H.A. Dagman Vs The Collector of Customs and Others

C.R. No. 12496 (W) of 1979

Court: Calcutta High Court

Date of Decision: Nov. 17, 1989

Acts Referred:
Constitution of India, 1950 â€" Article 226#Gold (Control) Act, 1968 â€" Section 74, 83

Citation: (1990) 2 CALLT 133 : (1990) 25 ECC 414 : (1990) 27 ECR 370

Hon'ble Judges: Susanta Chatterji, J

Bench: Single Bench

Advocate: Bijoy Kumar Bhose and Pinaki Chandra Motilal, for the Appellant;S.N. Banerjee and R.N. Mazumder, for the Respondent

Final Decision: Dismissed

Judgement

Susanta Chatterji, J.
The present Rule was issued on 26.11.79. The writ petitioner has challenged order No. 174 and order No. 175

dated 14.7.72 passed by the Additional Collector of Customs, Calcutta imposing penalty of Rs. 10,000/- upon the petitioner (H. A. Dagman) u/s

74 of the Gold Control Act, 1968. The petitioner has also challenged the order dated 27.7.74 passed by the Gold Control Administrator as the

appellate authority to dismiss the appeal and by affirming the aforesaid order of the Additional Collector of Customs dated 14.7.72. The petitioner

has also challenged the order in revision dated 7.9.79 passed by the Special Secretary to the Government of India. It is stated that acting on a

secret information officers of Air Customs, Calcutta Airport attended the Bombay flight of Indian Airlines through Flight No. 175 dated 28.5.71 at

about 10.00 P.M. All the baggages of crew were unloaded from the aircraft and the two baggages remained unidentified. Out of the said two

unidentified baggages one was found locked and another was found unlocked. Locked bag was opened in presence of independent witnessed and

105 of gold bars were recovered and in the unlocked bags 25 pieces of gold bars along with 12 pieces of mangoes were recovered. Several

statements were recorded and a show cause notice was served upon the petitioner on 8.11.71 for contravention of Gold Control Act. In view of

the petitioner''s written representation against the show cause notice, the Additional Collector of Customs, Calcutta disposed of the adjudication

proceedings under Gold Control Act and made an order after recording his findings and imposed penalty of Rs. 10,000/- u/s 74 of the Gold

Control Act. The petitioner preferred an appeal before Gold Control Administrator, New Delhi against the order dated 14.7.72. Both the appeal

and the revisional application were disposed of. Being aggrieved the petitioner has come to this writ Court on the ground that no oral evidence has

been recorded at the time of the enquiry or the trial. The respondent No. 5 acted wholly who without jurisdiction in relying upon the statements

recorded by the Customs Officers prior to the issuance of the show cause notice in the matter of imposing of penalty u/s 74 of the Gold Control

Act, 1968. The petitioner''s further contention is that under provision of Section 83 of the Gold Control Act, it is incumbent upon the respondent

Nos. 1 to 5 to record the evidence of the witnesses. The respondent Nos. 1 to 5 have no power to rely upon the statements other than the

receiving evidence on affidavits. There are allegations that the respondent Nos. 1 to 5 acted wholly without jurisdiction in receiving the statements

of different persons and there is no clear evidence to link the petitioner and the packages containing smuggled gold in the form of foreign marking.

Stating all these facts in details, the petitioner has sought for the reliefs to quash the impugned orders as indicated above.

2. The writ petition is contested by the respondent authorities by filing affidavit-in-opposition by the respondent Nos. 1 to 3 and 5 and No. 4

separately. It is disclosed that pursuant to information received at Dum Dum Airport to the effect that one Indian Airlines Steward Sri H. A.

Dagman would carry smuggled gold bars from Bombay by Indian Airlines Flight No. 175 a group of Customs Officers took up their position

around the said aircraft on the aforesaid date and maintained surveillance on the crews'' baggages. The gold bars were seized in the reasonable

belief that there was smuggled goods and was liable to confiscation under the Customs Act. In connection with the above seizure, enquiries were

made with different persons. All recorded statements were supplied to the petitioner and it revealed during the enquiries that Sri H. A. Dagman and

Sri M. K. Kundu the two flight stewards of Indian Airlines were closely associated to each other and the Indian Airlines'' roster indicated that they

preferred to fly together and in fact, on 27.6.71 both of them went to Bombay in Flight No. IA 176 and stayed there at hotel Ritz in room No. 304

and that on 28.5.71 both of them accompanied by flight stewardess Miss G. Rodringness went to Crawford market and purchased mangoes from

the same vendor for themselves as well as for Captain Aserappa. Sri Dagman and Sri Kundu carried their purchase in the respective handbags and

that out of the mangoes purchased by Sri Dagman, 12 pieces mangoes were given to Sri Aserappa on board the aircraft at Santa Cruz Airport. In

course of investigation, it transpired that the petitioner was involved in smuggling the prohibited gold bars and show cause notices were issued to

the petitioner and Sri M. K. Kundu both under the Customs Act, 1962 and Gold Control Act, 1968 on 8.11.71. The case was adjudicated by the

Additional Collector of Customs on 14.7.72 after granting personal hearing to the said persons. The Adjudication Officer imposed personal

penalty of Rs. 10,000/- each and under the Customs Act, 1962 and on each Sri H. A. Dagman and Sri M. K. Kundu. Against the order passed

by the Additional Collector under Gold Control Act, the appeals were preferred. The petitioner also challenged the order made in the appeal

before the revisional authority. Thereafter, the petitioner has come to the writ Court to seek the reliefs. It is disclosed in details that upon finding of

all relevant facts the impugned orders were made according to law. The petitioner cannot avoid the same by filing the writ petition and there is no

merit in the petitioner''s contention. The petitioner, however, filed affidavits-in-reply controverting the allegations of the respondents.

3. For effective adjudication of the matter in dispute the entire file with all relevant papers have been produced before this Court with the assistance

of the learned counsel appearing for the respective parties. This Court has the occasion to go through the entire file. The attention of the Court has

been drawn to Section 74 of Gold ""Control Act, 1968. It indicates inter alia that any person who, in relation to any gold, does or ommits to do any

act which act of omission would render such gold liable to confiscation under this Act, or abets the doing or omission of such an act, or is in charge

of the conveyance or animal which is liable to confiscation under this Act, shall be liable to a penalty not exceeding five times the value of the gold

or one thousand rupees, whichever is more, whether or not such gold has been confiscated or is available for confiscation. The attention of the

Court has further been drawn to the observation of the Supreme Court in the case of Hindustan Steel Limited v. State of Orissa) Civil Appeal

Nos. 883 to 892 decided on 4.8.69 that ""an order imposing penalty for failure to carry out a statutory obligation is the result of a quasi criminal

proceeding and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct

contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so,

whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially

and on a consideration of all the relevant circumstances"". The adjudication proceedings has been provided in Chapter XIV starting from Section

78 onwards. The petitioner has led much emphasis upon Section 83 as to the power of the Adjudication Officer. It clearly lays down that every

person or authority making any adjudication shall have all the powers of a civil Court under the Code of Civil Procedure, 1908, while trying a suit

in respect of the following matters viz:-

(a) summoning and enforcing the attendance of witnesses ;

(b) requiring the discovery and production of any document;

(c) requisitioning any public record or copy thereof in Court or office ;

(d) receiving evidence or affidavits ;

and

(e) issuing commissions for the examination of witnesses on documents.

Section 83(2) lays down that ""every person or authority making any adjudication or learning any appeal or exercising any power under this Act

shall be deemed to be a Court for the purpose of Sections 480 and 482 of the Code of Criminal Procedure. Similarly, Section 83(3) provides that

every person or authority making any adjudication under this Act shall have the power to make such order of any interim in nature as they may

think fit and may also, for sufficient cause or the stay of operation of the order"".

4. The grievance of the petitioner is that relying upon the statements required by the customs authorities the adjudication proceedings preceded

without examining any independent witness. This Court has considered this aspect of the matter. While disposing of an adjudication proceeding,

the authority concerned has the jurisdiction to admit oral and documentary evidences. The statements recorded by the customs authorities were

supplied to the petitioners. Those documents were admitted as evidences. The petitioner had the opportunities to examine, re-examine and/or

cross-examine the statements of the persons under the provision of the Evidence Act. It is too late and particularly before the Writ Court to assert

that the impugned orders were made without recording any evidence and the matter will be opened for fresh adjudication de novo. It has to be

remembered that the Writ Court is not sitting in appeal upon each and every decision of the statutory authority, although the Writ Court has to

examine the decision-making process as observed by the Supreme Court of India in a recent decision reported in State of Uttar Pradesh and

Others Vs. Maharaja Dharmander Prasad Singh and Others, . The Writ Court has to see that as to whether the impugned orders are perverse or

that they are causing manifest injustice to the petitioner. With great anxieties, this Court has gone through the materials on record and the provisions

of the Gold Control Act and this Court does not find that the adjudication proceeding suffers from any inherent defect. Neither the Additional

Collector nor the appellate authority and also not the revisional authority have acted in a manner which is otherwise contrary to and inconsistent

with the provisions of law. It is immaterial for the Writ Court to consider whether the petitioner has actually joined the service after the order of

suspension being revoked or not. The Writ Court has to consider whether there will be any impact upon the impugned orders.

5. Upon examination of all the materials, the Writ Court does not find any merit in the matter to interfere. Consequently, the writ petition fails. The

Rule is discharged. Interim order, if any, is vacated. There will be no further order as to costs.

There will be stay of operation of this order for a period of three weeks from date.