

British India Steam Navigation Co. Ltd vs Jasjit Singh Additional Commissioner ... on 3 February, 1964

Equivalent citations: AIR 1964 SUPREME COURT 1451

Bench: K.N. Wanchoo, K.C. Das Gupta, J.C. Shah

CASE NO. :

Appeal (civil) 803 of 1962

PETITIONER:

BRITISH INDIA STEAM NAVIGATION CO. LTD.

RESPONDENT:

JASJIT SINGH ADDITIONAL COMMISSIONER OF CUSTOMS

DATE OF JUDGMENT: 03/02/1964

BENCH:

P.B. GAJENDRAGADKAR (CJ) & K.N. WANCHOO & K.C. DAS GUPTA & J.C. SHAH & N.R. AYYANGAR

JUDGMENT:

JUDGMENT 1964 AIR (SC) 1451 WITH Civil Appeal Nos. 374 of 1961, 299 & 312 of 1963 and Petition Nos. 121 of 1959 & 2-4 of 1963 The Judgment was delivered by B. GAJENDRAGADKAR, C.J.I Per . B. Gajendragadkar, C.J.I. Along with Civil Appeal No. 770 of 1962 1983 (13) ELT 1392 (S.C.)] in which we have pronounced our judgment today, four other civil appeals and four writ petitions were also placed for hearing, because they raise a common question about the construction of Section 52A of the Sea Customs Act, and we propose to deal with them by this common judgment.

2. We will first take Civil Appeal No. 803 of 1962 which has been filed by special leave by the British India Steam Navigation Co. Ltd. against the decision of the Central Board of Revenue pronounced on January 7, 1960, as well as the decision of the Central Government pronounced on May 27, 1961. The offending ship is 'Santhia' and the fine imposed is Rs. 42, 500/-. So far as this appeal is concerned, for the reasons given by us in dismissing Civil Appeal No. 770 of 1962 1983 (13) ELT 1392 (S.C.)], it also fails and must be dismissed with costs.

3. Civil Appeal No. 374 of 1961 and Writ Petition No. 121 of 1959 have been filed by Everett Orient Line Incorporated. The offending vessel in this case is 'Rebeverett'. On September 5, 1957 the Collector of Customs had imposed a fine of Rs. 4 lakhs in lieu of confiscation of this vessel under Section 167(12A) read with Section 183 of the Sea Customs Act. This order was challenged by the appellant by preferring a writ petition before the Calcutta High Court under Article 226 of the Constitution. D. N. Sinha, J., who heard this writ petition, held that in imposing a fine of Rs. 4 lakhs, the Collector of Customs had misconstrued the scope of his jurisdiction and powers, and so, he set aside the said order and sent it back to him to reconsider the question of fine in accordance with

law. This order was pronounced on September 11, 1958. As a result of the order of remand thus passed by the High Court, the matter was considered by the Collector of Customs again and the fine of Rs. 4 lakhs initially imposed by him has been reduced to Rs. 2 lakhs. It is against this order that the appellant has come to this Court by C.A. No. 374 of 1961 and has also filed W.P. No. 121 of 1959.

4. C.A. No. 229 of 1963 has been preferred by special leave by the Everett Orient Line Incorporated. The offending ship is 'Noreverett'. The Collector of Customs has imposed a fine of Rs. 1 lakh. The said order was challenged by the appellant by a writ petition before the Calcutta High Court. The said petition was dismissed by Sinha, J., on September 11, 1958, and an appeal under the Letters Patent preferred by the appellant was also dismissed on July 7, 1961. It is against this order of the Letters Patent Bench that the appellant has come to this Court in the present appeal.

5. Civil Appeal No. 312 of 1963 has been preferred by the Everett Orient Line Incorporated against the order of the Collector of Customs imposing a fine of Rs. 26 lakhs in lieu of confiscation of the vessel 'Rutheverett'. The order was passed on October 1, 1960. The appellant has come to this court by special leave directly against this order.

6. The remaining three Writ Petition Nos. 2-4 of 1963 have been filed by the Shipping Corporation of India Ltd., the offending ships being 'State of Bihar', 'State of Uttar Pradesh', and 'State of Bihar' respectively. These writ petitions have been filed against the orders of the Collector of Customs. In the first case, the order was passed on July 25, 1962, imposing a fine of Rs. 50, 000/-, in the second, the order was passed on September 4, 1962, imposing a fine of Rs. 10, 000/-, and in the last, the order was passed on August 16, 1962, imposing a fine of Rs. 25, 000/-.

7. We have heard all these matters together because they raise the same question which was raised for our decision by the appellant in C.A. No. 770 of 1962 1983 (13) ELT 1392 (S.C.)). If these matters had not been placed together for hearing along with the said civil appeal, we would not have entertained them, except C.A. No. 299 of 1963. This latter appeal has been brought against the decision of the Calcutta High Court and the only point which could have been argued by the appellant would be one of jurisdiction, since the appellant had moved the said High Court under Article 226, and that too against the order of the Collector of Customs. But in regard to the other matters, the parties have come to this Court directly against the orders of the Collector of Customs and this Court generally does not entertain appeals against the orders passed by a Tribunal unless the alternative remedies provided by the relevant Act by way of appeals or revisions have been pursued by the aggrieved party. We have already seen that against the order of confiscation and fine passed by the Collector of Customs, an appeal is competent, and against the decision of the appellate authority, a revision also lies. That being so, we would have hesitated to entertain these appeals if each one of them had come separately for hearing before us. In fact, the question as to whether the writ jurisdiction of the High Court could be successfully invoked by a party immediately after an order is passed against him by the Collector of Customs under Section 167(12A) and Section 183, does not appear to have been argued before the Calcutta High Court when it entertained the writ proceedings from which Appeal No. 299 of 1963 has been brought to this Court. As was observed by this Court in *A. V. Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobhraj Wadhwani* - 1983 (13) ELT 1327 (S.C.) = 1962 (1) SCR 753, the rule that a party who applies for the issue of a

high prerogative writ should, before he approaches the Court, have exhausted other remedies open to him under the law, though not one which bars the jurisdiction of the Court to entertain the petition or to deal with it, but is a rule which courts have laid down for the exercise of this discretion. That is one aspect which has to be borne in mind in dealing with C.A. No. 299 of 1963, and the other writ petitions in this group.

8. If an appeal is entertained against an order passed by the Collector of Customs and our jurisdiction is allowed to be invoked under Article 136, it would lead to this anomalous result that questions of fact determined by the Collector of Customs may have to be re-examined by us as a Court of facts and an argument impeaching the validity or propriety of the order of fine may also have to be considered, and these precisely are the matters which the legislature has left to the determination of the appellate and the revisional authorities as prescribed by Sections 190 and 191 of the Sea Customs Act. Besides, the High Court should be slow in encouraging parties to circumvent the special provisions in respect of orders which they seek to challenge by writ petition under Article 226. In the present case, however, these writ petitions were presumably admitted because they raised a question of some importance which had already been raised by some appeals properly brought before this Court under Article 136, and so, we have allowed the counsel to argue these writ petitions on the question of construction alone.

9. Besides, it appears that these writ petitions and C.A. No. 299 of 1963 purport to raise a question about the validity of Section 52A of the Sea Customs Act and that may have weighed in favour of admitting the said matters : but as we have held in Civil Appeal No. 770 of 1962 1983 (13) ELT 1392 (S.C.)] the foreign companies whose vessels have contravened Section 52A and in respect of which penalties have been imposed under Section 167(12A) read with Section 183, are not entitled to claim the fundamental right guaranteed under Article 19(1)(f) of the Constitution and so, that plea fails.

10. In regard to the Shipping Corporation of India Ltd., which has filed the three Writ Petition Nos. 2-4 of 1963, the said Corporation is in no better position. As a result of the decision of this Court in State Trading Corporation of India Ltd. v. Commercial Tax Officer - 1963 AIR(SC) 1811, the Shipping Corporation of India Ltd. cannot claim to be a citizen of India, and as such, is not entitled to rely upon Article 19(1) in support of its case that Section 52A is ultra vires.

11. The result is, all the Civil Appeals and the Writ Petitions included in this group fail and are dismissed. Since these matters were heard along with Civil Appeal No. 770 of 1962 1983 (13) ELT 1392 (S.C.)], there would be no order as to costs in respect of them.

Appeals and petitions dismissed