(1995) 07 CAL CK 0031

Calcutta High Court

Case No: F.M.A.T. No. 3894 of 1994

I.T.C. Ltd.	APPELLANT
Vs	
Union of India (UOI)	RESPONDENT

Date of Decision: July 31, 1995

Acts Referred:

- Central Excise Rules, 1944 - Rule 233, 8
- Central Excises and Salt Act, 1944 - Section 10(2), 11A, 14, 4
- Constitution of India, 1950 - Article 14, 21, 226, 311
- Income Tax Act, 1961 - Section 269
- Lands Customs Act, 1924 - Section 7(1)
- Medical Act, 1858 - Section 29

Citation: (1996) 2 ILR (Cal) 459

Hon'ble Judges: Visheshwar Nath Khare, C.J; Tarun Chatterjee, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Visheshwar Nath Khare, C.J.

This appeal has been preferred against the judgment of a learned Single Judge dismissing a Writ application being CO. No. 6202 (W) of 1992. The facts in brief are as follows:

2. I.T.C. Ltd., (hereinafter referred to as "the company") has been manufacturing cigarettes in India since 1911. The Appellant No. 2 is one of its shareholders. The excise duty is payable on the manufacture of cigarettes under the Central Excise and Salt Act, 1944 (called "the Act" for brevity) at the prescribed rates read with the relevant Exemption Notification in force issued under Rule 8 of the Central Excise Rules, 1944. (Called "the Rules" for short).

3. Between March 1, 1983 and February 28, 1987, excise duty was payable on cigarettes at the rates as specified by means of different notifications issued under Rule 8 of the Rules. The Appellant Company alleged, that excise duty on the cigarettes manufactured by it during the period aforesaid had been paid up. The aggregate amount paid by the Appellant Company during the said period was Rs. 2441 crores.

4. On March 27, 1987, a notice was issued to the Appellant Company and its Directors by Sri N.K. Bajpai, Director of Anti-Evasion (Central Excise) asking the Company to show cause why a sum of Rs. 803.78 crores should not be recovered as shortfall for the said period and also why orders of penalty and confiscation be not made against the Appellant. The Appellant submitted a reply to the Show Cause Notice asserting that the amount payable under the law had been duly paid to the Central Government. As such, Show Cause Notice was factually not correct. In support and in purported proof of the allegations in the said show cause notice reliance has been placed on.

(a) 88 documents seized from the offices of the Appellant Company-and of various wholesale dealers. These documents have been collectively marked as Annexure ''A'' to the Show Cause Notice. k

(b) The statements of 45 persons examined by the Excise Authorities u/s 14 of the Act. The statefrient of 43 persons have been collectively marked as Annexure ''B'' to Show Cause Notice. The, statement of one person is annexed t6 the Corrigendum to the Show Cause Notice, and the statement of one person has been referred to the Show Cause Notice. Extracts from all* the said statements have been incorporated in the body of the Show Cause Notice.

5. The principal allegations in the said Show Cause Notice are that the Appellant Company clandestinely fixed prices at which cigarettes manufactured by it were to be sold, which were higher than the prices printed on the cigarette packets. These higher specific prices, referred to as effective prices, which are indicated in the Corrigendum to the Show Cause Notice; were clandestinely circulated to the company formations, wholesale dealers, secondary wholesale dealers and retailers for compliance. It has been alleged that the Appellant Company had, with an intent to defraud the Revenue, deliberately printed lower prices on the cigarette packets so as to avail of the lower rate of excise duty payable on such prices. It was, accordingly liable to pay the difference between the amount of duty payable on the basis of the alleged higher prices fixed by the Appellant Company and the actual amount of excise duty paid by it, amounting to Rs. 803.78 crores.

6. The legality of the said Show Cause Notice dated March 27, 1987, was challenged by the Appellant Company in a writ petition filed by it in this Hon''ble Court on August 11, 1987. The writ application was dismissed by the Hon''ble Mr. Justice Bhagabati Prasad1 Banerjee by his judgment delivered on December 24, 1987. The

appeal preferred from the said judgment was dismissed by a Division Bench consisting of the Hon''ble Mr. Justice S.C. San and the Hon''ble Mr. Justice U.C. Banerjee on October 12, 1988. A SLP against the judgment of the Court of Appeal is pending before the Supreme Court.

7. In the meantime on March 2, 1988, the Appellant Company filed a written reply to the show cause notice. In it, the Appellant company denied the correctness of the allegations in the show cause notice, as also those contained in the statement of witnesses annexed to and relied upon in the said show cause notice and the corrigendum thereto. In its written reply, it specifically claimed right to cross-examine the persons who had made these statements, and also specifically reserved its right to lead its own evidence by way of defence.

8. Mr. N.K. Bajpai, Director Anti Evasion was transferred on December 30, 1988. So he ceased to be the Adjudicator. The case was thereafter transferred to Mr. .H.M. Singh. After some hearing Mr. H.M. Singh also ceased to be the Adjudicating Authority. Thereafter, Mr. Lalji Ram; Collector of Central Excise of Delhi,'' was appointed as Adjudicating Authority. He too ceased to hold office of the adjudicating authority after sometime.

Before each of the aforesaid Adjudicators, the Appellant company filed applications for permission to cross-examine all the 45 persons whose statements had been relied upon in the show cause notice.

9. On October 25, 1990, G.R. Sharma, Respondent No. 2 Collector of Central Excise, Delhi, was appointed the Adjudicator in fie matter. On January 9, 1991, the Appellant company again filed an application before him for permission to cross-examine the remaining 36 persons whose statements had been relied on in the show cause notice. However, by order dated April 5, 1991 the Respondent No. 2 only allowed in all 5 persons to be cross-examined. Thus, only 14 of the 45 witnesses have been permitted to be cross-examined by the Appellant Company. On March 12, 1992, the Appellant company filed an application before the Respondent No. 2 for permission to examine fifty persons as defence witnesses. However, by order dated May 21, 1992, the Respondent No. 2 rejected the prayer of the Appellant Company for examination of defence witnesses. By the same order, the Respondent No. 2 allowed the individual applications made by twelve Directors to examine themselves in their own defence.

10. On June 7, 1992, the Appellants filed a writ application in this Hon''ble Court challenging the said orders dated April 5, 1991 and May 21, 1992 passed by the Respondent No. 2 on the said application made by the Appellant company. The said application was numbered as CO. No. 6 202(W) of 1992. Upon the said application being moved on notice before the Hon''ble Mr. Justice Subhas Chandra Sen as His Lordship then was, His Lordship, after hearing the parties, passed an interim order on June 17, 1992 to the effect that no final order should be passed by the

Respondent No. 2 in the adjudication proceedings without giving an opportunity to the Appellant company to cross-examine the witnesses whose statements had been relied on in the show cause notice.

11. During the pendency of the said writ petition the Respondent No. 2 Mr. G.R. Sharma, ceased to be the Adjudicating Authority and with effect from June, 1993 the hearing in connection with show cause notice commenced before Mr. Somnath Pal, the Collector, Central Excise, Delhi. Writ petition being CO. No. 6202 (W) of 1992 was heard by Mr. Justice Umesh Chandra Banerjee for a number of days it was ultimately dismissed by the judgment challenged in this appeal.

12. Proceeding initiatea against the Company upon show cause notice dated March 27, 1987, following investigation at the level of the Directorate of Anti-Evasion (Central Excise) and Revenue Intelligence, alleging defalcation of large amount of excise duty and envisaging inquiry by the Adjudicating Authority, under Central Act, is without doubt quasi-judicial in character. The enquiry is to abide by the principles of natural justice which ordinarily extend also to administrative matters entailing civil consequences A.K. Kraipak and Others Vs. Union of India (UOI) and Others, Natural justice is not contained in strait jacket, the application of the principles thereof to a case depends largely on its facts and circumstances, ''A great judge once stigmatized the expression (natural justice) as'' sadly lacking in precision and so it is, but most people will probably acree that the rules which the courts require those who are entrusted with the duty of deciding disputes to observe in the name of ''natural justice'' are rules which every ordinary reasonable man would consider to be fair'' (Philips James: Introduction to English Law, 11th ed. p.146).

''Fairness'' in proceeding is the accepted criterian, ''Fair'' connotes what is just and reasonable. That again is dependent on relevant facts and circumstances of a case, and cannot be defined as a rule of thumb of universal application divorced from the ground realities. The audi alteram partem rule of natural justice casts a duty to act fairly and demands that a person should be told of the nature of the charges he is called upon to meet; he should be allowed adequate opportunity to prepare the defence, and that he should be given a fair hearing.... A person is entitled to a fair hearing before a decision adversely affecting his interests is made by a public authority .... (The English Legal Process Terence Mgham 5th ed, p. 371.72.

What is ''fair'' must vary according to the nature of the proceedings and more stringent standards will be imposed where the consequences resulting are harsh and far reaching. In Kartar Singh Vs. State of Punjab, the Supreme Court has very succinctly described the concept of fairness in the following words:

Appearance of injustice is denial of justice. Built in procedural safeguards assure a feeling of fairness. When the procedure prescribed by the statute offends the principles of fair justice or established judicial ethos or traditions or snooks the conscience, it could be said that it is fundamentally Unfair and violative of the

fundamental fairness which are essential t6 the very concept of justice and civilised procedure. Whether such fundamental fairness has been denied is to be determined by ah appraisal of the totality of facts, gathered from the setting, the contents and the procedure which feed the end result. The procedure which smacks of the denial of fundamental fairness and shocks the conscience or universal sense of justice is an anathema to just, fair and reasonable procedure. Articles 14 and 21 frown against arbitrary and oppressive procedure.

13. The settled view is that the courts may review a public body''s decision on the ground of procedural impropriety if the decision maker has failed to meet required standards of fair procedure. The courts in review concerns itself not with a decision on its merits but the process through which it has been arrived at. It is very difficult to define precisely what is covered by the word ''procedure'' in this context, but in essence, it concerns the manner in which the decision is reached rather than the actual decision itself Tata Cellular Vs. Union of India, In reference to the entitlement to call witnesses including the right to cross examine the note appearing in Constitutional and Administrative Law. (Lecture Notes): A.P. Lesueue v. Herberg at 239 is illumining. It is extracted below:

The question of entitlement to cross examine witnesses produced by the other side normally (although not always) arises where the parties are legally represented. As a general rule, it can be said that if a witness is allowed to testify orally the other side should be allowed to confront the witnesses by cross examination. But once again, this is a matter of discretion for the tribunal or adjudicator, and if the'' tribunal feels that cross examination will serve no useful purpose, then the court may be slow to disturb that discretion. The celebrated case on this point is Bushell v. Secretary of State for Environment (1980) 2 All E.R. 608, where the House of Lords refused to overturn the decision of an inspector at a public inquiry in relation to the proposed motorway not to allow cross examination as to the basis of the Department prediction of the environments future traffic flow. Although the decision can be read to suggest that cross examination should not be allowed on ''Policy'' type issues, it is more accurate to say that the crucial point was that the House of Lords (and the inspector) did not regard the issue of future traffic flow as a relevant question for the inquiry to decide ....

What is the importance and significance of cross-examination of a witness in a proceeding? According to Sir Ruport Cross in his celebrated work ''Evidence'' (5th ed., p.256), ''The object of cross-examination is twofold, first, to elicit information concerning facts in issue or relevant to the issue that is favourable to the party on whose behalf the cross-examination is conducted, and secondly, the cast doubt upon the accuracy of the evidence-in-chief given against the party seeking cross-examination.

in administrative process, these objectives assume even greater significance than they possess in judicial determination - thus observes Flick in his work ''Natural

Justice''.

14. In the United States, the concept of natural justice is the sense known to our constitutional & administrative jurisprudence is rather unknown. It is subsumed by one process of law. The goals of due process are fairness of procedure, security in relation to the State and individual''s sense of worth and dignity. It is a product of history.

Initially, the concept was ''a trial according to some settled course of judicial proceedings Murray''s Lessee v. Hoboken Land and Imp. Co. 59 U.S. 272. Among other incidents, it