The Chief Controller of Imports Vs N.K. Roy

Court: Calcutta High Court

Date of Decision: Jan. 21, 1954

Citation: (1956) 2 ILR (Cal) 222

Hon'ble Judges: Chakravartti, C.J; S.R. Das Gupta, J

Bench: Division Bench

Advocate: G.P. Kar, for the Appellant;A.K. Mukherji, Sudhansu Sen and N.K. Roy, for the Respondent

Judgement

Chakravatti C.J.

1. This case caused a long argument before us in two stages but really the issue is an extremely simple one. The length of the argument was caused

by the confused manner in which the proceedings had been conducted by and before the Committee of the Institute of Chartered Accountants and

the condition of the paaper-book.

2. The facts are as follows A firm called Messrs Mehar and Company had occasion to apply to the Government of India for a licence to import

safety razor Wades from Germany for the period July-December 1950 According to the Rules relating to Import Licences, an applicant for a

licence was required to furnish, a statement of its past imports duly certified by an auditor. Mehar and Company furnished a statement certified by

the Respondent, Shri N.K. Roy, and the statement included consignments of imports which have been referred to in these proceedings as items 2

and 3. Upon an examination of that statement, the authorities of the Government of India came to feel some suspicion as to its accuracy in view of

the largeness of the imports claimed. They thereupon took steps to verify the items and discovered that the goods referred to in items 2 and 3 had

not, in fact, been imported by Mehar and Company at all, but had been imported by a totally different firm, called Messrs. R. Abraham and

Company, who had, in fact, used those imports in aid of their own application,, for an import licence and obtained a licence on the strength of

those imports.

3. The Chief Controller of Imports thus had a case before him in which the Respondent had given a certificate that the goods referred to in items 2

and 3 had been imported by Mehar and Company, whereas, in fact, they had not been imported by the firm. Naturally, the Chief Controller came

to think that if the Respondent had taken care to verify the entries made in the statement by reference to the documents mentioned in column 3 of

the standard form, he could not have given the certificate which he had, in fact, given. Among the documents mentioned in column 3 are Bills of

Entry and the Chief Controller thought that since the goods concerned had been imported by R. Abraham and Company, the Bills of Entry must

have been in the name of that firm and in so far as the auditor had stated in the report that he had checked and verified the entries contained in the

statement by reference to the. documents mentioned in the standard form, including Bills of Entry, he could not have made a true statement. In

these circumstances, the Chief Controller made a complaint to the Institute of Chartered Accountants against the Respondent out of which the

present proceedings have arisen.

4. The case of the Respondent was that he had, in fact, been shown Bills of Entry relating to items 2 and 3 and that he was at a loss to understand

how the goods covered by those items could have been imported by a different firm or if they had, in fact, been imported by a different firm, how

could he have been shown Bills of Entry relating to them. He seems to have taken steps to put himself into touch with Mehar and Company

immediately and addressed a letter to that firm on January 17, 1951. The affidavit affirmed by the Respondent on March 4, 1952, sets out a long

series of attempts made by the Respondent to contact the firm, all proving unsuccessful, till he was able to establish connection with them in about

June, 1951. In the/ meantime, Mehar and Company had sent a letter to the Secretary of the/" Ministry of Commerce and Industry in which they

stated that the papers elating to items 2 and 3 had been mislaid. Latter on, they appeared to have changed their case and represented that they

had, in fact, led the auditor to believe that they had imported the goods referred to in items 2 and 3, but had done so in forgetfulness of the fact that

they had only purchased the invoices from agents, but not imported them themselves. They, however, adhered to the view that no Bills of Entry

were placed by them before the auditor and that he had acted merely on their representation without taking care to check the same by reference to

Bills of Entry, as he was required by law to do.

5. The substance of the case made by Mehar and Company, therefore, was that initially they themselves had been at fault in making an incorrect

representation to the auditor,- but that the auditor had been more in fault in not performing his duties in accordance with the requirements of the

statute. Strange though it may seem, it appears that even when proceedings before the Institute of Chartered Accountants were still pending, the

Government of India, according to the evidence of their own witness, Malhautra, accepted the explanation of Mehar and Company, and lifted the

ban which had been imposed on them, whereas they continued to pursue the proceedings against the Respondent. Why, of the two parties

involved in the affair, the firm, which had admittedly made a misrepresentation to the auditor appeared to them to be the snore truthful and virtuous

is not clear.

6. Before the Institute of Chartered Accountants Mehar and Company never appeared. The witness called by the Chief Controller of Imports,

Malhautra, seems to have made an attempt to convince the Committee of the Institute that the case of the firm was true and that sought to be made

by the Respondent was false and in support of that contention to have wanted to rely upon the letter written by Mehar and Company to the

Secretary of the Ministry of Commerce and Industry. The Committee appears to have told Malhautra that the letter could not be put in, unless

some partner of the firm came to prove and produce it, but the letter seems, nevertheless, to have got into the record in some manner or other. Be

that as it may, the position, as it appears from the paper-book, is that the Chief Controller of Imports tried to prove his case against the

Respondent by the evidence of Mehar and Company

7. As I have stated, Mehar and Company never appeared before the Institute, but on behalf of the firm a lawyer appeared and made certain

statements, which, he said, he was making on instructions. It is somewhat surprising that he was at all allowed to make statements of fact, seeing

that on his own showing he had no personal knowledge of anything at all and was merely going to make statements on instructions. It is true that

the lawyer set up some cases of a fire among the papers of Mehar and Company and also a case of their not having produced the Bills of Entry

before the Respondent, by those statements are obviously of no value and not evidence at all, in view of the fact that the maker of the statements

had no personal knowledge of the matters he was sneaking to.

8. The position, as it stood before the Committee, was therefore this; The certificate given by the Respondent was obviously not in accordance

with fact, inasmuch as, whereas according to the certificate the goods covered by items 2 and 3 had been imported by Mehar and Company, they

had, in fact, been imported by a different firm. The next question, therefore, was by what means or for what reason was this inaccuracy caused.

The Respondent''s case was that Bills of Entry relating to those two items had, in fact, been produced before him and if the goods concerned had

really been imported by a different firm, the Bills of Entry produced before him must have been forgeries. The only party who could have

contradicted that statement was Mehar and Company who never came forward to contradict it. The statement and the evidence of the Respondent

thus stood unconstructed. Such being the position as regards direct evidence, the case on the probabilities was also in favour of the Respondent,.

The witness called by the Chief Controller, of Imports, admitted that forgeries, of Bills of Entry were not unknown, and that he himself had come

across quite a large number of instances in his own experience. That being the evidence of, the witness called by the Chief Controller himself, the

position was that not only was the case made by the Respondent not contradicted by Mehar and Company, but it was also a probable case in

view of the fact that forgeries of Bills of Entry were, known and could be committed without their being instantly detected. In that state of the

evidence, the Disciplinary Committee of the Institute came to the conclusion that the complainant had not proved his case and that finding was

subsequently accepted by the Institute.

9. We have been taken through practically every paper in the paper-book and we are of opinion that in view of the state of the evidence which I

have summarised above, the conclusion at which the Institute arrived was the only conclusion possible. Before us the Chief Controller of Imports

tried, at first, to contend that the findings recorded by the Institute should not be accepted, but ultimately the Learned Counsel appearing for him

modified his stand and submitted that his client would be content if there was an expression of opinion by us as regards the necessity of auditors

keeping and maintaining a note of the documents placed before them and examined by them at the time they granted a certificate. As there is really

no opposition before us to the finding of the Institute and as we accept the finding as a proper finding, it is not necessary for me to deal with the

merits of the case any further.

10. Certain observations, however, seem to be called for. The Respondent was naturally asked if he could support his case by reference to any

contemporary documents prepared by himself, such as notes recorded of the inspection made by him of the documents on which he had granted

the certificate. His answer was that he had made and kept no notes. It was represented to be that the system of requiring a certificate by an auditor

was introduced for the purpose of obviating the trouble of the Import authorities themselves verifying the relative documents on the strength of

which a licence was claimed and that the whole meaning and purpose of the Rule was that if an auditor, on whom the Government was prepared to

rely, gave, a certificate in his professional capacity that he had satisfied himself as to the accuracy of the entries contained in the statement he was

sponsoring, no further enquiry would be made. It was represented to us that unless some materials were available to Government for the purpose

of checking that the auditors granted their certificate after examining the documents mentioned in the standard form and unless some indirect

restraint was placed on the auditors themselves by requiring them to make contemporary entries as regards their inspection of such documents, it

would be difficult to continue the system of relying upon the certificate of auditor. Whenever a question arose, the auditor would be able to say that

he had in fact seen all the documents he was required by law to see. We think that the difficulty represented to us is a real one and that to require

an auditor to make and keep an appropriate inspection note is not to require him to do something unduly onerous or not required by considerations

of convenience or public policy. Indeed, even ordinarily, it is, I believe, a practice with the auditors to make and keep inspection notes, just as a

solicitor makes entries regarding services he renders in his Day Book. We, therefore, consider it right to express our opinion that auditors, when

they grant a. certificate in relation to statements furnished to the Import authorities in aid of an application for a licence, should make and keep a

note of the documents which are placed before them and which they inspect.

11. The second matter which calls for some observations from us is, one which relates to the proceedings before the Disciplinary Committee. It

appears that as business is now conducted by that Committee, it is quite common for its membership to change from, sitting to sitting. In this very

case we find certain members sitting on a certain day and some of them being replaced by others on the next day and the final report not being

signed by a member who attended and took a very prominent part during the major part of the proceedings. It appeared to us extremely curious

and even improper that anything like that should happen, but we were referred to Rule 62B of the Rules framed by the Institute which was said to

warrant such procedure. Rule 62B merely provides that no business shall be transacted at a meeting of a Standing Committee unless there are

present at least three members, including the President or in his absence the Vice-President. It was said that the Disciplinary Committee was also a

Standing Committee and therefore it could lawfully transact business if only three members, including the President or the Vice-President were

present. I do not think that the objection to a complaint being heard and tried by a tribunal of a variable and varying composition is at all answered

by Rule 62B. The rule of a quorum may conveniently and not improperly be applied to such meetings of the Standing Committee as deal with

administrative matters. It can have no reference to meetings at which judicial or semi-judicial business is transacted. It appears to me to be quite

improper that when the reputation and probably the professional existence of an auditor is in peril and the Committee is considering a charge made

against him and hearing evidence, the personnel of the tribunal should change from day to day, so that some of the members would not hear a part

of the evidence at all and thus come to form their opinion on a partial consideration of the relevant materials. Under the ordinary legal procedure,

whenever the presiding Judge is transferred or becomes otherwise unavailable, the proceedings are commenced de novo. I do not think that the

proceedings before the Disciplinary Committee of the Institute are in any way less serious, or that to those proceedings the rule of the Judge who

gives the ultimate verdict being required to hear the whole of the evidence, does not apply. It is hoped that these observations would be borne in

mind in future, in the interest not only of auditors arraigned before the Institute, but of the good name and efficiency of the Institute itself, not to

speak of natural justice.

12. The third matter on which I find myself compelled to make some observations is the slovenliness with which the paper-book has been

prepared. When the case came first to be heard by us we discovered to our amazement that some of the most important papers were not included

in it and even of the papers included, the originals in many cases were not before the Court.. This deficiency relates to the composition of the

paper-book. As regards what is actually contained in the paper-book, again, we found that it was disfigured by inexcusable errors, and in certain

cases by large omissions with the result that the document or paper concerned was perfectly unintelligible. It cannot be proper on the part of any

solicitor to place before the Court a paper-book which suffers from such deficiencies. We hope that a repetition of such defects will not be seen by

us in future.

13. A complaint was made by Mr. Kar that under the system now prevailing, the Institute included in the paper-book whatever papers it chose

and the parties, particularly the Union of India, got no opportunity for making suggestions of their own. He thought that a system of something like

settling the index should be introduced. It appears to us to be reasonable that when a paper-book is prepared for use by this Court in a matter in

which several parties are interested, all those parties should have an opportunity of suggesting what papers will be relevant and should find place in

the paper-book. That is the ordinary rule followed in common legal procedure and we hope that the Institute will take the necessary steps for

framing some rule or introducing some practice which will enable all parties to make suggestions as to the contents of the paper-book.

14. Reverting to the merits of the case, we accept the findings of the Institute and in view of the nature of that finding, no further action is obviously

called for.

15. Each party will bear its own costs in these proceedings.

16. S.R. Das Gupta, J.

16. I agree.