
(2002) 08 BOM CK 0120
In the Bombay High Court
Case No : Writ Petition No. 103 of 1989

Kantilal Parekh

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 13-08-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 112 ECR 12 : (2003) 158 ELT 678

Hon'ble Judges : V.C. Daga, J; J.P. Devadhar, J

Bench : Division Bench

Advocate : N. Thakkar and K. Wadhwa, instructed by S.D. Nankani, for the Appellant; R.V. Desai and K.R. Chaudhari, for the Respondent

Final Decision : Allowed

Judgement

V.C. Daga, J.—Heard rival contentions. Perused record.

2. At the outset, Mr. R.V. Desai, learned Sr. Counsel appearing for the Respondents raised a preliminary objection to the jurisdiction of this Court to hear and adjudicate this petition on the ground that no cause of action, arose within the jurisdiction of this Court. The learned Counsel appearing for the Respondent relied upon the decision in case of Union of India and Others Vs. Adani Exports Ltd. and Another, in support of his submission.

3. This contention sought to be raised has not been raised in the return or counter affidavit filed before this Court as back as in the month of February, 1989. This objection is being raised for the first time during the course of oral submission when this petition is being heard finally.

4. The learned Counsel appearing for the Petitioner, in reply, took us through the contents of the petition as well as show cause notice and the averments made therein. He pointed out from Para 5 of the impugned show cause notice that the alleged adverse material on which reliance was being placed in the show cause notice was collected at Bombay. The alleged adverse material sought to be used

against the Petitioner came from the custody of the Collector of Customs Bombay. Apart from this, from para 7 of said show cause notice and allegations made therein it is clear that alleged conspiracy alleged to have been hatched by Mr. Jasbir Singh Manchanda with Mr. Kanti Lal Parekh, M/s. J.M. Kawadkar Co. & Mr. Virendra Kumar Handa and Tejinder Singh to import material and to get it cleared from the Customs (docks), Bombay was hatched at Bombay. The goods alleged to have been cleared were from the Customs (docks) Bombay Mr. Kanti Lal Parekh who alleged to have conspired with the Petitioner was and is a resident of Bombay. M/s. J.M. Kawadkar & Co. has its place of business at Bombay. Mr. Virendra Kumar Handa and Mr. Tejinder Singh both of them were and are carrying on their respective businesses at Bombay. The show cause notice was served on the Petitioner at Bombay. The notice was replied from Bombay. The impugned order imposing penalty has also been served at Bombay. The civil consequences of the impugned action are to be suffered by the Petitioner at Bombay.

5. In the above circumstances the learned Counsel appearing for the Petitioner rightly submitted that the whole cause of action or at any rate part of the cause of action was at Bombay. As such this Court would be well within its jurisdiction to deal with, decide and adjudicate upon this petition in exercise of powers under Article 226 of the Constitution of India.

6. Having given our thoughtful consideration to the rival submissions, we are unable to accept the preliminary objection raised by the learned Counsel for the Respondents for the first time during the course of oral submissions with respect to the territorial jurisdiction of this Court to adjudicate upon this writ petition. Hence, objection in this behalf is overruled being without any substance.

6. So far as merits of this matter is concerned, the contents of the show cause notice would unequivocally go to show that no allegations of the alleged conspiracy alleged to have been hatched by the Petitioner with Mr. Kanti Lal Parekh, M/s. J.M. Kawadkar & Co., Virendra Kumar Handa and Tejinder Singh are to be found in the show cause notice served on the Petitioner although adverse finding in this behalf has been recorded against Petitioner in the impugned order. Thus, the impugned order and adverse finding recorded in this behalf are beyond the scope of show cause notice. The finding is thus clearly in breach of principles of natural justice.

7. Apart from the above, the Petitioner had approached the Respondents with a request to supply documents and the material on the basis of which the show cause notice was framed. The Controller of Imports and Exports ("the Controller" for short), in reply, vide his letter dated 10th September, 1986 called upon the Petitioner to attend his office in Delhi on 8th October, 1986 during office hours, to take inspection of the relevant record available with him. Accordingly, the Petitioner along with his Counsel had been to the office of the Respondent No. 1/ Controller at Delhi. But on the said date, the Petitioner was not given any inspection of documents. On the contrary he was told that beyond the allegations

made in para 7 of the show cause notice, no other documents were with them. If that be so it was not necessary to call upon the Petitioner to attend the office of the Controller at New Delhi. It is, therefore, clear that no documents were made available to the Petitioner on the basis of which show cause notice was issued.

8. The alleged report on the basis of which action was initiated against the Petitioner was also not made available to the Petitioner. In this behalf one may refer to the judgment of Apex Court in the case of *Brajlal Manilal and Co. v. Union of India and Anr.* reported in 1964 Mh. LJ. 500 wherein the Apex Court held as under :

"If the report of the State Government made any points against the representations made by the appellants and these were being taken into consideration by the Union Government, in common fairness, the appellants were entitled to be informed as to what these were and an opportunity to point out how far they militated against the contentions raised by them."

"We have, therefore, no hesitation in holding that the order of the Central Government now under appeal is vitiated as being contrary to the principles of natural justice, in that the decision was rendered without affording to the appellants a reasonable opportunity of being heard which is a sine quo non of a fair hearing."

In view of the above, it is clear that the impugned order is clearly in breach of principles of natural justice.

9. For the aforesaid reasons the impugned order cannot stand to the scrutiny of Court being clearly against the principles of natural justice. The impugned order is, therefore, quashed and set aside.

10. In the result, petition is allowed. Rule made absolute in terms of prayer clause (a), with no order as to costs.