

(1960) 06 KAR CK 0005
In the Karnataka High Court
Case No : Writ Petition No. 563 of 1958

Manohar Vinayak Kudtarkar

APPELLANT

Vs

The Collector, Central Excise, Bangalore and Another

RESPONDENT

Date of Decision : 14-06-1960

Acts Referred:

Land Customs Act, 1924 — Section 7 (1) (c)
Sea Customs Act, 1878 — Section 167, 178 A, 182

Citation : AIR 1961 Kar 263 : (1961) CriLJ 791 : (1960) ILR (Kar) 683

Hon'ble Judges : S.R. Das Gupta, C.J.; A.R. Somnath Iyer, J

Bench : Division Bench

Advocate : S.K. Venkataranga Iyengar, for the Appellant; G.B. Ethirajulu Naidu, for the Respondent

Judgement

Somnath Iyer J.

1. This is an application in which the petitioner challenges an order made by the Collector of Central Excise and Land Customs, Bombay, imposing on him a penalty under the provisions of item (8) of Section 167 of the Sea Customs Act (Central Act VIII of 1878), read with Section 7(1) (c) of the Land Customs Act (Central Act XIX of 1924).

2. On April 27, 1954, twenty-two gold bangles were seized from the possession of one Rosalin Jacki Cardos and another Lenin Jacki Fernandez when they were in a bus which had to proceed to Hubli from Karwar. The Customs Authorities seized those gold bangles on receipt of information that they were illegally imported into the Indian Territory from Goa, contrary to statutory provisions.

3. A few days after the seizure of these bangles, the petitioner before us Manohar Vinayak Kudtarkar presented an application to the Customs Authorities, claiming those bangles as belonging to him. His case was that he handed over those twenty-two bangles to the two ladies from whom they were seized in order that they may be delivered to his brother Mahabaleswar Vinnayak Kudtarkar, at a

place called Yellapur.

4. In the course of the adjudication, which the Collector of Central Excises and Land Customs of Bombay made, u/s 182 of the Sea Customs Act, he came to the conclusion that the gold bangles had been illegally imported from Goa into the Indian Territory. Thereupon, he made an order under the provisions of Section 5(3) of the Land Customs Act read with item (8) of Section 167 of the Sea Customs Act, confiscating those gold bangles. By another part of his order, he imposed penalties on each of those three individuals. On the petitioner, he imposed a penalty of Rs. 1,000/-.

5. In this writ petition, the petitioner assailed the orders so made by the Collector. But, at the stage of admission, this application was admitted only for the limited purpose of considering whether the Collector of Central Excise and Land Customs had jurisdiction to impose a penalty on the petitioner under item (8) of Section 167-A of the Sea Customs Act, with the result that the petitioner's application in regard to the other matters stood dismissed.

6. The only question that is argued on behalf of the petitioner by his learned advocate Mr. Ven-kataranga Iyengar before us is that the order made by the Collector imposing a penalty on the petitioner was unsustainable. He argued that the Order made by the Collector was wholly without jurisdiction since the Collector imposed the penalty without recording a clear finding that he was concerned in the commission of an offence referred to in item (8) of Section 167 of the Sea Customs Act.

7. The Collector of Central Excises and Land Customs, Bombay, who made the impugned order is not impleaded as a respondent in this case, Respondent 1 is the Collector of Central Excises, Bangalore, and respondent 2 is the Union of India.

8. The learned Advocate General appearing on behalf of the respondents urged before us two preliminary objections.

9. His first contention is that since the Collector of Central Excises and Land Customs, Bombay, who made the impugned order was neither residing nor had his office within the jurisdiction of this Court, the application presented by the petitioner in which he has asked that the order made by him should be quashed is not maintainable.

10. The second is that we should refuse to exercise our jurisdiction under Article 226 of the Constitution on account of the inordinate delay in the presentation of this application.

11. It seems to me that the argument addressed by the learned Advocate General that the application of the petitioner should fail on the ground that it has been made after undue delay has to succeed, thus making it unnecessary for us to consider the other preliminary objection raised by him.

12. The impugned order was prepared On May 2, 1955. It was issued on May 10, 1955, and served on the petitioner on May 14, 1955. The petitioner appealed from that order to the Central Board of Revenue, under the provisions of the Sea Customs Act, and that appeal was dismissed on August 9, 1956. The petitioner presented a revision petition against the order made by the Central Board of Revenue to the Government of India, and that revision petition was dismissed on May 3, 1957. This Writ petition was not presented until December 3, 1958.

13. The well established practice of this Court is that this Court refuses to exercise its jurisdiction under Article 226 of the Constitution when there has been unexplained delay in the presentation of the application to this Court for a writ under that article. It will be seen from the decision of the High Court of Madras in Rao Bahadur A. Nathamooni Chetti Vs. M.R. Viswanatha Sastry and Another, that the accepted practice of that Court was not to exercise jurisdiction under that article when the petitioner was guilty of laches.

14. The same view was taken by the High Court of Bombay in Gandhinagar Motor Transport Society Vs. State of Bombay, . In that case, Chagla C. J., pointed out that the only delay which the High Court would excuse in presenting a petition under Articles 226 and 227 of the Constitution is the delay which is caused by the petitioner pursuing a legal remedy which is given to him.

15. It will be seen that the petitioner in this case, after exhausting the statutory remedies available to him under the provisions of the Sea Customs Act, waited for nearly nineteen months before he presented his application to this Court. Although the revision petition presented to the Government of India was dismissed on May 3, 1957, the petitioner did not explain in his affidavit as to why he postponed the making of this application until December 3, 1958.

16. Mr, Venkataranga Iyengar, the learned Advocate for the petitioner, has however asked us to hold that the well settled rule that jurisdiction under Article 226 will not be exercised when there is undue delay in the presentation of an application for that purpose does not apply to the present case since, according to him this is a case in which the impugned order has resulted in an infraction of some fundamental right of the petitioner, and since the impugned order has also to be regarded as one made by the Collector wholly without jurisdiction.

17. It is, I think, difficult for the petitioner to sustain either of these two contentions.

18. Mr. Venkataranga Iyengar was wholly unable to support his argument that there was, in this case, any infraction of any fundamental right of the petitioner. It has not been demonstrated to us that the impugned order made by the Collector has resulted in any such infraction. Mr. Venkataranga Iyengar was unable to tell us what that fundamental right of the petitioner was which was infringed in this case as a consequence of the impugned order.

19. It is likewise difficult for the petitioner to sustain the contention urged on his

behalf that the order made by the Collector was wholly without jurisdiction.

20. The finding of the Collector was that the gold bangles which were confiscated on the adjudication made by the Collector represented smuggled gold. Although Mr. Venkataranga Iyengar urged before us very strenuously that there was no finding to that effect recorded by the Collector, it is clear that the finding of the Collector is clearly to the effect that the gold bangles had been smuggled from Goa into the Indian Territory in violation of the relevant statutory provisions. The further finding recorded by the Collector was, as I understand it, that the petitioner was a person who was concerned in the commission of such illegal importation. I am unable to accept the argument addressed to us by Mr. Venkataranga Iyengar that the Collector has recorded no such finding.

21. It was next urged that, as pointed Out by their Lordships of the High Court of Madras in *Devichand Jestimall and Co., Bangalore and Others Vs. The Collector of Central Excise, Madras*, , a person can be regarded to have been concerned in the commission, of an offence, like the-one referred to in item (8) of Section 167 of the Sea Customs Act, only when it is shown that he had arranged for the import of the forbidden article or abetted it or received it immediately after its import, the receipt being the final step in the process of the importation.

22. On the basis of this authority, it was strenuously contended that, in the absence of a finding by the Collector that those ingredients had been established by legal evidence in the case, the Collector had no jurisdiction to make an order imposing a penalty on the petitioner as the Collector did in this case. It was further argued that if the impugned order was one made wholly without jurisdiction, the mere fact that the application to this Court was presented after undue delay would not be a bar in the way of the writ being issued by this Court

23. In my opinion, these contentions cannot stand scrutiny. I am unable to agree that the Collector in this case did not record any finding that the petitioner was concerned in the commission of the offence, which, according to the Collector, had been committed in this case. The Collector pointed out in the course of his order that some of the twenty-two bangles, were, when they were seized worn by one of the two ladies to whom I have already referred. The others were worn by the other lady. He next adverted to the fact that those bangles had been concealed by them under the sleeves of their blouses. One of those ladies Rosalin Jacki, Cardoz, in her statement during investigation, disclaimed those bangles which were seized from her and explained that they had been handed over to her by some unknown person in Order that they may be given to someone at Yellapur. She relised from this statement in the adjudication proceedings of the Collector, in the course of which she stated that the gold bangles seized from her belonged to the petitioner.

The other lady Lenin Jacki Fernandiz claimed four of the twelve bangles seized from her as belonging to her and admitted that the remaining eight bangles were given to her by her sister Rosalin Jacki Cardoz who told her that those bangles

were given to her by some unknown person for being worn and carried to Yellapur. This statement which she made during investigation was reiterated by her in the adjudication proceedings of the Collector.

24. The petitioner's case was that he had purchased some gold in October 1951, and prepared the bangles in question out of that gold and that he sent those bangles to his brother who was at Yella pur, through these ladies.

25. The Collector disbelieved the story told by the petitioner and, after a consideration of all the materials before him, he came to the conclusion that there was "no room to doubt the smuggled origin of the gold". He came to the further conclusion that the conduct of the petitioner and the two ladies was sufficient to make them liable under the provisions of Section 7(1) (c) of the Land Customs Act read with item (8) of Section 167 of the Sea Customs Act

26. It is thus clear that the finding of the Collector, when properly understood, was that there was an illegal importation of the gold bangles from Goa into the Indian territory and that the petitioner was a person who was concerned in such illegal importation. In the circumstances of the case, and having regard to the fact that it was the petitioner's own case that the gold bangles had been handed over by him to the two ladies, it was unnecessary for the Collector and indeed superfluous for him to record a further finding that the petitioner was the person who had arranged for such illegal importation which, according to Mr. Venkataranga Iyengar, is one of the necessary ingredients to be established before the petitioner could be made liable for an offence under item (8) of Section 167 of the Sea Customs Act.

27. If, therefore, the penalty was imposed on the petitioner in this case as a result of a finding recorded by the Collector that the petitioner was concerned in the commission of the offence, referred to in item (8) of Section 167 of the Sea Customs Act, it could not be said that the Collector in making the impugned order acted wholly without jurisdiction, even on the assumption that if there had been no such finding, his order should have to be regarded as one made without jurisdiction.

28. That being so, the ordinary rule that we should refuse to exercise jurisdiction under Article 226 of the Constitution in cases where there have been laches on the part of the petitioner, has to be followed in this case, there being no special circumstances justifying the adoption of any contrary principle.

29. In support of his contentions, Mr. Venkataranga Iyengar relied on a number of decisions, in some of which writs were issued under Article 226 of the Constitution, although there had been greater delay in the presentation of the application for that purpose than in the case before us. Some of the other cases cited before us were relied on to support the proposition that the delay in the presentation of a writ petition was an immaterial consideration in cases in which there was an infraction of a fundamental right, and those cases can really have no relevance for the purpose of the present case since, it is not established that

there was any Infringement of a fundamental right of the petitioner,

The third set of cases on which Mr. Venkatarahga lyengar relied are those in which it was decided that if the impugned order was made wholly without jurisdiction or by the adoption of a procedure which was entirely illegal, so as to render the order made in such proceedings a nullity, the High Court should not refuse its jurisdiction under Article 226, merely on the ground that the application was presented after a long delay.

30. I shall now briefly refer to these decisions.

31. In *Somath Mal and Another Vs. State of Rajasthan and Others*, , their Lordships of the High Court of Rajasthan were dealing with a case in which a Municipal Board acting without due authority of law and without any jurisdiction levied Municipal taxes. Their Lordships came to the conclusion that where the levy of taxes was without the authority of law, the fact that the application for an order prohibiting the levy of such taxes was made after great delay did not disentitle the petitioner to relief. Mr. Venkataranga lyengar contended before us that the imposition of the penalty by the Collector in this case has to be regarded as being similar to the levy of a tax by the Municipal authorities in the Rajasthan case, without the authority of law. I do not agree. Their Lordships of the Rajasthan High Court came to the conclusion that the exaction in that case was without the authority of law and opposed to the provisions of Article 285 of the Constitution.

32. The case before us has no resemblance whatsoever to a case of that kind.

33. In *Pt. Gopi Nath Wali Vs. State of Jammu and Kashmir*, , all that was decided was that while it is true that the petitioner making an application under Article 226 should be vigilant in pursuing the extraordinary remedy which, is open to him under the Constitution, in order to determine whether there has been delay in a particular case, the facts of each case have to be taken into consideration. It was also decided in that case that the absence of a plea by the respondent that on account of the delay the respondent has been prejudiced in any manner was also a relevant consideration.

34. Far from supporting the contention urged before us on behalf of the petitioner, that delay can never be a ground for the refusal of a Writ under Article 226 of the Constitution, the decision referred to above merely reiterates the well-settled rule that each case must depend on its own circumstances and facts in regard to the question as to whether the delay in the presentation of an application should or should not form the ground for the refusal of the writ prayed for.

35. In *Poonamram Vs. State of Rajasthan*, , the decision turned on the special facts of that case. That was a case in which an employee in the Police Department was reduced to the rank of a constable in an enquiry made against him by the Deputy Inspector General of Police, The employee appealed from that

order to the Inspector General of Police. The Inspector General of Police who heard the appeal, very strangely, enhanced the punishment awarded to the employee and ordered that he should be discharged from service. The employee thereupon presented an application for the issue of a writ, quashing the order made by the Inspector General of Police. Their Lordships of the Rajasthan High Court came to the conclusion that the order made by the Inspector General of Police enhancing the punishment of the employee in an appeal by the latter was an order which was entirely without jurisdiction.

Following the principle enunciated by their Lordships of the Supreme Court in *State of U. P. v. Mohammad Nooh* AIR 1958 SC 86, their Lordships came to the conclusion that the order was a nullity and must be held to be inoperative. Having regard to this feature of the impugned order, made by the Inspector General of Police and also to the fact that the contention that the writ prayed for by the employee should be refused on the ground of delay was not raised by the State at the earliest stage, their Lordships decided that the delay in the making of the application in that case was not such as to disentitle the petitioner in that case to the writ for which he prayed.

36. In *Venkatapathi Raju v. State of Andhra* AIR 1957 AP 686, it was pointed out by Mr. Venkataranga Iyengar, that a writ was issued although an application for that purpose had been made four years after the impugned order had been made against him.

37. It will thus be seen that none of the cases on which Mr. Venkataranga Iyengar relied in support of his contention affords any real support to the contention urged by him before us.

38. It seems to me that the true rule in such cases, as pointed out by their Lordships of the Nagpur High Court in *Krishna Rajeshwar v. Chief Secy. to M.P. Govt., Police Dept; Nagpur* AIR 1954 Nag 151 (FB), is that the question of delay or laches cannot be determined with reference to the number of days that have elapsed since the injury was caused or threatened and that while "in certain cases long delay may not be deemed sufficient to defeat a just cause, in others, it may not in equity be fair to condone even a slight delay. In each case it is for the Court to determine the limits to which it will go depending on the justice of each case.

39. In the case before us, the delay in the presentation of the application to us was so considerable and so long that it should, in my opinion, be rejected on the ground that the petitioner has been guilty of laches, there being no special circumstances or features, in this case, justifying the contrary view. Respondent 1 has, in his counter-affidavit, raised the contention that the application should be rejected on that ground, and, in my opinion, that contention has to be upheld.

40. Mr. Venkataranga Iyengar at one stage of the argument contended before us that the impugned order in this case was founded on the provisions of Section 178-A of the Sea Customs Act which has been declared by some of the High

Courts as invalid and unconstitutional and that therefore, we should quash the order made by the Collector in this case on that ground, although the application was not made without undue delay.

41. As pointed out by the learned Advocate General, when the Collector made his adjudication u/s 182 of the Sea Customs Act, he did not depend for that adjudication to any extent whatsoever on the provisions of Section 178-A of the Sea Customs Act. That Section which incorporates a rule of evidence throwing the burden of proving that the goods seized were not smuggled goods on the person who contends to the contrary, came into force only on May 7, 1955. In paragraph 10 of the counter-affidavit produced on behalf of the respondent, it was stated that the impugned order was dictated by the Collector on April 29, 1955, and that the order was typed on May 2, 1955, issued on May 10, 1955 and served on the petitioner on May 14, 1955.

In the course of his order, the Collector did not raise any presumption under the provisions of Section 178-A; nor were his findings based on the fact that the petitioner had not discharged the burden which he had to discharge under the provisions of that Section. That being so, the question as to whether the provisions of Section 178-A are or are not unconstitutional does not arise for consideration and the delay in this case cannot be overlooked on the ground that this writ petition involves a decision about the constitutionality of the provisions of that Section.

42. In my opinion, this application has to be dismissed on the ground that the petitioner has come to this Court too late and has not explained the delay in the presentation of his application.

43. It will, therefore, be unnecessary for us to consider the other questions or contentions which were argued before us.

44. This petition is therefore dismissed, there being no order as to costs.

S.R. Das Gupta, C.J.

45. I agree.

46. Petition dismissed.