) rejecting an application for the renewal of a licence granted under these Rules; (ii) rejecting a fresh application made in accordance with Rule 17 and (iii) refusing the grant or renewal of a special temporary licence under Rule 24. It is argued that even though an appeal has been provided for these matters, no appeal has been provided for the rejection under Rule 10(l)(c). No doubt, other reasons may exist for rejecting the application of a candidate, as for example, when he is found to be a leper or an epileptic; but one would expect that an order of this kind would be backed by reasons to be recorded in writing. It must be remembered that there is first a scrutiny of the application and an enquiry into the respectability, reliability and financial status of the candidate. Then follows an examination. If a candidate satisfies all the above conditions, there would hardly be any ground left for rejecting his application except probably his physical unfitness to do the work. The Rule which is framed is so general that it leaves to the discretion of the Customs-Collector to reject a candidate for a temporary reason (which he need not state) even though the candidate may be otherwise suitable. In our opinion, if a candidate is found fit under the other Rules and has successfully passed the examination, he should only be rejected under a rule which requires the Customs-Collector to state his reasons for the rejection, and the rules must provide for an appeal against that order, as they do in the other cases. As the Rule stands it cannot be considered to be a reasonable restriction upon the right

of the successful candidate to carry on his advocation.

33. It has been contended on behalf of the Union of India that the writ petitioners have no locus standi to maintain this application.

34. In support of his contention the learned Advocate relied upon the following decisions:

(1) The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others,

(2) Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, .

(3) Mohd. Ibrahim Khan and Others Vs. State of Madhya Pradesh and Others,

35. In the case of The Nagar Rice and Flour Mills (supra) it was held that the owners of an existing rice mill shifted its existing location and obtained the necessary permission for change of location from the Director of Food & Civil Supplies, even if it be assumed that the previous sanction has to be obtained from the authorities before the machinery is moved from its existing site, the competitor in the business (owner of another rice mill) can have no grievance against the grant of permission permitting the installation on a new site.

36. In our view the aforesaid decision cannot have any bearing in the facts of the instant case and, as such, cannot be of any assistance to the respondent.

37. In the case of Jasbhai Motibhai Desai (supra) it was held that the proprietor of a cinema theatre holding a licence for exhibiting cinematograph films is not entitled to invoke the certiorari jurisdiction ex debito justitiae to get a ''No Objection Certificate'' granted under Rule 6 of the Bombay Cinema Rules 1954 by the District Magistrate in favour of a rival in the trade, brought up and quashed on the ground that it suffers from a defect of jurisdiction.

38. In order to have the locus standi to invoke certiorari jurisdiction, the petitioner should be an ''aggrieved person'' denotes an elastic, and, to an extent, an elusive concept. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner''s interest and the nature and extent of the prejudice or injury suffered by him.

39. The Bombay Cinemas Regulation Act, 1953 and the Bombay Cinema Rules 1954 are not designed to set norms of moral or professional conduct for the community at large or even section thereof. They only regulate the exercise of private rights of an individual to carry on a particular business on his property. In this context, the expression ''person aggrieved'' must receive a strict construction.

40. The Act and the Rules do not confer any substantive justiciable right on a rival in cinema trade, apart from the option, in common with the rest of the public to lodge an objection in response to the notice published under Rule 4.

Thus the proprietor of Cinema or theatre holding a licence for exhibiting Cinematograph films have no legal right under the statutory provisions or under the general law which can be said to have been subjected to or threatened with injury as a result of the grant of ''No Objection Certificate to the rival trader.''

41. In the instant case before us, however, the Rules in question are not designed to set norms of moral or professional conduct and not extended only to regulate the exercise of private rights and, as such, the judgment and decision in the aforesaid case instead of supporting the contention of the respondent, Union of India really goes against the respondent. We are, accordingly of the view that the writ petitioners are entitled to invoke the writ jurisdiction.

42. In the case of Mohd. Ibrahim Khan and Ors. (supra) it was held that since the members of public were not objecting at initial stage of granting ''No Objection Certificate'' they cannot subsequently object at time of application for licence for cinema and it can claim to be heard in appeal filed by the applicant.

43. This decision also, in our view, cannot have any assistance to the respondent. Learned Advocate for the respondent, Union of India relied on an unreported judgment and decision of the Division Bench of the Delhi High Court in the case of Federation of Custom House Agent Association v. Union of India and Ors. Copy of the judgment has been produced in Court. The Division Bench upheld the validity of the Regulations of 1984. We are afraid that we cannot agree with the view of the Division Bench of the Delhi High Court to the effect that "The position under the 1965 regulations was that a person could only be a Customs House Agent, if he passes the examination and otherwise he could not do business at all and the same has created a kind of monopoly in favour of the existing Customs House Agents. The knowledge for passing the examination which is of a practical type involves the getting of experience which is not easily available to an outsider. The result was that a kind of closed shop was created in favour of the existing customs house agents. Of course, the regulations could have been amended to do away the examination altogether. This is one of the ways in which others could have been allowed to enter the business. However, the alteration now is that a person can get a temporary licence for some period and then get a regular licence on passing the examination. We do not see how this infringes the Act and we also do not think that it infringes Article 14 of the Constitution. Learned Counsel says that it does infringe Article 14 because it makes unequals equal. We do not think that this is so. What the new regulations have actually done is to create a kind of apprenticeship for new entrants. They are not given regular licences but temporary licences which would enable them to get necessary experience and expertise to get regular licences. This type of procedure is not unknown. For instance, if you want a driving licence you can first get a learner''s licence which enables you to drive a car so that you can get the necessary experience to get an ordinary driving licence.

44. With respect we are unable to agree with the aforesaid findings of the Division Bench of the Delhi High Court. Moreover, the said judgment has not

taken into account the findings and observations of the Supreme Court in the case of Chandrakant Krishnarao Pradhan and Anr. v. Jasjit Singh (supra).

45. We are accordingly of the view that the writ petitioners should have succeeded in the writ application. The appellants should succeed in this appeal. The appeal is accordingly allowed and the order passed by the learned Single Judge dismissing the writ petition is hereby set aside.

46. Accordingly, the said Regulations of 1984 in so far as the same allow temporary licence to be issued on conditions prescribed therein and the Public Notice issued thereunder for granting new licences to the new applicants for the Customs House Agents stand quashed and set aside and the respondent Nos. 1 to 3 are directed not to act on the basis of the said Regulations.

47. The appeal is accordingly, allowed to the extent indicated above.

48. There will be no order as to costs.

Ajit Kumar Sengupta, J.

49. I agree with the view of my learned brother Shyamal Kumar Sen, J. I feel it necessary to add a few words for the purpose of emphasising the hazards involved in the practice of issuing temporary licences to be followed by a permanent licence a year after. The practice is, indeed, a contradiction of the very purpose which the issue of licence seeks to achieve. The purpose of the licensing method is to ensure the reliability, financial solvency and, above all, the competence of the profession which is highly specialised and technicalised. It defeats the elaborate system of testing the overall capacity of a person before he is considered eligible for holding a licence and makes a mockery of it. By the system the trade as well as the Department is exposed to a high risk of novices dabbling in matters which require expertise and competence of a high order.

It is indisputable that the licence is meant to be issued only to persons specialising in the work of customs clearance and attendant details of the task to be undertaken by them on behalf of the traders. Not to speak of the clearing agents, even the clerks and the other staff who attend to the work of the agents also require special experience, knowledge and aptitude. The sole purpose of issuing the licences is to ensure that it is only persons competent to do the work and familiar with the complex customs procedures, who operate.

50. The present system is fraught with the risk of generating deficiencies which are bound to lead to inefficient management and messing up the job for want of knowledge of the relevant laws and the job requirements. It is only by a system of licensing well on guards against the infiltration of persons of inadequate knowledge, technical as well as financial competence, that the interest of the trade can be protected and that in turn requires a strictly objective selection.

51. Given that it is necessary for the Customs House to have a disciplined and well regulated knowledgeable band of agents, there is no means of perceiving

how a reckless system of issuing temporary licences can conduce to such objective. It is bound to produce such unwholesome results as make the entire licensing system nugated and judicrous. One would simply shudder if it is said that the quacks would be given temporary licences to practise as physicians as there is a dearth of qualified physicians. The system as obtaining in the Customs House in giving temporary licences to the agents has a simile to that situation. This system of temporary licensing is an irony when contrasted against the rigid standards of selection set forth for issuing the permanent licence. No permanent licence is given unless every application for licence is thoroughly enquired into and the particulars set out in the application closely verified to make sure of respectability, reliability and the financial status of the applicant. The applicant is examined with a view to ensuring that he has the requisite knowledge of Customs law and procedure and fitness to guide and render proper services to the importers and exporters. The examinations held are both oral and written and follow a prescribed syllabus. For the examinations there are 16 subjects prescribed. The Collector of Customs also has to satisfy himself whether the applicant possesses satisfactory knowledge of English or the local language. The stringency of such selection for issue of permanent licence becomes senseless if already the floodgate is opened for the novices to crowd the Customs House as forwarding agents. The potential for mischief of the system is so vast that the subsequent rigid tests held for issuing the permanent licence loses its use. The unchecked infiltration of ignoramuses would cause sufficient damage beyond the point of salvage; the screening afterwards is pointless.

52. It is also judicially recognised that the function of a clearing agent is not a pedestrian job. The movement of goods, the due performance of the duties under the Sea Customs Act and the knowledge and observance of the regulations are not easy matters that a person pick up instantly. It requires a sufficient practical experience and efforts before one can become proficient and answer the job requirements. Unless we compromise to a situation where persons without knowledge and experience in clearing job are likely to have unchecked entry into the Customs House, the continuation of the present practice of issuing temporary licences cannot be countenanced.

53. It is stated that pursuant to the liberty given by this Court temporary licences were issued and examination had already been held on 28th June, 1993. Those who have appeared in the examination, their temporary licences will continue until the oral examination is held and the final results are published. Those who have taken temporary licences but have not yet appeared in the examination, their licences will stand terminated within a fortnight from date.

54. Stay asked for is refused.

