(1964) 07 P&H CK 0022

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 364 of 1963

Shir Amir Singh APPELLANT

Vs

Government of India and Others RESPONDENT

Date of Decision : 29-07-1964

Acts Referred:

Constitution of India, 1950 — Article 226
Sea Customs Act, 1878 — Section 178A, 182

Citation : AIR 1965 P&H 84 : (1964) 2 ILR (P&H) 784

Hon'ble Judges : H.R. Khanna, J;A.N. Grover, J

Bench : Division Bench

Judgement

Khanna, J.

(1) This appeal under Clause 10 of the Letters Patent is directed against the order of learned Single Judge whereby he dismissed the petition of the appellant under Article 226 of the Constitution of India.

(2) The brief facts of the case are that on 11th of January 1957 at about 8 P.M. the appellant was apprehended at Amritsar railway station by a customs preventive party. On personal search of the appellant two bars of weighing 110 Tolas 4 Mashas and 3 Rattis, a pair of bangles weighing 1 Tola 10 Mashas and 3/4 Ratti and currency notes of the amount of Rs. 1,163/- were recovered. Statements of Dharam Pal, Moti Ram and Tek chand were thereafter recorded on 11th and 12th of January 1957. According to the appellant he had got the gold melted from Dharam Pal. The appellant also claimed to have purchased some gold from Tek Chand. Moti Ram is the Munim of the appellant and was examined with respect tot he entries made in the account books of the appellant. As the above witnesses did not support the appellant and as the appellant was found to have made contradictory statements and to have failed to give any satisfactory account for the procurement of the gold in his possession a notice was issued to the appellant under S. 178A of the gold in his possession a notice was issued to the appellant under S. 178A of the Sea Customs Act 1878 (hereinafter referred

to as the Act) on 1st February 1957 calling upon him to prove that the seized gold was not smuggled.

The appellant in reply stated that he had brought gold ornaments from Faridkot and had go them melted at Amristar from Dhanam Pal. The appellant also requested for a personal hearing which was granted to him on 10th of January 1958. On that date Sri M. M. Sharam Advocate argued the case on behalf of the appellant before Shri R. Parshad, Collector. Shri Parshad was later transferred and on 12th of July 1958, Shri B. D. Deshmukh Collector of Central Excise and Land Customs passed an order for the confiscation of two gold bars u/s 167(8) of the Act. The bangles and the currency notes recovered appellant were ordered to be released in his favour. Appeal field by the appellant against order of the Collector was dismissed by the Central Board of Revenue on 2nd September 1960. Revision was thereafter filed by appellant to the Government of India Ministry of Finance, but the same was rejected on 6th July 1961. The appellant thereupon approached Court by means of a petition under Article 226 of the Constitution of India for quashing the order about confiscation of the gold bars. Two contentions were raised on behalf the learned Single Judge. It was argued in the first instance that Shri R. Parshad Collector, had given a personal hearing to the appellant but since the order of adjudication was passed by Shri B. d. Deshmukh it was necessary that shri Deshkmukh should have also personally heard impugned order had been passed on the evidence of Dharam Pal and Tek Chand who were never examined in the presence of the appellant and consequntently he had no opportunity to cross-examine them. The learned Single Judge repelled both the contentions and accordingly dismissed the writ petition.

(3) Mr. Chawla on behalf of the appellant has contended as he did before the learned Single Judge that as the personal hearing was given by Shri r. Prashad the order for confiscation of gold bars could not be passed by his successor, Shri Dekshmukh without giving the appellant a personal bearing. In my opinion, there is considerable force in the above contention. Section 182 of the Act deals with adjudication of confiscation and penalties under the Act by the different customs authorities. It is significant that the word used in that section is "adjudged" which goes to show that the matter has to be approached judicially and the procedure to be adopted has to be such as conforms to judicial requirements. As observed by their Lordships of the Supreme Court in Leo Roy Frey v. Superintendent District Jail Amritsar ARI 1958 SC 119 and Shewpujanrai Indrasanrai Ltd. Vs. The Collector of Customs and Others, a Collector in imposing confiscation and penalties under the Sea Customs Act acts judicially and his order in this respect cannot be deemed to be a mere administrative or executive act.

It is apparent that Shri R. Parshad was conscious of this aspect of the matter and he accordingly decided to give a personal hearing to the appellant and allowed him to be represented by counsel. consequently arguments were advanced before of the appellant on 10th January 1958. Shri Parshad was however, transferred before passing any order and was succeeded by Shri B.D.Deshmukh. Shri Deshmukh thereafter passed the impugned order on 12th of July 1958 without giving any hearing to the appellant. In my opinion procedure adopted by Shri Deshmukh was violative of the principles of natural justice and canons of judicial procedure. No hearing was given by Shri Deshmukh and no arguments were advanced before him before he passed the order for confiscation and it would be no answer that hearing had been given and arguments had been advanced before his predecessor and that the notes of those arguments were passed on to Shri Deshmukh. It is a cardinal principle of our judicial system that a case should be decided by the authority hearing the arguments and that a successor cannot decide a case without hearing the arguments afresh on the ground that arguments have already been advanced before his predecessor who left the case without deicing it himself.

The object of hearing arguments is to give an opportunity to a party to satisfy the Tribunal about the case set up by that party and to explain any adverse facts which may emerge on the record. The doubts entertained by the Tribunal are resolved but he leaves the matter without a decision his successor can adjudicate upon the matter fairly only if he puts his doubts to the party against whom he decides the successor must hear the arguments afresh. Any other view would render the hearing of arguments an empty formality and a mere farce. I may in this context refer to the following observation s of their Lordships of the Supreme Court in Gullapalli Nagaswar Rao v. Andh Pradesh State road Transport Corporation AIR 1959 308:

"Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear-up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure".

(4) Mr. Dewan, on behalf of the respondents, has urged that the appellant made no grievance in his appeal against the order of the Collector to the Central Board of Revenue that arguments had been heard by Shri Parshad and order about the confiscation had been made by Shri Deshmukh. In this respect I find that in paragraph No. 5 of his memorandum of appeal before the Central Board of Revenue the appellant clearly stated that the arguments had been heard by Shir Parshad and the order under reference had been made by Shri Deshmukh. It was further stated that Shri Parshad had conceded all the issues raised on behalf of the appellant during the course of the arguments. It would thus appear that the stand taken by the appellant was that if the matter had been decided by Shri Parshad, the decision would have gone in favour of the appellant. The appellant should thus be taken to have urged the ground that he had been prejudiced because the matter had not been decided by Shir Parshad who had heard the

arguments.

(5) I would, accordingly, hold that the failure of Shir Deshmukh to give a personal hearing to the appellant before passing the impugned order for confiscation of the two gold bars in question vitiates that order.

Mr. Chawla has also argued that the impugned order is liable to be quashed because the appellant was not given any opportunity to cross-examine Dharam Pal and Tek Chand (P Ws) as the statements of those were not recorded in his presence. Although I am of the view that there is no force in this contention because the record shows that the statements of those two witnesses were in fact recorded in the presence of the appellant and their statements did not from the basis of the impugned order, it is not necessary to go into this aspect of the matter in view of my finding given above on the first contention of Mr. Chawla.

(6) As a result of the above, I accept the appeal and quash the impugned order confiscating the two bars of gold in question. Mr. Chawia, on behalf of the appellant, agrees that in the circumstances the case should be remitted to the Collector for fresh decision in accordance with law after hearing the appellant. I order accordingly, In the circumstances of the case, I leave the parties to bear their own cost.

Grover, J.

(7) I agree.

(8) Appeal accepted.