

(1980) 12 BOM CK 0014

In the Bombay High Court

Case No : Spl. Civil Application No. 486 of 1978

Wadilal Mathuradas Jain

APPELLANT

Vs

The Assistant Collector of Central Excise and Others

RESPONDENT

Date of Decision : 01-12-1980

Acts Referred:

Constitution of India, 1950 — Article 226
Gold (Control) Act, 1968 — Section 82

Citation : AIR 1982 Bom 1

Hon'ble Judges : Palshikar, J; Dharmadhikari, J

Bench : Division Bench

Advocate : Kumar Mehta and Shrish Gupte, for the Appellant; V.D. Govilkar and S.G. Shah, for the Respondent

Judgement

Palshikar, J.—In this petition the Petitioner is challenging the orders of the authorities under the Gold Control Act.

2. According to the central Excise officers at Amalner, the petitioner had gone to Bombay for purchasing gold on 2nd Feb., 1970 and was likely to return by a bus from Bombay on 4th February, 1970. The Superintendent, central Excise, Amalner, therefore, proceeded to Dhulia to apprehend the petitioner and at Dhulia to apprehend the petitioner and at Dhulia they found that the petitioner was travelling by a bus from Bombay to Jalgaon. He was asked to get down with all his luggage. Thereafter his personal search was taken by the superintendent. Central Excise, Amalner, in the presence of panchas and he found that the petitioner was wearing two gold patlies in crude form on both his hands. These patlies weighed 113.100 gms. Of gold. His luggage was, therefore, searched by the authorities and they found six gold patlies in crude form which were hidden in the bents for fitting water pipes. The pipes were closed with screws on. The total weight of these six patlies was 361.000 gms. When he was questioned by the authorities, the petitioner could not satisfactorily explain the possession of these gold patlies. All the 8 patlies were, therefore, seized along with other

articles and according to the authorities the petitioner had contravened the provisions of section 8 of the Gold control Act as he was in possessing 474.100 gms. According to them these patlies were liable to confiscation u/s 71 (1) of the G.C. Act and the petitioner was also liable to penalty u/s 74 of the G.C. Act.

3. It appears that there was a panchanama prepared by the Central Excise authorities dated 20th April ,1970. This purports to be an assay report. However, it also contains the observations of the panchas that out of these 8 patlies 6 were in complete form of ornaments and the other two patlies were in incomplete shape and form of ornaments. They also observed that such patlies were used in Maharashtra.

4. The Central Excise authorities served a show cause notice dated 15th may, 1970 upon the petitioner asking to show cause why the gold in question should not be forfeited and why he should not be penalised under the Act. The authorities relied upon two panchanamas dated 4th February, 1970 and 20th April 1970 and also the statements dated 4th February , 1970 and 25th February, 1970 of the petitioner. According to the authorities the petitioner was in possession of primary gold in the form of round crude patlies in an unfinished form. These were hidden in the pipes and the pipes were closed with screws. Two of these patlies were won by the petitioner on his hand.

5. The defence of the petitioner was that these were the family ornaments and when he had gone to Bombay for purchasing certain hardware materials he wanted to sell them in the market at Bombay. However, he could not get sufficient price for these articles and, therefore, he brought them back; but in order to keep them at a safe place he but in order to keep them at a safe place he wore two patilies on his hands and had kept the rest of them in the pipes so that nobody would think that he was carrying gold ornaments. He also stated in his reply that these were his family ornaments in a finished form and such ornaments were normally used in conservative Marwari families and there was nothing unusual in it: but since he could not sell them in Bombay. He brought them back.

6. The Assistant Controller of Central Excise Integrated Division . Nasik, granted a personal hearing to the petitioner and passed personal hearing to the petitioner and passed an order on 12th October. 1970 confiscating all the 8 patlies holding them to be the primary gold. He also levied a penalty of Rs.500/- upon the petitioner. Against this order the petitioner filed an appeal. Before the appellate authority he was represented by a lawyer and was granted a personal hearing on 20th October, 1972. The collector of Excise, poona. Who heard the appeal dismissed the same by his order dated 17th November 1972. He also confirmed the findings of the Assistant Collector of Central Excise . Nasik, that these so-called patlies were primary gold and were liable to confiscation.

7. Being aggrieved by the appellate order, the petitioner filed a revision application before the Government of India. The Government of India did not

grant any personal hearing to the petitioner and decided the revision application by its order dated 27th July, 1976. The Government of India also held that these patlies were not the ornaments as defined by the Gold Control Act and they were clearly the pieces of primary gold. The Government of India, therefore, confirmed the findings recorded by the Assistant Collector of Central Excise Nasik, and the Collector of Central Excise, poona, These orders have now been challenged in the present petition.

8. Shri Mehta, the learned counsel for the petitioner, argued that the order passed by the Government of India was vitiated because no personal hearing was granted to the petitioner. According to him he had demanded a personal hearing even before the Government of India and since the same was not granted, the principles of natural justice were violated. He said that the Government of India was acting in a quasi-judicial manner while disposing of the revision application, It was, therefore, obligatory upon the revisional authority to grant a personal hearing He further submitted that the Government of India as well as the authorities below have not taken into consideration an important piece of evidence viz. the panchanama date 20th April 1970. He submitted that this was the panchanama drawn by the authorities concerned and the panchas were specifically asked their opinion on the question whether those patlies were the ornaments or not and those patlies were the ornaments or not and whether such ornaments were used in the State of Maharashtra or not. The opinion expressed by the panchas was binding on the Department, and since none of the authorities has stated any reasons for rejecting the said panchanama, all the orders are liable to be set aside. He also argued that it was not open to the authorities concerned to examine the articles themselves and come to their own independent conclusions. Mr. Mehta also argued that the opinion expressed by the panchas should have been accepted by the authorities concerned. He, therefore, contented that all the orders of the authorities concerned, the liable to be set aside.

9. Before dealing with the question raised by shri mehta. It would be necessary to note certain provisions as regards adjudication of the disputes under the G.C. Act. Chap. XIV of the G.C. Act deals with adjudication, appeal and revision under the Act. Section 79 lays down that no order of adjudication or confiscation or penalty shall be made unless the owner of the gold, conveyance ,or animal or other person concerned is given a notice in writing - (I) informing him of the grounds on which it is proposed to confiscate such gold; conveyance or animal or to impose a penalty; and (ii) giving him a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the confiscation or imposition of penalty mentioned therein and, if he so desires , of being heard in the matter. We are not concerned in the present petition with the rest of the provisions of section 79. This section clearly lays down that if before the adjudicating authority the person concerned demands a personal hearing, it has to be granted.

10. Section 80 provides for an appeal against the order passed by the authorities u/s 79. It lays down that the appellate authority may, after giving to the appellant an opportunity of being heard, if he so desires, and after making such further inquiries, if any, as it may send back the case, with such directions, as it thinks fit, confirming modifying or reversing the decision, as the case may after taking additional evidence if necessary. Section 80 also, therefore, provides that if the appellant demands an opportunity of being heard, it has to be granted, we may observe at this stage that both the Assistant collector of central Excise, Nasik, and the Collector of Central Excise, poona, had granted an opportunity of being personally heard to the petitioner. We are mainly concerned in this petition with the question whether it was obligatory upon the revisional authority to grant a personal hearing. Section 82 of the G.C. Act empowers the Central Government either on its own motion or otherwise, to call for and examine the record of any proceeding in which any decision or order has been made on appeal for the purpose of satisfying itself as to the correctness, legality or propriety of such decision or order and may pass such order there on as it may think fit. The only obligation the revisional order under clause (b) of sub-section (3) of section 82 is that if the order is to be varied, then the person against whom such order is being passed prejudicial to his interest, he has to be given a reasonable opportunity of making a representation and, if he so desires, of being heard in his defence. A combined reading of all these provisions makes it clear that at the stage of initial adjudication u/s 79 and at the appellate stage u/s 80 if the person concerned demands an opportunity of being heard, if has to be given . In our opinion, these two sections amply provide for observance of the principles of natural justice while adjudicating the matters. However same is not the position when the revisional powers are being exercised by the central Government. The central Government is bound to grant a personal hearing if any order is to be varied prejudicially to the interest of any person .The intention of the Legislature, therefore, appears that it is not necessary at the revisional stage to grant a personal hearing.

11. In *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, , it has been laid down by their Lordship of the supreme court in para 10 which reads as under:

"10. As regards the second contention, I do not think that the appellant is entitled as of right to a personal hearing. It is no doubt a principle of natural justice that a quasi-judicial tribunal cannot make any decision adverse to a party without giving him an effective opportunity of meeting any relevant allegations against him. Indeed, R.55 of the Rules quote supra, recognises the said principle and states that no order shall be passed against any applicant unless he has been given an opportunity to make his representations against the comments, it any, received from the state Government or other authority. The said opportunity need not necessarily be by personal hearing. It can be by written representation. Whether the said opportunity should be by written representation or by personal hearing depends upon the facts of each case and ordinarily if is in the discretion

of the tribunal. The facts of the present case disclose that as written representation would effectively meet the requirements of the principles of natural justice. But there is some apparent justification in the submission that the central Government had taken into consideration an extraneous matter that came into Existence subsequent Messrs. Manganese ore (India) Ltd., which is a public sector undertaking, had applied for the lease of the area in question on october 5, 1962 , for the purpose of mining. The appellant did not allege in its affidavit that this fact was not brought to its notice before the central Government made the order; indeed, it did not file any reply affidavit to the effect that the said matter was kept back from it. I would have pursued the matter a little further but for the fact that I am refusing to interfere in this appeal on other grounds."

However, it was argued that personal hearing even at the revisional stage was necessary be even at the revisional stage was necessary because the decision of the supreme court in the aforesaid case was held to be no longer good law. However , the supreme court in a later decision is Tara Chand Khatri Vs. Municipal Corporation of Delhi and Others, observed in para 24 as under :

"24 We would also like to point out that the observations in Travancore Rayon Ltd. Vs. Union of India (UOI), that in Bharat Raja Vs. The Union of India (UOI) and Others, this court in effect overruled the judgment of the majority in Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI), seem to have crept therein through some oversight . A careful perusal of the decision in Bhagat Raja v. The Union of India (supra) would show that his court did not make any observations therein which can be interpreted as overruling the majority judgment in Madhya pradesh Industries Ltd., v. Union of India (supra) It is also worthy of note that in Bhagat Raja's case)supra). The amendment of Rule 55 of the mineral concession Rules , 1960 introduced in July, 1965 laid down a special procedure in regard to revisions. It required the Central Government to send copies if the application for revision to all the impleaded parties including the to whom a lease had been granted calling upon them to make such comments as they might like to make such comments as they might like to ,make within three months from the date of the issue of the communication and on receipt of the comments from any party to send copies thereof to the other parties calling upon them to make further comments as they might like to make within one month from the date if the issue of the communication. It also provided that the revision application , the communications containing comments and counter-comments referred to above would constitute record of ferred to above would constitute record of the case. Thus under the amended rule, the the case. Thus under the amended rule, the party whose application was rejected got an ample opportunity of showing to the central Government by reference not only to the record which was before the state Government but by reference to the fresh material as well that the state Government was misled in its consideration of the matter or that it decision was based on irrelevant considerations. This is evident from the following observations made in Bhagat Raja v. The union of India

(supra) :

" The old Rule 55 was replaced by a new rule which came into force on 19th July, 1965. Whereas the old rule directed the central Government to consider comments on the petition of review by the state Government or other authority only, the new rule is aimed at calling upon all the parties including the state Government to make their comments in the matter and the parties are given the right to make further comments on those made by the other or others. In effect, the parties are given a right to bring forth material which was not before the state Government. It is easy to see that an unsuccessful party may challenge the grant of a leave in favour of another by pointing out defects or demerits which did not come to the knowledge of the state Government. The order in this case does not even purport to show that the comments and counter-comments which were before the Central Government in this case, had been considered.

It is clear from this paragraph that the decision in Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI), was still a good law and relying upon the said decision in Madhya Pradesh Industries case and this case, there is no manner of doubt that the petitioner had no right of personal hearing at the revisional stage before the Central Government u/s 82 of the Gold Control Act as a matter of right.

12. It may also be pointed out that the supreme court in Shrikrishnadas Tikara Vs. State Government of Madhya Pradesh and Others, observed as follows (at p. 1694): -

"... .. The lessee having been heard, natural justice has been complied with. The fact that in the second notice by the collector a personal hearing was offered, does not mean that the failure personally to hear the petitioner was a contravention of the canon of natural justice in the first case. It is well-established that the principles of natural justice cannot be petrified or fitted into rigid moulds. They are flexible and turn on the facts and circumstances of each case. Has there been any unfair deal by the authority ? Has the party affected been fit below the belt ? Has he had a just opportunity to state his plea? Having regard to the features of the present case, we are, hardly satisfied that the order is bad on this score.

It is therefore, clear that in the present case the petitioner had ample opportunity to defend himself against the proposed action before the Assistant Collector of Central Excise who originally adjudicated the matter. From the reply to the show cause notice it appears that the petitioner had every opportunity to defend himself. It is also clear from the appellate order that the collector of Central Excise, poona also gave an opportunity to the petitioner of being represented by a lawyer and of being heard personally. If this be so, we do not think that there was any violation of the principles of natural justice when the Government of India declined to grant any personal hearing. In their order the Government of India have stated that they carefully considered the submissions

made by the applicant in his revision application and also examined the records. The plea of the petitioner for a personal hearing was turned down on the ground that it was not so provided in law and that the Government of India did not think it necessary, having regard to the nature and circumstances of the case, to meet the ends of natural justice. We find that they were aware of the arguments advanced that the dealers, through experts in gold business. We may further observe that it was not pointed out to us that since no personal hearing was granted, the petitioner was prejudicially the absence of any such material on record, we do not think that the order of the Government of India dated 27th July, 1976 is vitiated on this count.

13. We may also usefully rely upon the decision of the Calcutta High Court in Prafulla Kumar Mazumdar Vs. Inspector General of Police and Others, , Wherein it was observed that the stage of an enquiry, the accused must be heard and given every opportunity to defend himself. But once the proceedings have terminated, subsequent states like appeals or revisions are in most cases governed by rules and regulations which are framed or according to practice. Through personal hearing is essential at the primary state of enquiry, at later stages if the rules do not permit it, personal hearing cannot be given since the matter is governed by rules framed, so far as the rules of natural justice are concerned, they do not necessarily require that there should be repeated hearings at all later stages, namely appeals, revisions, etc.

14. As already observed , Section 82 does not contemplate a personal hearing when the order under the appeal is being confirmed. In our opinion , therefore, the order is perfectly valid. When we turn into the next contention raised by Shri Mehta , we find that so far as the Panchanama dated 20 th April, 1970 is concerned, the Assistant Collector of Central Exercise has taken into consideration the same. However the real question that arises is what is the evidentiary value of this panchanama and the opinion expressed by this so called experts. In the first place , there is no legal bar to the authorities concerned in using their own eyes to compare the articles and come to their own conclusions. Neither the sections nor the rules create any such legal bar. In our opinion, therefore, it was open to the authorities concerned to physically examine the articles and come to a finding whether they were ornaments or primary gold . Moreover, they have also taken into account the panchanama dated 20th April 1970 . However, it was argued by Shri Mehta, that no reasons were stated by the authorities concerned for not accepting the said piece of evidence and according to him without assigning any cogent reasons for rejecting the piece of evidence the authorities could not compare the articles and come to their own finding. Having regard to the facts and circumstances of the case , we find that when the authorities have examined the articles themselves and have come to the conclusion that this was primary gold , by necessary implication they have rejected the panchanama to the extent of the opinion of the expert. There is another aspect in this case. In the first place, we do not accept that the two panchas were experts on the question whether the articles were ornaments or

primary gold . There is nothing on record to suggest that they had any expertise knowledge in the field. If that is the state of affairs , we do not think that even non-consideration of the panchanama, if any , would vitiate the order.

15. It was also contended that the department failed to establish that the articles in question were the pieces of primary gold. We must examine this question with reference to the defence made out by the petitioner in his reply to the show cause notice. In paragraph 3 of his reply the petitioner has stated that he had gone to Bombay to purchase certain Hardware goods and at that time he had carried with him patlies for the purpose of sale in Zaveri Bazaar at Bombay. However as he could not get the desired price as the purity of gold was found to be less, he brought them back. For the purpose of safety of his valuable he wore two of them on his hands and kept the others in the pipe bents so that nobody would doubt the possession of the valuables. He has also stated that they were family ornaments in a finished form and were normally used in a conservative Marwari family. The Assistant Collector of Central Excise , personally examined these articles and found that they were primary gold from their finish . The ends of those pieces were crudely cut and the inside surface was so rough and crudely made that the pieces could hardly be called ornaments intended for decorating human body in any society in the country. The same is the finding of the Higher authorities. We do not accept the contention of the petitioner that the department has failed to establish that these were the pieces of primary gold. Having regard to the circumstances under which the petitioner brought them from Bombay to Dhulia and the explanation given by him, which was ultimately found to be false, the authorities were justified in coming to their own conclusion.

16. In the result, the rule is discharged with costs.

17. Petition dismissed.