LETTERS PATENT APPEAL

Before Falshaw and Kapur, JJ.

SHRI W. SALDANHA, THE COLLECTOR OF CENTRAL EXCISE, DELHI,—*Appellant*

versus

S. AMARJIT SINGH,—*Respondent*

Letters Patent Appeal No. 68 of 1953

1953

Oct. 1st.

Constitution of India—Article 226—Writs under—Alternative remedy open and not availed of—Whether can be granted—See Customs Act (VIII of 1878)—Sections 188 and 190—Whether afford all the reliefs to aggrieved party.

A imported rock-salt from Pakistan without obtaining an import licence from the Government of India. The Collector of Customs in exercise of powers under the Sea Customs Act, confiscated the rock-salt imported and imposed a penalty of Rs 50,000 on A. Instead of filing appeal under section 188 of the Sea Customs Act, A filed a petition under Article 226 for a writ in the nature of certiorari or any other order to quash the order of the Collector of Customs and to be allowed to clear the wagons of rock-salt. Objection was taken that appeal and revision provided by the Sea Customs Act being an adequate, efficacious and expeditious remedy the petition for writ was not competent.

Held, that an application for writ under Article 226 is not allowable so as to short circuit the procedure and by-pass an appeal provided under a particular statute from one administrative tribunal to another because that is the policy of the law. An application under Article 226 is no substitute for these appeals and cannot be made a ground for by-passing them.

Held further, that sections 188 and 190 of the Sea Customs Act are wide enough to give to the petitioner all the reliefs that he may be entitled to and are an adequate, efficacious and expeditious alternative remedy which should first be availed of before filing an application for a writ under Article 226 of the Constitution of India.

Case-law reviewed.

Letters Patent Appeal under clause 10 of the Letters Patent against the judgment of Hon'ble Mr. Justice Harnam Singh, dated the 9th September 1953, in C.W. 99-D/53, dated the 9th September, 1953, quashing the order passed by the Collector on the 31st of July 1953, and remitting the case

to the Assistant Collector for a fresh decision giving full opportunity to the applicant to substantiate the pleas raised in defence.

S. M. SIKRI, Advocate-General, and JINDRA LAL, for Appellant.

TEK CHAND, RANJIT SINGH NARULA, K. S. THAPAR and R. PATNAIK, for Respondent.

JUDGMENT

Kapur, J.

KAPUR, J. This judgment will dispose of two Letters Patent Appeals Nos. 68 and 71 of 1953. One is brought by the Collector of Central Excise, Delhi, against a judgment of Harnam Singh, J., dated the 9th September 1953, whereby he quashed the order of the Collector confiscating rock-salt imported by the original petitioner Amarjit Singh and imposing a fine of Rs. 50,000 and ordered the redetermination of the question by the Assistant Collector of Customs and also released the 55 wagons of rock-salt on furnishing a security of Rs. 1,00,000. The other appeal is brought by the petitioner Amarjit Singh for the quashing of the order altogether and for setting aside that portion of the judgment which directs redetermination of the question and releases the rock-salt on furnishing of security and not unconditionally.

In Letters Patent Appeal No. 68 the respondent is Amarjit Singh, proprietor of the firm Punjab Traders Corporation which it is alleged has its Head Office at Bombay and the respondent resides at No. 1700, Dufferin Bridge, Mori Gate, Delhi.

The facts of the case which have given rise to this appeal are that Amarjit Singh carried on business as importer and exporter and as commission agent under the firm and style above given. The Head Office of this firm was in Bombay and branch offices at various places including Delhi. He wrote a letter on the 18th February 1953 to the Chief Controller of Imports asking whether any

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of the articles mentioned therein could be imported from Pakistan with or without a licence. It is perhaps better that the whole of the letter which is at page 28 of the paper-book may be given here :—

"Punjab Traders Corporation,

234, Masjid Bunder Road,

Bombay-3.

February 18, 1953.

To

The Chief Controller of Imports,
Government of India,
New Delhi.

Dear sir,

Kindly let us know which of the following items can be imported from Pakistan with or without licence :—

1. Pan
2. Supari
3. Piayaj
4. Lasson
5. Adrak
6. Badam
7. Kishmish
8. Saib
9. Sarda
10. Khurmani
11. Angur
12. Malta
13. Hanjeer
14. Alu Bukhara
15. Khushta
16. Taj Pat
17. Lal Mirch
18. Jaifal
19. Kali Mirch
20. Dhania
21. Zeera

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22. Dhania ke beej
23. Hing
24. Shendev (Sainda) Mitha
25. Methi
26. Dandasa
27. Samel
28. Gule-e-Banufsha
29. Gule-e-Gulab
30. Gule-e-Kazban
31. Gule-e-Zufa
32. Baidara
33. Malathi
34. Majeeth
35. Bada Arwad
36. Kanocha
37. Shika Kai.

Hoping for an early reply.
Yours faithfully,
for Punjab Traders Corporation.
Pro.
(Sd.) :—AMARJIT SINGH.

In this letter the article which has been the subject-matter of dispute is No. 24 and is given as *shendev (sainda) mitha*. We are informed that this is a Gujrati name for rock-salt. This letter was sent from an address in Bombay. The Chief Controller of Imports on the 7th March 1953, replied indicating the articles which could not be imported from Pakistan and in regard to the others the letter seems to show they could be and item No. 24 seems to be in the latter category.

Amarjit Singh imported 55 wagons of rock-salt from Khewra and on 2nd July 1953 he wrote a letter—this time from 34, Akali Market, Amritsar informing the Assistant Collecter of Land Customs that he was importing 55 wagons of *shendev (sainda) mitha*, i.e., rock-salt, from Pakistan on the basis of a letter of credit and requested "we shall be obliged if you release these wagons for Delhi which is a Land Custom Station" and undertook to present the customs documents at the Delhi Customs House and undertook to execute any bond

that he was asked to do. On the same day he sent a telegram in which he again used the words *"shendev (sainda) mitha"* and asked for the release of wagons "to Delhi". This letter and the telegram are at pages 38 and 39 of the paper-book.

The Assistant Collector of Customs at Amritsar issued several memos to Amarjit Singh at 34, Akali Market, Amritsar, in which he said that someone unknown to the office had contravened section 19 of the Sea Customs Act read with section 3 (1) of the Import/Export (Control) Act and had imported rock-salt from West Pakistan without an import licence or the Customs Clearance Permit from the Chief Controller of Imports, New Delhi, and the importer by means of this memo was required to produce either of these two documents or show cause within ten days of the receipt of this document as to why the goods in respect of which the offence appeared to have been committed be not confiscated under section 167 (8) of the Sea Customs Act read with section 3 (2) of the Import/Export (Control) Act, 1947. The importer was also required :—

(1) to produce at the time of showing cause all the evidence upon which he relied in his defence;

(2) to produce the invoices and proof of ownership of the goods;

(3) to indicate if he wanted to be heard in person; and

(4) if cause was not shown within the ten days allowed, proceedings would be taken *ex parte*.

This letter is at page 40 of the paper-book. This letter seems to have been sent to Amritsar as the letter for clearance had been sent from there.

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On the 16th July 1953, a letter was sent by Amarjit Singh from his address in Bombay in which he acknowledged the receipt of 55 memoranda, all dated the 4th July, which had been received on the 9th July, but as he was out of station he could not reply earlier. His defence, which may be stated in his own words, was :—

> "The stocks referred to as 'Rock Salt' in your memoranda were imported after obtaining confirmation from the Chief Controller of Imports, Delhi, that this item is covered along with many others under O.G.L. XXVI. I enclose copies of the correspondence exchanged between us and the Chief Controller of Imports on the subject, namely, our letter, dated 18th February, 1953, and the Chief Controller of Imports reply,—*vide* his letter No. R & I 925G/472, dated the 7th March 1953.
>
> It will be observed that we had referred above 37 items to the Chief Controller of Imports enquiring whether any Import License is required in their case. One of these 37 items is *Shendev (Sainda) Mitha,* item No. 24, in our letter. The reply of Chief Controller of Imports is categorical to the effect that this is covered under O.G.L. XXVI and on the authority of this certification by the Chief Controller of Imports an irrevocable letter of credit was opened through Central Bank of India Ltd., for import of this item."

In the letter by which he sent his defence he stated that there was no deliberate or direct contravention of any provisions of the Import/Export Act and he also stated that *shandev (sainda) mitha* was a vernacular word for rock-salt which was used in the Bombay Presidency where he was doing business.

The record does not show nor has it been claimed before us that Amarjit Singh made any attempt to place any further facts or proofs before the Assistant Collector, Customs, at Amritsar, but he made an application for a writ of certiorari or in the alternative of prohibition on the 28th July 1953, which is dated the 27th July 1953, in the Circuit Bench at Delhi being Civil Writ Application No. 78-D of 1953. In this he stated that he had the authority for the import of *shandev* (*sainda*) *mitha* from Pakistan under open general license and that the Collector, Customs, New Delhi, should not have instructed the Assistant Collector to issue the memoranda which have been referred to above. He also alleged that he had sent a letter, dated the 16th July, at the office of the Assistant Collector, but he had not been given any reply, that all that he was told was that it was for the Collector, Land Customs, to decide the question of release of goods, that the goods had been held up at Attari, which had caused a great deal of loss to him, and that he had invested a large sum of money because of the letter of the Chief Controller of Imports. He then alleged that he had a fundamental right to carry on any occupation he liked and that in view of the letter of the Chief Controller of Imports "this right of his was unfettered and unrestricted" and that this holding up of the wagons was an infringement of his right under Article 31 (1) of the Constitution of India.

On the 29th July 1953, the Circuit Bench at Delhi sent a copy of the application to the Chief Controller of Imports for comments and also asked for the notification which restricted the import of rock-salt from Pakistan. No notice was issued to the Collector of Customs. In obedience to the orders of the Circuit Bench the Chief Controller of Imports, Mr. K. B. Lal—the alleged letter of authorization had been signed by one P. D. Shrivastava—put in a reply wherein he stated that the import of rock-salt was classified as 98 in Part IV-Trade Control Schedule, and its import was not allowed during January to June 1953, licensing

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period as also in the period July to December 1953. In paragraph 2 he stated that no clarification by any officer of the Chief Controller of Imports could effect the scope of the open general license (O.G.L.) and in paragraph 3 he said that the matter had been adjudicated upon by the Collector of Central Excise and if the petitioner had any grievance he could prefer an appeal to the Central Board of Revenue and he enclosed a copy of the order of the Collector.

This order of the Collector is dated the 31st July 1953 and is at page 44 of the paper-book and it shows that after taking into consideration the letter of Amarjit Singh, dated the 16th July 1953, to the Assistant Collector and also the fact that he (Amarjit Singh) had obtained confirmation of the Chief Controller of Imports, Delhi, that the item along with so many others was covered by O.G.L. XXVI, he held (1) that the letter of the 18th February was only an enquiry about the restrictions on the 37 items one of which was *shandev (sainda) mitha,* but there is no indication that this denoted rock-salt, (2) that the 37 articles mentioned in the letter of the Chief Controller of Imports was in the nature of an advice about the 37 articles mentioned in the letter sent by Amarjit Singh, (3) he then took into consideration the contention of Amarjit Singh that he had not deliberately contravened section 19 of the Sea Customs Act or any provision of the Import/Export (Control) Act, 1947, and that *shandev (sainda) mitha* was a vernacular name of rock-salt in the Bombay Presidency, (4) that there was an error on the part of the office of the Chief Controller which was induced by the fact that an unfamiliar name like *shandev sainda mitha* was inserted among a host of others in the list attached to the firm's letter, dated the 18th February 1953, and (5) that the incorrect advice given by the office of the Chief Controller of Imports could not affect the statutory position of the Controller and that he was not bound by the advice. He, therefore, ordered the confiscation of the rock-salt under section 167 (8) of the Sea Customs Act and also imposed a penalty of

Rs. 50,000 "for what I am convinced was a deliberate and calculated attempt to import rock-salt into India in violation of a well-known prohibition against the importation of commodity from Pakistan notified under the Import Trade Control Regulation."

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On the 4th August 1953, the petition made to the Delhi Court was withdrawn and was, therefore, dismissed.

On the 14th August 1953, Amarjit Singh made a petition (C.W.A. 99-D of 1953) in the Circuit Court at Delhi, in which he alleged, besides narrating the facts which have been given above, that the order of the Collector, dated the 31st July was void and inoperative because (1) the petitioner had not violated section 167 (8) of the Sea Customs Act; (2) that the order of confiscation had been made without giving to the petitioner the option to pay a fine in lieu of confiscation and in the absence of such option the order of confiscation was unlawful; (3) that the petitioner had imported *shendev* (*sainda*) *mitha* under the Open General License No. 26; (4) that the petitioner was acting under a letter sent by the Joint Chief Controller of Imports by which he could import salt without any license; (5) that the Joint Chief Controller of Imports could authorise the import of salt even if it did not fall under Open General License; (6) that no reasonable opportunity had been given to him and the order was, therefore, contrary to the principles of natural justice and in violation of the petitioner's fundamental rights; (7) that a perfunctory hearing was given to the petitioner by Mr. D. R. Kohli, the Assistant Collector of Land Customs, Amritsar, but the order was passed by the Collector who did not give any further hearing. (This last allegation is contained in paragraph 18 at page 9 of the paper-book). He, therefore, prayed for a writ in the nature of certiorari and asked for such other order as this Court may think fit to give and he also prayed that he may be allowed to clear the 55 wagons of *shendev* (*sainda*) *mitha*. Rule was

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issued on the 17th of August 1953 by the Circuit Bench but both parties agreed that the case be heard at Simla.

The Collector put in his reply on the 24th August 1953, in which he raised a preliminary objection that the petitioner was not entitled to any relief under Article 226 as he had an equally efficacious and expeditious remedy open to him by way of appeal under the Sea Customs Act. He admitted the publication of public notice No. 139, dated the 31st of December, in which only these items are mentioned for which a new-comer can apply for a license, and pleaded that salt in any form is not one of the items included in the list and that the petitioner was fully aware of the said public notice and it was unnecessary for him to have applied for any permission, that it was significant that the petitioner, though he was a Punjabi, has used the Gujrati term for rock-salt. He further pleaded that rock-salt was not covered by the Open General License and denied other allegations of the petitioner and also said that he had acted *bona fide*, that the letter relied upon by the petitioner was not a letter of authority or a license to import rock-salt and that it was incorrect that the petitioner had not been given reasonable opportunity to show cause. Along with his reply he filed the form to be used for application for importing of goods by new-comers. It was admitted before us that no such form had been used by the petitioner when he wrote to the Chief Controller of Imports.

The case was heard by Harnam Singh, J., who held :—

(1) that no proper enquiry had been held by the Collector;

(2) that there was no notice except as to confiscation;

(3) that no evidence was examined by the Customs Authorities before confiscation of goods;

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(4) that by a notification, dated the 5th September, 1952 the Central Government had given general permission for the import from Pakistan of goods which included crude and indigenous drugs and medicines including *murrabba* and *gulqand;*

(5) that no enquiry was made by the Assistant Collector whether rock-salt fell within any of the items in that Schedule;

(6) that in British Pharmacopoeia medical properties of rock-salt were stated;

(7) that under section 182 of the Act an opportuntiy had to be given which had not in this case been given;

(8) that no option had been given to the petitioner as required under section 183 of the Sea Customs Act; and

(9) that it was not clear from the order of the Collector that he had considered the question of levying fine in lieu of confiscation.

The learned Judge said at page 10 thus:—

> "Finding as I do that the applicant was not heard before adjudication of confiscation and penalty, I would quash the adjudication of confiscation and penalty by writ of certiorari."

He then discussed the question whether appeal was a proper remedy and relying on a judgment of the Calcutta High Court in *Assistant Collector of Customs* v. *Soorajmull* (1), where Harries C.J., had described these appeals as appeals and revisions in the nature of "appeals from Caesar to Caesar" which might not be regarded with any great confidence by persons accused of offences under the Sea Customs Act. He, therefore, quashed the order of confiscation

(1) A.I.R. 1952 Cal. 656

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and penalty and also ordered that the proper punishment on the proof of any offence would be to give the applicant an option to pay fine in lieu of confiscation and that irreparable injury may result to the petitioner if the goods were not released till the final hearing of the matter by the Customs Authorities. He, therefore, ordered that the matter may now be dealt with by the Assistant Collector and that the goods be released on furnishing a security of Rs. 1,00,000.

Against this judgment the Collector has come up in appeal and the petitioner has also appealed with a prayer that the order should be quashed and the goods should be released without any condition and that no proceedings be taken by the Assistant Collector.

I shall now take up the appeal by the Collector. A great deal of time was expended by the parties in this appeal in placing before the Court the principles of natural justice which should be followed by administrative tribunals such as the Collector is. The learned Advocate-General submitted that no such principle had been violated. He referred to the notice to show cause which had been issued by the Assistant Collector on the 4th July 1953 and which is at page 40 of the paper-book which showed clearly as to what the infringement was, e.g., the importing of salt which was prohibited because of section 19 of the Sea Customs Act read with section 3 (1) of the Import/Export (Control) Act, 1947, which contravention was punishable under section 167 (8) of the Sea Customs Act and section 3 (2) of the Import/Export (Control) Act and it also called upon the importer to produce all evidence upon which he intended to rely and to indicate if he wanted a personal hearing and to produce invoice and proof of ownership of the goods, otherwise the matter would be decided *ex parte*.

He then refererd to the letter of the 16th July 1953 (p. 41) which was the defence of the importer and particularly referred to the absence of any

demand on the part of the petitioner for an oral hearing and also that the petitioner knew that the matter was to be determined by the Collector, a fact which was admitted by the petitioner in his affidavit attached to the second application (the present application) made to the Court.

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Mr. Tek Chand for Amarjit Singh made a particular grievance of the fact that no notice was given to him showing that he would incur the penalty of confiscation, that the matter had been decided by the Collector although the notice had been issued by the Assistant Collector and both the parties debated with great ability the principles of natural justice which have to be followed by administrative tribunals of the kind that the Collector is.

The Advocate-General referred to the Hand Book on Import Trade Control issued by the Chief Controller of Imports and drew our attention to pages 60 and 61 where it is stated that all goods excepting those stated therein are prohibited from import and clause (vii) is "any goods covered by an Open General Licence issued by the Central Government." At page 77 of this book in Part IV are the articles for which special licence has to be obtained from an Import Trade Controller. At page 81 is item No. 98 'Salt'. Item No. 109 is 'Drugs and medicines, all sorts, not otherwise specified in this Schedule.' In the Open General Licence issued by the Central Government, dated the 5th September 1952, items which are allowed to be imported are given. He drew our attention to the item 'Crude and indigenous drugs and medicines including herbs, but excluding *morabba* and *gulkand*. Reference is there made to Part IV and to item 109. He submitted that salt is not one of the articles which were allowed by the Open General Licence.

The learned Advocate-General has drawn our attention to paragraph 8 of the affidavit of the Collector, dated the 9th September 1953, in which it is stated that rock-salt is not allowed to be

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imported into India and it has, therefore, become a rare commodity in Northern India and it is being sold for a very high price so much so that the quantity imported would be sold in the Indian market for a sum of Rs. 8,00,000.

Mr. Tek Chand sought to show in reply that salt was one of the articles which were covered by the Open General Licence. He referred to section 18 of the Sea Customs Act which prescribes absolute prohibition for certain articles and to section 19 under which are given the articles which may be prohibited by Government. He then referred to Part IV at page 81 and to items 98 and 109 as also to the Open General Licence. This part of the case is really covered by the appeal which Mr. Tek Chand has brought against the judgment of Harnam Singh, J., but as this appeal was not pressed, I do not think it is necessary that we should give any finding as to whether salt is covered by the Open General Licence because that expression of opinion may prejudice the case of the parties in the proceedings which may be taken hereafter.

Reverting now to the principles of natural justice the Advocate-General relied on the observations of Lords Haldane, Shaw and Moulton in *Local Government Board* v. *Arlidge* (1). Lord Haldane said at page 132 :—

> "But it does not follow that the procedure of every such tribunal must be the same. In the case of a Court of Law tradition in this country has prescribed certain principles to which in the main the procedure must conform. But what that procedure is to be in detail must depend on the nature of the tribunal. When, therefore, Parliament entrusts it with judicial duties, Parliament must be taken, in the absence of any declaration to the contrary, to have intended it

(1) 1915 A.C. 120

to follow the procedure which is its own, and is necessary if it is to be capable of doing its work efficiently."

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Lord Shaw said at page 138 :—

"In so far as the term 'natural justice' means that a result or process should be just, it is harmless though it may be a high-sounding expression; in so far as it attempts to reflect the *old jus naturale* it is a confused and unwarranted transfer into the ethical sphere of a term employed for other distinctions; and, in so far as it is resorted to for other purposes, it is vacuous."

Lord Moulton in the same case at page 150 said :—

"In the present case, however, the Legislature has provided an appeal, but it is an appeal to an administrative department of State and not to a judicial body. It is said, truthfully, that on such an appeal the Local Government Board must act judicially, but this, in my opinion, only means that it must preserve a judicial temper and perform its duties conscientiously, with a proper feeling of responsibility, in view of the fact that its acts affect the property and rights of individuals."

He then relied on a judgment of their Lordships of the Privy Council in *Nakkuda Ali* v. *M. F. De S. Jayaratne*, (1) where at page 81 Lord Radcliffe said :—

"Nor did the procedure adopted fail to give the appellant the essentials that justice would require, assuming the respondent to have been under a duty to act judicially. The appellant was informed in precise terms what it was that he

(1) 1951 A.C. 66

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was suspected of; and he was given a proper opportunity of dissipating the suspicion and having such representation as might aid him put forward by counsel on his behalf. In fact, the explanation that he did offer was hardly calculated to allay the respondent's suspicions, probably it confirmed them."

and he strongly relied on this judgment where the person whose licence was subsequently revoked was asked an explanation which he did give and after considering this the Privy Council decided that in the first place it was not a question that was being decided but that, in other words it was not a judicial or a *quasi* judicial act that the Controller was performing, and secondly that even if the Controller was acting judicially he had not violated any principles of natural justice.

He next drew our attention to another judgment of their Lordships in *M. F. De Jayaratne* v. *Bapu Miya Mohamed Miya,* (1) which was also a case of revocation of a licence on the ground of reasonable grounds to believe that the dealer was unfit to continue as a dealer. Lord Radcliffe delivering the judgment said at page 896 :—

"But it does not adequately appreciate the situation to describe the respondent as acting merely on suspicion. The suspicion which he entertained arose reasonably out of the facts that were before him, and nothing appears in the explanation which the respondent added to those facts that made it unreasonable for the appellant to decide that his suspicion had not been removed and that he was justified in regarding the respondent as unfit to retain a dealer's licence."

(1) 54 C.W.N. 893

He then relied on *Mahadev Ganesh* v. *The Secretary of State for India,* (1) which was a case under the Sea Customs Act and where a Division Bench of the Bombay High Court held that the Customs Officer acting under section 182 of the Sea Customs Act should proceed according to general principles, which are not necessarily legal principles, and is not bound to adjudicate on confiscation and penalty as if the matter was proceeding in a Court of law according to the provisions of the Civil or Criminal Procedure Code.

Mr. Tek Chand drew our attention to several English cases. In R. v. *The Electricity Commissioners,* (2), Bankes, L.J., at page 194 approved of the following dictum of Brett L. J. in R. v. *Local Government Board* (3), at page 321 :—

> "My view of the power of prohibition at the present day is that the Court should not be chary of exercising it, and that wherever the Legislature entrusts to any body of persons other than to the superior Courts the power of imposing an obligation upon individuals; the Courts ought to exercise as widely as they can the power of controlling these bodies of persons if these persons admittedly attempt to exercise powers beyond the powers given to them by Act of Parliament."

He then relied on R. v. *Manchester Legal Aid Committee* (4), where Parker, J., said:—

> "When, on the other hand, the decision is that of an administrative body and is actuated in whole or in part by questions of policy, the duty to act judicially may arise in the course of arriving at that decision."

(1) I.L.R. 46 Bom. 732
(2) 1924 K.B. 171
(3) 10 Q.B.D. 309
(4) (1952) I.A.E.R. 480

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and he then referred to R.v. *Northumberland Compensation Appeal Tribunal* (1), where at page 128 Denning L. J., said :—

> "But the Lord Chief Justice has in the present case, restored certiorari to its rightful position and shown that it can be used to correct errors of law which appear on the face of the record, even though they do not go to jurisdiction."

Reference was also made to *James Dunbar Smith's case* (2), where their Lordships of the Privy Council said that the enquiry under section 51 of the Crown Lands Alienation Act, 1868, is in the nature of a judicial enquiry and must be conducted according to the requirements of substantial justice, but at page 623 Sir Robert Collier said :—

> "They do not desire to be understood as laying it down that the Commissioner, in conducting such an inquiry, is bound by technical rules relating to the admission of evidence, or any form of procedure, provided the inquiry is conducted according to the requirements of substantial justice."

There are several other cases which might be useful in determining what are the principles which govern principles of natural justice in regard to administrative tribunals but it is not necessary to refer to them in this judgment because of what I am going to say a little later. *Maqbool Hussain's case* (3), decided by their Lordships of the Supreme Court was, by the Advocate-General, particularly pressed before us; there in paragraph 16 their Lordships said :—

> "Confiscation is no doubt one of the penalities which the Customs Authorities can impose but that is more in the

(1) (1952) 1 A.E.R. 122
(2) 3 A.C. 614
(3) A.I.R. 1953 S.C. 325

nature of proceedings in rem than proceedings in personam, the object being to confiscate the offending goods which have been dealt with contrary to the provisions of the law."

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Their Lordships also said :—

> "All this is for the enforcement of the levy of and safeguarding the recovery of the sea customs duties. There is no procedure prescribed to be followed by the Customs Officer in the matter of such adjudication and the proceedings before the Customs Officers are not assimilated in any manner whatever to proceedings in Courts of Law according to the provisions of the Civil or the Criminal Procedure Code."

In paragraph 17 it was held by the Supreme Court :—

> "We are of the opinion that the Sea Customs authorities are not a judicial tribunal and the adjudging of confiscation, increased rate of duty or penalty under the provisions of the Sea Customs Act do not constitute a judgment or order of a Court or judicial tribunal necessary for the purpose of supporting a plea of double jeopardy."

but it is not necessary to say anything further in regard to this point.

The learned Advocate-General then raised the point that appeal and revision provided by the Sea Customs Act are an adequate, efficacious and expeditious remedy and according to the rule which has more or less been consistently followed in this Court proceedings under article 226 cannot be taken if an alternative remedy of that kind is available. Section 188 of the Sea Customs Act provides for an appeal against the order of the Collector, 189 provides that a penalty which has

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been ordered has to be deposited before an appeal can be filed and 190 gives the powers of the appellate authority. This section is as follows :—

> "190. If upon consideration of the circumstances under which any penalty, increased rate of duty or confiscation has been adjudged under this Act by an Officer of Customs, the Chief Customs authority is of opinion that such penalty, increased rate or confiscation ought to be remitted in whole or in part, or commuted, such authority may remit the same or any portion thereof, or may, with the consent of the owner of any goods ordered to be confiscated, commute the order of confiscation to a penalty not exceeding the value of such goods."

Against this order a revision lies to the Central Government.

In *Lala Lachhman Dass Nayar and others* (1), it was held that the challenge of the decision of the Income-tax Officer who is entrusted by the Act for the decision of facts and the law in the first instance is not available to an assessee by way of a writ of prohibition and mandamus under Article 226. In this case the whole law was reviewed. Soni, J., said there :—

> "Writs of mandamus are issued in proper cases to fill in gaps where no legal remedy or no adequate legal remedy is available. They are meant to supplement not to supersede legal remedies. They are meant to promote the orderly administration of justice by the duly constituted Tribunals of the land, and are not intended to by-pass them; See *Elverton's* case (2)."

(1) 22 I.T.R. 418
(2) (1895) 156 U.S, 21

In that case a writ of prohibition was sought to be brought against the Income-tax authorities on the ground that the assessees were not liable to income-tax and the decision of the Income-tax Officer was erroneous. I referred to *Raleigh Investment Company's case,* (1) where a suit had been brought by an assessee claiming repayment of a part of a larger sum of money under an assessment. The claim was based on the fact that in the computation of assessable income certain provisions of the Income-tax Act were given effect to which were *ultra vires* of the Indian Legislature, Lord Uthwatt in giving the judgment of their Lordships said :—

> "In construing the section it is pertinent, in their Lordships' opinion, to ascertain whether the Act contains machinery which enables an assessee effectively to raise in the courts the question whether a particular provision of the Income-tax Act bearing on the assessment made is or is not *ultra vires.* The presence of such machinery, though by no means conclusive marches with a construction of the section which denies an alternative jurisdiction to inquire into the same subject-matter. The absence of such machinery would greatly assist the appellant on the question of construction and, indeed, it may be added that, if there were no such machinery, and if the section affected to preclude the High Court in its ordinary civil jurisdiction from considering a point of *ultra vires,* there would be a serious question whether the opening part of the section, so far as it debarred the question of *ultra vires* being debated, fell within the competence of the legislature. In their Lordships' view it is clear that the "Income-tax Act, 1922 as it stood at the relevant date

(2) 74 I.A. 50

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did give the assesee the right effectively to raise in relation to an assessment made on him the question whether or not a provision in the Act was *ultra vires.*"

In *Messrs. Afghan Commercial Co. Ltd., Bombay* v. *The Union of India,* (1) a bench of this Court held that a writ of mandamus is meant for extraordinary emergencies. It is a supplementary means of obtaining substantial justice where there is a clear legal right and no other legal remedy. Writ of mandamus cannot be used to perform the functions of an appeal, nor can it be used to review errors of law committed by a tribunal acting within its jurisdiction.

In cases which were brought under the Punjab Sales Tax Act and where the challenge was on the ground that the assessees were not liable to any sales tax it was held in *Dharam Chand-Kishore Chand Puri and Brothers* v. *The Excise and Taxation Commissioner* (2) by this very bench that an application for a writ under article 226 is not allowable so as to short-circuit the procedure provided by the Sales Tax Act. In that case it was open to the assessee to go in revision to the Financial Commissioner, a remedy, which he had not availed himself of and this Court refused to interfere on that ground. The same view was taken by this bench in *Kandhari Oil Mills* v. *The Excise and Taxation Commissioner* (3), decided on the 28th April 1953. It was there held that an appeal provided by the Act and which could be taken up in revision to the Financial Commissioner was the proper remedy for a person aggrieved and he could not short-circuit the procedure provided by the Act itself. In another case decided by this Court, *U. C. Rekhi* v. *The Income Tax*

(1) 55 P.L.R. 304
(2) A.I.R. 1953 Punjab 27
(3) I.L.R. 1954 Punjab 119

Officer, New Delhi (1), it was held after reviewing all the various cases that the proper remedy of an assessee under the Income-tax Act who felt aggrieved by the action of an Income-tax Officer was to appeal under the Act and not to make an application under Article 226.

The Advocate-General has also referred to two other cases *Wan Ten Lang.* v. *Collector of Customs* (2), where Ameer Ali, J., held that until an applicant has exhausted his right of appeal under sections 188 and 191 the Court will not interfere by way of mandamus. This was an application under section 45 of the Specific Relief Act and although the assessment of duty by addition of 50 per cent on each item of value was held not to be warranted by any provision of the Act, still the Court refused to interfere.

The Advocate-General then referred to *Walchandnagar Industries, Ltd.*, v. *State of Bombay* (3) where under Article 226 the constitutionality of the Bombay Sugarcane Cess Act was challenged and it was held that the proper remedy was to pay the tax and bring a suit. Chagla, C.J., observed (Bhagwati, J., concurring):—

> "It was never the intention of our Constitution makers that article 226 should supplant the ordinary remedies open to a citizen. If that had been the case, then it would have been left to the option of a party aggrieved whether to file a suit in the ordinary Court of law or to approach us to exercise our jurisdiction under article 226. Surely that could not be the interpretation of article 226. Once it is conceded, as it is conceded by Mr. Joshi, that the exercise of our jurisdiction under article 226 is discretionary, certain principles must be laid

(1) 52 P.L.R. 267
(2) I.L.R. (1939) 2 Cal. 541
(3) 55 Bom. L.R. 77

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down for the exercise of that discretionary jurisdiction, and one of the most important principles is that if a citizen can obtain equally adequate, equally efficacious, equally prompt remedy in the ordinary Courts of law, ordinarily this Court would not exercise its discretion in his favour under article 226."

This is a case where the learned Judges of the Bombay High Court, after a very careful consideration of the many cases that were placed before them, held against the right of an assessee to come to a High Court under Article 226, when an alternative remedy is open to him and in that case the alternative remedy was that of a suit.

The next case which was brought to our notice is *Chockalingam Chettiar* v. *Government of Madras* (1), which was a case under Sea Customs Act and it was held that even if it was true that procedure adopted by the Collector of Customs was not in accordance with the Act or in accordance with the principles of natural justice, there was a definite remedy provided by the Act and hence the owner had no right of bringing a suit. No doubt that was not a case under Article 226 but what was held was that the proper thing for a person aggrieved was to avail of the remedies provided by the Act—Sea Customs Act.

I would once again refer to *Raleigh Investment Co. Ltd.* v. *the Governor-General in Council* (2), where Lord Uthwatt said :—

"Under the Act (S. 45) there arises a duty to pay the amount of tax demanded on the basis of that assessment of total income. Jurisdiction to question the assessment otherwise than by use of the machinery expressly provided by

(1) A.I.R. 1942 Mad. 704
(2) 74 I.A. 50

the Act would appear to be inconsistent with the statutory obligation to pay arising by virtue of the assessment."

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I may here mention the observations of their Lordships of the Privy Council in *Besant* v. *Advocate-General of Madras* (1).

> "Certiorari according to the English rule is only to be granted where no other suitable remedy exists."

Mr. Tek Chand has firstly relied on *Wanchoo's case* (2), where Eric Weston, C.J., and myself held that an appeal provided under the Delhi Premises (Requisition and Eviction) Act of 1947 was not a bar to an application under Article 226. In the first place the facts of that case do not fall under the rule laid down by their Lordships of the Privy Council in *Raleigh Investment Co. Ltd., case* (3), and secondly there the appeal had been filed and the Chief Commissioner had granted a stay of only a week and in spite of the fact that the appeal had been pending for some time no date of hearing had been fixed. It was in those circumstances that it was held that appeal by itself was no adequate remedy and therefore the application under Article 226 was not barred.

Counsel also referred to *Mukand Lal's case* (4), where a servant of the municipality had been dismissed without the necessary formalities having been gone into and when he filed a petition under Article 226 a preliminary objection was taken that his proper remedy was to go up and appeal to the Commissioner, and the Bench consisting of Harnam Singh, J., and myself held that in that case he had not even the remedy of appeal available to him. Neither of these two cases, in my opinion, supports the contention of the respondent's Counsel.

(1) I.L.R. 43 Mad. 146 (P.C.)
(2) 54 P.L.R. 206
(3) 74 I.A. 50
(4) A.I.R. 1953 Pb. 88

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Mr. Tek Chand then referred to the judgment of the Calcutta High Court which has been noticed in an earlier part of this judgment. That is a case decided by Sir Trevor Harries, C.J., and Bannerjee, J., in *Assistant Collector of Customs* v. *Soorajmull* (1), where the learned Chief Justice referred to appeals under the Sea Customs Act as appeals from Caesar to Caesar which might not inspire great confidence in aggrieved persons. With very great respect I am unable to agree that an appeal under the Sea Customs Act which has been laid down by the Statute itself should be by-passed merely on the ground that it is an appeal from one administrative tribunal to another, because that is the policy of the law and as has been held by so many cases to which I have made reference that an application under Article 226 is no substitute for these appeals and cannot be made a ground for by-passing them. If the law has laid down a particular procedure for redress of grievances, another remedy would, in my opinion, be not available as was held in the *Raleigh Investment Co., Ltd., case* (2), to which I have already referred.

As I have held that the proper remedy for the petitioner Amarjit Singh was to resort to the procedure provided by the Sea Customs Act, I am of the opinion that his petition under Article 226 should be dismissed. In view of this finding I do not think it necessary to give any decision in regard to the question debated before us as to whether there has been a transgression of the principles of natural justice because any opinion expressed by us may prejudice the rights of one or the other party. I have no doubt that the appellate authority dealing with the appeal under section 188 of Sea Customs Act, if one is brought, will give the petitioner Amarjit Singh such hearing as under the principles of natural justice he should be entitled to and will take every fact into consideration which may be urged by him,

(1) A.I.R. 1952 Cal. 656
(2) 74 I.A. 50

and sections 188 and 190 are wide enough to give to the petitioner all the relief that he may be entitled to.

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The learned Advocate-General has under instructions of his client intimated to this Court that the appellate authority will be prepared to hear the appeal without in this particular case insisting on the deposit of Rs. 50,000 which has been imposed as penalty provided a proper application is made by the petitioner to the authority.

I would, therefore, allow the appeal of the Collector, set aside the judgment of the learned Single Judge and dismiss the petition of Amarjit Singh. The parties will bear their own costs. The appeal of Amarjit Singh was not pressed before us and is, therefore, dismissed, but no order as to costs.

FALSHAW, J. I agree.

Falshaw, J.

APPELLATE CIVIL
Before Bhandari, C. J., and Dulat, J.

SHRI LADLI PARSHAD AND ANOTHER,—*Appellants*
versus
THE KARNAL DISTILLERY COMPANY, LTD. KARNAL—*Respondent*

Letters Patent Appeal No. 29 of 1952

1953

Oct. 1st.

Indian Companies Act (VII of 1913)—Section 162—Two or more winding up petitions on identical grounds—Maintainability of—High Courts (Punjab) Order, 1947—Article 13—Effect of—Winding up petition pending in the Lahore High Court on the appointed day—Another winding up petition filed in the Punjab High Court on identical grounds—Maintainability of—Practice—Jurisdiction—Amplification of, by Courts in granting remedies.

Held, that the effect of Article 13 of High Courts (Punjab) Order, 1947, is that while jurisdiction in general in respect of matters connected with the territories included in East Punjab was vested in the High Court of East Punjab, the proceedings on the original side actually pending in the Lahore High Court at the time of the partition were left to be determined by that High Court and thus limited jurisdiction *qua* such proceedings alone remained with that High Court.