
(2001) 09 BOM CK 0002

In the Bombay High Court

Case No : Writ Petition No. 2581 of 2001

Shashank Bhalchandra Subhedar (Dr.)

APPELLANT

Vs

Dir. Gen. of Health Services

RESPONDENT

Date of Decision : 21-09-2001

Acts Referred:

Customs Act, 1962 — Section 28

Citation : (2003) 151 ELT 486

Hon'ble Judges : D.D. Sinha, J;A.B. Naik, J

Bench : Division Bench

Advocate : R.K. Deshpande, for the Appellant; V.G. Palshikar, for the Respondent

Final Decision : Allowed

Judgement

D.D. Sinha, J.—Rule made returnable forthwith.

2. Heard Mr. Deshpande, learned Senior Counsel for the petitioners and Mr. Palshikar, learned Standing Counsel for the Union of India/ respondents.

3. This writ petition is directed against the impugned order dated 30-8-2000, passed by the respondent No. 1, whereby the Custom Duty Exemption Certificate (CDEC) under Notification No. 64/88-Cus., dated 1-3- 1988, issued by the respondent No. 1, in exercise of powers, conferred on it u/s 25(i) of the Customs Act, was revoked/cancelled by the respondent No. 1.

4. Mr. Deshpande, learned Senior Counsel, states that in exercise of powers conferred by Sub-section (1) of Section 25 of the Customs Act, 1962, the Central Government, being satisfied, that it is necessary in the public interest to do so, exempted all equipments, apparatus and appliances including spare-parts and accessories thereof and the import of which was approved in each case, by the Government of India in the Ministry of Health and Family Welfare, or by Director General of Health Services to the Government of India, as essential for use in the hospital. The Custom Duty Exemption Certificate in the case of the petitioner No. 2-hospital was granted by the Respondent No. 1 on 1-3-1988, vide Notification

No. 64/88-QUS. In pursuance of the said Notification, the petitioners have submitted their proposal for grant of Certificate, in question, to the Director General, Health Services, through the Deputy Director, Health Services, Nagpur, on 10-1-1989, which was recommended to the Director, Health Services, after its due verification and inspection. It is further contended that on 16-11-1989, Public Health Department of the State Government, recommended the proposal of the petitioner to the Director General, Technical Development, Government of India, for grant of Certificate of "not manufactured in India". On 22-2-1989, the Director General, Technical Development, Government of India, issued to the petitioner a certificate of "not manufactured in India". On 24-4-1990, Computerised Stress System with Tread Mill was imported from USA. In May, 1990, after a period of about 10 years, the officers from the office of the Commissioner of Customs, Mumbai, and New Delhi, visited and inspected the hospital of the petitioner at Nagpur, and on the basis of that inspection, certain information collected by the Visiting/inspecting Committee. On 24-2-2000, the Respondent No. 1 issued a letter to the petitioner, seeking certain information to be furnished to him, within ten days from the date of issuance of that letter. It is contended that the petitioners were under the impression that some formal information is sought for by the respondent No. 1 and, therefore, vide communication dated 9th of March, 2000, the petitioner furnished the information, as asked for, through the State Government. In the said communication, the petitioners have specifically mentioned that since the original patients records are with customs authorities, no copies of the same were available for verification and the information so provided was tentative in nature. It was further mentioned in the said communication dated 9th March, 2000 that the information provided in this communication, does not truly reflect the number of free patients, as the records are maintained for Income tax purpose only in form 3C format. It is further mentioned in the said communication that additionally, petitioners have conducted many free diagnostic/treatment camps for thousands of patients, at various locations, availing free facilities of centre, which have not been included in the data. Mr. Deshpande, learned Senior Counsel further contended that the Respondent No. 1, all of a sudden, without giving a reasonable opportunity of being heard to the petitioner, passed the impugned order dated 30-8-2000 and thereby withdrawn the Custom Duty Exemption Certificates (CDECs) which were granted to the petitioner under the Notification dated 1-3-1988, and, therefore, the petitioners are constrained to invoke the extra-ordinary writ jurisdiction of this Court under Article 226 of the Constitution of India.

5. Mr. Deshpande, learned Senior Counsel, challenged the action of the Respondent No. 1, in withdrawing the Custom Duty Exemption Certificate, on the ground of violation of principles of natural justice. It is further contended" that the communication dated 24-2-2000, is not a show-cause notice and the petitioner was also not informed the purpose and object for which, the information was sought. The petitioner, therefore, was denied an opportunity of

being heard, to put forth their case at the threshold and, therefore, the impugned order dated 30-8-2000 is without giving any show cause notice and hence the same cannot be sustained.

6. The learned Senior Counsel Shri Deshpande, also challenged the impugned order on the ground that it is passed by the respondent No. 1, without giving reasonable opportunity of being heard to the petitioner No. 1 and, therefore, the petitioner was deprived of his legitimate right to defend his case and put forth his claim before the competent authority. It is contended that the impugned order not only caused grave injustice to the petitioners, but it has also resulted in enormous civil consequences. It is further submitted that in view of the aforesaid facts and circumstances of the case, the communication dated 24-2-2000, as well as the impugned order dated 30-8-2000, passed by the respondent No. 1, being violative of principles of natural justice, cannot be sustained.

7. It is further submitted that the issue, in question in this regard is concluded by the Judgment of the Madras High Court, delivered in Writ Petition Nos. 2110/1998, 3652 & 3654 of 1999, Apollo Hospitals Enterprises Ltd. Vs. Union of India (UOI), . It is submitted that the controversy in issue in the present case about the validity of action of respondent in withdrawing the Custom Duty Exemption Certificate, is violative of principles of natural justice, has been considered by the learned Judge of the Madras High Court and it has been held that the action cannot be sustained, for want of reasonable opportunity. It is further stated that in para No. 8 of the said Judgment, a specific question is framed in this regard which reads as here under : -

"Whether the impugned proceedings is in violation of the principles of natural justice."

In para No. 30 of the said Judgment, it is specifically held that the action of the Director General of Health Services cannot be sustained for want of opportunity to the concerned person to explain the same. The learned Judge of the Madras High Court in said case, has already considered this aspect and recorded its findings in para No. 30 of the Judgment which reads as under :-

"30. One more aspect which has to be taken into consideration is even an admission by any one can be explained. When that be the case, it is for the second respondent Director General of Health Services to provide an opportunity to the petitioners herein in respect of the Report submitted by the Visiting Committee. When the Report has been admittedly prepared on the basis of the materials collected in an innocuous manner and the petitioners have given the particulars without knowing the purpose for which the particulars were sought for, such statements cannot be taken into consideration in strict sense to hold that the petitioners have violated the conditions of the Notification, without affording an opportunity to the concerned persons to explain the same. In this case, it is admitted that the petitioners have not been given notice to show-cause or the copy of the Report of the visiting committee had been furnished to them.

It is also the grievance that no opportunity was given before passing of the impugned proceedings. When that be so, on this ground also the order of the second respondent, Director General of Health services cannot be sustained."

8. The learned Counsel Shri Deshpande therefore contended that the communication, dated 24-2-2000 as well as impugned order dated 30-8-2000, passed by the Resp. No. 1, may be quashed and set aside.

9. The learned Counsel for the petitioner contended that since the impugned order is challenged only on the ground of violation of principles of natural justice, other grounds raised in the petition, may be kept open.

10. Mr. Palshikar, learned Standing Counsel, has not disputed the fact that the respondent No. 1, before passing the impugned order dated 30-8-2000, did not grant hearing to the petitioner No. 1, however, it is contended that the impugned order is passed on the basis of the information furnished by the petitioner, in pursuance of the show-cause notice dated 24-2-2000 and, therefore, it cannot be said that the petitioner was not given opportunity of being heard to defend the case.

11. Mr. Palshikar, learned Standing Counsel states that the communication dated 24-2-2000 was nothing but show-cause notice, calling upon the petitioner No. 1 to furnish the informations as set out under items (i) to (v), which reads as under :-

"(i) (a) Whether the medical equipment has been installed in the premises of the hospital;

(b) If yes, date of installation of each equipment.

(ii) (a) Total No. of OPD patients treated since installation of medical equipment yearwise (upto 1998);

(b) percentage of OPD patients treated free during the above period year wise;

(c) percentage of OPD patients treated free during the above period year wise ;

(iii) (a) Total No. of Indoor patients treated since installation of the medical equipment yearwise (upto 1998);

(b) Total No. of Indoor patients belonging to families with an income of less than Rs. 500/- p.m. treated during the above period year wise;

(c) Total No. of Indoor patients belonging to families with an income of less than Rs. 500/- p.m. treated free during the above period year wise ;

(iv) (a) Total No. of beds speciality wise;

(b) Total No. of beds reserved for indoor patients belonging to families with an income of less than Rs. 500/- p.m.;

(c) Percentage of free beds reserved for patients as stated under (b) above;

(v) A legible and duly attested copy of letter received from the customs authorities asking for categorisation certificate from the Ministry of Health and Family Welfare."

12. It is further contended that para 2 of the said communication clearly states that Information sought by the respondent No. 1 should reach within ten days, and if no information is received within the stipulated period, it will be presumed that the petitioners are no longer interested in retaining the Custom Duty Exemption Certificates, which were issued for the hospital equipments) under Notification No. 654/88-Cus, dated 1-3-1988. It is further contended that the recitals of the said communication are in the nature of show-cause, calling upon the petitioner to furnish the information as asked for, failing which, appropriate action would be taken and, hence, the contention of the petitioner in this regard, are incorrect.

13. Mr. Palshikar, learned Standing Counsel, further contended that the Respondent No. 1, after taking into consideration pros and cons and the relevant factors, including the information furnished by the petitioner, has passed the impugned order dated 30-8-2000, since the Respondent No. 1 was satisfied that the petitioner No. 1 has violated the terms and conditions laid down under the Notification No. 64/88-Cus., dated 1-3-1988. It is argued before us that the action of the respondent No. 1 is in conformity with the procedure in this regard and is sustainable in law. It is further contended that the petitioner was given opportunity to furnish all the relevant information/data as asked for, and after taken into consideration the same, the impugned order dated 30-8-2000 was passed by the Resp. No. 1 and, therefore, the impugned order cannot be said to be violative of principles of natural justice.

14. Mr. Palshikar, learned Standing Counsel, in support of his contentions has placed reliance on the Judgment delivered by the Karnataka High Court, in W.P. No. 28186-87/96, The The Medical Relief Society of South Kanara, Manipal, Dakshina Kannada and Others Vs. Union of India and Others, and the Judgment delivered by learned Single Judge of the Punjab & Haryana High Court, in Civil Writ Petition No. 6164/1998, dated 6th September, 1999, CT Scan Research Centre Pvt. Ltd. v. Director General of Health Services, and Ors. In the observations made by the learned Single Judge of the Punjab & Haryana High Court in CT Scan case (cited supra) express thus :-

"A conjoint reading of the [show cause notice the impugned order and other documents available on the record unmistakably shows that the petitioner was made aware of the fact that the action was being taken against it due to non-compliance of the conditions embodied in the notification dated 1-3-1988, and, therefore, it is not possible to accept the submission of Shri Sarin that the petitioner has been condemned unheard...."

15. We have given our anxious thought to the above referred contention raised by the respective counsel for the parties. However, before we deliberate on the

issue, in question, it would be appropriate to take a look at the concept of principles of natural justice. The theory of reasonable opportunity and principles of natural justice have been evolved under Rule of law and to assist an individual to vindicate his right. It is settled that the doctrine of principle of natural justice has a definite purpose and positive object and the doctrine is evolved and developed by the Apex Court, keeping in view the spirit of our Constitution and is culminated in creating legal right in the individual of being heard before passing any order against him, which results in civil consequences.

16. In the present case, it is not in dispute that the Custom Duty Exemption Certificate was issued to the petitioner on 1-3-1988, i.e. more than a decade ago prior to passing of the impugned order dated 30-8-2000. Now, for the first time, the communication dated 24-2-2000 was received by the petitioner and certain information was asked for by the respondent as per the said communication. Perusal and recitals of said communication dated 24-2-2000, demonstrate that it is a simpliciter communication in the form of letter whereby the petitioner was asked to furnish certain information. The communication is totally silent as regards the purpose for which, information was asked for from the petitioner, as well as it does not reflect for what purpose the information would be used. The recitals in the communication dt. 24-2-2000 do not indicate that the information, was called for taking some action against the petitioner, if the said information is not satisfactory. At the most the said communication shows that the petitioner was required to furnish certain information in order to show compliance and fulfillment of the conditions laid down in the aforesaid Notification dated 1-3-1988. Beyond that, the communication does not imply anything else. In view of the nature of the communication dated 24-2-2000 and as per the recitals contained therein, we have no hesitation to hold that the communication, by no stretch of imagination, can be construed to be a show cause notice, issued to the petitioner, calling upon the petitioner to show cause as to why the Custom Duty Exemption Certificate, should not be revoked/cancelled. The recitals in the impugned communication, on the other hand, do not even remotely indicate that the information, as asked for by the respondent, was in order to take decision of cancellation/revocation of the Certificate in question, which was granted to the petitioner, more than a decade ago. In our opinion, the said communication dated 24-2-2000 amounts to denial of opportunity to the petitioner to defend himself at the threshold itself, for want of appropriate and specific show-cause notice in this regard and in absence thereof, the petitioner could not place all the relevant material before the authorities and, therefore, the action of the respondent is bad in law for want of reasonable opportunity to the petitioner in this regard.

17. We expect the authority, like Resp. No. 1, when it wants to initiate an action against defaulter, or against those, who, violate terms and conditions of the Notification, to issue proper and specific show cause notice and afford reasonable opportunity to defend the case. The recitals of the show-cause notice must indicate the purpose, for which, information is sought for, as well as the action

proposed to be taken, if the information found to be not satisfactory. In the instant case, as we have already observed hereinabove that the communication dated 24-2-2000 cannot be treated as show-cause notice issued by the authority to the petitioner calling information from him for taking action of cancellation/withdrawal of the Certificate in question, therefore, the petitioner was denied an opportunity to place relevant material before the authority and, hence, the action taken by the respondent, was without affording the opportunity to the petitioner in this regard at the threshold itself and therefore, such action cannot be sustained.

18. The other important aspect that cannot be lost sight of is in respect of doctrine of principles of natural justice. The concept needs to be understood in its right perspective as well as as per the spirit of the Constitution. An opportunity of being heard, before passing the impugned order, is not an empty formality, but is a valuable right of an individual and is also requirement of law, particularly, when the order has civil consequences. This is a valuable right and violation thereof, would not only deprive the person concerned, to put forth his claim before the competent authority, but also causes total prejudice and results in miscarriage of justice.

19. It is no doubt true that the respondent No. 1 is entitled to take any decision on the basis of the relevant material placed before it by the concerned, on its own merit, however, it should be taken only after complying with the principles of natural justice. In the instant case, admittedly, the petitioner was not given an opportunity of being heard by the respondent No. 1, before passing the impugned order dated 30-8-2000. The procedure adopted by the Resp. No. 1, in our opinion, has resulted in taking away the valuable legal right of the petitioner, of being heard, before passing the impugned order and, therefore, we have no hesitation to hold that the impugned order is violative of principles of natural justice.

20. The contentions canvassed before us by Mr. Palshikar, learned Standing Counsel for the Respondent, are totally misconceived and devoid of substance.

21. For the reasons stated hereinabove, we respectfully disagree with the view expressed by the learned Single Judge of the Punjab & Haryana High Court (cited *supra*), and we concur with the view taken by the learned Single Judge of the Madras High Court in the M/s. Apollo Hospitals case (cited *supra*).

22. For the reasons stated hereinabove, the communication dated 24-2-2000, in the facts and circumstances of the present case, as well as law laid down by Madras High Court, cannot be treated and construed as show cause notice, much less notice for the purposes of taking decision of cancellation/revocation of the Custom Duty Exemption Certificate. Similarly, merely because the Resp. No. 1 considered the innocuous material for passing the impugned order dt. 30-8-2000, it also cannot be held that it complies with the principles of natural justice. On the other hand, the whole action of respondent, in our opinion, is

violative of principles of natural justice and cannot be sustained.

23. In the result, the impugned communication dated 24-2-2000 as well as impugned order dated 30-8-2000, passed by the respondent No. 1, are hereby quashed and set aside. The respondents are entitled to issue appropriate fresh show cause notice, if any, to the petitioner and to pass final order in pursuance of the said show cause notice, after giving reasonable opportunity of being heard, to the petitioner.

24. Rule is made absolute in the aforesaid terms with no order as to costs.