

Bijoy Gopal Bhattacharya Vs Union of India (UOI) and Others

Court: Calcutta High Court

Date of Decision: Jan. 15, 1985

Acts Referred: Constitution of India, 1950 Article 226

Citation: (1985) CriLJ 543

Hon'ble Judges: Umesh Chandra Banerjee, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Umesh Chandra Banerjee, J.

This application under Article 226 of the Constitution is directed against the issuance of a show cause notice,

as also the order of confiscation and penalty by the adjudicating authority u/s 78 of the Gold Control Act.

2. The facts relating to issuance of show cause notice reveal that in pursuance of a search and seizure effected at the petitioners premises at South

Bishnupur, Police Station Mandir Bazar, Dist. 24 Parganas on 2nd May, 1973, the Gold Control Authority seized gold and gold ornaments

weighing 2687.00 grams valued at Rs. 50,000/- consisting of manufactured, prepared polished processed primary gold and gold ornaments and

also certain number of plastic boxes bearing inscription Bashaspati Dokan and thereafter the names of the petitioners. Subsequently a show cause

notice was issued on 8th October 1973 under Sections 8(1), 11(1)(a) &(b) and Section 27(i) of the Gold Control Act 1968 requiring the writ

petitioners to show cause as to why an order of confiscation u/s 71 of the Act of 1961 as also penalty u/s 74 should not be imposed on each of the

petitioners. The show cause notice also detailed the basis of the notice being the allegation of charges as also the evidence as recorded.

3. On 29th October 1973, the petitioners by a letter required copies of detailed inventory list, copy of search warrant as also copy of any other

document on which reliance was to be placed by the adjudicating authority. The petitioners also wanted to inspect the plastic boxes. The reply to

the aforesaid letter is of some consequence, as the main plank of the petitioners contention centered round the complaint of violation of the

principles of natural justice and as such relevant extract of the same is set herein below :

....

True copies of the search authorisation and of your initial statement and of the statement of Shri Krishna Saran Bhattacharjee, your son dated 2-5-

73 are enclosed herewith as requested for in your letter under reference. A copy of your son's statement dated 9-7-73 has already been taken by

him under receipt on the same date. In this connection I may point out that the search authorisation was shown to you before and after the search

in token of which you have put your signature on the said document.

As regards furnishing of an inventory of the goods seized I am to inform you that a copy of the Panchanama containing the inventory of the goods

was furnished to you on the very date of seizure. It is, however, open to you to apply to the adjudicating authority at the time of hearing of the

case, for inspection of the seized gold. You may also inspect the plastic boxes at the time of personal hearing.

As regards para 3(3) of your letter under reference you are requested to specifically state what other documents you require.

Personal hearing will be granted to you by the Adjudicating Authority before decision of your case on receipt of your reply to the Show Cause

Notice.

....

4. There is no dispute in regard to the factum of a detailed hearing before the adjudicating authority.

5. Mr. R.N. Das appearing for the writ petitioners strenuously contended that the respondent Authority ought to have made available the inventory

list of the seized items. No complaint was however lodged at the time of hearing before the Authority even though the petitioners were represented

by two learned Advocates. In my view on the basis of the available records question of violation of natural justice does not and cannot arise in the

instant case. Observance of the doctrine of audi alteram partem is one of the most salutary principles of law for the purpose of administration of

justice except however where it is expressly or by necessary implication excluded. Prof. Wade "On Administrative Law" observed that the

requirement of natural justice must depend on the facts and the circumstances of the case, the nature of the enquiry, the rules under which the

tribunal is acting, the subject matter to be dealt with and so forth "" This view also finds support in the decision of the Supreme Court in the case of

K.L. Tripathi Vs. State Bank of India and Others, . In a sense justice demands a fair opportunity to the offender, even assuming at its highest,

deserving or not. But in the fact of this case no such complaint can be made. The reply to the letter dt. 29th October 1973 was categorical and

negates the contention.

6. Further, sufficient safeguard has been engrafted in the Gold Control Act and no violation was also ascribed in the case under consideration.

7. The other contention of Mr. Das is in regard to show cause notice and violation of Section 11(1)(a) and Section 11(1)(b) of the Gold Control

Act. Section 11(1)(a) provides that no person save as otherwise provided in the Gold Control Act shall make, manufacture, prepare or process

any primary gold and Section 11(1)(b) provides that no person shall make, manufacture, prepare, repair, polish or process any ornaments except

as provided in the Act. In the show cause notice it was alleged that the writ petitioners did in fact prepare, polish and process primary gold

weighing about 75 grams and gold ornaments weighing all together 2612.00 grams. In the allegation of charges it has been specifically mentioned

that the primary gold recovered were in the form of small pieces of brand new strips for use in regard to the manufacture of gold ornaments. It was

further alleged that most of the new ornaments recovered were multiple in number and the Balas being hollow without any lac inside indicative of

that they were not completely manufactured and were yet to be used and have been kept for sale to the customers. The earrings, neck-chains and

churis were new and multiple in number indicating that they were also kept for sale. Some of the rings were in incomplete state with stone yet to be

set.

8. Mr. Das contended that the finding in regard to the primary gold is incorrect and the same being jurisdictional issue the writ courts can and ought

to interfere in regard thereto. In order to appreciate the contentions one needs to consider the definition of primary gold as laid down in the Gold

Control Act. Section 2(r) defines primary gold and means gold in unfinished or semi-finished form and includes ingots, bars, block, slabs, billets or

foils. The definite finding of the Collector that the gold recovered were in the form of small pieces of brand-new strips for use in the manufacture of

gold ornaments cannot in my view be questioned in this forum. Mr. Das placed strong reliance on the decision of the court in the case of Sumanlal

Parekh and Others Vs. Collector of Central Excise and Customs, W. Bengal and Others, wherein T. K. Basu, J. held that it is undoubtedly for the

gold control authorities to decide the collateral question of fact namely, whether article in respect of which the proceedings are sought to be

initiated is primary gold or not within the meaning of the Act. Basu, J. thereupon went on to say that it is only upon a correct finding of that

collateral fact that the authorities can assume jurisdiction to invoke " the provisions of the Act for the purpose of initiation of proceeding therein. It

was held in that decision that the fact whether article in question is primary gold or not is clearly jurisdictional fact upon a correct finding on which

the assumption of jurisdiction by the authorities will depend. In the facts of that case it appeared in the seizure list the description of the goods

seized was "yellow metal said to be gold in form of churl." The question arose whether those churis can be termed to be primary gold or ornaments

within the meaning of the Act as the consequences were different if it is otherwise. Upon inspection of the churis in Court Basu, J, came to a finding

of fact that the said churis were ornaments. In the present set of facts there is no such possibility as there exists a definite finding. The decision

therefore is clearly distinguishable on facts and as such is of no assistance to Mr. Das. The other decision relied upon by Mr. Das is the decision of

Nemichand Bhansali v. Superintendent of Central Excise (Preventive, Raipur) reported in AIR 1981 Madh Pra 253. In my view the said decision

has no manner of application in the facts of the case under consideration. The adjudicating authority has considered the entire set of facts and the

circumstances and upon consideration of the facts and circumstances of the case, came to a finding that the gold ornaments and the small pieces of

primary gold could not be kept for reasons stated by the writ petitioners but it was definitely meant for sale to the others. The plea of license under

Bengal Money Lenders Act and the deposit of gold ornaments by borrowers as also subsequent failure to redeem the ornaments were considered

by the adjudicating authority and the writ court ought not to interfere in the matter of the definite findings of fact by the adjudicating authority. There

is no question of any error of law apparent on the face of the record. It is well settled principle of law that writ court's intervention is required only

in the case of an error of law or an error apparent on the face of the record which can be termed to be an error of law. It is also well settled that

even if the writ court comes to a different conclusion it ought not to interfere inasmuch as the Writ court ought not to sit on appeal over the

decisions of the adjudicating authority under the law. In my view there is no error of law nor any error apparent on the face of the record which

can be termed to be an error of law.

9. In that view of the matter this application fails. The Rule is discharged All interim orders are vacated. There will however be no order as to

costs.

10. Stay of operation of the order as prayed for is granted for a period of one week from date.