
(1991) 09 DEL CK 0028

In the Delhi High Court

Case No : Letter Patent Appeal No. 3 of 1988

Union of India

APPELLANT

Vs

Ajanta Tubes Ltd. and Others

RESPONDENT

Date of Decision : 13-09-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1991) 45 DLT 624

Hon'ble Judges : Sunanda Bhandare, J;Chander Mohan Nayar, J

Bench : Division Bench

Advocate : Madan Lokur, G.L. Rawal and Neerja Mehra, for the Appellant;

Judgement

C.M. Nayar, J.

(1) This Letters Patent Appeal is directed against the judgment of the learned Single Judge in Civil Writ No. 2564/84 dated October 27, 1987. The learned Single Judge disposed of two other writ petitions bearing No. 1537/85 and 2169/85 as common questions were involved In all these petitions with regard "to the applicability of Clause 6 of Imports (Control) Order, 1955 (herein-after referred to as the Order). The challenge in all the petitions related to the debarment order dated 17.2.1984 read with debaring circular dated 2.3.1984 and the consequential letters issued by the appellants herein.

(2) The brief facts relating to the matter in controversy are already referred to in the judgment of the learned Single Judge and it will suffice to state that M/s. Jain Sudb Vanaspati Co. Ltd. imported certain amount of Beef Tallow. A show cause notice dated 14.11.1983 was issued to the said Company. The operative portion of the said show cause notice may be reproduced as follows :-

"THEREFORE,in exercise of the powers vested in me, under Clause 8 (g) of the Imports (Control) Order, 1955, as amended, I hereby direct you in terms of Clause I Oof the said Order to show cause by 30th November, 1983. why action should not be taken against you/your directors under Clause 8 (i)(g) for having

committed breach of Clause 3 (i) of the Imports (Control) Order, 1955, as amended and why you and your directors should not be debarred from importing any goods through S.T.C., M.M.T.C. or any other similar agency."

M/s. Jain Sudh Vanaspati Co. Ltd. replied to the said show cause notice and was provided hearing. The Deputy Chief Controller of Imports & Exports passed an order on 17.2.1984 debaring M/s. Jain Sudh Vanaspati Co. Ltd, and its 9 directors from importing any goods and from receiving import licenses/ CCPs and allotment of imported goods through S.T.C, M.M.T.C. and other similar agencies. The order also mentioned that the provisions of Clause 6 (d) (dd) and (e) of the Imports (Control) Order will also be applicable to this case. It was further stayed that in case M/s. Jain Sudh Vanaspati Co. Ltd. and the directors were not satisfied with the above debarment order, they might file an appeal under Clause 10 (2) of the Order to the Competent Authority i.e. Addl. Chief Controller of Imports & Exports, Udyog Bhawan, New Delhi, within 45 days from the date of communication of the order.

(3) The natural effect of the debarment order dated 17.2.1984 was that the three Companies who had some of the Directors common to M/s. Jain Sudh Vanaspati Co. Ltd. were also debarred from getting any import license, under Clause 6 of the said order on the ground that some of the directors were common as they were also the directors of M/s. Jain Sudh Vanaspati Co. Ltd. The learned Single Judge further noted that the appellants went to the extent of informing the banks dealing with the Companies and instructed them not to open any L C S for Import of goods and also issued circulars to the various agencies without specifically mentioning the names of the Companies or its directors. The consequences of this order and the various letters has been that the working of the Companies had been prejudiced to a great extent. The said Companies which were effected by the order were M/s. Ajanta Tubes Ltd. (respondents herein), M/s. Jain Tubes Co. Ltd. and M/s. Jain Brothers.

(4) The respondent herein and the other two Companies filed writ petitions in this Court under Article 226 of the Constitution of India. The said petitions were allowed by the learned Single Judge by means of a common order of October 27, 1987. The learned Single Judge held that the petitions had to succeed on the short ground that principles of natural justice had been violated and the impugned order suffered from non-application of mind.

(5) The appellants felt aggrieved by the order of the Single Judge and filed L.P.A. Nos 3,4 and 5 of 1988. L.P.A. No. 4 of 1988 related to the Company M/s. Jain Tubes Co. Ltd. and L.P.A. No. 5/88 related to the Company M/s. Jain Brothers, These two Letters Patent Appeals were dismissed by the Division Bench of this Courts in liming on 1.9.1988 after hearing both the parties. The order reads as follows :-

"WE find no ground to interfere Dismissed."

It was submitted by the learned Counsel for the respondents that this appeal

(i.e-. L.P.A. No. 3/88) was admitted because an appeal was filed by the respondents before the Joint Controller of Imports & Exports. Learned counsel submitted that the appeal is now not pending and is withdrawn.

(6) It was admitted that neither any show cause notice had been issued nor any bearing had been provided to the respondent Company or its directors for invoking the provisions of Clause 6. The contention that the statute does not provide for such notice or bearing and where-over the legislature has intended for hearing it has said so in the - statute itself was rejected by the learned Single Judge. The argument that the legislature thought it fit to comply with the rules of natural justice while passing an order under Clause 8 of the order and as such provided for it in Clause 10 and there was no provision in the order for affording any such opportunity when an action has to be taken under Clause 6 of the Order was also negated by the Single Judge. It was held that the silence of a statute has no exclusionary effect except where it flows from necessary implications. The learned Judge relied on various judgments of the Supreme Court including the case of *Swadeshi Cotton Mills Vs. Union of India (UOI)*, and *Liberty Oil Mills and Others Vs. Union of India (UOI) and Others*, and came to the conclusion that principles of natural justice had been violated.

(7) We are inclined to agree with the reasoning of the Single Judge that the principles of natural justice had been violated and there was non application of mind. The Hon''ble Supreme Court in the later decision also noticed as referred by the Single Judge that although clause 8-B of the Order did not specifically provide for an opportunity of personal hearing but while interpreting the said clause it was held that the consequences were rather serious and in this situation it was necessary to provide a predecisional hearing and in any case atleast a post-decisional hearing.

(8) We may also refer to the Guide Lines Issued by the Govt. of India, Ministry of Foreign Trade and Supply which are already referred in the judgment of the Single Judge and they have been rightly interpreted that a reading of the said Guide Lines make" it absolutely clear that before applying clause 6 of the Order it is to be found as to whether the firm or company has substantially benefitted from the offences committed by the accused party and as to whether a director or a partner is a major accused and has a controlling interest in the affairs of the associated company. These findings cannot possibly be recorded without hearing the party to which the provisions of clause 6 of the Order are being made applicable. There is no infirmity and illegality in the said findings of the Single Judge. It will also M against the principles of natural justice to debar the other companies which were associated with the accused company, " particularly when, the said companies were engaged entirely in different trade than the one being carried on by M/s. Jain Sudh Vanaspati Co. Ltd. without providing an opportunity to show cause and for effective hearing before making the provisions of clause 6 of the Order applicable to them. The debarment order dated 17.2.1984, Therefore, cannot be sustained and the learned Single Judge rightly

allowed the three writ petitions. It may also be noticed that the other Letters Patent Appeals No. 4 and 5 of 1988 which impugned the same order have already been dismissed by a Division Bench of this Court.

(9) There is no merit in this appeal and the same is dismissed accordingly. There shall be no order as to costs.