(1965) 05 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 751 of 1965

T.N. Mahajan APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 25-05-1965

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1965) 05 P&H CK 0001

Hon'ble Judges : P.D. Sharma, J

Bench : Single Bench

Advocate : Bhagirath Dass with Mr. S.S. Kang, for the Appellant; C.D. Dewan, for the Respondent

Final Decision : Allowed

Judgement

P.D. Sharma, J.—The facts relevant for the disposal of this writ petition under Articles 226 and 227 of the Constitution of India briefly stated are these. T.N. Mahajan is the sole proprietor of the firm styled as Messrs Mahajan Engineering Works, Ludhiana, and is carrying on the industry of manufacturing Panel Pins, Wire Nails and Cycle parts etc. His concern is registered as a "Small-Scale Industry" with the Director of Industries, Punjab. He requires raw material like H.B. Wire, tool alloy and diesteel, cold rolled bright strip and industrial scrap for running his industry. The import of certain raw materials is controlled under the provisions of the imports and Exports (Control) Act, 1947, and the Rules made thereunder. He was allowed import licences as actual user for the two periods October, 1959 to March, 196) and April, 1960 to September, 1960. It so happened that in the licence for the period April, 1960 to September, 1960, against the two items, namely cold rolled bright strip up to 10 inches and H.P. Wire 8G and thinner for the manufacture of machinery, wire nails, panel pins, reamers and sewing machine parts, Rs. 6,000/- were mentioned as the amount to which he could avail the foreign exchange (Annexure P.A.). Subsequently, he was granted amongst others also import licences (1) dated 23rd June, 1962, for

October, 1961 to March, 1962, (2) dated 2nd April, 1963 for April, 1962 to September, 1962, (3) dated 9th April, 1963, for October, 1962 to March, 1963, and (4) dated 19th November, 1963, for April, 1963 to September, 1963. Besides, he also succeeded in getting essentiality certificates from the Director of Industries, Punjab, for supplementary import licences for the periods, April, 1963 to September, 1963, and April, 1964 to September, 1964. The Director of Industries declined to grant him essentiality certificate for the period, October, 1964 to March, 1965. The petitioner applied to the Iron and Steel Controller respondent No. 2 on 17th May, 19c,2, to issue him a duplicate copy of the import licence No. SIC/IL/C/CLD/DI/PJB/609/l/60-61 dated 6th February, 1961 on the ground that he had not received the original thereof (Annexure P.E.). It may be stated here that the licence a duplicate copy of which was sought for by the petitioner in this application is annexure P. A. wherein he had been allowed foreign exchange to the tune of Rs. 6,000/- for the two items. The Iron and Steel Controller under an impression that the petitioner was trying to obtain a duplicate copy of an import licence which he had received and also utilised by misrepresentation, reported the matter to the police for investigation as a result of which a case u/s 420/(sic)11 of the Indian Penal Code was registered against him. The challan was put up before Shri P.K. Banerjee, Presidency Magistrate, II Court, Calcutta, who acquitted the petitioner. The State has gone in revision against this order which is pending in the Calcutta High Court. Th. Iron and Steel Controller respondent No. 2 on account of the above prosecution issued circular letter No. (sic)/64 dated 21st October, 1964, directing all the licencing authorities to keep in abeyance until further advice the petitioner''s applications for grant of an import/export licence, custom clearance permits, etc. Before the issue of this circular the petitioner had submitted his import licences (1) dated 23rd June, 1962, for October, 1961 to March, 1962, (2) dated 2nd April, 1963, for April, 1962 to September, 1962, (3) dated 9th April 1963 for October, 1962 to March, 1963, and (4) dated 19th November, 1963, for April, 1963 to September, 1963, for revalidation because he was not able to utilise them within the period prescribed. He had also submitted the essentiality certificate conveying supplementary recommendation for April, 1963 to September, 1963 and normal recommendation for the period April, 1964 to September, 1964, for the issue of import licences. The Assistant Iron and Steel Controller by his letter dated 13th December 1963, had asked the petitioner to return the import licence dated 19th November, 1963, for industrial scrap for Rs. 2,650/- without commitment for verification (Annexure P.R.). After the issue of the circular (Annexture P.V.) the action on the import licences submitted by the petitioner for revalidation and the essentiality certificates submitted for grant of import licences and the issue of essentiality certificate for the period, October, 1964 to March, 1965 was kept in abeyance. The petitioner alleged that the Iron and Steel Controller respondent No. 2 had no power under the law to issue the abeyance order dated 21st October, 1964, nor could such abeyance order be issued without affording him an opportunity of being heard. He also urged that the Iron and Steel Controller, the Deputy Chief Controller of Imports and Exports, and the Assistant Iron and Steel

Controller, respondents Nos. 2 to 4, had no jurisdiction to refuse to obey the orders passed by the Union of India respondent No. 1 and that respondent No. 2 after having issued import licences for the period subsequent to the period April, 1960 to September, 1960 had no power to recall those licences or to refuse to issue licences on the basis of the essentiality certificates granted by the Director of Industries, Punjab, respondent No. 5.

2. Respondents Nos. 1, 2 and 4 in their written statement maintained that respondent No. 2 could issue the letter keeping the action in abeyance on the revalidation of import licences already granted to the petitioner and the giant of future import licence on the strength of essentiality certificates granted by respondent No. 5 on account of the criminal proceedings pending against him in the Calcutta High Court. They also stated that it was not necessary for respondent No. 2 to give an opportunity to the petitioner to present his case before issuing the impugned circular letter (Annexure P.V.). They further pleaded that respondent No. 1 or respondent No. 2 at no stage issued directions to any authority to grant import licences to the petitioner. What they said was that his prayer for the grant of such import licences might be considered on merits.

3. The learned counsel for the petitioner contended that the impugned abeyance letter dated 21st October, 1964 (Annexure P.V.) in fact amounted to the suspension of the grant of licences which according to him could have been done by the Central Government or the Chief Controller of Imports and Exports and after the petitioner had been given a reasonable opportunity of being heard. He relied on clauses 8A and 10 of the Central Government Order No. 17/55 issued under sections 3 and 4A of the Imports and Exports (Control) Act, 1947, which run as under:

8A. The Central Government or the Chief Controller of Imports and Exports may suspend the grant of a licence to a licensee or an importer or any other person, pending investigation into one or more of the allegations mentioned in clause 8 without prejudice to any other action that may be taken against him in this behalf.

Provided that grant of a licence shall not ordinarily be suspended under this clause for a period exceeding twelve months.

Provided further that on the withdrawal of such suspension, a licence may be granted to him for the period of suspension subject to such conditions or limitations as may be decided by the authority aforesaid, keeping in view the foreign exchange position, indigneous production and other relevent factors.

10. No action shall be taken under clause 7 or clause 8 or clause 8A or clause 9 against a licensee or an importer or any other person unless he has been given a reasonable opportunity of being heard". The plain language of the above two clauses of the order no doubt supports the learned counsel for the petitioner''s case. The mere fact that the impugned order mentions that the action should be kept in abeyance and not under suspension does not improve the respondents''

case. The Oxford Dictionary gives the meaning of "abeyance" as "state of suspension". The learned counsel for the respondents was not able to refer me to any authority or circular which authorised the Iron and Steel Controller to suspend the grant of licences to the applicant like the petitioner. The language of clause 8A explicitly states that the Central Government and Chief Controller of Imports and Exports could suspend the grant of a licence to a licensee pending investigation into one or more of the allegations mentioned in clause 8 further, according to clause 10, the Central Government or the Chief Controller of Imports or Exports could suspend the grant of a licence to a licensee after he has been given a reasonable opportunity of being heard. The Supreme Court while considering the phraseology of clause 9(a) which provides for cancellation of licences, in the case of Messrs Fedco (P) Ltd. and another v. S.N. Bilgrami AIR 1963 S.C. 415, observed:

Provision in clause 9(a) that a licence granted under the Order may be cancelled, if it. is found, after giving a reasonable opportunity to the licensee to be heard to have been obtained by fraud or misrepresentation is a reasonable restriction in the interests of general public on the exercise of the fundamental right of a citizen guaranteed under Art 19(l)(f) and (g) of the Constitution.......

Clause 10 of the Order mentions clauses 7, 8 and 8A like clause 9. The Supreme Court in the above case points out that a licence once granted can be cancelled for specified reasons but this can be accomplished after giving a reasonable opportunity to the licence of being heard, Consequently, the grant of a licence etc to the petitioner could not have been suspended or kept in abeyance even by the competent authority without giving him a reasonable opportunity of being heard which in this case evidently has not been done. I would not like to go into the merits of the impugned order because the competent authority will have to go into it after hearing the petitioner.

4. For the reasons given above, the writ petition is allowed to the extent that the impugned abeyance circular No. 5/64 dated 21st October, 1964 (Annexure P.V.) issued by the Iron and Steel Controller respondent No. 2 is quashed. The respondents are directed to deal with the petitioner''s prayer for revalidation of the import licences already granted to him and the grant of fresh import licences on the basis of essentiality certificates allowed by respondent No. 2 and the issue of essentiality certificate to him by respondent No. 5 for the period, October, 1964 to March, 1965 according to law. The parties in the circumstances of the case are left to bear their own costs.

