Munsha Singh and others
v.
Gurdit Singh and others

Grover, J.

Lahore Full Bench. He has relied on the Bombay decision as also the observations of a Privy Council to which reference has been made but as has already been pointed out, Their Lordships of the Privy Council did not have occasion to deal with the ambit and scope of the words in question and the Bombay judgment does not take notice of a number of reasons which came to find expression in the decision of the Lahore Full Bench which, with respect, must be taken as laying down the law correctly.

Mr. M. L. Sethi has not contended that if the period from 1945 to 1951 is not excluded under section 14(1) of the Limitation Act, the suits would be within time. Since the suits were barred by time, they were rightly dismissed by the first two Courts. It is thus unnecessary to decide the question of abatement of Waryam Singh's appeal which was agitated before the learned Single Judge and the delay in which was condoned by him.

For the reasons given above, all the three appeals are allowed and the decision of the learned Single Judge is reversed, with the result that the suits shall stand dismissed. In view of all the circumstances, the parties are left to bear their own costs.

H. R. KHANNA, J.—I agree.

B.R.T.

LETTERS PATENT APPEALS

Before A. N. Grover and H. R. Khanna, JJ.

SHRI AMIR SINGH,—*Appellant.*

versus

THE GOVERNMENT OF INDIA AND OTHERS,—*Respondents.*

L.P.A. No. 364 of 1963

1964

July, 29th.

Sea Custom Act (VIII of 1878)—Section 182—Procedure under—Whether judicial—Arguments heard by one Collector and decision given by his successor—Procedure whether violative of principles of natural justice—Personal hearing—Object of.

Held, that section 182 of the Sea Customs Act deals with adjudication of confiscation and penalties under the Act by the different Customs authorities. It is significant that the word used in that Section is "adjudged" which goes to show that the matter has to be approached judicially and the procedure to be adopted has to be such as conforms to judicial requirements. A Collector in imposing confiscation and penalties under the Act acts judicially and his order in this respect cannot be deemed to be a mere administrative or executive act.

Held, that it is a cardinal principle of our judicial system that a case should be decided by the authority hearing the arguments and that a successor cannot decide a case without hearing the arguments afresh on the ground that arguments have already been advanced before his predecessor who left the case without deciding it himself. Where a Collector, who has heard the arguments of the counsel, is transferred and the decision is given by his successor without hearing such arguments, the procedure adopted by the latter is violative of the principles of natural justice and canons of judicial procedure.

Held, that the object of personal hearing is to give an opportunity to a party to satisfy the Tribunal about the case set up by that party and to explain any adverse facts which may emerge on the record. The doubts entertained by the Tribunal can be expressed to the party and an attempt can be made by the party concerned or his counsel to resolve those doubts. In case doubts expressed by the Presiding Officer of a Tribunal are resolved, but he leaves the matter without a decision, his successor can adjudicate upon the matter fairly only if he put his doubts to the party against whom he decides the matter. For this purpose it is essential that the successor must hear the arguments afresh. Any other view would render the hearing of arguments an empty formality and a mere farce.

Appeal under Clause 10 of the Letters Patent against the judgment of teh Hon'ble Mr. Justice P. C. Pandit, passed in C. W. No. 195 of 1952, on 31st May, 1963.

B. S. CHAWLA, ADVOCATE, for the Appellant.

C. D. DEWAN, DEPUTY ADVOCATE-GENERAL, AND S. S. DEWAN, ADVOCATE, for the Respondents.

JUDGMENT

Khanna, J.

KHANNA, J.—This appeal under Clause 10 of the Letters Patent is directed against the order of a learned Single Judge whereby he dismissed the petition of the appellant under Article 226 of the Constitution of India.

The brief facts of the case are that on 11th of January, 1957, at about 8 p.m., the appellant was apprehended at Amritsar railway station by a customs preventive party. On personal search of the appellant, two bars of gold weighing 110 Tolas, 4 Mashas and 3 Rattis, a pair of bangles weighing 1 Tola, 10 Mashas and ¾ Ratti, and currency notes of the amount of Rs. 1,163 were recovered. Statements of Dharam Pal, Moti Ram and Tek Chand were thereafter recorded on 11th and 12th of January, 1957. According to the appellant, he had got the gold melted from Dharam Pal. The appellant also claimed to have purchased some gold from Tek Chand. Moti Ram is the Munim of the appellant and was examined with respect to the entries made in the account books of the appellant. As the above witnesses did not support the appellant and as the appellant was found to have made contradictory statements and to have failed to give any satisfactory account for the procurement of the gold in his possession, a notice was issued to the appellant under section 178A of the Sea Customs Act, 1878 (hereinafter referred to as the Act) on 1st of February, 1957, calling upon him to prove that the seized gold was not smuggled. The appellant in reply stated that he had brought gold ornaments from Faridkot and had got them melted at Amritsar from Dharam Pal. The appellant also requested for a personal hearing which was granted to him on 10th of January, 1958. On that date Shri M. M. Sharma, Advocate, argued the case on behalf of the appellant before Shri R. Parshad, Collector. Shri

Parshad was later transferred and on 12th of July, 1958, Shri B. D. Deshmukh, Collector of Central Excise and Land Customs, passed an order for the confiscation of two gold bars under section 167 (8) of the Act. The bangles and the currency notes recovered from the appellant were ordered to be released in his favour. Appeal filed by the appellant against the order of the Collector was dismissed by the Central Board of Revenue on 2nd of September, 1960. Revision was thereafter filed by the appellant to the Government of India, Ministry of Finance, but the same was rejected on 6th of July, 1961. The appellant thereupon approached this Court by means of a petition under Article 226 of the Constitution of India for quashing the order about the confiscation of the god bars. Two contentions were raised on behalf of the appellant before the learned Single Judge. It was urged in the first instance that Shri R. Parshad, Collector, had given a personal hearing to the appellant but since the order of adjudication was passed by Shri B. D. Deshmukh, it was necessary that Shri Deshmukh should have also personally heard the appellant. Secondly, it was submitted that the impugned order had been passed on the evidence of Dharam Pal and Tek Chand who were never examined in the presence of the appellant and consequently he had no opportunity to cross-examine them. The learned Signle Judge repelled both the contentions and accordingly dismissed the writ petition.

Mr. Chawla on behalf of the appellant has contended, as he did before the learned Single Judge, that as the personal hearing was given by Shri R. Parshad, the order for confiscation of gold bars could not be passed by his successor, Shri Deshmukh, without giving the appellant a personal hearing. In my opinion, there is considerable force in the above contention. Section 182 of the Act deals with adjudication of confiscation and penalties under the Act by the different

Shri Amir Singh
v.
The Government of India and others

Khanna, J.

customs authorities. It is significant that the word used in that Section is "adjudged" which goes to show that the matter has to be approached judicially and the procedure to be adopted has to be such as conforms to judicial requirements. As observed by their Lordships of the Supreme Court in *Leo Roy Frey v. Superintendent, District Jail, Amritsar and another* (1) and *Sewpujanrai Indrasanarai, Limited* v. *Collector of Customs and others* (2), a Collector in imposing confiscation and penalties under the Sea Customs Act acts judicially, and his order in this respect cannot be deemed to be a mere administrative or executive act. It is apparent that Shri R. Parshad was conscious of this aspect of the matter and he, accordingly, decided to give a personal hearing to the appellant and allowed him to be represented by counsel. Consequently, arguments were advanced before Shri R. Parshad by Shri M. M. Sharma, on behalf of the appellant, on 10th January, 1958. Shri Parshad was, however, transferred before passing any order and was succeeded by Shri B. D. Deshmukh. Shri Deshmukh thereafter passed the impugned order on 12th of July, 1958, without giving any hearing to the appellant. In my opinion, the procedure adopted by Shri Deshmukh was violative of the principles of natural justice and canons of judicial procedure. No hearing was given by Shri Deshmukh and no arguments were advanced before him before he passed the order for confiscation, and it would be no answer that hearing had been given and arguments had been advanced before his predecessor, and that the notes of those arguments were passed on to Shri Deshmukh. It is a cardinal principle of our judicial system that a case should be decided by the authority hearing the arguments and that a successor cannot decide a case without hearing the arguments afresh on the ground that arguments have already been

(1) A.I.R. 1958 S. C. 119.
(2) A.I.R. 1958 S. C. 845.

advanced before his predecessor who left the case without deciding it himself. The object of hearing arguments is to give an opportunity to a party to satisfy the Tribunal about the case set up by that party and to explain any adverse facts which may emerge on the record. The doubts entertained by the Tribunal can be expressed to the party and an attempt can be made by the party concerned or his counsel to resolve those doubts. In case doubts expressed by the Presiding Officer of a Tribunal are resolved, but he leaves the matter without a decision, his successor can adjudicate upon the matter fairly only if he puts his doubts to the party against whom he decides the matter. For this purpose it is essential that the successor must hear the arguments afresh. Any other view would render the hearing of arguments an empty formality and a mere farce. I may in this context refer to the following observations of their Lordships of the Supreme Court in *Gullapalli Nageswara Rao and other* v. *Andhra Pradesh State Road Transport Corporation and another* (3):—

> "Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We, therefore, hold that the said procedure followed in this case also offends another basic principle of judicial procedure."

Mr. Dewan, on behalf of the respondents, has urged that the appellant made no grievance in his appeal against the order of the Collector to the Central

(3) A.I.R. 1959 S. C. 308.

Shri Amir Singh
v.
The Government of India and others

Khanna, J.

Board of Revenue that arguments had been heard by Shri Parshad and order about the confiscation had been made by Shri Deshmukh. In this respect I find that in paragraph No. 5 of his memorandum of appeal before the Central Board of Revenue the appellant clearly stated that the arguments had been heard by Shri Parshad and the order under reference had been made by Shri Deshmukh. It was further stated that Shri Parshad had conceded all the issues raised on behalf of the appellant during the course of the arguments. It would thus appear that the stand taken by the appellant was that if the matter had been decided by Shri Parshad, the decision would have gone in favour of the appellant. The appellant should thus be taken to have urged the ground that he had been prejudiced because the matter had not been decided by Shri Parshad who had heard the arguments.

I would, accordingly, hold that the failure of Shri Deshmukh to give a personal hearing to the appellant before passing the impugned order for confiscation of the two gold bars in question, vitiates that order.

Mr. Chawla has also argued that the impugned order is liable to be quashed because the appellant was not given any opportunity to cross-examine Dharam Pal and Tek Chand (P.W.s) as the statements of those witnesses were not recorded in his presence. Although I am of the view that there is no force in this contention because the record shows that the statements of those two witnesses were in fact recorded in the presence of the appellant and their statements did not form the basis of the impugned order, it is not necessary to go into this aspect of the matter in view of my finding given above on the first contention of Mr. Chawla.

As a result of the above, I accept the appeal and quash the impugned order confiscating the two bars

Shri Amir Singh
v.
The Government of India and others

of gold in question. Mr. Chawla, on behalf of the appellant, agrees that in the circumstances the case should be remitted to the Collector for fresh decision in accordance with law after hearing the appellant. I order accordingly. In the circumstances of the case, I leave the parties to bear their own costs.

Khanna, J.

A. N. GROVER, J.—I agree.

Grover, J.

K.S.K.

REVISIONAL CIVIL

Before D. K. Mahajan, J.

SARDARNI GURDIAL KAUR,—*Petitioner.*

versus

S. SATINDAR SINGH AND ANOTHER,—*Respondents.*

Civil Revision No. 614 of 1963.

1964

July, 31st.

Code of Civil Procedure (Act of 1908)—Ss. 73 and 115—Revision against an order under S. 73 allowing rateable distribution—Whether competent—S. 73—"Application to the court"—Meaning of—Whether means execution application to the court which is holding the assets.

Held, htat a revision against an order passed under section 73 of the Code of Civil Procedure allowing rateable distribution will not be entertained as under sub-section (2) of section 73 a suit is competent.

Held, that section 73 of the Code of Civil Procedure sets out the pre-requisite conditions before rateable distribution can be allowed. It does not, in terms, say that application for execution has to be made to the Court where the assets are lying. Under the law, application for execution has to be made in the Court which passed the decree. The application for execution goes to another Court only by transfer. No application for execution can be made directly to a Court which did not pass the decree merely on the