Customs, Excise and Gold Tribunal - Tamil Nadu
Collector Of Customs vs Prehlad Singh Chadda on 30 December, 1985
Equivalent citations: 1987 (12) ECR 1129 Tri Chennai, 1986 (26) ELT 787 Tri Chennai
ORDER S. Kalyanam, Member (J)

1. This reference application by the Collector of Customs, Madras, is directed against the order of the Tribunal dated 27-5-85 in No.C/144/83 in terms of Section 130(1) of the Customs Act, 1962 hereinafter referred to as the Act. The following questions have been formulated in the pleadings as questions of law arising out of the impugned order of the Tribunal meriting reference to the High Court:

(1) In view of the specific provisions of the Customs Act envisaged under Section 122 and 137 vesting the powers of adjudication as well as sanction of prosecution, with the same authority by the legislature, whether it is correct to hold that the adjudicating authority who has sanctioned prosecution is not competent to adjudicate the case and he has prejudged the issue?

(2) Can the adjudicating authority said to have been influenced by his executive decision to sanction prosecution under Section 135 of the Customs Act, 1962 and thus become disqualified for adjudicating the case in exercise of the powers vested to him under Section 122 of the Customs Act, 1962?

(3) Are Section 122 and 137 of the Customs Act, 1962 mutually exclusive?

2. The learned/Senior Departmental Representative expatiating on the questions formulated above submitted that the Tribunal by- the impugned order set aside the order of the Additional Collector of Customs, Madras, dated 18-9-82 and remitted the matter back for readjudication, not on merits but on a technical ground that the Additional Collector, who, on application of mind into the facts of the case, accorded sanction, should not have adjudicated the same, particularly in the context of an apprehension expressed by the respondent herein by his application dated 29-3-82 on grounds of natural justice. It was urged that according sanction is a statutory duty and not a direction for prosecution and therefore, the sanctioning authority is competent to adjudicate. It was further submitted that prior sanction by the competent authority under Section 137 of the Act is a condition precedent for valid initiation of a prosecution under Section 135 of the Act, and if the sanctioning authority is precluded from adjudicating the cases, he would not be able to exercise the statutory powers and duties under Section 122 of the Act. The learned SDR submitted that the order of the Tribunal if given effect to would apparently render Section 132 and 137 mutually repugnant and exclusive, and as the issue is one of vital public and legal importance, it would merit reference to the High Court. He also placed reliance on a ruling of the Supreme Court reported in 1953 MLJ page 17 in the case of Rameshwar Bhartia v. The State of Assam.

3. The learned counsel for the respondent urged that a scrutiny of the sanction order would reveal that the Additional Collector had made up his mind with reference to the guilt of the respondent and in such a situation principles of fairplay and natural justice require that some other authority should have adjudicated the same. It was further urged that irrespective of bias on the part of the

adjudicating authority the issue will have to be adjudged from the stand point of a genuine apprehension in the mind of the respondent that he would not get fair trial in such a situation. Therefore, it was urged that the Department having acquiesced in the correctness of the impugned order of the Tribunal and more so, acted on the same by commencing de novo proceedings by the issue of show cause notice which has also been responded by the respondent herein, the Department would be estopped from filing this reference application.

4. The learned SDR in reply submitted that commencement of de novo proceedings by the Department pursuant to the remand order of the Tribunal is a post decisional factor which would not militate against the pre-existing right of the Department to take out an application for reference in terms of Section 130(1) of the Act.

5. I have carefully considered the submissions urged before me. The grant. of sanction in law is a solemn one and a statutory duty is cast on the sanctioning, authority, to apply its mind into ail the relevant facts constituting the offence and arrive at a decision on evaluation and consideration of the same. This aspect of the matter has been dealt with in extenso in the impugned order of the Tribunal in paragraph 5 and therefore, it is superfluous to repeat the same here. Nobody can quarrel with the proposition that according sanction is a statutory duty under Section 137 of the Act. But the whole question here is whether the sanctioning authority in the course of formation of an opinion for according sanction could be said to have entertained an impression or a feeling about the guilt of the person concerned and whether in the context of a criminal prosecution launched prior to adjudiction, an apprehension in the mind of the respondent that he may not get fair or unbiased trial or adjudication at the hands of the Additional Collector in the instant case is reasonable, bonafide or genuine or totally fanciful, imaginary and capricious. The fundamental principle of natural justice is that in the case of quasi-judicial proceedings, the authority empowered to decide the dispute between opposing parties must be one without bias towards one side or the other in the dispute. Tribunals or authorities who are entrusted with quasi-judicial functions are as much bound by the relevant principles governing "doctrine of bias" as in other judicial Tribunals. The principles governing the doctrine of bias vis-a-vis, judicial Tribunals are well settled and they are typified by the maxims known in common law as "audi alteram partem" and "Nemo debet esse judex in propria sua cusua". The quintessences of the legal wisdom embedded in the aforesaid and other common law Sega! maxims is that (1) no man shall be condemned unheard;

(2) no man shall be a judge in his own case; and

(3) justice should not only be done but manifestly and undoubtedly s

(emphasis applied).

In applying the bias rule, the test is not whether in fact a bias has affected the judgment but the test is always and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the Tribunal might have operated against him in the final decision of the Tribunal. This facet of natural justice has been highlighted by the ratio decidendi in the ruling of the Supreme court in the case of Manak Lal v. Premchand - AIR 1957 SC 425. In deciding the question of bias, human probabilities and ordinary course of conduct must be taken into consideration. No doubt, the question as to whether an enquiry of adjudication has been in conformity with the canons of natural justice would depend upon the facts and circumstances of each case. In the instant case, the respondent herein by an application dated 29.3.82 made a plea before the adjudicating authority that he having accorded sanction should not adjudicate and submitted "you have pre-judged the issue and made up your mind" and that "in all fairness the case ought not be adjudicated by you, for there will be gross violation of the principles of natural justice." After this plea was turned down by the adjudicating authority, the respondent participated in the proceedings "without prejudice to his rights and contentions" as expressed in the petition dated 24.7.82. The various correspondence between the adjudicating authority and the respondent forming part of the materials in the case leaves no room tor doubt that they continued to join issue at every stage of the adjudicating proceedings on various matters. The adjudicating authority in his letter dated 3.8.82, inter alia, has levelled a charge against the respondent of "prolonging the proceedings on some pretext or the other", which was repudiated by the respondent by his letter dated 4.8.82 adverting to prejudging of the issue and attributing the inordinate delay from March to July in adjudication to the adjudicating authority. Whatever may be the truth or otherwise, one thing is certain that the respondent herein has clearly expressed want of confidence in the impartiality of the adjudicating authority who also has taken in tenacious stand with reference to his legal competence to proceed with the adjudication notwithstanding the expression of want of confidence by the respondent. In such a situation of factual controversy with reference to procedural propriety resorted to by either of the side it need hardly be said that it is expedient that the adjudication should have been made over to some other authority. As the Supreme Court has held it is of the essence of judicial trial that the atmosphere in which it is held must be of calm detachment and dispassionate and unbiased application- of mind. Therefore, in a situation as the one that existed in the present case, human probabilities and ordinary course of conduct would be factors relevant and determinative of the question of bias. After all, principles of natural justice explained above could not be encapsuled into the straight jacket of a rigid formula nor will it be proper to borrow the felicitous metaphor of Lord Wright" to force it into any Procrustean bed".

6. The ruling relied upon by the learned SDR is clearly distinguishable on the facts and circumstances of the present case. In the Rameshwar Bhartia case, relied upon by the SDR, the Supreme Court was concerned to construe the connotation and legal signification of the word 'personal interest' in interpreting Section 556 of the Code of Criminal Procedure (V of 1898). In that case the sanction accorded by the District Magistrate was on the basis of a short note written out and "sent to him by the Procurement Inspector. The facts did not disclose that the District Magistrate perused all relevant facts and materials. Apart from it, in the factual background of that case, the Supreme Court was of the view that the accord of sanction by the District Magistrate in that case would not tantamount to direction within the meaning of. illustration to Section 556 Cr. P.C. referred to supra. I perused the sanction order in the present case. It states that the respondent

herein and others "devised and executed their plan to illegally import the above mentioned goods of foreign origin and attempted to evade duties of customs payable on the goods and also the prohibitions and restrictions applicable to the goods on import under me imports and Exports (Control) Act, 1947", and by their acts of commission and omission rendered the goods liable to confiscation under Sections 111(d), (e), (1) and 115(1) and (2) and Section 119 of the Customs Act, 1962 read with Section 3 of the Imports and Exports (Control) Act, 1947", and "on the basis of facts and materials available, I am satisfied that the above mentioned A.I. A.2, A.3 and A. (respondent herein) should be prosecuted for the offences under Section 135(1)(a) of the Customs Act, 1962". The wordings in the sanction order clearly signifies that the sanctioning authority on perusal of the materials reached a conclusion that the respondent herein and others devised and executed their plan of illegal import of goods of foreign origin and by their acts of commission and omission rendered the goods liable to confiscation and the respondent and others should be prosecuted for the offences. In the context of the factual background of this case, the language employed in the sanction order leaves no room for doubt in my mind that the sanctioning authority has not only made up his mind about the guilt of the respondent but also has expressed an opinion that he and others' "should be prosecuted for the offences". This finding of the superior officer like that of an Additional Collector is certainly in the nature of command and would undoubtedly partake the character of an official direction.

7. As has been pointed out by the Supreme Court in the aforesaid ruling, "the question on whether a Magistrate is personally interested or not has essentially to be decided on the facts in each case. Pecuniary interest, however, small will be a disqualification, but as regards other kinds of interest there is no measure or standard except that it should be a substantial one giving rise to a real bias or a reasonable apprehension on the part of the accused of such bias" (emphasis applied). Indeed, in the impugned order of the Tribunal has observed that "as principles of natural justice revolve round fairplay in action, justice should not only be done but must seem to be done". The law has regard not so much perhaps to the motives which might be supposed to bias the judge as to the susceptibilities of the litigant parties. One important object, at all events, is to clear away everything which might engender suspicion and distruct of the tribunal, and so to promote the feeling of confidence in the administration of justice which is so essential to social order and security. It is common knowledge that when a judicial confession under Section 164 Cr. P.C. is recorded by a Judicial Magistrate, he would not hold the committal enquiries in relation to the case triable by a Court of Session, when law provided for such a commital enquiry. Likewise, even with reference to transfer of proceedings from one court to another court the Court have consistently held that the guiding facts would be whether the facts or circumstances urged for transfer are calculated to create in the mind of the applicant seeking transfer a justifiable apprehension that he may not have a fair and impartial trial. In the instant case, on the basis of the circumstances relating to sanction and a plea of apprehension about fair trial expressed by the respondent, a finding has been given by the Tribunal that on the grounds of natural justice and fairplay, adjudication should be by different authority.

8. The plea of the learned SDR that the view taken by the Tribunal in the impugned order would create a conflict between Sections 122 and 137 of the Act is without basis. Section 122(a) deals with adjudication of confiscation and penalties without limit by a Collector of Customs or a Deputy Collector of Customs. As per Section 2(8) "Collector of Customs" includes an Additional Collector of

Customs. Therefore, when there are a Collector and an Additional Collector, one can be the sanctioning authority while any one of the rest in Collector or Additional Collector or Deputy Collector can be the adjudicating authority and I fail to appreciate how one could ever spell out a conflict between Section 122 vis-a-vis 137 of the Act. Assuming argumendo that the finding of the Tribunal is apt to create administrative difficulties, it should not be difficult to notify certain category of officers as Collectors within the meaning of Section 137 for the limited purpose of according sanction.

9. The plea of the respondent that the Department having accepted the finding of the Tribunal in the impugned order and commenced fresh adjudication proceedings by issue of show cause notice which has also been responded to; would not have the right of reference under the Act is legally untenable. As rightly pointed out by the learned SDR acts initiated by the Department subsequent to the order of the Tribunal and in conformity thereto, would not destroy or nullify the pres-existing right of reference in terms of Section 130(1) of the Act.

10. In the result the reference application is rejected.