

Oryx Fisheries Pvt.Ltd vs Union Of India & Ors on 29 October, 2010

Bench: Asok Kumar Ganguly, G.S. Singhvi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2010
(Arising out of Special Leave Petition (C) No.27615/08)

ORYX Fisheries Private Limited ...Appellant(s)

- Versus -

Union of India and others ...Respondent(s)

J U D G M E N T

GANGULY, J.

1. Leave granted.

2. The appellant, a Private Limited Company engaged in the production, procurement and processing and export of sea-foods, and other related products, agreed to supply MT of peeled and undeveined (PUD) shrimps to one Cascade Marine Foods LLC (hereinafter referred to as, "Cascade"}, a company incorporated under the relevant laws of UAE at Sharjah. The Purchase Contract dated 26.09.2006, was signed by Pristine Food Inc., a local agent of Cascade, and as per the details of the contract, the PUD Shrimps were to be Block frozen-with mandatory labels on both individual block and master carton and the destination was Sharjah, UAE. By a subsequent amendment dated 19.10.2006 to the purchase contract, the PUD quantity was increased to a total of 24 MT without changing other terms of the purchase contract. Prior to the dispatch of the consignment, inspection was carried out by Sakson Fisheries Consultants, local agents of Cascade, on 18.10.2006, whereby it was found that there was no bad odour. Rather there was a fairly fresh smell and the quality of the consignment was found to be satisfactory.

3. On 25.10.2006, the consignment was dispatched from Mumbai, which arrived at Sharjah Port on 02.11.2006 via Delivery Order, dated 06.11.2006. The Director of Customs, Sharjah, was requested to authorize the release of the PUD Shrimps to Cascade. Following this, on 07.11.2006 Sharjah Customs, vide its Customs Declaration Form, stated that the consignment was not to be released before Health Inspection. It appears from the facts that the customs and health authorities of UAE, had inspected the PUD Shrimps' quality and quantity and they were satisfied that it was fit for human consumption. The health authorities resealed the consignment and numbered it as MSLA 18 J 550015, as against the original seal no. YME 166813. It appears from the Store Receipt voucher No. 9232 dated 12.11.2006 of Cascade, the buyer, that they had taken possession of the consignment. After a lapse of more than 10 days, Cascade alleged that the PUD Shrimp was of very poor quality as it transpired from their analysis report dated 21.11.06.

4. As per the minutes of the meeting held on 17.12.2006 in the office of Cascade at Sharjah which was attended by Mr. S.D. Puranik and Mr. P.R. Sakthivel, respectively Managing Director and Director Marketing of the appellant and Mr. Vijay Paranjape, Group QA Manager Al-Kabeer and Ajit Pillai, General Manager, Cascade Marine Foods LLC, the appellant agreed to compensate Cascade to the extent of the value of the defective goods and the minutes of the meeting were signed by all the aforementioned individuals.

5. It has been mentioned in the note attached to the letter dated 03.09.2007 sent by Cascade to the Secretary, Ministry of Commerce, Government of India that Cascade was asked by the appellant on 21.12.2006 to issue necessary samples to Mr. Celestine of M/s Starfish Trading FZE and several samples were handed over to him. The fact that the samples were handed over to M/s Starfish Trading FZE has been disputed because the appellant's stand before this Court was that Cascade failed to hand-over the necessary samples to the said M/s Starfish Trading FZE.

6. The appellant called upon Cascade to hand over the consignment to one Freshly Frozen Foods LLC and as a result of that 1081 cartons of goods were delivered to the cold store designated by Freshly Frozen Foods on 14.04.2007 vide Cascade Store Issue Voucher 0390. Freshly Frozen Foods could retrieve only 25 kgs from 4 MT of product they had thawed out and they had directed Cascade to take back the material. When the Municipality Audit found out that the validity of PUD shrimp packages had expired they compulsorily destroyed the entire consignment of shrimps and the destruction cost was debited to Cascade. As a result, Cascade by its facsimile transmission dated 13.08.2007 informed the appellant that they rejected the entire consignment and they enclosed a Debit Note No.CMF/DN/108/07 for US\$ 86,104.00 which represented the material cost and destruction charges and requested the appellant to settle the same at the earliest.

7. On 3.09.2007 Cascade by its letter addressed to Chairman, Marine Products Export Development Authority (for short, MPEDA), made a quality complaint on the shipment effected by the appellant for a value of US\$ 83000 and a claim of total loss arising from intentional cheating by way of delivery of decomposed shrimp, unfit for human consumption.

8. The Deputy Director, MPEDA, the third respondent by its letter dated 12.09.2007 forwarded the quality complaint made by Cascade and sought clarification from the appellant regarding the same.

To that the appellant vide its letter dated 18.09.2007 stated that the consignment that they had sent was of standard quality and also pointed out that they were very doubtful whether the sample shown to the appellant's officers during their visit to Cascade's factory and the analysis report dated 21.11.2006 pertained to the consignment sent by them.

9. In addition to this, Cascade, through its advocates, served a legal notice on the appellant on 23.09.2007 asking it to pay US\$ 83104 plus destruction costs within 7 days of receipt of the notice and on failing to do so, appropriate legal proceedings would be filed in India and UAE to recover the said amount. The appellant, through its Advocate, replied on 17.10.2007 denying that the entire consignment of shrimps exported by the appellant had deteriorated in quality. In furtherance they also denied any liability to compensate Cascade for the value of the goods along with storage charges, distribution costs of USD 83104 plus destruction costs as alleged.

10. The third respondent vide its letter dated 25.10.2007, addressed to the appellant, directed it to settle the dispute with Cascade urgently by 10.11.2007, which was duly replied to by the appellant in the negative by its letter dated 11.11.2007. After a series of correspondence between the appellant and the third respondent, finally the third respondent decided on 20.11.2007 to convene a joint meeting on 5.12.2007 between the appellant and Cascade to find out an amicable settlement of the issue in the presence of the officers of MPEDA. The appellant in order to amicably settle the dispute offered Cascade 25% of the value of the goods exported, by way of deferred payment against adjustments, from future supplies, in the presence of officers of MPEDA, Cochin.

11. However, Cascade refused to accept the same. Then the third respondent issued a show cause notice dated 23.01.2008. As per the show cause notice the MPEDA called upon the appellant to show cause why their certificate of registration should not be cancelled.

12. The appellant replied to the show cause notice vide its letter dated 4.2.2008 seeking to refute the allegations levied upon it and further stated that MPEDA would not be justified in canceling its certificate of registration on the above- mentioned grounds.

13. Third respondent without giving any reason and without giving the appellant any personal hearing held, vide its order dated 19.3.2008, that the registration certificate of the appellant stood cancelled.

14. Being aggrieved by the said order, the appellant appealed before the second respondent under Rule 44 of the Marine Products Export Development Authority Rules, 1972 (hereinafter referred to as, "the MPEDA Rules"). The appellate body fixed a personal hearing on 28.04.2008. The appellant vide letter dated 26.05.2008 addressed to the appellate body stated that despite several attempts made by the appellant to resolve the dispute with Cascade as advised by the MPEDA, the attempts proved futile and once again requested appellate body to adjudicate the dispute on merits as well as to revoke the order of cancellation.

15. The second respondent vide its letter dated 20.06.2008 informed the appellant that no more personal hearing was required and directed them to send any further evidence of proof of settlement

with Cascade, if any. On 19-08-2008, the second respondent passed an order holding, inter alia, that:

".....The appellant in a very unethical way, had reneged on the promises made earlier. It is also clear that the appellant company has made every attempt to disown its responsibility for supplying poor quality seafood to M/s. Cascade Marine Foods LLC, Sharjah. Even during the personal hearing before the undersigned on the 28th April, the appellant was given ample time to settle the matter. Time was also given beyond the deadline fixed. However, the appellant seems to have taken a decision not to settle the complaint.

The appellant's contention that they were pressured to sign the documents is quite illogical and unjustifiable because if they had any difference of opinion they could have recorded then and there. Hence there is ample evidence that this is definitely a case of cheating of M/s. Orxy Fisheries by shipping substandard material to M/s. Cascade Marine that brought heavy loss to one of the leading buyers in UAE. Such erring and unrepentant exporters if they continue to export seafood from India could easily damage the reputation of India among buyers abroad.

In view of the facts and circumstances as mentioned above, this appellate authority finds no lapse on the part of the Deputy Director in canceling the registration of the appellant as an exporter.

I, therefore disallow the appeal and uphold the order of cancellation issued by the Deputy Director, RO, Mumbai."

16. Being aggrieved, by the order dated 19.03.2008 and 19.08.2008, the appellant preferred a Writ Petition No.2251 of 2008, before the High Court of Bombay. The High Court found no error of law on the face of record, and upheld the findings of the appellate authority and dismissed the writ petition by an order dated 16.10.2008.

17. Assailing the High Court's order, this Court was moved on a Special Leave Petition whereupon this Court on 28.11.2008 issued notice and continued the stay granted by the High Court on 16.10.2008.

18. In the backdrop of these facts the first question which falls for consideration of this Court is whether the respondents in cancelling the registration certificate of the appellant acted fairly and in compliance with principles of natural justice and also whether the respondents acted with an open mind.

19. It is obvious that in passing the impugned order of cancellation, the respondents were acting in a quasi-judicial capacity and also they were acting in exercise of their statutory powers. Indisputably, the third respondent while purporting to cancel the registration certificate was acting in exercise of his power under Rule 43 of the MPEDA Rules.

20. The show cause notice dated 23.01.2008 was issued by the third respondent in exercise of this power.

21. For a proper appreciation of the points involved, the show cause notice is set out in extenso:

"Sub: SHOW CAUSE NOTICE Your attention is invited to our HQ's letter No.IV/53/06-MS/HO dated 25.10.2007 and subsequent joint meeting with the buyer held at our Head office on 5th September, 2007 on the trade complaint received from M/s Cascade Marine Foods LLC, Sharjah.

At the meeting it was convincingly proved that the cargo shipped by you to the above mentioned buyer was defective and you have not so far settled the complaint. Therefore, in exercise of the powers vested in me vide Office Order Part-II No.184012005 dated 25.11.2005 read with Rule 43 of the MPEDA Rules, I hereby call upon you to show cause why the Certificate of Registration as an Exporter granted to you should not be cancelled for reasons given below:

1. It has been proved beyond doubt that you have sent substandard material to M/s Cascade Marine Foods, LLC, Sharjah.

2. You have dishonoured your written agreement with M/s Cascade Marine Foods, LLC, Sharjah to settle the complaint made by the buyer as you had agreed to compensate to the extent of the value of defective cargo sent by you and have now evaded from the responsibility.

3. This irresponsible action have brought irreparable damage to India's trade relation with UAE.

Your reply should reach the undersigned within 10 days from the date of receipt of this letter failing which it will be presumed that you have no explanation to offer and we will proceed with action for cancellation of your registration certificate without further notice to you. If ultimately a decision is reached to deregister you under the provisions of the MPEDA Rules, it will automatically entail de-registration under Registration Exporters' policy also."

22. Relying on the underlined portions in the show cause notice, learned counsel for the appellant urged that even at the stage of the show cause notice the third respondent has completely made up his mind and reached definite conclusion about the alleged guilt of the appellant. This has rendered the subsequent proceedings an empty ritual and an idle formality.

23. This Court finds that there is a lot of substance in the aforesaid contention.

24. It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show cause proceeding. A show

cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.

25. Expressions like "a reasonable opportunity of making objection" or "a reasonable opportunity of defence" have come up for consideration before this Court in the context of several statutes.

26. A Constitution Bench of this Court in *Khem Chand v. Union of India and others*, reported in AIR 1958 SC 300, of course in the context of service jurisprudence, reiterated certain principles which are applicable in the present case also.

27. Chief Justice S.R. Das speaking for the unanimous Constitution Bench in *Khem Chand (supra)* held that the concept of 'reasonable opportunity' includes various safeguards and one of them, in the words of the learned Chief Justice, is:

"(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges leveled against him are and the allegations on which such charges are based;"

28. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge- sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show cause notice gets vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony.

29. Justice is rooted in confidence and justice is the goal of a quasi-judicial proceeding also. If the functioning of a quasi- judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Its fairness is obviously to be manifested by the language in which charges are couched and conveyed to the person proceeded against. In the instant case from the underlined portion of the show cause notice it is clear that the third respondent has demonstrated a totally close mind at the stage of show cause notice itself. Such a close mind is inconsistent with the scheme of Rule 43 which is set out below. The aforesaid rule has been framed in exercise of the power conferred under Section 33 of The Marine Products Export Development Authority Act, 1972 and as such that Rule is statutory in nature.

30. Rule 43 of the MPEDA Rules provides as follows:

"43. Cancellation of registration Where the Secretary or other officer is satisfied that any person has obtained a certificate of registration by furnishing incorrect information or that he has contravened any of the provisions of this rule or of the conditions mentioned in the certificate of registration, or any person who has been registered as an exporter fails during the period of twelve consecutive months to export any of the marine products in respect of which he is registered, or if the secretary or other officer is satisfied that such person has become disqualified to

continue as an exporter, the Secretary or such officer may, after giving the person who holds a certificate a reasonable opportunity of making his objections, by order, cancel the registration and communicate to him a copy of such order."

31. It is of course true that the show cause notice cannot be read hyper-technically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show cause notice does not commence a fair procedure especially when it is issued in a quasi- judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show cause notice.

33. The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it.

34. A somewhat similar observation was made by this Court in the case of Kumaon Mandal Vikas Nigam Limited v. Girja Shankar Pant & others, (2001) 1 SCC 182. In that case, this court was dealing with a show cause notice cum charge-sheet issued to an employee. While dealing with the same, this Court in paragraph 25 (page 198 of the report) by referring to the language in the show cause notice observed as follows:

"25. Upon consideration of the language in the show-cause notice-cum-charge-sheet, it has been very strongly contended that it is clear that the Officer concerned has a mindset even at the stage of framing of charges and we also do find some justification in such a submission since the chain is otherwise complete."

35. After paragraph 25, this Court discussed in detail the emerging law of bias in different jurisdictions and ultimately held in paragraph 35 (page 201 of the report), the true test of bias is:

"35. The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom -- in the event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained:"

36. Going by the aforesaid test any man of ordinary prudence would come to a conclusion that in the instant case the alleged guilt of the appellant has been prejudged at the stage of show cause notice itself.

37. The appellant gave a reply to the show cause notice but in the order of the third respondent by which registration certificate of the appellant was cancelled, no reference was made to the reply of the appellant, except saying that it is not satisfactory. The cancellation order is totally a non-speaking one. The relevant portion of the cancellation order is set out:-

"Sub: Registration as an Exporter of Marine Products under MPEDA Rules 1972.

Please refer to the Show Cause Notice No.10/3/MS/2006/MS/3634 dated 23.01.2008 acknowledged by you on 28/01/2008 directing you to show cause why the certificate of registration as an exporter No.MAI/ME/119/06 dated 03/03/2006 granted to you as Merchant Exporter should not be cancelled for the following reasons:-

1. It has been proved beyond doubt that you have sent sub-standard material to M/s. Cascade Marine Foods, L.L.C., Sharjah.
2. You have dishonoured your written agreement with M/s. Cascade Marine Foods, L.L.C, Sharjah to settle the complaint made by the buyer as you had agreed to compensate to the extent of the value of the defective cargo sent by you and have now evaded from the responsibility.
3. This irresponsible action has brought irreparable damage to India's trade relation with UAE.

Your reply dated 04/02/2008 to the Show Cause Notice is not satisfactory because the quality complaint raised by M/s. Cascade Marine Foods, L.L.C, Sharjah have not been resolved amicably. Therefore, in exercise of the power conferred on me vide Rule 43 of the MPEDA Rules, read with office order Part II No.1840/2005 dated 25/11/2006, I hereby cancel the Registration Certificate No.MAI/ME/119/06 dated 03/03/2006 issued to you. The original Certificate of Registration issued should be returned to this office for cancellation immediately.

In case you are aggrieved by this order of cancellation, you may prefer an appeal to the Chairman within 30 days of the date of receipt of this order vide Rule 44 of the MPEDA Rules.

38. Therefore, the bias of the third respondent which was latent in the show cause notice became patent in the order of cancellation of the registration certificate. The cancellation order quotes the show cause notice and is a non-speaking one and is virtually no order in the eye of law. Since the same order is an appealable one it is incumbent on the third respondent to give adequate reasons.

39. On the question whether the entire proceeding for cancellation of registration initiated by the show cause notice and culminating in the order of cancellation is vitiated by bias we can appropriately refer to the succinct formulation of the principle by Lord Reid in *Ridge v. Baldwin* and others (1964 A.C. 40). The Learned Law Lord, while dealing with several concepts, which are not susceptible of exact definition, held that by fair procedure one would mean that what a reasonable man would regard as fair in the particular circumstances (see page 65 of the Report). If we follow the aforesaid test, we are bound to hold that the procedure of cancellation registration in this case was not a fair one.

40. On the requirement of disclosing reasons by a quasi- judicial authority in support of its order, this Court has recently delivered a judgment in the case of *Kranti Associates Pvt. Ltd. & Anr. v. Sh. Masood Ahmed Khan & Others* on 8th September 2010.

41. In *M/s Kranti Associates* (supra), this Court after considering various judgments formulated certain principles in para 51 of the judgment which are set out below a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions. c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice. i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of

precedent or to principles of incrementalism. l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions". o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

42. In the instant case the appellate order contains reasons. However, absence of reasons in the original order cannot be compensated by disclosure of reason in the appellate order.

43. In Institute of Chartered Accountants of India v. L.K. Ratna and others,(1986) 4 SCC 537, it has been held:

".....after the blow suffered by the initial decision, it is difficult to contemplate complete restitution through an appellate decision. Such a case is unlike an action for money or recovery of property, where the execution of the trial decree may be stayed pending appeal, or a successful appeal may result in refund of the money or restitution of the property, with appropriate compensation by way of interest or mesne profits for the period of deprivation. And, therefore, it seems to us, there is manifest need to ensure that there is no breach of fundamental procedure in the original proceeding, and to avoid treating an appeal as an overall substitute for the original proceeding."

(See para 18, pages 553-554 of the report)

44. For the reasons aforesaid, this Court quashes the show cause notice as also the order dated 19.03.2008 passed by the third respondent. In view of that, the appellate order has no legs to stand and accordingly is quashed.

45. We are constrained to observe that unfortunately this aspect of the matter was not considered by the High Court. We cannot, therefore, approve the order of the High Court and the same is accordingly quashed. The cancellation of the registration certificate of the appellant is set aside and we declare the registration to be valid if it is not vitiated for any other reason.

46. We, however, make it clear that if the authorities are so inclined, they can proceed from the stage of show cause notice afresh but strictly in accordance with law and following the fair procedure indicated in this judgment.

47. The appeal is allowed. Parties are left to bear their own costs.

.....J. (G.S. SINGHVI)J. (ASOK KUMAR GANGULY) New Delhi October
29, 2010