

1961

March 23.

## SINHA GOVINDJI

v.

THE DEPUTY CHIEF CONTROLLER OF  
IMPORTS AND EXPORTS AND OTHERS(B. P. SINHA, C. J., S. K. DAS, A. K. SARKAR,  
N. RAJAGOPALA AYYANGAR and  
J. R. MUDHOLKAR, JJ.)

*Import Licence—Cancellation—Grounds for cancellation—Licensee to be given a reasonable opportunity of being heard—Principles of natural justice—Violation of—Imports (Control) Order, 1955, cls. 8, 9, 10.*

The petitioner who was carrying on the business of the manufacture of celluloid and plastic bangles etc. was granted two licences dated January 18, 1960, and February 2, 1960, for the purpose of importing cellulose nitrate sheets for two licensing periods, April/September, 1950, and October/March, 1960. On getting information that the petitioner had no machinery or equipment at the premises nor possessed any municipal licence or factory licence, the Imports and Exports authorities issued a notice dated May 27, 1960, to the petitioner to the effect that the Government of India proposed to cancel the licences granted to him, in exercise of the powers conferred by cl. 9 of the Imports (Control) Order, 1955, unless sufficient cause against this was furnished within ten days of the date of issue of the notice. The petitioner replied that as the notice did not disclose on which of the grounds specified in cl. 9 the proposed action was sought to be taken, it was not possible to show cause against it and that in any case he had not done anything justifying the cancellation of the licences under the said rule. On July 2, 1960, the Chief Controller of Imports and Exports wrote to the petitioner giving the information received as aforesaid and said: "In view of this it is clear that you had obtained the Essentiality Certificate from the Director of Industries fraudulently and by misrepresentation of facts and thereafter obtained the licences in question..... You are called upon under cl. 10 of the Imports (Control) Order, 1955, to show cause, within fifteen days from the date of receipt of this letter, as to why further issue of licences to you should not be suspended, under cl. 8 of the said Imports (Control) Order, 1955, for contravening the Imports Trade Control Regulations.....". On August 4, 1960, the petitioner received two orders dated August 3, 1960, by which the two licences in favour of the petitioner were cancelled. The petitioner challenged the validity of the aforesaid orders on the grounds, inter alia, that no real opportunity at all to show cause against the proposed cancellation was given to him in total disregard of the provisions of cl. 10 of the Imports (Control)

Order, 1955, which required that "No action shall be taken under cls. 7, 8 or 9 unless the licensee.....has been given a reasonable opportunity of being heard", and that the cancellation of the licences arbitrarily deprived the petitioner of his fundamental right to carry on his business under Art. 19 of the Constitution of India. The correspondence between the petitioner and the Import authorities showed that after the receipt of the letter dated July 2, 1960, the petitioner had no real opportunity of being heard with regard to the ground alleged in the letter, before the cancellation orders were made on August 3, 1960.

*Held*, that on the facts of the case, there was a clear violation of the requirements of cl. 10 of the Imports (Control) Order 1955, which embodied the principles of natural justice, and that the orders dated August 3, 1960, cancelling the licences granted to the petitioner, were bad and must be quashed.

ORIGINAL JURISDICTION: Petitions Nos. 307 and 308 of 1960.

Petitions under Art. 32 of the Constitution of India for enforcement of Fundamental Rights.

*Porus A. Mehta, J. R. Gagrat and G. Gopalakrishnan*, for the petitioner.

*H. J. Umrigar, R. H. Dhebar and T. M. Sen*, for the respondents.

1961. March 23. The Judgment of the Court was delivered by

S. K. DAS, J.—These are two writ petitions in respect of two orders dated August 3, 1960, by which the Joint Chief Controller of Imports, Madras, cancelled two import licences, Nos. A 863296 and 836640 dated January 18, 1960, and February 2, 1960, respectively, granted in favour of the petitioner, Messrs. Sinha Govindji of Bangalore Road, Bellary, for the purpose of importing cellulose nitrate sheets of the value of Rs. 75,000 each for two licensing periods, April/September, 1959, and October/March, 1960. The complaint of the petitioner firm is that respondents 1 and 2 have cancelled the licences in circumstances which amounted to a denial of its right to be given a reasonable opportunity of being heard, as provided by cl. 10 of the Imports (Control) Order, 1955, before the impugned orders were passed

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and thus arbitrarily and without authority of law deprived the petitioner of its fundamental right to carry on its business under Art. 19 of the Constitution.

The point for decision is a short one and we need only state such facts as bear upon that point. The petitioner's case is that the proprietor of the firm is a citizen of India carrying on a business of the manufacture of celluloid and plastic bangles, etc., at Bellary in the Mysore State. The petitioner was granted the two licences referred to above and thereafter entered into firm commitments for the import of cellulose sheets to the value of Rs. 99,000. On March 4, 1960, the petitioner was surprised to receive two letters from the Assistant Controller of Imports, Madras, calling upon the petitioner to let him know the extent to which the licenses had been utilised and asking the petitioner not to enter into fresh commitments against the said licenses without specific and prior approval of the Controllers' office. This led to some correspondence between the petitioner and the Control authorities, details whereof are not necessary for our purpose. On May 27, 1960, the petitioner received two notices, only one of which we need set out in full. It stated:

"It is hereby notified that in exercise of the powers conferred by cl. 9 of the Imports (Control) Order, 1955, the Government of India, in the Ministry of Commerce and Industry propose to cancel licence No. A 836640/60/AU/M dated the Second February, 1960, valued at Rs. 75,000 (Rupees Seventy five thousand only) for import of Cellulose Nitrate Sheets from the Soft Currency area except South Africa, granted by the Joint Chief Controller of Imports and Exports, Madras to Messrs. Sinha Govindji, No. 18, Bangalore Road, Bellary-2, unless sufficient cause against this is furnished to the Joint Chief Controller of Imports and Exports, Madras, within ten days of the date of issue of this notice, by the said Messrs. Sinha Govindji, No. 18, Bangalore Road, Bellary-2 or any Bank, or any other party who may be interested in it.

In view of what is stated above, Messrs. Sinha

Govindji, Bellary or any Bank, or any other party who may be interested in the said licence No. 836640/60/AU/M dated Second February, 1960, are hereby directed not to enter into any commitments against the said license and return it immediately to the Joint Chief Controller of Imports and Exports, Madras.

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(Sd.) J. K. Sarkar,  
Deputy Chief Controller of  
Imports and Exports."

The notices, be it noted, did not state on what grounds falling within cl. 9 of the Imports (Control) Order, 1955, it was proposed to cancel the licences of the petitioner. Clause 9 of the Control Order states four grounds for cancellation of a licence, and we may read the clause here omitting those grounds which are not relevant for our case:

"9. *Cancellation of Licences:* The Central Government or any other officer authorised in this behalf may cancel any licence granted under this Order or otherwise render it ineffective:

(a) if the licence has been granted through inadvertence or mistake or has been obtained by fraud or misrepresentation;

- (b) .....
- (c) .....
- (d) ....."

By a letter dated May 30, 1960, the petitioner referred to the earlier correspondence on the subject and said inter alia:

"Now clause (9) of the Import Control Order, 1955, under which action is proposed to be taken envisages the cancellation of a licence on various grounds. Your notice does not disclose on which of these grounds the proposed action is sought to be taken. Without knowing on what ground the proposed cancellation is to be effected it is impossible for me to show cause against it. I may, however, state that I have not done anything justifying the cancellation of the licence under the said Rule and that as far as I can see, there is no ground whatsoever for such cancellation."

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Then, on August 4, 1960, the petitioner received two orders dated the previous day by which the two licences in favour of the petitioner were cancelled. The orders stated (we are quoting only one of the orders which are similar in terms):

“Whereas M/s. Sinha Govindji, Bangalore Road, Bellary or any bank or any other person have not come forward furnishing sufficient cause, against Notice No. 1/LCL/60/CDN(I) dt. 27-5-1960, proposing to cancel licence No. A 863296/60/AU/M dt. 18-1-60, valued at Rs. 75,000 for the import of Cellulose Nitrate Sheets from the Soft Currency Area except South Africa granted to the said M/s. Sinha Govindji, Bangalore Road, Bellary, by the Joint Chief Controller of Imports and Exports, Madras, Government of India, in the Ministry of Commerce and Industry in exercise of the powers conferred by clause 9 of the Imports (Control) Order, 1955, hereby cancel the said licence No. A 863296/60/AU/M dt. 18-1-60 issued to the said M/s. Sinha Govindji, Bellary.”

It will be noticed that the orders also did not state on what ground the licences were cancelled. The petitioner complained that the cancellation of the two licences led the Customs authorities to hold back the goods of the petitioner which had already arrived at port and were awaiting clearance, resulting in heavy demurrage, etc.; but the real ground on which the petitioner challenges the two cancellation orders is that (to quote the words of the petition) “no real opportunity at all to show cause against the proposed cancellation was given to the petitioner in total disregard of the provisions of cl. 10 of the Imports (Control) Order, 1955”. We may read here that clause.

“10. Applicant or licensee to be heard. No action shall be taken under Clauses 7, 8 or 9 unless the licensee/importer has been given a reasonable opportunity of being heard.”

On behalf of the respondents it has been stated that after the issue of the two licences a letter dated February 16, 1960, was received from the Director, Small Industries Service Institute, Bangalore, to the

effect that the petitioner had no machinery and equipment to manufacture the relevant articles from the imported raw material. On receipt of this letter a joint investigation was held by the Assistant Director of Industries, Bellary, and the Deputy Director, Small Industries Service Institute, Hubli, and it was found at the time of inspection that the petitioner firm had no machinery and equipment at the premises, nor did they possess any municipal licence or factory licence. On July 2, 1960, the Chief Controller of Imports & Exports wrote to the petitioner giving the above information and asking the petitioner to show cause why further issue of licences should not be suspended under cl. 8 of the Imports (Control) Order, 1955. We quote below the relevant extracts from this letter:

“Gentleman,

I write to refer to your letter dated the 21st May, 1960, and 30th May, 1960, on the above subject, and to say that a joint investigation conducted by the Deputy Director, Small Industries Service Institute, Hubli, and Assistant Director of Industries, Government of Mysore, Bellary, revealed that at the time of inspection of your firm by them, no machinery and equipment existed in your premises and that you had no Municipal licences or Factory licence or Factory. In view of this, it is clear that you had obtained the Essentiality Certificate from the Director of Industries fraudulently and by misrepresentation of facts and thereafter obtained the licences in question by producing the said Certificate to the Joint Controller of Imports & Exports, Madras.

The above action on your part directly contravenes the Import Trade Control Regulations, within the meaning of para. 6(vii) of Chapter V of the Import Trade Control Hand Book of Rules and Procedure, 1956, read with clause 8(b) of the Imports (Control) Order No. 17/55 dated the 7th December, 1955. In view of this, the request made by you in the letters under reference cannot be acceded to.

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On the other hand, you are called upon, under clause 10 of the said Imports (Control) Order, 1955, to show cause, *within 15 (fifteen) days* from the date of receipt of this letter, as to why further issue of licences to you should not be suspended, under clause 8 of the said Imports (Control) Order No. 17/55 dated the 7th December, 1955, for contravening the Import Trade Control Regulations. If your reply does not reach the undersigned within the stipulated period it will be assumed that you have no defence to urge in your favour and this office will proceed to adjudicate action against you, without making any further reference to you."

The contention urged on behalf of the respondents is that the letter dated July 2, 1960, stated the necessary ground for the cancellation of the licences to the petitioner, and as the petitioner furnished no sufficient cause against cancellation, the orders of cancellation were made on August 3, 1960. The argument on behalf of the respondents is that the provisions of cl. 10 of the Imports (Control) Order, 1955, have been sufficiently complied with by reason of what was stated in the letter of July 2, 1960.

On a careful consideration of the facts and circumstances as stated in the affidavits of the parties we have come to the conclusion that the petitioner has had no reasonable opportunity of being heard before the cancellation orders were made on August 3, 1960. The cancellation orders are, therefore, bad and must be quashed. Our reasons are the following.

It is not disputed that the notice dated May 27, 1960, did not state any ground for the proposed cancellation; it merely referred to cl. 9 without stating on which of the four grounds mentioned therein it was proposed to take action. Naturally, the petitioner stated in its letter dated May 30, 1960, that without knowing on what ground the proposed cancellation was to be made, the petitioner firm was not in a position to show cause. So far there is no dispute between the parties, and it is not seriously urged by the respondents that if the notice stood by itself, it could be held to have given the petitioner a reasonable

opportunity of being heard within the meaning of cl. 10. The respondents, however, rely on the letter dated July 2, 1960, in support of their contention that the petitioner has had a reasonable opportunity of showing cause against the cancellation of the two licences.

On behalf of the petitioner it has been submitted, not without justification, that the letter dated July 2, 1960, related to a different matter, *viz.*, the suspension of the grant of further licences under cl. 8 for which also a reasonable opportunity to be heard had to be given to the petitioner under cl. 10. In its operative part the letter stated: "you are called upon to show cause, within 15 days from the date of this letter, as to why further issue of licences to you should not be suspended under cl. 8". It, therefore, related to proposed action under cl. 8. The respondents, have, however, pointed out that the subject matter of the letter as indicated therein referred to the notices dated May 27, 1960, for cancellation of the licences and it also referred to the earlier correspondence on the same subject, *viz.*, the petitioner's letters dated May 21, 1960, and May 30, 1960; therefore, the contention is that the petitioner must know as a result of the reference to the subject-matter and earlier correspondence that the grounds given in the letter related to proposed action both under cl. 8 and cl. 9, even though the operative portion related to cl. 8 only. It is true that the contents of the letter dated July 2, 1960, should be considered from the point of view of substance rather than that of technical rules of construction of statutory instruments. So considered, it is difficult to hold that the letter asked the petitioner to show cause against cancellation of its licences, particularly in the light of the contents of the subsequent letters of the Department which would be referred to presently. Even if we assume that it did so, what is the position? Within 10 days of the receipt of the letter (which was received by the petitioner on July 5, 1960) the petitioner's solicitor asked for a copy of the joint investigation proceeding and the report submitted as a result thereof. The letter also asked for

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other relevant documents in order to enable the petitioner to show cause. It said that the petitioner would show cause as soon as the relevant documents were received and it also said that a personal hearing would be asked for and prayed that in the meantime no further action should be taken. No reply was given by the respondents to the aforesaid letter of the petitioner's solicitor till August 6, 1960, that is, three days after the cancellation orders had been made. The petitioner was not given a copy of the report of the investigation till a much later date, nor was any information given to the petitioner that the copy would not be available and the petitioner must show cause at once. As a matter of fact the petitioner was told nothing in reply to the letter dated July 15, 1960, till three days after the cancellation orders had been made. The cancellation orders blandly stated that no cause had been shown, when in fact the petitioner had specifically asked for an opportunity to show cause. By their letter dated August 6, 1960, the respondents said that the matter would be considered on receipt of a letter of authority from the solicitor in proper form and on stamped paper, without stating that in the meantime cancellation orders had been made without waiting for any explanation. On August 10, 1960, the solicitor submitted a written authority, saying that it was unnecessary to call for it and that the two licences had been cancelled arbitrarily and without giving the petitioner an opportunity of being heard. The correspondence then continued with regard to the proposed action under cl. 8 and the petitioner challenged the correctness of the report of the joint investigation proceeding on many essential particulars including the alleged absence of machinery and equipment. It is not necessary to enter into details of that correspondence, because the proposed action under cl. 8 is not the subject-matter of the present proceeding. It is enough to state that from what happened after the receipt of the letter dated July 2, 1960, it is abundantly clear that the petitioner has had no real opportunity of being heard with regard to the ground alleged in the letter, before the cancellation orders were made

on August 3, 1960. There was, in our opinion, a clear violation of the requirement of cl. 10, which embodies the principles of natural justice. The cancellation orders are, therefore, bad and must be quashed. We allow the writ petitions and order accordingly. The petitioner is entitled to its costs; there will be one hearing fee.

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*Petitions allowed.*

THE ORIENT PAPER MILLS LTD.

v.

THE STATE OF ORISSA AND OTHERS

(And Connected Appeal)

(S. K. DAS, J. L. KAPUR, M. HIDAYATULLAH,  
J. C. SHAH and T. L. VENKATARAMA AYYAR, JJ.)

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*Sales Tax—Tax imposed on sales outside the State—Refund, if claimable by dealer or purchaser—Assessee's fundamental right—Reasonable restriction—Orissa Sales Tax Act, 1947 (XIV of 1947), ss. 9B, cl. (3), 14—Orissa Sales Tax (Amendment) Act, 1958 (28 of 1958), s. 14A—Constitution of India, Art. 19(1)(f).*

The appellants who were registered as dealers under the Orissa Sales Tax Act, 1947, used to collect sales tax from the purchasers on all sales effected by them including sales to dealers in other states. They were assessed to and paid tax on their turnover which included sales outside the State of Orissa, but after the decision of this Court in *State of Bombay v. The United Motors (India) Ltd.*, [1953] S.C.R. 1069, they applied under s. 14 of the Act for refund of tax paid on the ground that sales outside the State were not taxable under cl. (1)(a) of Art. 286 of the Constitution read with the Explanation. Refund was refused by the Sales Tax Authorities and the Board of Revenue. In petitions moved by the appellants for writs of *certiorari* and *mandamus* against the orders of the Board of Revenue the High Court ordered refund of tax paid for certain periods and refused it in regard to other periods. The Orissa Sales Tax Act was, however, amended in 1958 with retrospective effect incorporating s. 14-A which provided that refund could be claimed only by the person from whom the dealer had realised the amount by way of sales-tax or otherwise.