**(1973) 02 CAL CK 0021**

**In the Calcutta High Court**

**Case No :** Matter No. 379 of 1970

New Central Jute Mills Co. Ltd. APPELLANT

Vs

Triloki Nath Kaul and Others RESPONDENT

**Date of Decision :** 15-02-1973

**Acts Referred:**

Foreign Exchange Regulation Act, 1947 — Section 19(2)

**Citation :** AIR 1974 Cal 146

**Hon'ble Judges :** Sabyasachi Mukharji, J

**Bench :** Single Bench

**Final Decision :** Allowed

## Judgement

Sabyasachi Mukharji, J.—The petitioner in this casa challenges two notices and orders issued u/s 19(2) of the Foreign Ex-change Regulation Act. 1947. These are dated 3rd of May. 1969 and 31st May. 1969 respectively. In view of the contentions raised in this application it would be appropriate to set out the said two notices:

(1) "No. Cal/1/66/AKRC/P.III/2586 Calcutta Blanch, 8. Lindsay Street. (2nd floor). Caicutta-16.

Whereas for the purpose of the Foreign Exchange Regulation Act. 1947 (VII of 1947). the Central Government considers it necessary or expedient to obtain and examine the undermentioned documents in the possession of the Re gistrar of Companies. West Bengal-27, Brabourne Road. Narayani Building., Calcutta-1 or which in the opinion of the Central Government it is possible for the said Registrar of Companies. West Bengal 27. Brabourne Road. Narayani Building. Calcutta-1 to obtain and fur nish.

Now. therefore, in exercise of the powers conferred by Sub-section (2) of Section 19 of the said Act. the Central Government hereby requires the said Registrar of Companies. West Bengal. 27, Brabourne Road, Narayani Building. Calcutta-1, to furnish or to obtain and furnish to the undersigned the said documents on receipt of this order.

Particulars of documents required

All documents seized by the officers Of the Company Law Department pursuant to the orders issued by the Chief Presidency Magistrate. Calcutta and the District Magistrate. Howrah. in July. 1984, under the provisions of the Companies Act. 1956. from:

(i) M/s. New Central Jute Mills Co. Ltd. 11. Clive Row. Calcutta-1 and

(ii) M/s. Ashoka Marketing Ltd., 18A. Brabourne Road, Calcutta-1.

Dated at Calcutta this 3rd day of May. One thousand Nine Hundred and sixty-nine.

To

The Registrar of Companies. W. B., 27. Brabourne Road, "Narayani Building". Calcutta.

Sd. (T. N. Kaul). 3-5-1969, Asst. Director. Enforcement Directorate. Ministry of Finance Department of Revenue and Insurance. Government of India. (sic) "No. CAL/1/66/AKRC/P.III/3324. Calcutta Branch, 8. Lindsay Street, (2nd floor). Calcutta-16

In exercise of the powers conferred by Sub-section (2) of Section 19 of the Foreign Exchange Regulation Act, 1947 (VII of 1947). the Central Government, vide Order No. CAL/1/66/AKRC/P.III/2586 dated 3-5-1969. required the Registrar of Companies. West Bengal. 27. Brabourne Road. Narayani Buildings. Calcutta-1, to furnish or to obtain and furnish the information and1 documents mentioned therein on receipt of the order--which the said Registrar of Companies. West Bengal, has not so far furnished.

Now. therefore, the said Registrar of Companies. West Bengal, is required to furnish or to obtain and furnish the information and documents called for in Central Government''s Order No CAL/1/ 66/AKRC/PIII/2586 dated 3-5-1969 without further delay.

Dated at Calcutta this 3lst day of May. One thousand and nine hundred and sixty-nine.

(Seal of the Ministry of Finance.....)

Sd. (T. N. Kaul). Asst Director. Enforcement, Foreign Exchange Regulation Act. Ministry of Finance, Department of Revenue and Insurance Government of India,

To

The Registrar of Companies. West Bengal, Department of Company Affairs (Company Law Board). Naravani Building. 1st floor. 27, Brabourne Road Calcutta."

2. It appears that on 11th of April. 1963. there was an order passed u/s 237(b)(i)(ii) of the Companies Act. 1956. appointing an Inspector to investigate the affairs of the petitioner-company. On 12th of June. 1964 another order under the aforesaid section was passed appointing another inspector alone with the previous Inspector to investigate the affairs of the company. On the 30th June. 1964 a similar order was passed. On 20th of July. 1964 Inspectors appointed as aforesaid seized large number of books, documents and papers pursuant to the warrants obtained by them from the Magistrates u/s 240-A of the Companies Act. 1956. On the 21st of July. 1964 an application was made under Article 226 of the Constitution of India by the petitioner-company challenging the appointment of the Inspectors as aforesaid and a Rule Nisi was issued and interim order was made. The said application was numbered as Matter No 272 oE 1964. On 23rd of July, 1964 there was variation of the interim order whereby the Inspectors were allowed to continue with the search and seizure for four day- and thereafter to keep all the seized books, papers and documents with the Registrar of Companies, West Bengal. It was provided that if the petitioner-company required the documents, books or papers, they would be at liberty to take back the same. On the 1st of April-1965 hearing of Matter Nq. 272 of 1964 was concluded before B. N. Banerjee. J. On 3rd of June. 1965 another application was made under Article 226 of the Constitution by the petitioner-company challenging the search and seizure made bv the said Inspectors and the said matter was numbered as Civil Rule No. 571(W) of 1965. In the aforesaid application the Magistrates who issued the search warrants were made parties. On 4th of August. 1965 judgment was delivered in Marter No. 272 of 1964 and the Rule obtained by the petitioner-company was discharged. On 29th of September. 1965 the petitioner preferred an appeal against the judgment as aforesaid and the Court of appeal made an order directing maintenance of status quo. On the 5th of March, 1968 judgment was delivered in C.P. No. 581 (W) of 1965 by B. N. Bauerjee J. quashing the warrants issued by the Magistrates authorising the Inspectors to conduct the search. It was provided in the order that it would suffer such modification as might be necessary after the appeal In the said Matter No. 272 of 1964 was disposed of. On 7th of March. 1969 the appeal preferred bv the petitioner-company in the said Matter No. 272 of 1964 was allowed bv the Appeal Court and the stay of operation of the order was isassed as against the respondents. Then between 18th of April. 1969 and 30th of April. 1969 the stay granted was extended. On 3rd of May, 1969 there was a notice u/s 19 (2) of the Foreign Exchange Regulation Act. 1947 served on the Registrar of Companies by the Assistant Director of Enforcement. This notice is the subject-matter of challenge in this application under Article 226 of the Constitution. On 3rd of May. 1969 four notices to show cause were issued by the Director of Enforcement to the petitioner for alleged contravention of Foreign Exchange Regulation Act. 1947, On the 7th May. 1969 stay granted in appeal from Matter No. 272 of 1964 at the instance of the Government was further extended. On the 31st of May. 1969 another notice and summons u/s 19 (2) of the Foreign Exchange Regulation Act, 1947 was served. This is also the subject-

 

matter of challenge in this application. On 3rd of June. 1969 a letter was written by the Registrar of Companies to the Assistant Director of Enforcement Directorate stating that he could not part with the seized documents as the same were held by him pursuant to the orders of the Hon''ble Court. On the 5th of June, 1869 by a letter Registrar of Companies was required to comply with the notice issued u/s 19(2) of the Foreign Exchange Regulation Act. 1947. referred to hereinbefore on 5th of June. 1959 another summons was issued u/s 131 of the Income Tax Act. 1961, by the Income Tax Officer on the Registrar of Companies requiring him to produce all the Seized documents. The said summons was the subject-matter of challenge in Matter No. 378 of 1970. I will later refer the judgment delivered by me on 2nd of February, 1972 in respect of that application. On the 7th of June. 1969 the stay granted by the Appeal Court in Matter No. 272 of 1964 expired. On the 10th of June. 1969 notice of motion was taken by Shri A. P. Roy. Solicitor for the Registrar of Companies for directions regarding the return of the seized documents. The Appeal Court directed that notice of the said application to be served on the Assistant Director, Enforcement and the Income Tax Officer. On the 1st of July, 1969 the Government mentioned the matter before the Appeal Court for granting further stav of operation of the judgment passed in appeal from the said Matter No. 272 of 1964. The stay prayer was refused. On the 23rd of June, 1970 after affidavits had been filed an order was passed in respect of the application dated 10th June. 1969 by a Division Bench of this Court whereby liberty was given to the petitioner-company to challenge the said notices u/s 19 (2) of the Foreign Exchange Regulation Act. 1947. and the said summons u/s 131 of the Income Tax Act. 1961. served on the Registrar of Companies. On the 13th of July. 1970 the present application was made challenging the said two notices u/s 19 (2) of the Foreign Exchange Regulation Act, 1947.

3. In support of this application it was contended that in issuing the aforesaid notices there had been no application of mind by the authorities con--cerned. It was. secondly, contended that u/s 19 (2) of the Foreign Exchange Regulation Act. 1947. the order could only be passed bv the Central Government and the Assistant Director of Enforcement was a statutory authority created under the Act having specified functions and the Assistant Director of Enforcement had no power to issue these notices. It was. thirdly, contended that the action taken was mala fide and lastly, the Section 19 (2) of the Foreign Exchange Regulation Act, 1947. was ultra vires.

4. The first contention that re-quires consideration is whether there had been non-application of mind in Issuing the summons. Section 19 (2) of the Foreign Exchange Regulation Act is in the following term2.

"Where for the purposes of this Act the Central Government or the Reserve Bank considers it necessary or expedient to obtain and examine any information, book or other document in the possession of any person or which in the opinion of the Central Government or the Reserve Bank it is possible for such person to obtain and furnish, the Central Government or as the case may be. the Reserve Bank may by order in writing require any such person (whose name shall be specified in the order) to furnish, or to obtain and furnish, to the Central Government or the Reserve Bank or any person specified in the order with buch Information, book or other document."

5. The said summons and notices Issued under the aforesaid section should be specific and should be issued after applying the mind and specifying the documents directed to be produced. The aforesaid section came up for consideration before the Supreme Court in the case of The Barium Chemicals Ltd. and Another Vs. Sh. A.J. Rana and Others, where the Supreme Court observed that the mind had to be applied with regard to the necessity to obtain and examine all the documents mentioned in the order. An application of the mind with regard to the necessity to obtain and examine only a few of the many documents mentioned in the order, while there had been no such application of mind in respect of the remaining documents, would not be sufficient compliance with the requirements of the statute. It was further observed that the language of the Section 19 (2) pointed to the conclusion that while an order under it might be made with respect to ''any information'' book or other document it was essential that such information, book or other document should be specified in the order. The word ''such'' in the concluding part of Sub-section (2) of Section 19 pointed to the necessity of specifying the information, book or other document in the order. The aforesaid decision was considered by me In the application made by the petitioner-com-peny in challenging the notice u/s 131 of the Income Tax Act. 1951, in Matter No. 378 of 1970 referred to hereinbefore. Thereupon consideration of the summons I came to the conclusion that there had been no application of mind because the Income Tax authorities did not have any knowledge about the contents of the documents. Secondly. I came to the conclusion that omnibus nature of the order passed indicated non-application of the mind. It appears that the aforesaid two judgments were again considered by S. C. Ghose J. in a case in respect of summons issued unaer Section 131 of the Income Tax Act 1961(in Matter No 404 of 1971 and by a judg-ment delivered on the 26th of September, 1972. the learned Judge came to the conclusion that the summons should be spe-cine.

6. Counsel for the respondents contended that in this case the lacts were different It was urged that there were materials before the authorities to come to the belief that there were documents with the Registrar of Companies and were relevant for the investigation being conducted by the respondents. It was stated that the said facts had been set out in paragraph 4 of the affidavit of Sri Trilok Nath Kaul affirmed on 22nd of April, 1971. The said facts deal with the history and the materials upon which the belief for the issuance of the said notice was formed. Tt was alleged that between 1959 and 1964 the petitioner company had been exporting large consignment of jute carpet backing cloth worth several million dollars to Messrs. City Trade and Industries Ltd. of New York and further allegation was made that there were informations about the various irregularities

 

in the matter of Foreign Exchange Regulation committed by the petitioner-company. Thereafter there was search and seizure of the premises of the petitioner-company. As a result of such search and seizure it was found that many files and documents pertaining to the year 1964 and earlier years which should have been found among the papers seized by the Enforcement Directorate were not there. It was further stated that it was learnt that the Company Law Board had seized many documents in July. 1964 from the petitioner-company and the respondents thought that the documents which would be relevant and essential for the purpose of proceeding under the Foreign Exchange Regulation Act were "most likely to be included" among the documents seized by the Company Law Board. It was further stated that the documents and papers seized by the Company Law Board were "most likely" to disclose the names and addresses of various parties and banks abroad. In those circumstances, it was urged that the ratio of the aforesaid decisions referred to hereinbefore would not be applicable to this instant case. From the facts stated in paragraph 4 of the said affidavit in opposition it appears that the respondents might have had information for the formation of the belief that the petitioner-company had committed acts which re-cruired investigation under the Foreign Exchange Regulation Act 1947. For the aforesaid purpose the respondents were not entitled to conduct the search and seizure. I am. however, not concerned with that, position here. But in order to be a specific, notice as contemplated u/s 19 (2) of the Foreign Exchange Regulation Act. 1947. the documents must be specified. In this case the respondents did not know what documents were In the hands of the Registrar of Companies. Furthermore, the respondents had not specified what particular documents the respondents were looking for which they did not obtain in their search and seizure and which thev thought might be or likely to be with the Registrar of Companies with the documents already seized. As mentioned bv the Supreme Court in The Barium Chemicals Ltd. and Another Vs. Sh. A.J. Rana and Others, that the word ''such'' in the concluding part of Sub-section (2) of Section 19 pointed to the necessity of specifying the information, book or other document in the order. That specification is lacking. In the aforesaid view of the matter it must be held that the notices issued in this case u/s 19 (21 of the Act were not proper notices and there bad been no application of miod before issuance of the notices.

7. There is another aspect of the mat-ter which is connected with the second argument in support of the petition. In this case, the second point urged was, as mentioned hereinbefore, that under the Foreign Exchange Regulation Act. 1947, the order could only be passed by the Central Government and the order had not been in this case passed by the Central Government- In support of the contention that the order in question must be passed by the Central Government, reliance was placed on a decision of the Kerala High Court in the case of Krishnan Sukumaran Vs. Enforcement Officer, Cochin, . There the Divsion Bench of the Kerala High Court came to the conclusion that the Reserve Bank and the Central Government alone had the power to pass the order u/s 19 (2) of

 

the Foreign Exchange Regulation Act. 1947, In the absence of any statutory provisions this power could not be delegated to any other officer. Therefore, where an order passed bv the Assistant Director of Enforcement u/s 19 (2). neither stated that it was passed by virtue of any delegation of power nor did it even purport to be one passed on behalf of the Reserve Bank or the Central Government was illegal. The impugned notices in this case do not purport to be signed by the officers concerned on behalf of the Central Government but even then counsel for the respondents drew my attention to the notification dated 19th November 1965 which runs as follows ;

"No. 3/7/65-Pub.I.  Government of India.  Ministry of Home Affairs.

New Delhi, the 19th Nov. 1965  28th Kartik. 1837.

Notification

In exercise of the powers conferred by Clause (2) of Article 77 of the Constitution, the President hereby makes the following rules further to amend the Authentication (Orders and other instruments) Rules 1958 published with the notification of the Govt. of India in the Ministry of Home Affairs. No. S. Q. 2297. dated the 3rd November. 1958, namely. 1. These rules may be called the Authentication (Orders and Other Instruments) Fourth Amendment Rules. 1965.

2. In rule 2 of the Authentication (Orders and Other Instruments) Rules, 1958.

(i) in Clause (ac). the word ''or'' shall be added at the end;

(ii) after Clause (ac) the following clause shall be inserted, namely.

"(ad) In the case, of orders and other Instruments relating to the Works Division of the Ministry of Works and Housing, by a Section Officer in that Division of the Ministry."

(iii) for Clause fp] the following clause shall be substituted, namely :--

(P) in the case of orders relating to the Ministry of Finance. Department of Revenue Enforcement Directorate. Foreign Exchange Regulation Act. 1947, by the Director. Deputy Director or the Assistant Director. Enforcement Directorate. Foreign Exchange Regulation Act 1947: or''

Sd. Fateh Singh,

Joint Secretary to Govt. of India." It was urged that by virtue of the said notification Assistant Director, Enforcement Branch, could sign and authenticate an order passed on behalf of the Central Government. In other words, what was sought to be argued was that the order parsed by the Central Government was authenticated by the officer concerned. In support of the contention that the Assistant Director of Enforcement could not pass the impugned order counsel for the petitioner drew my attention to the Several provisions of the Act. He drew my attention to the provision whereby certain specific powers had been given to the Central Government and also to the provision whereby certain functions and powers had been given to the Director and Assistant Directors of Enforcement u/ s 2 (bb) Director of Enfnrcement has been defined to mean Director of Enforcement of Foreign Exchange Regulation appointed by the Central Govt. for the purpose of enforcing the provisions of the Act. But Section 2-A states the Central Government may appoint a Director of Enforcement and as many as Deputy Directors of Enforcement. Assistant Directors of Enforcement and -suuh other officers as it thinks fit to be officers of Enforcement for the purpose of enforcing the provisions of the Act. Section 2-B on the other hand provides that the Central Government may, bv an order, subject to such limitations and conditions as it thinks fit to impose, authorise anv officer of Enforcement, or any officer of Customs or anv Central Excise Officer or any Pnljre Officer or any other Officer of the Central Government or a Slate Government, to exercise such of the nowers and discharge such of the duties of Director of Enforcement or anv other officer of the Enforcement under the Act as may be specified in the order. The importance of Section 2-B was that under this section no aulhoritv had been given to the Central Government to authorise any officer mentioned therein to perform the functions of the Central Government or the Reserve Bank. Similarly my attention was drawn to provision of Sections 9. 12 (1). 17. 18. 19. 20 and 25 to indicate what were the functions of the Central Government and the Reserve Bank. Equally my attention was drawn to Sections 19-A. 19-B. 19-C. 19-D. 19-E and 19F to indicate the functions of the officers of the Enforcement. It was contended that by the provision of Section 19-F more or less similar powers had been given to the Director of Enforcement as contemplated u/s 19 (2) but these were given for different purposes to different authorities, and these were not notices u/s 19-F. It was urged that the Central Government and the Reserve Bank who had only the authority to issue the impugned summons and notice had not in fact issued the impugned notices and the summons. In this connection counsel also referred to Paragraph 37 of the affidavit in opposition of Triloki N. Kaul wherein he had stated that he had examined the papers, documents and came to the conclusion that the documents relevant should be produced. It was further urged that there was no pleading of anv delegation of power bv the Central Government or the Reserve Bank to the officer concerned. It was. therefore. urged, firstly. that the officer concerned who had Issued the notices had not issued the notices on behalf of the Central Government, secondly, that he bad not pleaded that he had anv authority delegated to him from the Central Government and thirdly, it had been stated in the affidavit that it was he who had been satisfied about the propriety and necessity of issuing the summons and not the authorities mentioned in the section. In those circumstances it was urged that that notices in question were bad. Though there is good deal of substance in these contentions on behalf of the petitioner. in the view I have taken on the first point, it is not necessary for me to rest my decision in this application on this point Therefore, I do not decide this point.

8. It was. thirdly, urged that this was mala fide exercise of power. More or less on similar facts before me in Matter No 378 of 1970 : (Reported in 1973 Tax LR 205

 

(Cal). New Central Jute Mills Co. Ltd. v. Dwijendrnlal Brah-machari. similar points had been taken which I did nut accept. From the averments made in this case it is not possible to accept the contention of mala fide exercise of power.

9. In the view I have taken it is also not necessary for me to so into the question of vires of the section.

10. In the aforesaid view of the matter this application succeeds and the notices dated :ird May, 1969 and 31st May, 1969 referred to in the petition are hereby Quashed and set aside. The respondents are restrained from Giving effect to the said summons or notices. This order will not. however, prevent the respondents from taking any fresh steps for discovery or inspection of documents in compliance with the provisions of Section 19 (2) of the Foreign Exchange Regulation Act. 1947. in respect of the said documents. Rule is made absolute to the extent indicated above. The documents will be handed over to the petitioner-company subject to anv other order of this Court in any other pending matter.

11. There will be no order as to costs.

12. There will be a stay of operation of this order for eight weeks.

 