

(2004) 06 CAL CK 0033
In the Calcutta High Court
Case No : Writ Petition No. 1588 of 2003

Nellimarla Jute Mills Co. Ltd.

APPELLANT

Vs

Zonal Director General of Foreign Trade and Another

RESPONDENT

Date of Decision : 18-06-2004

Acts Referred:

Foreign Trade (Development and Regulation) Act, 1992 — Section 14

Citation : (2004) 4 CHN 9 : (2005) 185 ELT 227 : (2006) 65 SCL 369

Hon'ble Judges : Bhaskar Bhattacharya, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, J.—By this writ application, the petitioner, the holder of an advance license under para 111 of Handbook of Procedure, 1992-97 has challenged an order passed by the adjudicating authority in exercise of power conferred u/s 14 of the Foreign Trade (Development and Regulation) Act, 1992, (hereinafter referred to as the Act) thereby imposing a penalty of Rs. 8,10,63, 820/-.

2. The following facts are not in dispute:

a) The petitioner was served with a notice to show cause u/s 11 of the Act asking it to justify why action should not be taken for not complying with the obligations of export imposed under the conditions of the advance license.

b) In spite of receiving such notice, the petitioner did not answer nor did the petitioner demand any opportunity of hearing. The respondent authority suo motu extended the time to answer the show cause but the petitioner did not avail of the opportunity. Ultimately, the respondent ex parts passed the order impugned after finding the petitioner guilty of violation of the terms of the license.

3. Being dissatisfied, the petitioner has come up with this application.

4. Mr. Mehta, the learned advocate appearing on behalf of the petitioner has raised a pure question of law in support of this application. According to Mr. Mehta, although the petitioner did not give any answer to the show cause notice issued under the Act, it was the duty of the respondent to give a further notice indicating the date of hearing. Mr. Mehta contends that even without giving any answer to the show cause notice, one is entitled to oppose the proposed action on the basis of pure question of law. According to Mr. Mehta, the principle of natural justice demands that the person, against whom an action is going to be taken, should be given an opportunity of being heard. In support of such contention, Mr. Mehta relies upon the following decisions:

- 1) Swadeshi Cotton Mills Vs. Union of India (UOI), ;
- 2) Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, ;
- 3) C.B. Gautam Vs. Union of India and Others, ;
- 4) Mayes v. Mayes, reported in 1971(2) All ER 397.

5. In order to appreciate the question raised by Mr. Mehta, it will be profitable to refer to the following relevant sections of the Act:

"Section 13. Adjudicating Authority.--Any penalty may be imposed or any confiscation may be adjudged under this Act by the Director General or, subject to such limit as may be specified, by such other officer as the Central Government may, by notification in the Official Gazette, authorise in this behalf.

Section 14. Giving of opportunity to the owner of the goods, etc.--

No order imposing a penalty or of adjudication of confiscation shall be made unless the owner of the goods or the conveyances, or other person concerned, had been given a notice in writing:

- a) informing him of the grounds on which it is proposed to impose a penalty or confiscate such goods or conveyance; and
- b) to make a representation in writing within such reasonable time as may be specified in the notice against the imposition of penalty or confiscation mentioned therein, and, if he so desires, of being heard in the matter."

6. Section 14 of the Act gives power to the adjudicating authority to impose penalty after complying with the requirements mentioned therein. According to the said section, before imposing penalty, the person concerned must be informed of the grounds on which the adjudicating authority proposes to impose penalty and an opportunity should be given to make representation in writing within a reasonable time to be specified in the notice and further, if the said person so desires, an opportunity of hearing should be given.

7. In the case before us, the adjudicating authority gave a show cause notice to the petitioner informing him of the grounds on which the penalty was proposed and a period of 30 days was given to answer. It appears from the record that in

spite of receiving such show cause notice, being Annexure P1 to the writ application, the petitioner neither gave answer nor did express any desire of being heard. Subsequently, the adjudicating authority gave further 7 days" time to answer the earlier show cause notice, but in spite of receiving such notice, the petitioner remained silent. In the circumstances, the adjudicating authority passed exparte orders on the expiry of 7 days. I, thus, find that the adjudicating authority, after complying with the requirements of Section 14 passed the impugned order. The said section does not require that even if the person concerned does not answer the notice of show cause or demand an opportunity of hearing, any duty is cast upon the adjudicating authority to further communicate the date of taking exparte decision.

8. I now propose to deal with the decisions cited by Mr. Mehta.

9. In the case of *Swadeshi Cotton Mills v. Union of India* (supra), the Supreme Court observed that if in a statute conferring the power of giving a pre-decisional hearing to the person affected, there is no specific provision with regard to the giving of such opportunity and the administrative decision taken by the authority involves civil consequences of a grave nature, the Court must make every effort to salvage the said cardinal rule to the maximum extent possible. I do not, for a moment, dispute the aforesaid proposition of law. But, if in a statute, the extent of giving opportunity of hearing is explicitly limited, in such a situation, the Court cannot extend the said benefit beyond the one specified in the statute. In the case before us, it is specifically mentioned in Section 14 of the Act that opportunity of hearing can be given only if the person concerned so desires. Thus, if the person concerned does not answer the show cause and at the same time, also does not demand any hearing, the Court cannot interpret the said provision so as to add into it a duty to communicate to the person concerned any date of taking decision for the purpose of giving him a further opportunity of hearing.

10. In the case of *Institute of Chartered Accountants and Ors. v. L.K. Ratna and Ors.* (supra), the Apex Court was considering the scope, of Sections 21(3) and 21(4) of the Chartered Accountants Act, 1949, to find out whether at the stage of recording finding in terms of Section 21(3), an opportunity of hearing should be given to the member against whom an allegation of misconduct has been brought, although there is no specific provision for giving any such opportunity. The Supreme Court in such circumstances held that when a body is required to take a decision which has adverse effect on the person against whom it is taken, an opportunity of hearing should be given to the person affected. In my view, the principle laid down in the said decision cannot have any application to a case where in spite of giving opportunity to a person going to be affected, he decides not to avail of such opportunity.

11. In the case of *C.B. Gautam and Ors. v. Union of India* (supra), the Supreme Court while considering the provisions contained on Section 269UD of the Indian Income Tax Act, observed that that the Courts have generally read in to the

provisions of the relevant statute a requirement of a reasonable opportunity of hearing before an order is made which would have civil consequences for the parties affected. This would be particularly so in cases, the Supreme Court proceeded, where the validity of the section will be open to serious challenge for want of such opportunity. According to the Supreme Court, before making an order of compulsory purchase is made u/s 269UD of the said Act, the intending purchaser and the seller must be given an opportunity of showing cause against the order for compulsory purchase sought to be made by the appropriate authority. The Supreme Court further observed that if such requirement of giving opportunity is not read into the section, the same would be open to serious challenge on the ground of violation of Article 14 of the Constitution. In the case before us, the relevant statutory provision, quoted above, gives sufficient opportunity to the party going to be affected by the proposed action of the adjudicating authority. Thus, there is no scope of reading anything more in the said statutory provision to save the same from the challenge on the ground that the same infringes any of the principles of natural justice. I, thus, find no scope of application of the principles laid down in the said case to the fact of the present one.

12. In the case of *Mayes v. Mayes* (supra), a wife brought action against the husband complaining desertion. At the trial, the solicitor for the wife opened the case and then called her as witness. She gave evidence, cross-examined and then was examined by the Court. Thereafter the Court dismissed the case with the following observation :

"We formed the opinion that (the wife's) evidence disclosed no grave and weighty matter which would justify her in leaving the matrimonial home."

13. An appeal was preferred by the wife contending inter alia that the Court was wrong in stopping the hearing as aforesaid without giving the solicitor of the wife the opportunity of addressing as to whether or not there was a case for the husband to answer. It was contended on behalf of the husband that the solicitor for the wife not having prayed for leave to make submission, the wife had waived the right to address. Such contention was overruled by holding that a Court was to act in accordance with the settled practice or the rules of natural justice, and that practice or the rules give a person a right to be heard. Thus the Court, the Appeal Court proceeded, was wrong in proceeding to a decision without affording that right. In my opinion, the principle laid down in that decision has no application to a case where the statute specifically enjoins that a party is required to express his desire that he should be given an opportunity of hearing after submission of answer to the show cause notice. In this case, as pointed out earlier, the petitioner, in spite of receiving the show cause notice, has neither answered the same nor has it expressed its desire to get an opportunity of hearing. Thus, the said decision is of no avail to Mr. Mehta's client.

14. Mr. Mehta lastly referred to the following observations from the *Principles of Judicial Review* by De Smith & Jowell, 1999 edition;

"Procedural fairness generally requires that person liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed, so that they may be in a position:

(1) to make representation on their own behalf; or

(2) to appear at hearing or enquiry (if one is to be held);

and

(3) effectively to prepare their own case and to answer the case (if any) they have to meet."

15. In the case before us, the petitioner was given all the opportunities mentioned above, but it did not avail of those and after ex parte disposal of the case has come up with the allegation that the principles of natural justice have been violated for not communicating the date of taking ex parte decision. Those observations are, thus, of no help to the petitioner.

15. I, thus, find that the respondent after fully complying with the requirements of law has passed the order impugned and there is no reason to entertain this writ application. The application is, thus, dismissed.

No costs.