
(1960) 03 P&H CK 0025
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 958 of 1959

S. Balbir Singh

APPELLANT

Vs

Collector of Central Excise and Land Customs, New Delhi and
Another

RESPONDENT

Date of Decision : 18-03-1960

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 19(1)
Sea Customs Act, 1878 — Section 167(8), 178

Citation : AIR 1960 P&H 488

Hon'ble Judges : I.D. Dua, J; Bishan Narain, J

Bench : Division Bench

Judgement

Dua, J.

(1) In this writ petition only two points fall for decision. The first one relates to the vires of Section 178A of the Sea Customs Act, though the attack is only confined to Article 19(1) (f) and (g) of the Constitution. It is conceded that this section has been held by the Supreme Court not to be violative of Article 14: vide Babulal Amthlal Mehta Vs. The Collector of Customs, Calcutta, The second point relates to the construction of Section 167(8) of the Sea Customs Act.

(2) The facts do not seem to be disputed and it is common ground that the petitioner was arrested on 29th of September 1957 and 38 tolas and 1 1/2 rattis of gold, consisting of four bars, was recovered from his possession. He was tried and convicted of an offence u/s 167(81) of the Sea Customs Act and sentenced to one year's rigorous imprisonment. A revision against the order of the learned Additional Sessions Judge, Amritsar, with respect to this conviction, is pending in this Court.

(3) On 8th of March 1958 the Customs authorities sent a notice to the petitioner to show cause as to why the gold recovered from his possession be not confiscated and why further penal action be not taken against him under the provisions of the Sea Customs Act. The petitioner's attention was specifically

drawn to Section 178-A of the above Act. The Collector seems to have ultimately confiscated the gold recovered from the petitioner's possession and also to have imposed a penalty to the extent of Rs. 3,000/- on 30th of August 1958. The petitioner preferred an appeal to the Central Board of Revenue, but he was called upon to deposit the amount of penalty, failing which his appeal was liable to be dismissed for non-compliance with the provisions of Section 189 of the Sea Customs Act.

The petitioner objected to this course and expressed his inability to deposit the penalty, with the result that on 13th of May 1959 the Central Board of Revenue rejected his appeal on the ground of non-compliance with the provisions of Section 189 of the Sea Customs Act. On 24th of August 1959 the present writ petition was filed in this Court and, as already noticed, vires of Section 178-A of the Sea Customs Act have been assailed on the ground that its provisions are violative of clauses (f) and (g) of Article 19(1) of the Constitution.

(4) Mr. Sibal has emphatically contended that arbitrary and uncontrolled powers have been given to Customs officers to form subjective belief about the gold, found in the possession of any person, to be smuggled-gold and to seize it, and the impossible onus is thereafter cast upon the person, from whom the gold has been so seized, to prove that it is not smuggled-gold. The counsel's attack is two-fold. In the first instance he has submitted that this onus is impossible to discharge and, therefore, this provision places unreasonable restriction in the way of citizens "to acquire and hold property" and also "to carry on any trade or business." Secondly he has contended that there is no rational nexus between the object to be achieved by enacting this provision of law and the restriction imposed.

He has sought support for his contention from *Nathella Sampathu Chetty and Another Vs. Collector of Customs, Madras*, where a Division Bench of the Madras Court has held that Section 178-A (1) of the Sea Customs Act constitutes an unconstitutional infringement of the fundamental right secured to citizens by Articles 19(1)(f) and 19(1)(g) of the Constitution and is, therefore, void under Article 13. Reliance in this connection has also been placed on an unreported decision of the Bombay High Court by a learned Single Judge Desai J., in *Misc. Appln. No. 21 of 1957*.

These decisions, of course, support the contention of the petitioner, inasmuch as it is laid down in them that there is no reasonable or rational connection between the fact to be proved and the presumption to follow u/s 178-A(1). The learned Judges also seem to have been influenced by the severity of the burden imposed by the legislature on the person in possession of the gold which is seized and indeed they proceed to observe that this severity defeats the achievement of the purpose the legislature had in view. With this argument I shall deal a little later.

(5) I may, however, not, at this stage, that the decision of Desai J. in the unreported case, which has been approved by the Madras High Court in the

reported case, has recently been dissented from by a Division Bench of the Bombay High Court (Tambe and Badkas JJ.) in another unreported case Pukhraj Jain v. D. R. Kohli, Collector of Central Excise, etc., (Special Civil Appln. No. 3 of 1958, D/- 20-3-1959 (Bom)). The Division Bench of the Bombay High Court in Pukhraj Jain's case, Special Civil Appln. No. 3 of 1958 have dealt with the question of reasonable restriction under Article 19(1) (f) and (g) in a fairly exhaustive judgment and have come to the conclusion that the restriction imposed, in the shape of rule of evidence casting a burden of proof on the person from whose possession the gold is seized, that, it was not smuggled, cannot, in the circumstances in which this provision has been enacted, be considered to be unreasonable.

The learned Judges notice that Section 178-A was, for the first time, brought on the Statute Book, in the year 1955, in order to remedy the evil of gold-smuggling which was going on at a very extensive scale and had indeed increased in such dangerous proportions that it was seriously affecting the economy of the country adversely. The decision of the Madras High Court in Nathella Sampathu Chetty and Another Vs. Collector of Customs, Madras, was also cited before the learned Judges, but they nevertheless upheld the constitutionality of Section 178-A of the Sea Customs Act.

(6) This question has also come up for decision in our own High Court and in State of Punjab v. Krishan Lal (1959 61 Pun LR 937) a Division Bench of this Court repelled the contention that this section violates Article 19(1)(f) and 19(1) (g) of the Constitution. But then the learned counsel has contended that the Division Bench deciding Krishan Lal's case 1959 61 Pun LR 937, did not consider the matter at any great length, but merely because an attack based on Article 19(1) (f) and (g) had not been persisted in, by the counsel of the eminence of Mr. N. C. Chatterjee, before the Supreme Court, in Babulal Amthalal Mehta Vs. The Collector of Customs, Calcutta, the attack based on Article 19(1) (f) and (g) was considered to be without merit.

In my opinion it is perfectly legitimate to observe, as was done by G. D. Khosla J. (as he then was) in the reported case, that if there was any real merit in the contention based on Article 19(1) (f) and (g), the counsel of the eminence of Mr. N. C. Chatterjee would apparently not have abstained from pressing the point seriously. But this apart, in a later unreported judgment of this Court in Gian Chand v. State of Punjab, Criminal Revn. No. 1566 of 1958 (Punj), by a Division Bench (G. D. Khosla C. J. & Bedi J.) it has again been laid down in unambiguous terms, that Article 19(1) (f) and (g) has not been infringed by enacting Section 178-A(1) of the Sea Customs Act. In this case reference has, by way of analogy, been made to the Prevention of Corruption Act and the Division Bench has in positive language laid down that there does exist a nexus between the objective of the Act and the restriction imposed.

(7) Nothing said at the Bar has convinced us to doubt the correctness of the view taken in the two Bench decisions of this Court mentioned above. As a matter of

fact, keeping in view the object sought to be achieved by the Parliament and the provisions of Section 178-A(1) of the Sea Customs Act, by which, as a matter of evidence, onus has been placed on the persons, from whom the goods have been seized, in the belief, that they are smuggled goods, it is difficult to hold that there is no rational nexus between the two. The argument that the onus is difficult to discharge is in my opinion hardly relevant.

(8) It is true that the question of reasonableness of the restrictions imposed on the fundamental rights guaranteed by the Constitution is justifiable and this Court is fully competent to consider and adjudicate upon it. It is also well settled that while considering the reasonableness of the restrictions the Court has to apply the objective standard--the standard of the average prudent man. It is according to this external yardstick that the reasonableness has to be tested, keeping proper balance between the freedom guaranteed and the social control permitted. It must at the same time be borne in mind that there is no abstract standard or general pattern of reasonableness applicable to all cases, nor is it permissible to the Court to proceed on a consideration of what is reasonable from the point of view of the persons on whom the restriction is imposed.

In each case the Court is called upon to consider the nature of the right alleged to have been infringed, the true underlying purpose of the restriction imposed, the enormity, the extent and the gravity or the urgency of the evil intended to be controlled, the circumstances and the conditions prevailing at the relevant time, the manner of the imposition and the disproportion of the restriction imposed. The restriction should of course, not go beyond what is required in the interests of the general public and it must have a rational relation to the object which the legislature seeks to achieve. It has to be guided by intelligent care and deliberation and should be dictated by reason, and not by arbitrary whim, and must not invade the fundamental right excessively. Keeping these tests in view, if it is reasonably possible to uphold the restriction, then this Court would not go into the question and consider the wisdom, of the legislative policy, because the legislature is the best judge of what is good for the community by whose suffrage it comes into existence. It is only the validity of the law which has to be ultimately determined by the Court.

(9) In the light of what has been stated above, I am inclined to take the view that in order to achieve the underlying object or purpose of stopping or even impairing the evil of gold-smuggling it must be considered to be reasonable to enact a rule of evidence that if a public officer in the discharge of his official duty entertains a reasonable belief that the gold in the possession of a person is smuggled-gold, then it would be for that person to prove that it is not smuggled-gold.

It is not doubt not a light burden of proof, but when the economy of the nation is at stake, such a burden of proof cannot, according to the well recognised canons of statutory construction and the tests of reasonableness stated above, be considered to be unreasonable. The impugned provisions are by no means too

drastic or unnecessarily harsh and they do not in my opinion override the object to achieve which the legislative measure in question has been enacted. The rational nexus between the object to be achieved and the rule of evidence enacted is fairly obvious. I would, therefore, repel the contention that the impugned section is violative of Article 19(1) (f) and (g) of the Constitution.

(10) This brings me to the second contention, and this in my opinion must prevail. It has been contended that u/s 167(8) of the Sea Customs Act the penalty can only be imposed if the person has been concerned in the offence of importation or exportation of goods which are for the time being prohibited or restricted. In the present case it is not denied that there is no such finding on the record. If that be the position, then the order imposing penalty of Rs. 3,000/- cannot be sustained.

In this view of the matter, it is hardly necessary for us to go into the question whether the penalty under this provision of law can or cannot exceed Rs. 1,000/-. The counsel for the petitioner has in support of the last contention also placed reliance on some observations in a judgment of the Supreme Court in *F.N. Roy Vs. Collector of Customs, Calcutta*, and indeed the unreported decision of a Division Bench of this Court in *Gian Chand's case*, Criminal Revn. No. 1966 of 1958 (Punj) also lands support to the contention advanced by the counsel, but in view of the fact that on the findings of the Collector no penalty can at all be imposed, it is not necessary for us to express any considered opinion on this question.

(11) For the reasons given above this writ petition is allowed in part and the order imposing penalty, which is clearly savable from the other part, is quashed, but the order confiscating the gold is perfectly valid and unassailable, and the writ petition with respect to this part of the order is dismissed.

(12) In the circumstances of the case there will be no order as to costs.

Bishan Narain, J.

(13) I agree.

(14) Order accordingly.