

(1999) 04 CAL CK 0046

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction Original Side A.P.O.T. No. 74 of 1999 with
G.A. No. 427 of 1999 with W.P. No. 2381 of 1998

Union of India and Others

APPELLANT

Vs

Shashi Deo Jha

RESPONDENT

Date of Decision : 26-04-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 226
Customs Act, 1962 — Section 108, 129, 129(1)
Customs House Agents Licensing Regulations, 1984 — Regulation 13, 14, 17, 18, 19
Forest Act, 1927 — Section 3, 5, 5A, 5A(1)
Industrial Disputes Act, 1947 — Section 33B, 33B(1)
Unlawful Activities (Prevention) Act, 1967 — Section 3(1), 3(3), 4

Citation : (2000) 1 CALLT 537 : (1999) 66 ECC 640 : (1999) 113 ELT 385

Hon'ble Judges : Satyabrata Sinha, J; Samarendra Nath Bhattacharjee, J

Bench : Division Bench

Advocate : Mr. S.K. Kapoor, for the Appellant; Shibdas Banerjee, for the Respondent

Judgement

S.B. Sinha, J.—This appeal is directed against a Judgment and order dated 4th January, 1999 passed by a learned single Judge of this court whereby and whereunder the writ petition filed by the 1st respondent herein questioning an order of suspension dated 10.8.98 as contained in Annexure "H" to the stay application was allowed.

2. The 1st respondent is having a Customs House Agents Licence upon passing an examination framed under Rule 8 of the Customs House Agents Licensing Regulation, 1984 (hereinafter referred to and called for the sake of brevity of "said regulation"). He was carrying on his business under the name and style of "Jha Shipping Agency". According to him, owing to age and health problem he was not individually capable to manage the said business and, thus, in or about January, 1996 executed a power of Attorney in favour of his son Sanjib Jha as a result whereof he had authorised him to sign Customs Bills of Entry and Shipping

Bills and all other documents on behalf of the licensee In connection with the said business. The said Sanjib Jha was also authorised to open a Bank Account for the said purpose. Allegedly the said Sanjib Jha also appeared in the examination conducted under Rule 9 of the said regulation and was granted "A-Class Licence" having succeeded in the said examination. It is stated that various transactions were entered into by the aforementioned Sanjib Jha in the years 1987-88 with regard where to the 1st respondent was not informed.

3. He, however, received the Impugned Memo dated 10.8.98 in terms whereof he was informed that his licence bearing No. J-18 issued in favour of Jha Shipping Agency has been suspended with immediate effect in contemplation of an enquiry against the said concern.

4. The learned trial Judge had gone into the merit of the matter and found that a few charges had already been dropped subsequently. According to the learned trial Judge keeping in view the subsequent events, held that the reliefs prayed for require to be moulded and directed :-

"Thus, unless within seven days of issuance of authenticated copies of this dictated order an enquiry against the writ petitioner is put afoot under or in relation to Regulation 23 of the Customs House Agents Licensing Regulation, 1984 as relating to the suspension Memorandum dated 10.8.98, the order of suspension made thereby of the Customs House Agent's License No. J-18 of M/s. Jha Shipping Agency shall be quashed and rendered inoperative permanently and for ever.

In case such enquiry is commenced parties will be at liberty to take further steps in accordance with law, but if and only the strict time schedule of seven days mentioned above is adhered to."

5. Mr. Kapoor, the learned senior counsel appearing on behalf of the appellant, inter alia, submitted that Regulation 21 (2) which contains a non-obstante clause, empowers a Collector to suspend a licence of a Clearing Customs Agent where an enquiry is pending or contemplated. The learned counsel submitted that in terms of sub-regulation (8) of Regulation 23 an appeal lies against an order passed thereunder before the Customs and Central Excise Gold (Control) Appellate Tribunal established u/s 129(1) of Customs Act, 1962. The Counsel submits that it is not for this court to consider as to whether the charges were right or wrong. The learned Counsel further submits that the question as to whether an immediate action is necessary or not depends upon the satisfaction of the authorities and the same can be subject matter of a judicial review only in exceptional situation.

6. Our attention has been drawn to the fact that as the enquiry is to be conducted in respect of various transactions which had inter alia, taken place in Ahmedabad, Gandhidham and Bombay, the Commissioner of Customs, Calcutta is not in a position to collect all the Informations so as to initiate a proceeding in terms of Regulation 23 of the Regulation. In this connection our attention has

been drawn to a letter dated 14.12.1998 which is contained in Annexure "B" to the stay application for the purpose of showing that Sanjeev Jha had not been responding to the summons issued to him nor had he been co-operating with the investigating officer although his role as co-conspirator has prima facie been established but the enquiry could not be completed. It has been pointed out that even the summonses issued upon the said Sanjeeb Jha had been subject matter of a writ application pending before the Calcutta High Court. In any event, contends Mr. Kapoor, that a bare perusal of memorandum dated 10.8.98 would clearly demonstrate that sufficient reasons had been assigned to show that there existed a ground for suspension of the licence.

7. Mr. Shibdas Banerjee, the learned Counsel appearing on behalf of the respondents, on the other hand, submitted in the Instant case that the plea of existence of alternative remedy had not been raised before the learned trial Judge by the Appellants herein although an affidavit-in-opposition had been filed on or about 21.12.1997. The learned Counsel pointed out that alleged pendency of an enquiry against the writ petitioner or his son has got nothing to do with the violation of the conditions of licence as contemplated under Regulation 14 of the said Regulation. It has further been submitted that as "immediacy of action" is required to be taken by suspending the licence, such an order must be supported by reasons recorded therefore and a bare perusal of the order would clearly show that neither any reasons has been assigned nor any materials has been brought on records before this court. The learned Counsel in support of the aforementioned contention has placed strong reliance upon *East West Freight Carriers (P) Ltd. Vs. Collr. of Customs, Madras*, , *M/s. N.C. Singha and Sons and Another Vs. Union of India and Others*, and *Jose and Others Vs. State of Kerala*, . The learned Counsel submitted that although the Impugned judgment has been passed on 4.1.99 directing the appellants to initiate a proceeding within seven days, no action has been taken pursuant thereto and this appeal has been filed only on 4.2.99. It was obligatory on the part of the Appellants, contends Mr. Banerjee, to take Immediate steps to comply with the court's order.

8. Before advertng to the questions raised by the learned Counsel for the parties it is necessary to consider the relevant provisions of the Regulations.

9. Regulation 14 enumerates the obligations of Customs House Agent. The licence is not transferable in terms of Regulation 13. Regulation 17 provides for change in constitution of a firm or a company. Regulation 18 provides for engagement of persons qualified in the examination referred to in Regulation 9. Regulation 19 enjoins a duty upon the licensee to maintain accounts in the manner prescribed therein. Regulation 20 provides for employment of persons. The said provisions clearly envisage that a licensee must be a person of integrity and it is expected that his dealings in the matters with the customs authorities vis-a-vis his client must be fair. He in one sense, is an officer of the Customs Department and not merely an agent of his clients.

10. Regulation 21 provides for suspension or revocation of licence. Such

suspension of licence in terms of Regulation 21 is contemplated by way of punishment. However, sub-regulation (2) contains a non-obstante clause, in terms whereof such a licence can be suspended where an enquiry is pending or contemplated.

11. Regulation 23 provides for procedure for suspending or revoking licence under Regulation 21. Sub-regulation (8) of Regulation 23 provides for an appeal.

12. There cannot be any doubt that in terms of the aforementioned provision an appeal before the Customs and Central Excise God (Control) Appellate Tribunal was maintainable.

13. In view of existence of such an alternative remedy the learned trial Judge could have refused to exercise its discretion inasmuch as it is well known that the court may not entertain any writ application where there exists an alternative remedy which is an efficacious one. However, normally there are three exceptions to the said rule as has been pointed out by the Apex Court in Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, in the following terms :--

"Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon Itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its Jurisdiction. But the alternative remedy has been consistently held by this court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural Justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act Is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

14. Had such an appeal been filed, the Appellate Court could have considered the matter on merit. The appeal is continuation of original proceedings. See The State of Punjab and Others Vs. Bakshish Singh, . Be that as it may keeping in view the fact that in the Instant case a question has been raised that by passing the impugned order the Commissioner has exceeded his Jurisdiction and further in view of the fact that the writ petition has been heard on merits, this court is of the opinion that it would not be proper to ask the writ petitioner-appellant to avail alternative remedy at this stage in view of the decision of the Apex Court in L. Hirday Narain Vs. Income Tax Officer, Bareilly, .

15. There cannot be any doubt whatsoever that when an order under Sub-Regulation (2) of Regulation 21 is passed, reasons as regard expediency of suspending the licence Immediately are required to be recorded.

16. Reference in this connection may be made to Collector of The Collector of Monghyr and Others Vs. Keshav Prasad Goenka and Others, , Associated Electrical Industries (India) Private Ltd., Associated Electrical Industries (India) Private Ltd., Calcutta Vs. Its Workmen, , Vasant D. Bhaosar v. Bar Council of India & Ors. reported in 1991 (1) SCC 45, M/s. N.C. Singha and Sons and Another Vs. Union of India and Others, , Smt. Charanjit Kaur Vs. Union of India and others, .

17. In The Collector of Monghyr and Others Vs. Keshav Prasad Goenka and Others, , the apex court while considering the provisions of section 5A of the Forest Act held that even for exercising and emergent situation, reasons have to be recorded. The Apex Court laid down the law in the following terms :--

"There are two matters, which though somewhat Inter-related and nevertheless distinct and separate. One is conclusion or finding of the Collector that the state of circumstances set out in section 5A(1) exists, and the other the reasons why and the grounds upon which the Collector reaches that conclusion that in the circumstances existing in a particular case it cannot brook the delay which the resort to the normal procedure of notice and enquiry for which provisions is made by sections 3 to 5 should be departed from.

The other submission was that several of the orders u/s 5A were passed before the Constitution and that as the Constitution was not retrospective the High Court could not exercise the jurisdiction which was for the first time conferred on it by Article 226 of the Constitution in respect of orders passed before January 26, 1950. It is not disputed that all the several demands which were quashed were made after the Constitution. For the reasons for which we have rejected the submission Just now dealt with the argument in the present form must also be repelled."

18. The said principle has again been reiterated in Associated Electrical Industries (India) Private Ltd., Associated Electrical Industries (India) Private Ltd., Calcutta Vs. Its Workmen, wherein the apex court has laid down the law in the following terms :--

"The orders of transfer have been made u/s 33B of the Industrial Disputes Act, 1947. This section has been enacted in 1956 and it provides inter alia that the appropriate Government may by order in writing and for reasons to be stated therein withdraw any proceedings under this Act, pending before an Industrial tribunal and transfer it for disposal to another industrial tribunal. The argument is that though the appropriate Government was competent to transfer the proceedings it could exercise its power only after complying with the requirements of section 33B. and one of the requirements of the said section is that before making the order of transfer the appropriate Government must record reasons for the same. When we turn to the orders by which the reference was withdrawn from one industrial tribunal and transferred to another, we find that there is no reason mentioned in any of them. All that the orders purport to

say is that it is expedient to withdraw the reference from one tribunal and transfer it to another. In our opinion, the said bare statement made in the orders by which the proceedings are withdrawn from one tribunal and transferred to another does not amount to a statement of reasons as required by section 33B(1). It is quite clear that the requirement about the statement of the reason must be complied with both in substance and in letter. To say that it is expedient to withdraw a case from one tribunal and transfer it to another repeatedly on these occasions in respect of the same proceedings is not to give any reason as required by the section. Normally, when an Industrial dispute is referred to an Industrial Court or tribunal, and so the power of transfer can be exercised only for sufficient reasons. In the circumstances of this case we are not prepared to hold that any reasons have been stated as required by the section, and so the orders of transfer cannot be held to be Justified u/s 33B(1). In view of this Infirmary in the orders it is conceded that the decision of this Court in Bengal Chemical and Pharmaceutical Works Ltd., Calcutta Vs. Their Workmen, , would not assist the respondents."

19. In Vasant D. Bhavsar Vs. Bar Council of India and Others, , the Apex Court stated that the quasi Judicial authorities must pass a speaking order indicating the materials, on which their conclusions are based.

20. In Naga People's Movement of Naga People's Movement of Human Rights Vs. Union of India (UOI), , the Apex Court has held that even while passing an order of sanction in terms of section 6 of the Armed Forces (Special Provisions) Act, 1958, in view of the fact that such an order is subject to Judicial review, the Central Government is required to record reasons.

21. In M/s. N.C. Singha and Sons and Another Vs. Union of India and Others, a division bench of this court construing the provision of Regulation 21(2) of the Customs House Agents Licensing Regulations, 1984 which conferred power upon the Commissioner to suspend a licence where an enquiry against an agent is pending or contemplated held :--

"A perusal of the order dated 9th June, 1998 passed by the respondent No.2 clearly suggests that the power under Regulation 21(2) was resorted to apparently without spelling out in the Impugned order as to whether any Immediate action was necessary so as to suspend the licence of the appellants with immediate effect. Undoubtedly a plain reading of the Regulation 21(2) clearly stipulates that the requirement to take immediate action is a sine qua non to the suspension of a licence under Regulation 21(2) because such suspension is not by way of any punishment, as is contemplated by Regulation 21(2), but is required to cater to a situation warranting Immediate action. The purpose of resorting to immediate suspension of a licence because of some immediate action is to immediately stop the activities of the clearing agent so as to disable him from taking any further action in the matter since, under a particular situation and under some given set of circumstances, the requirement of immediate action may demand that the clearing agent may be Immediately

required to be prevented from working any further. The minimum that is required by the Commissioner to enable him to exercise such power Is the spelling out of the circumstances in the order warranting the need to take such immediate action and to actually say that Immediate action is indeed required in the matter. What we see from the impugned order dated 9th June, 1998 is that the expression "immediate action" itself is missing."

22. Yet again in Smt. Charanjit Kaur Vs. Union of India and others, , Sawant, J, speaking for the division bench while construing the provision of proviso appended to sub-section (3) of section 3 of the Unlawful Activities (Prevention) Act. 1967 held :--

"The proviso vests the Central Government with a power to declare an organisation unlawful with immediate effect. This mans that all its activities come to an end the moment the notification is Issued u/s 3(1). even without waiting for the due adjudication of the Tribunal u/s 4. It has obviously a situation in mind which cannot brook delay and await the outcome of the adjudication. The proviso, therefore, envisages a situation which has to be remedied urgently and cannot be met except by putting an end to the activities of the organisation with Immediate effect. The legislative Intention to that effect Is also clear otherwise. The proviso requires firstly that the Government must be of opinion (i) that circumstances exist which render it necessary for the Government to declare the association to be unlawful with Immediate effect and (II) the reasons for such declaration must be stated in writing. The language of the said proviso is different from the language of sub-section (1) of section 3 which merely states that the Government has to be of opinion that any association is or has become an unlawful association. The very fact further that the legislature has provided a machinery in the form of the tribunal to hold a full fledged inquiry to adjudicate on the issue whether the notification issued u/s 3(1) should be confirmed or cancelled, shows that the legislature has intention to banning an organisation and its activities without giving it due opportunity to show cause and represent its case fully."

23. There cannot, therefore, be any doubt that while passing such an order not only reasons are required to be recorded but the said order must prima facie show that there has ben an application of mind and existence of sufficient reasons for passing such order as the same does not contemplate following of any detailed procedure and not even compliance of the principles of natural Justice.

24. There cannot, however, be any doubt that once the court exercising its power of Judicial review, is satisfied that the order does not suffer from total non-application of mind nor it is a non-speaking one, it may refrain Itself from going Into the merit of the matter.

25. The order dated 10.8.98 reads thus :--

"Whereas over the past few years the activities of M/s. Jha Shipping Agency and

particularly Shri Sanjeeb Jha of the aforesaid CHA have come to the adverse notice of Directorate of Revenue Intelligence, Calcutta Zonal Unit. In a number of cases booked by DRI the subject CHA and In particular Shri Sanjeeb Jha has been found actively involved in the conspiracy with the importer for fabrication and forgery of import documents, clandestine disposal of the Imported material and in evasion of duty payable under the Customs Act." Whereas the latest involvement of M/s. Jha Shipping Agency and Shri Sanjeeb Jha @ Pappu Jha has been revealed in the course of an investigation undertaken by DRI, Calcutta, In coordination with their co-regional Branch at Mumbai and Ahmedabad into the import scam worth several crores of rupees organised by M/s. More Group of Companies, where duty free clearances of goods were effected on the strength of forged advance licence/DEEC book. In the instant case, Shri Sanjeeb Jha has been arrested by DRI, Ahmedabad on 03.07.98 and even Gujarat High Court at Ahmedabad has reportedly rejected his bail application after perusal of the records of Investigation which reveal the direct Involvement of Shri Sanjeeb Jha of M/s. Jha Shipping Agency.

Whereas Shri Sanjeeb Jha's Involvement was observed in the case of import of Pure Vitamin with Intent to evade Customs Duty by attempting to clear the assignment against advance licence/DEEC book for Vitamin mixes. Both the above mentioned cases were In the year of 1998. Whereas Shri Jha's another involvement was found in a case of 1997 where DRI detected DEEC diversion of duty free goods by M/s. Bombay Hand looms.

Whereas in two cases under DRI file No. 46/Cal/APP/98 and 87/Cal/ APP/98 for Importation of raw silk by M/s. Swastik International and importation of Copper scrap by M/s. V.M. Metals India, respectively, Shri Sanjeeb Jha of M/s. Jha Shipping Agency has been prima facie found to be involved with the importer in the illegal activities leading to the evasion of duty over Rs. 45 lakhs.

Whereas from the written statement of Subhash Hari Berde, an employee of M/s. Vishal Exports Overseas Limited, Bombay and Ahmedabad before DRI officers recorded u/s 108 of Customs Act, 1962 on 11.03.98, it is seen that Shri Berde has confessed that Pappu Jha @ Sanjeeb Jha had given him the copy of forged invoice which was submitted along with the Bill of Entry for clearance of the consignment of Vitamin imported by their company, Vishal Exports Overseas Ltd. He has also admitted that the documents were manipulated with a view to clearing the vitamin free of duty and this manipulation was done by their company on the advice of the Custom House Agent.

Whereas Shri Sanjeeb Jha, the employees of M/s. Jha Shipping Agency in his written statement recorded by DRI officers u/s 108 of Customs Act, 1962 on 09.01.98 has confessed that the clearance of goods of raw silk of M/s. Bombay Hand looms Pvt. Ltd. was undertaken on the basis of verbal instruction of the Importer.

Whereas from the prima facie investigation it is brought to light that M/s. Jha

Shipping Agency in connivance with the Importers took active part in manipulation of import consignments resulting in loss of huge Government Revenue.

Whereas it appears that aforesaid person namely Shri Sanjeeb Jha and the Custom House Agent M/s. Jha Shipping Agency, 15/1, Strand Road, Clearing Agent's Hall, Custom House, Calcutta-700 001 have failed to discharge their responsibilities/obligations cast on them under Regulation 14 of Custom House Agent's Licensing Regulation, 1984 amounting to gross misconduct within the meaning of the aforesaid Regulation.

Whereas an enquiry against the aforesaid M/s. Jha Shipping Agency, the said Sanjeeb Jha is contemplated in exercise of powers vested in me under Regulation 21(2) of the Custom House Agent's Licensing Regulation, 1984, this being an appropriate case where Immediate action is necessary as because the said CHA M/s. Jha Shipping Agency has violated the provision of Regulation and the CHA M/s. Jha Shipping Agency and Shri Sanjeeb Jha may cause similar offence of serious nature causing loss of Government Revenue. I hereby order suspension of the Custom House Agent's Licence No. J-18 of M/s. Jha Shipping Agency with immediate effect."

26. It is true, as has been found by the learned trial Judge, that two of the charges had later on been dropped but it is also equally well settled that only because a part of the order is based on Irrelevant materials, in the event, the order can be sustained on the basis of other materials placed on records, which were sufficient for passing the order, the same may not be interfered with.

27. A bare perusal of the order dated 10.8.98 would show that serious charges had been levelled against the writ petitioner-respondent. The second paragraph of the order contains the latest involvement of the writ petitioners as also his son. It has further been noticed that Sanjeeb Jha was arrested and even his bail application had been rejected by the Gujarat High Court. As Indicated hereinbefore at once point of time, if not now, Sri Sanjeeb Jha had not been co-operating with the customs authorities in the matter of enquiry.

28. The order of suspension has been passed upon taking into consideration the transactions made both in the year 1997 and 1998. Instances of 1998 cases had been cited and the impugned order has been passed on 10.8.98. In this situation, it cannot be said that there did not exist any materials whatsoever nor the impugned order suffers from non-recording of reasons nor does it show that there has been a total non-application of mind on the part of the authorities concerned. An order of statutory authority and that too when a notice is Issued at a primary stage can be Interfered by a writ court only on limited grounds. It is not for this court to enter into the merit of the matter and unless it is found that the order is wholly irrational and suffers from the vice of "Wednesbury" Unreasonableness, the same should not be interfered with.

29. In this view of the matter we agree with Mr. Kapoor that there existed

sufficient reasons for Issuing the Impugned order. However, that does not mean that an order of suspension of a licence which has a direct bearing on the livelihood of the agent shall be allowed to continue Indefinitely. A statutory authority while exercising its discretionary power, must not be permitted to active a goal indirectly which he cannot achieve directly.

30. Furthermore, a discretionary power has to be exercised on sound legal principles and reasonably, such a power cannot be exercised on whims or caprice. A reasonable exercise of power by a statutory authority should satisfy the test of reasonableness as adumbrated under Article 14 of the Constitution of India which would embrace within its fold taking of action by initiation of a proceeding within a reasonable time. In this age, whence communications can be exchanged in seconds from one corner of the world to other, it is inconceivable that materials gathered by the authorities concerned, could not be supplied to the Commissioner of Customs, Calcutta despite expiry of a period of eight months from the date of Issuance of the said order.

31. In the Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, , It has been held :

"There is thus no doubt that the High courts in India exercising their Jurisdiction under Article 226 have the power to Issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on Irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of Its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority and in a proper case, in order to prevent Injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

32. Keeping in view the fact that the learned trial Judge has passed the order under Appeal as far back as on 4.1.99, we are of the opinion that a proceedings may be initiated in terms of Regulation 23(1) as early as possible. Sub-Regulation (2) of Regulation 21 provides for an interim suspension even during pendency of an enquiry. It is now well known even in service jurisprudence where an employee during the period of suspension is provided with subsistence allowance that an order of suspension should not be allowed to continue for long time. In that view of the matter and keeping in view the fact that the livelihood of the petitioner is affected by reason of the impugned order, we agree with the

view of the learned trial Judge that the reliefs may be moulded by the courts- We, however, in modification of the order passed by the learned trial Judge, direct that a proceeding must peremptorily be Initiated within a period of one month from date, falling which the order of suspension shall stand revoked. Even if such order of suspension stands revoked, it goes without saying that it would be open to the appellant to initiate appropriate proceeding and take appropriate steps as against the writ petitioner if any occasion arises therefore in accordance with law.

This appeal is disposed of with the aforementioned directions but in the facts and circumstances of this case, there will be no order as to costs.

S. N. Bhattacharjee, J.

33. I agree.

34. Appeal disposed of