

(1941) 05 CAL CK 0019
In the Calcutta High Court

S.N. Mukherjee

APPELLANT

Vs

Sir G. Russel and Another

RESPONDENT

Date of Decision : 26-05-1941

Acts Referred:

Specific Relief Act, 1877 — Section 45

Citation : AIR 1942 Cal 51

Hon'ble Judges : Panckridge, J

Bench : Division Bench

Judgement

Panckridge, J.—This is an application u/s 45, Specific Relief Act, and is made by one S.N. Mukherjee, who carries on business at 22, Canning Street, under the name and style of Messrs. S.N. Mukherjee. The respondents are Sir Guthrie Russel, Steel Controller, and Mr. S.M.K. Alvi, Deputy Steel Controller, whose office is at No. 7, Wellesley Place, Calcutta. The application asks that the respondents should grant an import license for the import of 15 tons of mild steel plates 1/8" American make, covered by a certain order dated 13th December 1940. On 31st December 1940, a notification was published in the Gazette of India whereby it was notified that in exercise of the power conferred by Rule 84 of the Defence of India Rules the Central Government prohibited the bringing into British India by Sea from any place outside India of any iron or steel of the description specified in the schedule with certain exceptions. Exception 4 is:

Any iron or steel covered by a special license issued (a) in the case of goods imported from the United Kingdom or the United States of America by the Steel Controller or Deputy Steel Controller for India appointed in this behalf by the Central Government, on application made before the placing of an order: Provided that in respect of firm orders placed before 1st January 1941, applications are made to the Steel Controller for India before 1st April 1941.

2. The same day another notification was published appointing Sir Guthrie Russel, Steel Controller, and Mr. J. Walton and Mr. S.M.K. Alvi Deputy Steel Controllers for India. It is conceded that the applicant had placed firm orders for

steel plates prior to 1st January 1941, with certain manufacturers in the United States through his London agents, Messrs. D. & J. Fowler Ltd., of Queen Victoria Street, London. These firm orders included an order for the 15 tons of mild steel plates which are the subject-matter of this application. The applicant states, and I see no reason to question his statement, that these steel plates were required to fulfil an order given him by concerns known as the Kamala Soap Factory and the Model Soap Company for construction for chimneys in their soap factories. On 20th January 1941, the applicant wrote to the steel controller asking him to issue import licenses for steel plates of which these 15 tons were part. He received a reply from Mr. Alvi, the Deputy Steel Controller, requesting him to fill up the appropriate form, which is numbered W.S.B 73. On the reverse of the form he gave certain particulars as to the shipment and the price and on the face of the form against the space reserved for special reasons for wishing to import these articles he wrote : "We have imported these plates for manufacturing chimneys for soap factories." The petitioner's London agents kept on pressing him for the numbers of the import licenses which he was expecting to obtain, and the Deputy Steel Controller, who had received several reminders from the petitioner, made enquiries whether the shipment was covered by an irrevocable dollar credit. The petitioner was able to satisfy the steel controller on the point. As far as the correspondence is concerned there was nothing more from the controller until Mr. Alvi, the Deputy Steel Controller, wrote, on 16th April 1941, regretting his inability to grant import licenses. This refusal is on a common form and there are four possible reasons given, and to judge what has happened in this case it appears that the Department indicates by placing a tick against one of those reasons why they have refused the import licenses. The reasons are:

(a) The steel required by you can be obtained in India ; (b) suitable substitutes for the type of steel required by you can be obtained in India ; (c) the purpose for which the material is desired to be imported by you stated under item 3 of the application does not justify the issue of an import license ; (d) your demand is in excess of your normal imports.

In this case the Deputy Steel Controller had by placing a tick in the margin indicated that the reason for refusal was that the purpose for which the material was required" specified by the applicant, did not justify the issue of an import license. It will be remembered that the purpose notified by the petitioner was the erection of chimneys for soap factories. It is in these circumstances that the present application has been taken out.

3. Mr. Alvi has filed a somewhat verbose affidavit in which he says that it is the custom of the department to satisfy themselves that the applicant is a bona fide importer, and he suggests that his investigations show that the applicant was merely a middleman and also he was not satisfied that the purpose for which the goods were imported was truly stated, and there were suspicions of profiteering. He also suggests that in early March he had orally intimated the applicant that his application for import license was rejected. I have not thought it necessary to

examine these allegations on either side in great detail, because I am of opinion that unless in the circumstances the applicant is entitled as of right to the issue of a special license I cannot investigate the reasons which have caused the Deputy Steel Controller to refuse his application. It is obviously impossible for any Court to conduct an enquiry into questions of policy, whether it is desirable that this particular applicant should be granted a license, and although the reasons which have appeared good to the steel controller might appear open to question by the Court, yet there may be excellent reasons for refusing the license, reasons which reflect in no way on the character or dealings of the applicant, but which the Court is in no position to assess. Now, it will be noticed that unless the applicant comes within an exception he is absolutely prohibited from importing steel into British India by sea from any place outside. He can only do so in the circumstances of the case by obtaining a special license. Normally he can only obtain a special license if he applies for it before placing his order. Mr. Roy wishes to read the words "provided that in respect of firm orders placed before 1st January 1941, applications are made before the Steel Controller before 1st April 1941" as entitling the applicant, if he makes the application before the specified date, to obtain a license as of right. The notification is not happily worded but I cannot read it as bearing the meaning which Mr. Roy would put on it. What I think it means is that whereas generally no licenses to import steel will be granted unless they have been applied for before the order is placed, yet an exception is made in the case of licenses to import steel shipped in fulfilment of firm orders placed before 1st January 1941, to the extent that applications from importers who place such orders will be considered if they are made before 1st April 1941. In other words, the controller has no discretion to grant a license in respect of goods ordered after 1st January 1941, unless the license has been applied for before placing the order. In the case of goods ordered before 1st January 1941, the controller has a discretion to grant or refuse a license though applied for subsequently to the date of placing the order, if application is made to him prior to 1st April 1941. In this case he has in his discretion refused a license and I am powerless to interfere.

4. The Advocate General has taken the point that this application is incompetent by reason of Section 16(1), Defence of India Act, which provides that no order made in exercise of any power conferred by or under this Act shall be called in question in any Court. The order here made was under the notification which purports to be made in pursuance of Rule 84(3) by which the Central Government under its rule-making powers gives itself power to make provision for prohibiting or restricting or otherwise controlling, in all classes or in specified classes of cases, and subject to such exceptions, if any, as may be made by or under the order, the import or export, or the carriage coastwise or the shipment as ships stores, of all goods or goods of any specified description. Mr. S.C. Roy for the applicant maintains that the order of refusal was made under the notification which itself was made in virtue of Rule 84 and therefore it cannot be said to be made in exercise of any power conferred by or under the Act. I think

he is right in saying it was not made in exercise of any power conferred by the Act, but I think if it was necessary for me to decide the question one way or the other, I should hold that the order was made in exercise of a power conferred under the Act because ultimately the power given by the notification derives from the rule making power conferred by Section 2 of the Act.

5. Mr. Roy also argues that the order is "not called in question" by this application within the meaning of the Act, and by reference to Sub-section (2) he suggests that an order is only properly said to be called in question when it is attacked on the ground that it has been made by some one incompetent to make orders of that character. I do not agree with that submission and I think an order is equally called in question when it is suggested that it is made without power to make it or made in improper exercise of the power to make it. However that may be, my reason for refusing the application is that I consider that under the notification the applicant cannot ask for a license as of right and it is within the discretion of the Steel Controller's Department to grant the license or to refuse it, and with that discretion X cannot interfere. This application is dismissed with costs.