Prem Nath And Ors. vs S. Venkatesan And Ors. on 27 January, 1967

JUDGMENT

K.S. Hegde, J.

(1) Civil Writ petitions Nos. 180-D to 186-D of 1959 are connected petitions under Articles 226 and 227 of the Constitution In these petitions the petitioners pray that this Court may be pleased to issue an appropriate writ, order or direction calling for the record in these cases, and declare the orders passed by the Deputy Collector of Customs on 4th June. 1956, the Central Board of Revenue on 25th September, 1957, and the Central Government on 12th January. !959, "as illegal, perverse, arbitrary, unjust and without jurisdiction, and quash the same.

(2) The only point for decision is whether the petitioners have been able to establish that the impugned orders suffer from any error of law apparent on the face of the record or, in the alternative, whether any of the authorities concerned failed to exercise its jurisdiction as required by law.

(3) A heavy penalty was imposed on the petitioners on the ground that they imported into India chaff cutter knives without obtaining the necessary licences. The petitioners denied that allegation. The Deputy Collector of Customs after notice to the petitioners and after hearing them, rejected their case and imposed penalty on them. Aggrieved by that order, the petitioners went up in appeal to the Central Board of Revenue under section I S8 of the Sea Customs Act. They took various grounds of fact and law in their appeal memo. The Central Board of Revenue, by its order dated 25th September, 1957, dismissed the appeal with the following observations :-

> "ALLthe arguments pat forth in the appeal have been carefully considered but the Board sees no reason to interfere with the order passed by the Deputy Collector of Customs, Bombay." The revision petition taken to the Central Government was summarily dismissed.
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> (4) Under law, the petitioners had a right to go up in appeal to the Central Board of Revenue. A duty is cast on the Central Board of Revenue to consider the petitioners' case afresh, both on questions of facts as well as of law. The order of the Central Board merely assures that the Board has carefully considered all the grounds taken. Beyond this assurance, there is no indication in the order as to what were the points I that were taken before it and what was the decision of the Board on those points. Quite clearly, the order of the Board is not a speaking order. The order of the Board is subject to revision by the Central Government. Therefore, it cannot be considered as a final and conclusive order. That apart, the order of the Board is subject to review by this Court in exercise of its powers of superintendence under Article 227 of the Constitution. Therefore, a duty was cast on the Board to make its order a speaking

one. The revising authority as well as the superintending authority must get sufficient material from the order of the Board to satisfy themselves that the Board has in fact applied its mind to the questions of law and fact taken before it. That is absolutely necessary to compel the Board to discharge its legal duties. Otherwise, the revisonal power conferred on the Government and the superintending power of this Court would become meaningless. There will be no scope for exercising those powers. It may be that the members of the Board are quite conscientious and would discharge their duty according to law. But what is necessary is the guarantee that a party's case had been considered according to law. Law does not recognise any short cut to justice. Though the conditions laid down by rule 31 of Order 41 of the Code of Civil Procedure are not applicable to cases like the present one, the principles underlying those rules are equally applicable to these cases. They are juristic principles of high value. Adherence to those principles is the surest way of rendering justice in the long run. My conclusion in this regard receives support from various judicial pronouncements. It would be suffice if I refer to the decision of the Andhra Pradesh High Court in A. Annamalai v. State of Madras and other, the decision of the Allahabad High Court in Mohammad lrfan Khan v. Superintendent, Central Excise. Moradabad and another and that of the Punjab High Court in the Rohtak Delhi Trnsport v. Risal Singh.

(5) For the reasons, mentioned above, I agree with Mr. Anup Singh, the learned counsel for the petitioners, that the order of the Central Board of Revenue.. impugned in this case, is liable to be quashed. It is true that that order has been affirmed by the Central Government, but that affirmation cannot be substained in view of the fact that it is an affirmation of an order, which is per se bad (6) In the result, I allow these petitions and quash the orders of the Central Board of Revenue dated 25th September, 1957, and the Central Government dated 12th January, 1959 orders impugned in these petitions. There is no ground at this stage to quash the order of the Deputy Collector of Customs, dated June 4, 1956. The correctness of that order will have to be considered afresh by the Central Board of Revenue.

(7) These cases will now go back to the Central Board of Revenue for disposal according to law. The Board will hear the petitioners' appeals afresh after giving them a hearing according to law.