
(1965) 03 BOM CK 0014

In the Bombay High Court

Case No : O.C.J. Miscellaneous Petition No. 153 of 1963

The Union Bank of India Ltd.

APPELLANT

Vs

M. Pachappa

RESPONDENT

Date of Decision : 29-03-1965

Acts Referred:

Constitution of India, 1950 — Article 19, 226
Penal Code, 1860 (IPC) — Section 124A

Citation : (1967) 69 BOMLR 782

Hon'ble Judges : Tarkunde, J

Bench : Single Bench

Judgement

Tarkunde, J.—This petition has been filed by the Union Bank of India Limited for a writ or direction under Article 226 of the Constitution to quash and set aside an order of confiscation passed by respondent No. 1, the Additional Collector of Customs, Bombay, u/s 167(5) of the Sea Customs Act, 1878, in respect of property which had been pledged with the petitioner Bank.

2. The facts leading to the order of confiscation are not in dispute. On April 16, 1962, one Hansraj Chopra, the sole proprietor of Paramount Steel Industries, Varanasi, applied to a Calcutta branch of the petitioner Bank for opening an Irrevocable Letter of Credit in favour of a certain Japanese party, and agreed that the shipping documents and the goods imported under his import licence shall remain pledged with the petitioner Bank as security for amounts advanced in the transaction. An Irrevocable Letter of Credit was accordingly opened in favour of the Japanese party through a Japanese agent of the petitioner Bank, against an import license in favour of the said Paramount Steel Industries dated February 2, 1962. The import licence was in respect of stainless steel sheets. The imported goods arrived in India in two consignments. When the shipping documents of the first consignment were received by the petitioner Bank through their agent in Japan, the said Hansraj Chopra of Paramount Steel Industries paid the bill of the petitioner Bank in respect of that consignment and took delivery of the shipping documents. It appears that the goods of the first consignment were cleared

under the said shipping documents and no objection was taken by the Customs authorities at the time of the clearance of those goods. Shipping documents of the second and final consignment of the stainless steel sheets were received by the petitioner Bank on July 9, 1962. In accordance with the terms of the Letter of Credit, the petitioner Bank remitted the price of the goods, which amounted in Indian currency to Rs. 26,780 and odd, to their Japanese agent. However, the said Hansraj Chopra, proprietor of Paramount Steel Industries, did not pay this amount to the petitioner Bank, but requested the latter to arrange clearance of the goods in Bombay and store the goods in the Bank's godown. Towards the end of August 1962 the ship which carried the second instalment of the imported goods arrived in Bombay. On August 30, 1962, a firm of clearing agents acting on behalf of the petitioner Bank submitted a bill of entry in respect of the goods to the Customs authorities in Bombay. The importer's name mentioned in the Bill of Entry was "the Union Bank of India Ltd., Fort, Bombay-1 A/c. Paramount Steel Industries, Varanasi". The Clearing Agents, however, were unable to clear the goods. They were informed that the Customs' copy of the said licence, together with some other papers, had been taken into possession by an officer of the Special Investigation Branch, Customs.

3. Thereafter a summons dated September 10, 1962, u/s 171A of the Sea Customs Act, 1878, was served on the petitioner Bank. By the summons the Bank was called upon to produce certain documents in connection with the importation of the two consignments of stainless steel. On or about September 17, 1962, the Bank supplied to the Customs authorities all the requisite documents along with a covering letter. On October 23, 1962, the Bank wrote to the Assistant Collector of Customs requesting- him for the immediate release of the consignment as the goods were incurring heavy demurrage in the docks. In this letter the Bank pointed out that the import licence in question had been duly published in the Weekly Bulletin of Industrial Licences issued by the Government of India in the Ministry of Commerce and Industry and that the signature of the issuing officer on that licence tallied with the signatures of the same officer on other licences issued to the customers of the Bank. No reply to this letter was sent by the Customs authorities.

4. In the meantime, the Customs authorities had sent on October 3, 1962, a show cause memorandum to the Paramount Steel Industries, Varanasi, calling upon the latter to show cause why penal action should not be taken against them u/s 167(5) of the Sea Customs Act, 1878, read with Section 3(2) of the Imports and Exports (Control) Act, 1947. It was stated in the memorandum that the Customs House had received information to the effect that the said import licence of the Paramount Steel Industries authorising the import of stainless steel sheets was a forged licence. No intimation of this memorandum was given to the petitioner Bank. The registered letter in which the memorandum was sent to the Paramount Steel Industries, Varanasi, was returned through the Post with the remark "addressee unknown". Then on November 22, 1962, an intimation of the said show cause memorandum was published in the "Northern India Patrika",

which is said to be a local paper having circulation in the town of Varanasi. Again, no intimation of this Public Notice was given to the petitioner Bank. Then on December 26, 1962, the Additional Collector of Customs (respondent No. 1) passed the impugned order confiscating the stainless steel sheets of the second consignment u/s 167(8) of the Sea Customs Act, 1878, and further ordered that there shall be no option u/s 183 of the said Act to pay a fine in lieu of confiscation. A month after this order was passed, a copy thereof was sent to the petitioner Bank.

5. On these facts the petitioner Bank has challenged the validity of the said order of confiscation, the main ground of the challenge being that the order was passed in violation of the rules of natural justice, in that the order was passed behind its back and without giving it any hearing. ;

6. Respondent No. 1, the Additional Collector of Customs, stated in his affidavit in reply that on or about July 24, 1962, the Bombay Customs House had received information that the said import licence of Messrs. Paramount Steel Industries, Varanasi, was "fraudulently obtained". Respondent No. 1 added that an inquiry was thereafter made with the office of the Iron and Steel Controller, New Delhi, and a reply was received from that office that no import licence for stainless steel had been issued to Messrs. Paramount Steel Industries, Varanasi. Respondent No. 1 further stated that no show cause notice of the confiscation proceedings u/s 167(8) of the Sea Customs Act, 1878, was sent to the Bank because the Bank was not the owner of the imported goods.

7. It is now well settled that a Customs Officer, who passes an order of penalty or confiscation u/s 167(8) of the Sea Customs Act, 1878, discharges a quasi-judicial, and not merely an executive or administrative, function. (Shewpujanrai Indrasanrai Ltd. Vs. The Collector of Customs and Others, . In discharging this quasi-judicial function the officer concerned is bound to follow the principles of natural justice. A general statement of what those principles are was made by the Supreme Court in Union of India (UOI) Vs. T.R. Varma, . Their Lordships said (p. 507) :

...Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that his materials should be relied on against him without his being given an opportunity of explaining them. If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed.

It was held by a Division Bench of this Court in Pukhraj Champalal Jain Vs. D.R. Kohli, that the principles of natural justice as broadly stated by the Supreme Court apply to a case u/s 167(8) of the Sea Customs Act, 1878. In another case,

Valimahomed v. C.T. A. Pillai (1959) 62 Bom. L.R. 634 it was held by a single Judge that in proceedings u/s 167(8) of the Sea Customs Act, 1878, the rules of natural justice require that an opportunity should be furnished to a person of cross-examining those who have made statements which are to be used against him.

8. In the present case, respondent No. 1 was well aware, before he passed the, impugned order of confiscation, that the petitioner Bank was the pledgee of the imported goods and that it had an outstanding claim of more than Rs. 26,780 against the goods. Information about the Bank's claim had been conveyed to respondent No. 1 by letters dated September 17, 1962 and October 23, 1962, prior to the impugned order dated December 26, 1962. He was also aware that in the bill of entry which had been filed by the Clearing Agents, in respect of the said goods, the petitioner Bank was mentioned as the importer "on account-Messrs Paramount Steel Industries, Varanasi". A reference may be made in this connection to a Public Notice which had been issued by the Ministry of Commerce of the Government of India on July 21, 1950, and which is published at Appendix 7 in the Handbook on "Import Trade Control" of 1961. The Public Notice was issued in order to secure the position of banks which issue irrevocable letters of credit in order to finance the import of goods. The Public Notice provides that in such cases the bank in question is deemed to be "a joint holder" of the licence to the extent of the goods covered by the credit. As a result of this provision a bank which has opened an irrevocable letter of credit is in a position to clear the goods through the Customs if the licence holder does not honour the bills drawn against the letter of credit. It is clear that the order of confiscation passed by respondent No. 1 in the present case deprived the petitioner Bank of its right to clear the goods from the Customs and to realise its dues by selling them.

9. The grievance of the petitioner Bank that the order of confiscation was passed without observing the rules of natural justice is not merely a formal grievance. It was quite possible that if the Bank were given a proper hearing respondent No. 1 might not have passed an order to confiscate the goods without any option of paying a fine. The finding of respondent No. 1 that the import licence in favour of Messrs. Paramount Steel Industries had been fraudulently obtained or was a forged licence is merely based on a certain letter which he received from the office of the Iron and Steel Controller, New Delhi, If a proper inquiry were held in the presence of the Bank, the statements contained in the said letter could not have been relied upon without giving an opportunity to the Bank to cross-examine the writer of the letter. Secondly, it is not clear from the affidavit filed by respondent No. 1 whether the import licence, according to the information received by him, was a licence fraudulently obtained by Messrs. Paramount Steel Industries or was a forged document. In para. 18 of his affidavit respondent No. 1 has stated that the letter which he received from the office of the Iron and Steel Controller, New Delhi "was quite sufficient evidence to hold that the said licence was a fraudulent or a forged one." Respondent No. 1 has obviously assumed that he was entitled to pass an order of confiscation irrespective of

whether the licence was a forged one or had been obtained by a fraudulent misrepresentation. The Bank would have been able to show respondent No. 1 that this assumption was incorrect. It was held by the Supreme Court in *East India Commrl. Co. v. Collector of Customs* A.I.R [1962] Cal. 225 that where an import licence is obtained by misrepresentation, it cannot be held that the licence did not exist at all, and the goods imported under that licence cannot be held to have been imported in contravention of the order issued u/s 3 of the Imports and Exports (Control) Act, 1947, so as to bring the case within Section 167(8) of the Sea Customs Act, 1878 In delivering the judgment of the majority in that case Subba Piao J observed (p. 1907) :

Nor is there any legal basis for the contention that licence obtained by misrepresentation makes the licence non est, with the result that the goods should be deemed to have been imported without licence in contravention of the order issued u/s 3 of the Act so as to bring the case within Clause (8) of Section 167 of the Sea Customs Act. Assuming that the principles of law of contract apply to the issue of a licence under the Act, a licence obtained by fraud is only voidable it is good till avoided in the manner prescribed by law.

Thirdly, even supposing that respondent No. 1 had found, after taking evidence in the presence of the petitioner Bank that the import licence of Messrs. Paramount Steel Industries was a forged licence, the Bank might still have been able to persuade respondent No. 1 to hold that the proper order to pass in this case was to give Messrs. Paramount Steel Industries the option of paying a fine, and to fix the amount of fine at a figure which might enable the Bank to recover its dues either wholly or in part. It is thus clear that the violation of the rules of natural justice in the present case has caused serious prejudice to the Bank.

10. According to respondent No. 1, the only reason why no show cause notice was served on the Bank and why no hearing was given to it was that the Bank was merely the pledgee, and not the owner, of the imported goods. Section 182 of the Sea Customs Act, 1878, deals with "Adjudication of confiscations and penalties". But it is silent with regard to the parties who are to be heard before such adjudication. Section 9(o) of the Act empowers the Chief Customs Authority to make rules for carrying- out the provisions of the Act, and u/s 9(c) rules have been framed in 1957 by the Central Board of Revenue in order to provide for the service of notice in proceedings relating to adjudication of confiscation of goods and imposition of fine, penalty or increased rate of duty under the said Act. Mr. Rege, who appeared on behalf of respondent, No. 1, drew my attention to these rules and pointed out that they provide for a notice being served on "the owner or other person concerned in an offence." Mr. Rege argued that the petitioner Bank was not concerned with the offence defined in Section 167(5) of the Act and that it was also not the owner of the imported goods. In this connection, Mr. Rege drew my attention to the decision of a Single Judge of the Andhra Pradesh High Court in *Md. Sultan and Others Vs. Firm of Rampratap Kannyalal*, in which the learned Judge held that a pledge creates in the pledgee an estate which is

distinguishable from the ownership of the goods. This is because a pledgee has a right of possession and a limited right of disposition over the goods pledged, but has no right of enjoyment, unlike the owner who has the rights of possession, enjoyment and disposition. It was, therefore, urged by Mr. Rege that the rules framed by the Central Board of Revenue u/s 9(e) of the Act do not contemplate the service of notice on the pledgee of the goods in proceedings relating" to their confiscation.

11. The answer to Mr. Rege's argument is that neither the terms of Section 182 of the Sea Customs Act, 1878, nor the aforesaid rules framed u/s 9(c) of the Act prevent a Customs Officer from issuing a notice and giving a proper hearing to a person whose interests are likely to be adversely affected by an order of confiscation. It was held by the Supreme Court in *Shewpujmrαι Inc Vrasanrai Ltd. v. The Collector of Customs*, to which I have already referred in another connection, that an order of confiscation u/s 167(5) of the Sea Customs Act, 1878, operates as an order in rem. It has the effect of extinguishing all the property rights in the goods in question and vesting the goods in the Government, It must follow that an order of confiscation cannot be lawfully made without giving a proper hearing to all persons whose titles are liable to be extinguished by the proposed order. In the absence of any express provision to the contrary, it is to be assumed that hearing must be given to all persons who are likely to be adversely affected by the order of confiscation. In *Maxwell*, 11th edn., it has been observed (p. 358) :

In giving judicial powers to affect prejudicially the rights of persons or property, a statute is understood as silently implying, when it does not expressly provide, the condition or qualification that the power is to be exercised in. accordance with the fundamental rules of judicial procedure, such, for instance, as that which requires that, before its exercise, the person sought to be prejudicially affected shall have an opportunity of defending himself.

Remarks to the same effect are found in. *Tuljansa Janardhansa Pawar, Hubli Vs. Commissioner of Income Tax, Bombay South*, . It was argued by the Attorney General in that ease that Section 30 of the Income Tax Act, 1922, does not require the Appellate Assistant Commissioner to serve notices on all persons who were likely to be affected by his order. In repelling this argument Chagla C.J., who delivered the judgment of the Division Bench, observed (p. 423):

...Section 30 confers the power upon the Appellate Assistant Commissioner to hear and decide appeals from an order made by the Income Tax Officer. When an authority upon whom judicial functions are conferred has to decide or hear a case or an appeal, he can only do so provided he has heard all parties; which are likely to be affected by the order which he is going to make. It is a fundamental principle of natural justice that no Judge or no person upon whom judicial powers are conferred can come to a judicial or a quasi-judicial decision without hearing all parties who are to be affected by his decision, and we must always assume that the Legislature who has knowledge of judicial principles and rules of natural

justice impliedly, if not; expressly, incorporate these rules whenever they confer judicial functions upon a person or an authority. If these rules of natural justice are to be excluded, then we must find in the statute an express provision to that effect. Therefore, when we find in Section 30 that the Appellate Assistant Commissioner had to hear an appeal from the decision of the Income Tax Officer and to decide that appeal, we must hold that; that decision had to be in conformity with the rules of natural justice, and if a decision was arrived at by the Appellate Assistant Commissioner in contravention of the rules of natural justice, it was not a decision, at all in law.

12. There is also another reason why I must interpret the terms of Section 182 of the Sea Customs Act, 1878, and the aforesaid rules u/s 9(c) of the Act so as not to exclude the observance by the adjudicating authority of the rules of natural justice. The reason is that if I were to hold to the contrary, the said provisions are liable to be struck down as being- violative of the fundamental right guaranteed by Article 19(7)(1) of the Constitution. In Kedar Nath Singh Vs. State of Bihar, the Supreme Court were concerned with the proper interpretation to be placed on Section 124A of the Indian Penal Code. Their Lordships held it to be well settled that if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction.

13. For all these reasons I am of the view that it was incumbent on respondent No. 1 to give a proper hearing to the petitioner Bank before passing the impugned order of confiscation.

14. In justification of the impugned order Mr. Rege relied on a decision of a Division Bench of the Calcutta High Court in The Collector of Customs Vs. The Calcutta Cycle Syndicate, . The petitioners in that case had agreed to purchase cycle chains of a certain measurement from two firms and the two firms had placed orders for those goods with the agents of a Japanese firm. When the goods arrived in India it was found that the cycle chains were of a different measurement and that their import without a licence was prohibited. The petitioners in that case had advanced amounts for the purchase of the goods. Notices to show cause why penal action u/s 167(5) of the Sea Customs Act, 1878, should not be taken were issued against the two firms and against the said petitioners. In reply to the notice received by them the petitioners took up the position that they had undertaken to purchase the goods "subsequent to their clearance out of the Customs control" and that the goods agreed to be purchased by them were of a different measurement than the goods which were actually received. The officer concerned passed an order confiscating the goods "on the ground that all the said goods were unclaimed and all the parties concerned disclaim ownership." Later the said petitioners challenged the legality of the order of confiscation on the ground that they were the owners of the goods. The Court held in the circumstances that the petitioners were not entitled to a show cause notice before the order of confiscation was passed.

15. It will be noticed that the circumstances in which the Court came to that conclusion were very different from the circumstances of the present case. In the first place, in response to the notice which had been earlier issued on the petitioners in that case asking them to show cause why penal action u/s 167(8) should not be taken, the said petitioners had adopted the position that they had no title to the goods at all, including the title as pledgees. Secondly, it has been expressly noted in the judgment in that case that when notices of confiscation proceedings were issued against the two firms which had imported the goods, copies of those notices were served on the said petitioners. The Court observed that if the said petitioners had any bona fide intention of resisting those proceedings or showing cause against those proceedings, they could have very well done so. It is not possible to deduce from that decision a general rule, as desired by Mr. Rege, that a pledgee is not entitled to a hearing in confiscation proceedings even when the adjudication authority is aware of the pledgee's claims before he passes an order of confiscation.

16. I must accordingly hold that the impugned order of confiscation was passed in contravention of the principles of natural justice and that the order must, therefore, be set aside. The rule is made absolute in terms of prayer (a) of the petition. The respondent will pay the costs of the petitioner Bank as taxed. Mr. Rege agrees that respondent No. 1 (or his successor in office) will issue a show cause notice to the petitioner Bank within two weeks from to-day and will complete the hearing of the case with all possible expedition, without prejudice, however, to the respondents' right to apply for a stay of those proceedings to the Court of Appeal, if so advised.