

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 651 of 2001

Dr. Balabhai Nanavati Hospital and Nanavati)
Hospital Medical Research Centre, being a Charitable)
Trust registered under Public Trust Act and located at)
S.V. Road, Vile Parle (West), Mumbai-400 056.)...Petitioners

vs.

1. The Union of India (through the Ministry of)
Law, Justice and Company Affairs), Aayakar)
Bhawan, M.K. Road, Churchgate,)
Mumbai-400 020.)
2. The Deputy Director General (Medical),)
Directorate General of Health Services,)
Ministry of Health, Government of India,)
having his office at Nirman Bhavan,)
New Delhi.)
3. The Joint Director of Health Services (PDE))
Directorate of Health Services, Government of)
Maharashtra, having office at St. George Hospital)
Compound, Government Dental College Building,)
4th Floor, Mumbai-400 001.)
4. The Commissioner of Customs,)
Air Cargo Complex, Sahar, Andheri (East),)
Mumbai-400 099)..Respondents

Mr. E.P. Bharucha, Senior Advocate, with Mr. Cyrus Bharucha, Mr. Sachin Chandrana and Mr. Parira Talsaria, instructed by M/s. Manilal Kher Ambalal & Company, for the petitioners.

Mr. R.V. Desai, Senior Advocate with Mrs. S.V. Bharucha and Mr. R.C. Master for the respondents.

**CORAM: P.B. MAJMUDAR &
J.P. DEVADHAR, JJ.**

DATE: NOVEMBER 26, 2008.

ORAL JUDGMENT (Per J.P. Devadhar, J.):

This petition is filed to challenge the order dated 2nd February, 2001, passed by the Deputy Director General (Medical), whereby the Custom Duty Exemption Certificate (CEDC) issued to the petitioners in the year 1992-93 under Notification No. 64/88-Cus. dated 1st March, 1988, is sought to be cancelled.

2. The facts relevant for the present petition are that the petitioners are a Charitable Trust registered under the provisions of the Bombay Public Trusts Act, 1950, and run a hospital known as Dr. Balabhai Nanavati Hospital and Nanavati Medical Research Centre, at Mumbai.

3. In the year 1992-1993, the petitioners intended to import sophisticated hospital equipments by availing the benefits under exemption notification No. 64/88-Cus. dated 1st March, 1988, issued under Section 25 of the Customs Act, 1962. Under the said notification, hospital equipments could be imported and cleared duty free, subject to furnishing Customs duty Exemption Certificate ('CDEC' for short) from the Directorate General of Health Services to the Government of India and subject to fulfillment of certain post importation conditions.

4. Accordingly, the petitioners had applied for CDEC so as import and clear hospital equipments duty free. Officers from the Health Department of the State Government visited the Hospital and recommended grant of CDEC to the petitioners. In one such recommendation given by the State Government, it is stated as follows : -

“1. Certified that the Institution provides diagnostic and curative aid or treatment to all citizens of India without distinction of caste, creed, race, religion and language.

2. Certified that the Institution provided diagnostic, preventive or curative care free to 35,688 patients out of total 78,652 out patients attendance in the year 1989, which comes to more than 40%.

3. Certified that indoor treatment facilities will provided free to all with income of less than Rs. 500/- p.m. whenever made available for this purpose not less than 10% if beds are reserved.

4. Certified that the charges levied for other indoor patients are reasonable either on the basis of the income of patients/guardians of otherwise.

5. Certified that the Medical, Surgical and Diagnostic Equipment apparatus and appliances to be imported will be used in the institution itself only and will not be removed therefrom for private use and will not be sold or otherwise disposed off without prior permission of the Government.”

5. Based on the above recommendations, the Director General of Health Services, Government of India, issued several CDEC's to the petitioners for imports of various hospital equipments duty free. One such CDEC issued by the Govt. of India on the basis of which the hospital

equipments imported by the petitioners were allowed clearance duty free, reads thus : -

“Certified that the hospital in respect which to exemption from payment of customs duty is claimed as necessary for running or maintenance of the hospital in terms of Ministry of Finance (Department of Revenue). Notification No.64/88 dated 1.3.1988. The hospital falls in category II of the table annexed to the said notification.

6. By a letter dated 28th March, 2000, the Deputy Director General (M) from the Directorate General of Health Services called upon the petitioners to furnish certain particulars regarding fulfillment of the post importation conditions set out in the Notification No.64/88-Cus. dated 1.3.1988 within ten days of the issue of the said letter. It was stated that if no information was received within the said period, it would be presumed that the petitioners are no longer interested in retaining CEDC issued to the hospital under notification No. 64/88-Cus. dated 1st March, 1988. It is not in dispute that the petitioners by their reply dated 11th April, 2000, furnished the requisite particulars. By the impugned order dated 2nd February, 2001, the Deputy Director General (Medicine) held that the petitioners have violated the post-importation conditions set out in the Notification No.64/88 and accordingly held that the CDEC issued to the hospital stands withdrawn as cancelled. Challenging the aforesaid order, the present petition has been filed.

7. Mr. Bharucha, learned Senior Advocate, appearing on behalf of

the petitioners, submitted that the impugned order is liable to be quashed and set aside as the said order has been passed in gross violation of the principles of natural justice. He submitted that the communication dated 28th March, 2000, calling upon the petitioners to furnish certain particulars, cannot be construed as a show cause notice. After the petitioners furnished requisite particulars, if the respondents wanted to cancel the CDEC, then a show cause notice ought to have been issued and without giving a personal hearing the impugned order ought not to have been passed.

8. Mr. Bharucha further submitted that merely because the Customs Authorities had issued a show cause notice alleging non-compliance with the post importation conditions contained in Notification No. 64/88-Cus. and the adjudication order passed thereon has been upheld by this Court cannot be a ground to hold that the Directorate of Health Services could cancel the CDEC without issuing a show cause notice and without hearing the petitioners. He submitted that the Customs authorities have relied on the impugned order dated 02-02-2001 which is passed without hearing the petitioners.

9. Relying upon a Division Bench judgment of this Court in the case of Shashank Bhalchandra Subhedar (Dr.) vs. Dir. Gen. Of Health Services, 2003 (151) ELT 486 Bom. and a decision of the learned single Judge of this Court in the case of Lokash Chemical Works vs. M.S. Mehta, Collector of Customs (Preventive), Bombay and others, 1981 ELT 235 (Bom), Mr. Bharucha submitted that the impugned order passed by the Deputy Director General

(M) is liable to be quashed and set aside. Mr. Bharucha finally submitted that in the present case, none of the condition precedent for grant of CDEC have been violated by the petitioners and therefore, in the absence of any violation of the condition precedent for grant of CDEC, the impugned order cannot be sustained.

10. Mr. Desai, learned Senior Advocate, appearing on behalf of the respondents, on the other hand, submitted that in the letter dated 28th March, 2000, it was specifically stated that it has come to the notice of the authorities that the petitioners have not fulfilled the post importation conditions and while calling for the particulars within the stipulated period, it was specifically stated that if the petitioners failed to furnish the relevant particulars, it would be considered that the petitioners are not interested in continuing with the CEDC granted to them earlier. Thus, the petitioners were put to notice that if the post importation conditions are not fulfilled then the CDEC is liable to be cancelled. On the basis of the particulars furnished by the petitioners, it is evident that post importation conditions are not fulfilled and hence cancellation of CDEC cannot be faulted. In these circumstances, the grievance of the petitioners that no opportunity is given to them before passing the impugned order cannot be sustained. Mr. Desai further submitted that it was not obligatory on the part of the Deputy Director General (M) to grant a personal hearing and if on the basis of the particulars furnished by the petitioners, it could be established that there was no

compliance with the post importation conditions, then the order cancelling the CDEC cannot be faulted.

11. Mr. Desai further submitted that in the present case, the Customs Authorities have already adjudicated that the petitioners have not complied with the post importation conditions and the said order has been upheld by this Court and the matter is presently pending before the Apex Court. Under these circumstances, it cannot be disputed that the petitioners have failed to comply with the post importation conditions and, consequently, cancellation of CDEC is justified. Accordingly, Mr. Desai submitted that there is no merit in the present petition and the same is liable to be dismissed.

12. Having considered the rival contentions, in our opinion, the order impugned in the petition suffers from serious infirmities. Firstly, the letter dated 28th March, 2000, calling upon the petitioners to furnish certain particulars within the time stipulated therein, cannot be construed to be a show cause notice. In the case of *Shashank Bhalchandra Subhedar* (supra), which is very much to the facts of the present case, a Division Bench of this Court held as follows:-

“17. We expect the authority, like Res. No.1, when it wants to initiate an action against defaulter, or against those, who, violate terms and conditions of the Notification to issue proper and specific show cause notice and afford reasonable opportunity to defend the case. The recitals of the show cause notice must indicate the purpose, for which, information is sought for, as well as the action proposed to be

taken, if the information found to be not satisfactory. In the instant case, as we have already observed hereinabove that the communication dated 24-2-2000 cannot be treated as show cause notice issued by the authority to the petitioner calling information from him for taking action of cancellation/withdrawal of the certificate in question, therefore, the petitioner was denied an opportunity to place relevant material before the authority and, hence, the action taken by the respondent, was without affording the opportunity to the petitioner in this regard at the threshold itself and, therefore, such action cannot be sustained.

18. The other important aspect that cannot be lost sight of is in respect of doctrine of principles of natural justice. The concept needs to be understood in its right perspective as well as as per the spirit of the Constitution. An opportunity of being heard, before passing the impugned order, is not an empty formality, but is a valuable right of an individual and is also requirement of law, particularly, when the order has civil consequences. This is a valuable right and violation thereof, would not only deprive the person concerned, to put forth his claim before the competent authority, but also causes total prejudice and results in miscarriage of justice”.

In the light of the aforesaid decision of this Court, which is squarely applicable to the facts of the present case, the order impugned in the present petition must be held to have been passed in breach of the principles of natural justice.

13. Secondly, it is not the case of the revenue that the particulars furnished by the petitioners on the basis of which CDEC's were issued were erroneous or that the clearances made were contrary to the CDEC's. If the CDEC's issued as well as the clearances of the imported goods on the basis of CDEC's were in accordance with law, then for violation of the post

importation conditions set out in the Notification No.64 of 1988 whether the CDEC's could be cancelled is the question which needs consideration. In other words, whether the CDEC's could be cancelled for the alleged violation of post importation conditions, is the question to be considered in the present case. However, it is not necessary for us to go into the above questions, because those questions have not been considered in the impugned order and the impugned order has been passed in breach of the principles of natural justice.

13. For the aforesaid reasons, we quash and set aside the impugned order dated 2nd February, 2001, passed by the Deputy Director General (M). Rule is made absolute in terms of prayer clause (a). It is, however, made clear that it will be open to the respondents to issue a show cause notice if deemed fit and pass appropriate order in accordance with law and after following the principles of natural justice.

P. B. MAJMUDAR, J.

J.P. DEVADHAR, J.