Travancore Rayon Ltd vs Union Of India on 28 October, 1969

Equivalent citations: 1971 AIR 862, 1970 SCR (3) 40, AIR 1971 SUPREME COURT 862

Author: J.C. Shah

Bench: J.C. Shah, K.S. Hegde

PETITIONER:
TRAVANCORE RAYON LTD.

Vs.

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT:
28/10/1969

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
HEGDE, K.S.

CITATION:
1971 AIR 862 1970 SCR (3) 40
1969 SCC (3) 183
CITATOR INFO :
E 1977 SC 567 (23,24)
RF 1988 SC1737 (82)
RF 1990 SC1984 (28)

ACT:
Speaking Order-Central Excise and Salt Act, 1944, s. 36-Revisional jurisdiction of Central Government-Necessitv of speaking order while rejecting application-oral hearing--When advisable.

HEADNOTE:
The appellant company was assessed to excise duty on the consumption of "nitro-cellulose lacquer" produced by it. The company denied that the chemical compound Produced and utilised by it was "nitrocellulose lacquer" within the meaning of the Central Excise and Salt Act, 1944 . The Assistant Collector of Customs confirmed the assessment.

The Collector of Customs, in appeal, gave the company a personal hearing and rejected the company's claim by a detailed order. Against this order the company invoked the revisional jurisdiction of the Central Government under s. 36 of the Act. The petition was entertained but no personal hearing was girven to the company. The Government rejected the petition by an order which read :

> "The Government of India have carefully considered the points made by the applicant(s), but see no justification for interfering with the order in appeal. The revision application is accordingly rejected."

The Company appealed to this Court.

HELD : The case must be remanded to the Central Government to be disposed of according to law.

(i)The Central Government is by a. 36 invested with the judicial power of the State. A party who approaches the Government in exercise of a statutory right for adjudication of a dispute is entitled to know at least the official designation of the person who has considered the matter, what was considered by him, and the reasons for recording a decision against him. To enable the High Court or this Court to exercise its constitutional powers, not only the decision, but an adequate disclosure of materials justifying an inference that there has been a judicial consideration of the dispute by an authority competent in that behalf in the light of the claim made by the aggrieved party, is necessary. The Court insists upon disclosure of reasons in support of the order on two grounds : one, that the party aggrieved in a proceeding before the High Court or this Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous, the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power. [43 E-H; 46 D]

Madhya Pradesh Industries Ltd. v. Union of India, [1966] 1 S.C.R. 466 held overruled by Bhagat Raja v. Union of India, [1967] 3 S.C.R. 302.

State of Madhya Pradesh & Anr. v. Seth Narsinghdas Jankidas Mehta, C.A. No. 621 dated 29-4-69, State of Gujarat v. Patel Raghav Natha & Ors. [1970] 1 S.C.R. 335 and Prag Das U mar Yaishva v. Union of India, C.A. No. 723 of 1965 decided on 21-4-69- referred to.

In this case the communication from the Central Government gave no reasons in support of the order; it did not disclose the "points" which

were considered, who considered the points, and the reasons for rejecting them [46 B]

(ii) Where complex and difficult questions requiring familiarity with technical problems, as in the present case, are raised, it would conduce better administration and mote

satisfactory disposal of the grievances of the citizens if personal hearing is given. [43 B-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2252 of 1966.

Appeal by special leave from the order No. 543 of 1966 dated July 16, 1966 of the Government of India, Ministry of Finance, New Delhi in Central Excise Revision Application. S. Mohan Kumaramangalam, Soli J. Sorabji, A. K. Varma, Ravinder Narain, J. B. Dadachanji, and O. C. Mathur, for the appellant.

V. A. Seyid Muhammad and S. P. Nayar, for the respondents. B. R. Agarwala, for intervener No. 1.

Soli J. Sorabji, Ravinder Narain and j. B.Danchanji, for entervener No. 2.

The Judgment of the Court was delivered by Shah, J. The appellant Company is engaged in the production of cellulose film. The Central Excise Inspector reported that the appellant Company was producing in its factory nitro-cellulose acquer falling under tariff Item No. 22

(iii) (i) No. 14 (iii) (i) of the First Schedule to the Central Excise & Salt Act, 1944, read with the Finance Act, 1955]; without obtaining a central excise licence as required by the rules and was also removing nitroillulose lacquer for "internal use" without payment of duty. The appellant Company denied that the chemical compound utilised by to render plain film moisture-proof was "nitro-cellulose lacquer" within the meaning of the Central Excise & Salt Act, 1944.

The Deputy Superintendent of Central Excise, determined that the appellant Company was liable to pay, for the period between March 1, 1955 and September 19, 1962, Rs. 4,88,797- 34 as cise duty on the consumption of nitro-cellulose lacquer proceed by the Company. The Deputy Superintendent issued a mand notice, but the appellant Company failed to pay the duty.

The Assistant Collector of Customs required the appellant company to show cause why penalty should not be imposed on it the failing to obtain a licence for production of nitro- cellulose licquer. The appellant Company contended that what was proceed by it was not nitro-cellulose lacquer. The Assistant Colloctor rejected the contention and confirmed the order of assessment and imposed a penalty of Rs. 25/-. In appeal to the Collector, the appellant Company raised a range number of contentions-including the following 170-4 (1) that nitro-cellulose lacquer which is clear as well as pigmented falls within the purview of Item 14 of the First Schedule to the Central Excise & Salt Act, 1944, and that clear and white, or murky and pigmented lacquer is not subject to duty;, (2) that a certificate of test issued by the Silk Mills Research Association, Bombay showed that the nitro-cellulose lacquer content of a sample of surface-coating compound produced by the appellant Company was only 4.7% and it could not be considered nitro-cellulose lacquer within the meaning of the Act; and (3) that the failure to levy duty on the product from 1955 to 1962 was proof of the fact

that the Excise Department was itself of the view that the product was not excisable. The. Collector of Customs consulted the Chemical Examination and was of the view that the opinion expressed by the Silk Mills Research Association, Bombay, was not correct. In considering the, question about the reason for not levying duty for nearly several years, the Collector thought it necessary to give a fresh hearing to the appellant Company. Additional arguments were advance at the second hearing. After considering the arguments advanced by the appellant Company the Collector wrote a detailed judg- ment setting out the "points" on which he held against the claim of the appellant Company, and expressed the view that the appellant Company was not right in contending that only that chemical which is "clear and pigmented" falls within the purview of Item 14 of the First Schedule. Against the order dismissing the appeal, the appellant Com- pany moved a petition invoking the revisional jurisdiction of the Central Government under s. 36 of the Central Excise & Salt Act 1944. The petition was entertained, but no

-personal hearing was given to the appellant Company. By order dated July 11 1966, communicated by the Joint Secretary to the Government of India, Ministry of Finance, the petition was rejected. The order read :

> "The Government of India have carefully considered the points made by the applicant(s), but see no justification for interfering with the order in appeal. The revision application is accordingly
>
> -rejected."

Against the order passed by the Central Government this appeal preferred with special leave.

The question raised before the Collector of Customs was of a complicated nature and for its proper appreciation required familiarity with the chemical composition and physical properties of nitro-cellulose lacquer and of the substance produced by the appellant Company. The Collector in deciding the appeal wrote an order running into 18 typed pages. There were before the Collector conflicting opinions of the Chemical Examiner and the Silk Mills Research Association, Bombay. The Collector gave two personal hearings to the appellant Company. No personal hearing was given by the Government of India to the appellant Company even though the matter raised complex questions. It is true that the rules do not require that personal hearing shall be given, but if in appropriate cases where complex and difficult questions requiring familiarity with technical problems are raised, personal hearing is given, it would conduce to better administration and more satisfactory disposal of the grievances of citizens. The order does not disclose the name or designation of the authority of the Government of India who considered "the points made by the applicants", and it is impossible to say whether the officer was amiliar with the subject-matter so that he could decide the dispute without elucidation a.-id merely on a perusal of the papers. The form in which the order was communicated is apparently a printed form. There is a bare assertion by the Joint Secretary to the Government of India in his communication that the Government of India had "carefully considered the points made by the applicant(s)". 'there is no evidence as to who considered the "points" and what was considered. The Central Government is by s.36 invested with the judicial power of the State Orders involving important disputes are brought before the

Government. The orders made by the Central Government are subject to appeal to this Court under Art. 136 of the Constitution. It would be im- possible for this Court, exercising jurisdiction under Art. 136, to decide the dispute without a speaking order of the authority,. setting out the nature of the dispute the arguments in support thereof raised by the aggrieved party and reasonably disclosing. that the matter received due consideration by the authority competent to decide the dispute. Exercise of the right to appeal to this Court would be futile, if the authority chooses not be disclose the reasons in support of the decision reached by it. A party who at broaches the Government in exercise of a statutory right for Adjudication of a dispute is entitled to know at least the official designation of the person who has considered the matter, what was considered by him, and the reasons' for recording a decision against him. To enable the High Court or this Court to exercise its constitutional powers, not only the decision, but an adequate disclosure of materials justifying an inference that there has been a judicial consideration of the dispute, by an authority competent in that behalf in the light of the claim made by the aggrieved party, is necessary. If the Officer acting on behalf of the Government chooses to give no reasons, the right of appeal will be devoid of any substance.

Dr. Seyid Muhammad appearing for the Union of India con- tended that where the Central Government dismisses the petition, it is not obliged to give any reasons, for, it must be assumed that the Government had accepted every reason given by the Collector, and by dismissing the petition the Officer acting on behalf of the Government must be deemed to have incorporated the reasons given by the Collector in the judgment. Counsel relies in support of this contention on the decision of this Court in Madhya Pradesh Industries Ltd. v. Union of India and Others(1). In that case, Bachawat, J., on behalf of himself and Mudholkar, J., refused to accept the contention that the order passed by the Government of India rejecting a. revision application under the Mineral Concession Rules was liable to be quashed, because it did not give any reasons. Bachawat, J., observed at p. 477 "There is a vital difference between the order of reversal by the appellate authority in that case for no reason whatsoever and the order of affirmance by the revising authority in the present case. Having stated that there was novalid ground for interference, the revising authority was not bound to give fuller reasons. It is impossible to say that the impugned order was arbitrary, or that there was no proper trial of the revision application."

On the other hand, Subba Rao, J., observed at p. 472 "The least a tribunal can do is to; disclose its mind. The compulsion of disclosure guarantees consideration. The condition to give reasons introduces clarity and excludes or at any rate minimizes arbitrariness; it gives satisfaction to the party against whom the order is made: and it also enables an appellate or supervisory court to keep the tribunals within bounds. A reasoned order is a desirable condition of judicial disposal.

> "The conception of exercise of revisional jurisdiction and the manner of disposal provided in r. 55 of the Rules are indicative of the scope, and nature of the Government's jurisdiction. If tribunals can make order,-, without giving reasons, the said power in the hands of unscrupulous or dishonest officers may turn out to be a (1) [1966] 1 S.C.R. 466.

weapon for abuse of power. But if reasons for an order are given, it will be an effective restraint on such abuse, as the orders, if it discloses extraneous or irrelevant con- siderations , will be subject to judicial scrutiny and correction. A speaking order will at its best be a reasonable and at its worst be at least a plausible one. Tile public should not be deprived of this only safeguard.

cannot be expected to change from function to function or from act to act. So it is essential that some restrictions shall be imposed on tribunals in the matter of passing orders affecting the rights of parties; and the ,least they should do is to give reasons for their orders..... Ordinarily, the appellate or revisional tribunal shall give its own reasons succinctly; but in a case of affirmance where the original tribunal gives adequate reasons, the appellate tribunal may dismiss the appeal or the revision, as the case may be, agreeing with those reasons. What is essential is that reasons shall be given by an appellate or revisional tribunal expressly or by reference to those given by the original tribunal. The nature and the elaboration of the reasons necessarily depend upon the facts of each case."

In a later judgment Bhagat Raja v. The Union of India and Others(1), the Constitution Bench of this Court in effect overruled the judgment of the majority in Madhya Pradesh Industries Ltd's case(1). The Court held that the decisions of tribunals in India are subject to, the supervisory powers of the High Court under Art. 227 of the Constitution and of appellate powers of this Court under Art. 136. The High Court and this Court would be, placed under a great disadvantage if no reasons are given and the. revision is dismissed by the use of the single, word 'rejected' or 'dismissed'. The Court in that case held that the order of the Central Government in appeal, did not set out any reasons of its. own and on that account set aside that order. In our view, the majority judgment of this Court in Madhya Pradesh Industries Ltd's case(1) has been overruled by this Court in Bhagat Raja's. case(1).

In later decisions of this Court it was held that where the Central Government exercising power in revision gives no reasons, the. order will be regarded as void : see State of Madhya Pradesh and Another v. Seth Narsinghdas Jankidas Mehta;(3); The State of (1) [1967] 3. S.C.R. 302.

(2) [1966] 1 S.C.R 46 (3) C.A. No. 621 of 1966 decided on April 29, 1969.

Gujarat v. Patel Raghav Natha and Others(1); and Prag Das Umar Vaishya v. The Union of India and Others (2). In this case the communication from the Central Government gave no reasons in support of the order : the appellant Company is merely intimated thereby that the Government of India did not see any reasons to interfere "with the order in appeal". The communication does not disclose the "points" which were considered, and the reasons for rejecting them. This is a totally unsatisfactory method of disposal of a case in exercise of the judicial power vested in the ,Central Government. Necessity to give sufficient reasons which disclose proper appreciation of the problem to be solved, and the mental process by which the conclusion is reached, in cases where a non-judicial authority exercises judicial functions, is obvious. When judicial power is exercised by an authority normally performing executive or administrative functions, this Court would require to be satisfied that the decision has been reached after due consideration of the merits of the dispute, uninfluenced by extraneous considerations of policy or expediency. The Court insists upon disclosure of reasons in support of the order on two grounds : one, that the party aggrieved in a proceeding before the High

Court or this Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were ,erroneous : the other,, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the ,executive authority invested with the judicial power. The appeal is allowed and the order passed by the Central Government is set aside. The -case is 'remanded to the Central Government with the direction that it be disposed of according to law. In this case, we are of the view, having regard to the -complicated and technical questions involved, that the Central Government may be well-advised to give an oral hearing to the appellant Company. The Union of India will pay the costs of this appeal to the appellant Company. Y.P. Appeal allowed.

(1) C.A. ND. 723 of 1965 decided on April 21, 1969 (2) C.A. No. 687 of 1965 on August 17, 1967,