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(1993) 09 P&H CK 0098

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 1325 of 1982

Union of India APPELLANT

Vs

Ved Paul Anand RESPONDENT

Date of Decision : 13-09-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Imports and Exports (Control) Act, 1947 — Section 4(I), 5
Partnership Act, 1932 — Section 25, 27

Citation : AIR 1994 P&H 133

Hon'ble Judges : S.D. Agarwala, C.J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Mr. Viney Mittal, for the Appellant; Mr. S.S. Nijjar Mr. G.S. Bajwa and Mr. Ajaj Mittal, for the Respondent

Judgement

Jawahar Lal Gupta, J.—The Chief Controller of Imports and Exports Vide his order dated June 4, 1980 (Annexure P. 7) imposed "a penalty of Rs. 20.00 lacs (Rs.Twenty lacs) jointly on the firm and/or its proprietors directors etc. u/s 4-1 of the Imports and Exports Control Act and also debar the firm and its partners from receipt of import licence/imported goods etc. for a period of 10 years under Clause 8 of the Imports Control Order." In pursuance to this order, a circular dated June 12, 1980 was issued whereby Ved Paul Anand, the respondent, was debarred from the grant of import licences etc. He served a notice on the Chief Controller on March 14, 1981 requesting that his name be deleted from the circular as he had ceased to be a partner of M/s. Oriental Industrial Corporation, Mohali with effect from April 15, 1977. This request having been declined vide orders dated April 18,1981 (Annexure P-9), the respondent filed a writ petition in this Court challenging the action of the Chief Controller inasmuch as he had been debarred from the issue of import licences. In the writ petition, the respondent specifically averred that the "petitioneria not challenging the order (Annexure P. 7) passed by the respondent, so far as the imposition of penalty is concerned." This writ petition was admitted by the Motion Bench on June 4, 1982. Vide judgment dated September 6, 1982. The learned single Judge allowed the writ petition and quashed the impugned orders at Annexures P. 7 & P. 9 and issued a writ of mandamus to the respondent to delete the name of the petitioner from circular dated June 12, 1980. Aggrieved by this judgment, the Union of India has filed the present appeal. A few facts may be noticed.

2. The respondent was one of the three partners of M / s. Oriental Industrial Corporation, Mohali (hereinafter referred to as ''the firm''). The other two partners were S/Sh. Surinder Kumar Anand and Walaili Ram Chadha. The respondent claims that he remained a partner of the firm till April 15, 1977 when he had retired from the partnership. A copy of the dissolution deed was sent to the Register of the Firms on Sept. 1, 1977. Information was also conveyed to the Director of Industries and the Income Tax Officer, Rupnagar.

3. On July 1, 1977, the premises of the firm were inspected with a view to check up the proper utilisation of the goods imported by it under the category of "actual users and under registered exporters policy......" The Manager of the Unit, who was present, was unable to produce the documents/ records showing use of the import licencses and utilisation of the imported goods. When the records were not produced for almost two years, the appellant served a notice dated May 28, 1979 giving the complete sequence of events and calling upon the firm to cause as to why penalty be not imposed upon it and it be not debarred from the receipt of licenses and allotment of imported goods. The firm was also called upon to furnish certain information including "the full names and full addresses of proprietors, partners/ directors." The firm was called upon to appear for personal hearing on October 27, 1979, December 3, 1979, Februarys, 1980. March 18, 1980, May 13, 1980 and June 2, 1980. Every time request for adjournment was made. Even the records asked for were not produced. Accordingly, the authority proceeded to decide the matter "on the basis of the documents, registers etc. already furnished by the firm." It found that:--

(i) the firm has failed to produce consumption registers in respect of imported goods worth Rs. 50.50 lacs under 57 licenses/R.Os;

(ii) a substantial labour force would be required to utilise the huge quantity of raw-materials worth Rs. one crore, the landed cost of which would be almost double that amount. In spite of being repeatedly asked to produce its wages/ employment registers, "the frim has failed to produce a single document showing the employment of workers and payment of wages to them;"

(iii) use of such a vast quantity of imported raw-material also entails substantial consumption of electricity. In spite of repeated requests, the firm had failed to produce any document regarding payment of electricity bills;

(iv) use of such a vast quantity of imported raw-materials should have resulted in manufacture of end products worth few crores of rupees. The firm was repeatedly requested to produce sale vouchers for such a huge a turn over. The failure of the firm to prodce any sale documents "confirm the belief that it had

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really not utilised the imported raw-materials for genuine purposes;"

(v) sale of such a huge amount of manufactured goods would have even involved payment of sales tax. The firm was repeatedly requested to furnish documents regarding payment of sales tax but it had failed to produce a single document in this respect.

4. In view of the above, the authority concluded that the firm had misused the imported goods which was in violation of Section 4(1) of the Imports (Control) Orders, 1955 punishable by imposition of a penalty as well as by way of debarment from receipt of import licences, imported goods etc. As a result it decided to impose a penalty of Rs. 20.00 lacs and to debar the firm as also its partners from the receipt of import licences/ imported goods etc. for a period often years. In pursuace to the above order, a copy of which has been produced on record as Annexure- P-7, the Chief Controller issued a circular dated June 12, 1980 whereby the respondent along with others was debarred from the issue of import licences etc. The present respondent served a notice after the lapse of about 9 months on the Chief Controller informing him that he had ceased to be a partner of the firm with effect from April 15, 1977 and, therefore, his name may be deleted from the circular. This request was declined on the ground that the respondent was "a partner of the firm M/s. Oriental Industrial Corporation, Mohali (near Chandigarh) when the alleged offences were committed." A copy of the order dated April 18, 1981 has been produced on the record as Anncxure P-9.

5. On May 5, 1981, the respondent filed Civil Writ Petition No. 2044 of 1982. It came up for hearing before the Motion Bench on May 6, 1982. The Bench directed the issue of notice of motion for June 3, 1982. On May II, 1982, an amended petition was filed. Vide order dated May 12, 1982, the Bench directed the Registry of the Court that notice of the amended petition be sent to the Union of India. Thereafter, the writ petition came up for hearing on June 4, 1982 when it was admitted. It was further ordered that the case be listed for hearing in the week commencing 19th July, 1982 high-up in the list. No stay." The writ petition was taken up for hearing by the learned single Judge on July 19, 1982. No one had appeared on behalf of the department. After hearing exparte arguments, the learned single Judge reserved the orders. On August 2, 1982, Civil Misc. Application No. 1978 of 1982 was filed pointing out "the term of the previous counsel of the department had expired and no written statement on behalf of the department had been filed. It was prayed that the matter may be heard afresh after giving an opportunity to the respondent to file a reply in the case. "The learned single Judge passed an order, on August 6, 1982 that the writ petition be listed for rehearing on August 20, 1982. It was directed that the written statement, if any, may be filed at least four days prrior to the date of-hearing. Learned counsel for the department prayed for further time. The case was then adjourned to August 30, 1982. No written statement could be filed before that date. Accordingly, learned single Judge proceeded to hear the arguments. The writ petition was allowed vide judgment dated September 6,

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1982.

6. The learned single Judge has held that :--

(i) the respondent who was the writ petitioner had ceased to be a partner of the firm wilh effect from April 15, 1977;

(ii) the impugned order (copy Annexure P. 7) imposing the penalty and debarring its proprietors/partners from receipt of import licences/imported goods for a period of 10 years cannot apply to the writ petitioner, who had ceased to be a partner:

(iii) the impugned order having been passed without any notice to the present respondent, he neither had any knowledge nor occasion to file an appeal against it. It was further held that the objection regarding laches or non-availing of the alternative remedy cannot be heard in respect of an order "which is on the face of it illegal and opposed to the principles of natural justice."

7. According, the learned single Judge quashed the orders at Armexures P.7 and P.9 and issued a writ of mandamus directing that the name of the respondent be deleted from the circular dated June 12, 1980 debarring him from the issue of import licences etc.

8. Aggieved by this order of the learned single Judge, the Union of India filed this appeal, which has come up for hearing before us.

9. We have heard Mr. Vinay Mittal, learned counsel for the appellanl and Mr. S. S. Nijjar for the respondent. Mr. Mittaihas very fairly stated at the outset that so far as the order debarring the respondent from the issue of import licences for a period of 10 years is concerned, the case has been rendered in-fructuous by the mere lapse of time. He has further submitted that the learned single Judge had, however, erred in holding that the order imposing the penalty was illegal. Mr. Mittal has referred to various paragraphs of the writ petition to contend that the respondent had not challenged the imposition of penalty and consequently, no relief couid have been granted to him in that behalf. He has also contended that even if the respondent had challenged the order, no relief could have been granted to him in view of the provisions of the Partnership Act, 1932. On the other hand, Mr. Nijjar has submitted that the impugned orders were violative of the principles of natural justice and have been rightly quashed by the learned single Judge.

10. In order to settle the controversy between the parties, a brief reference to the avcrnment made in the writ petition is necessary. In paragraph 10 of the writ petition, it has been stated as under :-

10. That a bare perusal of the order of the respondent (Annexure P. 7) would make it clear that the firm of the petitioner was inspected for the first time on 1st July, 1977, that is after the date of the dissolution of the partnership, by virtue of which the petitioner has ceased to be its partner. It has already been

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mentioned that the petitioner had ceased to be the partner of M/s. Oriental Industrial Corporation right from 15th April, 1977, i.e. much before the first inspection of the concern and, therefore, apparently the order of respondent debarring the petitioner in his individual capacity from the receipt of import licences/imported goods is erroneous. Even the imposition of penalty on (he petitioner was illegal. However, the petitioner is not challenging the order (Annexure P. 7) passed by the respondent, so far as the imposition of penalty is concerned. In the present writ petition, the petitiner challenges the illegality and validity of the order of the respondent by which the petitioner in his individual capacity was debarred from the receipt of import licence/imported goods, for a period of ten years. The grounds for challenge would be elaborated in the succeeding paragraphs, after giving certain more facts."

11. A perusal of the above averments clearly shows that the respondent had specifically stated that he was not challenging the order (Annexure P. 7) in so far as the imposition of penalty was concerned. This was further reiterated by him in paragraph 17 (iii), wherein he had stated as under:--

17. (iii) That the petitioner while not challenging the legality of the order of the Chief Controller of Imports and Exports (Respondent) as a whole, seriously challenges the legality and validity of the orders, in so far as the petitioner''s debarring from the receipt of import licences/ imported goods for a period of ten years is concerned. The petitioner submits that no such general order can be passed against an individual, on the ground that he happend to be a partner of a particular firm at a particular time. It is only the concern which can be debarred, and not its partner. In any case, the submission of the petitioner is that in the instant case, the petitioner could not be debarred because both at the lime of the inspection of the concern on 1st July, 1977, as well as at the time of passing the impugned order, the petitioner was not the partner of M/s. Oriental Industrial Corporation, he having ceased to be its partner from 15th April, 1977."

12. On aperusal of the above quoted averments, it is apparent that the respondent had categorically sated that he was not challenging the imposition of penalty. In spite of the above quoted averments, Mr. Nijjar submitted that, in fact, the respondent had challenged the order at Annexure P. 7 in entirety. He referred to the averment in paragraph 14, wherein it had been mentioned that "the impugned order (Annexure P. 7) is liable to be quashed on the short ground that it is in violation of Clause 10 of the Control Order. No opportunity, as is required under the sub-clause was afforded to the petitioner....."

13. After considering the matter we are of the view that the pleadings of the parties had to be construed harmoniously. There is a specific averment in paragraph 10 of the writ petition that the respondent was not challenging the order in so far as the imposition of penalty was concerned. As already noticed, this averment was reiterated in paragraph 17 (iii). The averment in paragraph 14 had to be read as subject to those in paragraphs 10 & 17 (iii) On a combined reading of these avern-ments, we are of the view that the petitioner had not

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raised any challenge to the imposition of penalty.

14. Could the learned single Judge still hold that "the impugned order (copy Annexure P. 7) imposing the penalty and debarring its proprietors/partners from receipt of import licences/imported goods for a period of 10 years cannot, therefore, apply to the writ petitioner who had ceased to be a partner of the firm"? It is well settled that it is the case pleaded which has to be found. The pleading of the respodnent clearly show that he was not challenging the order in so far as it related to the imposition of penalty. This was consistent with the earlier stand of the respondent when after the issue of the order Annexure P. 7 and the circular dated June 12, 1981 he had approached the Chief Controller only with a request that his name be deleted from the circular debarring him from the receipt of import licences. No challenge to the imposition of penalty had been made even in that notice. In such a situation, we are of the view that the learned single Judge could not have held that the imposition of penalty was illegal. The impugned order (Annexure P. 7 on the record) could not have been quashed in entirity. We hold that the learned single Judge erred in doing so. We, accordingly, set aside the finding of the learned single Judge that the order imposing the penalty cannot apply to the respondent.

15. Still further, Mr. Mittal was at pains to point out that even the basis on which this finding has been recorded is wholly unfounded. He submitted that the learned single Judge had erred in observing that "there is no material on the record of this case to show as to which of these 57 licences/R. Os have remained unexplained and whether these lincences/R.Os pertain to the period during which the petitioner (the present respondent) was a partner of the firm. This material which must be in the possession of the respondent-department could have been easily placed on the record, but as already noticed, it has not even cared, to put a written statement containing necessary material before this Court. The non-production of this vital material raises a presumption against tha Department. The impugned order (copy Annexure P''. 1) imposing the penalty and debarring its proprietor/ partners from receipt of import licenses/imported goods for a period often years cannot, therefore, apply to the writ petitioner who had ceased to be a partner of the Firm." Mr. Mittal submitted that complete detail of the various import licences and release orders issued from April 1, 1974 to March 31, 1977 had been given to the firm along with the show cause notice dated May 28, 1979. On a perusal of the record we find that this is actually so. In fact, complete details including the licences number, the date of issue, the value and the particular item to which the licence relates have been specifically mentioned in the annexure to the show cause notice. Further we also find that all the licences, except two, for a value of about Rs. 65,000/- related to the period from April 1, 1974 to March 31, 1977, when the respondent was actually a partner of the firm. It is also apparent that the firm was given in numerable opportunities from July, 1977 to June 1981 when the order at Annexure P. 7 was passed for the production of the records and to explain various matters. In spite of these the record was not produced and repeated requests for adjournments were made. It

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is clear to us that the firm was avoiding to appear before the authority. If there had been any record showing the utilisation of the imported goods, it would have produced the records. We cannot also lose sight of the fact that the validity of the order does not appear to have been challenged by the firm. It is also worthy of notice that Surinder Kumar, the brother of the respondent, had continued to be a partner of the firm. Taking the totality in circumstances into consideration, we are clearly of the view that the finding that there is no material on the record to show as to utilisation of goods imported against which licence had remained unexplained or that the respondent had failed to place it on record cannot be sustained. Accordingly, even the presumption raised by the learned single Judge is unfounded.

16. Mr. Mittal also submitted that though the retirement of the respondent from the firm was highly doubtful and was only a device to raise a plea, but even if it is assumed to be correct, his liability for the facts of the firms was unassailable. He referred to the provisions of Sections 25 and 27 of the Parnership Act. Under the provision of Section 25 of the Partnership Act, every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner. Section 27 inter alia provides that where "a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss." In view of these provisions, it appears clearly to us that the respondent is liable "for all acts of the firm done while he was a partner." In view of these provisions, even if it is assumed that the respondent had ceased to be a partner of the firm with effect from April 15, 1977, he was liable for all acts of the firm which were done while he was a partner. It is presumably on account of this position of law, that it had been specifically stated in the writ petition that the respondent was not challenging the order regarding the imposition of penalty. In this situation, the learned Judge could not have quashed the order in its entirity. He erred in doing so.

17. Mr. Nijjar has vehemently contended that the respondent had a right tb be heard and no notice was issued to him in spite of the provision of Clause 10 of the Import (Control) Orders, 1955. This clause provides as under:--

"10. Opportunity of being heard to be given: --

(1) No action shall be taken under clause 7 or sub-clause (i) or sub-clause (3) of clauses or clause 8-A or clause (I) of clause 9 against a licensee or an importer or any other person unless he has given a reasonable opportunity of being heard.

(2) Where any person is aggrieved by any action taken under sub-clause (I) or sub-clause (3) of clause or clause 8-A or sub-clause (I) of clause 9, he may prefer an appeal against such action to such authority as the Central Government may, by notification in the Official Gazette constitute for the purpose of hearing appeals, within forty-five days from the date of communication of the action taken.

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(3) The authority referred to in sub-clause (2) may after giving to the appellant a reasonable opportunity of being heard, if he so desired, and after making such further inquiries, if any as it may consider necessary pass such orders as it thinks fit, confirming, modifying or reversing the action appealed against, or may send back the case with such directions as it may think fit, for a fresh proceeding or action as the case may be after taking additional evidence, if necessary.

Provided that an order to increase the period for which an applicant is debarred under clause 8, shall not be made under this sub-clause unless he has had an opportunity of making a representation, and if he so desires, of being heard in his defence."

18. Mr. Nijjar also referred to paragraph 9 of the petition wherein it has been stated as under:--

"9. That no action (under) clause 8 of the Control Order can be taken without affording an opportunity of hearing to the petitioner, as provided under clause 10 of the Control Order, no opportunity whatsoever was afforded to the petitioner, and he has been debarred from entering into export-import business for a period of ten years."

19. Accordingly, the learned counsel contended that the respondent had a right to be heard before he could be debarred from the grant of import licences.

20. On aperusal of clause 10 we find that it is incumbent on the authority to grant a reasonable opportunity of being heard to "a licensee or an importer or any other person....." before any action is taken under clause 8 etc. In this case, the firm was the licensee. Notice was duly given to the firm. In spite of the grant of repeated opportunities, record was not produced and the representative of the firm did not appear for personal hearing. The provision does not require that every partner of a firm has to be separately given an opportunity of hearing. When an import licence has been issued to a firm, the hearing has to be afforded to the licensee only. This opportunity was duly given. Consequently, no legitimate complaint can be made in that behalf. In any case, so far as the grievance of the respondent with regard to his being debarred for a period of 10 years is concerned, it has become infructuous by efflux of time. A period of 10 years expired long back. The iss-ue does not survive any more.

21. Mr. Nijjar also contended that the notice issued by the counsel for the respondent vide Annexure P.8 should have been treated as an appeal and decided as such. The contention was presumably raised to explain delay and also to obviate the chance of the respondent being relegated to the alternative remedies under the relevant statute. We need only mention that it was after almost nine months of the passing of the order dated June 4, 1980 (Annexure P.7) that a notice had been sent on behalf of the respondent on March 14, 1981. It was rejeced vide order dated April 18, 1981. The respondent had filed a writ petition more that a year after the passing of this order. Even though the respondent had taken his own sweet time to issue the notice and to file the writ

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petition, the present appellant was pot given a reasonable amount of time to file the written statement. In the circumstances of the case, we feel that the appellant did not get a fair chance to contest the writ petition.

22. Accordingly, the appeal is allowed. The judgment of the learned single Judge in so far as it relates to the imposition of penalty is set aside. The grievance of the respondent with regard to the impugned bar placed on him has become infructuous. In the circumstances of the case, there will be no order as to costs.

23. Appeal partly allowed.

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