

Sovachand Mulchand Vs. the Collector of Central Excise and Land Customs and ors.

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Court : Kolkata

Decided On : Nov-23-1966

Reported in : AIR1968Cal174,71CWN700

Judge : S.P. Mitra and ;S.C. Ghose, JJ.

Acts : [Constitution of India](#) - Articles 141 and 226; ;Sea Customs Act, 1878 - Section 167(8)

Appeal No. : Appeal No. 45 of 1954

Appellant : Sovachand Mulchand

Respondent : The Collector of Central Excise and Land Customs and ors.

Advocate for Def. : Mr. G. P. Kar

Disposition : Appeal allowed

Judgement :

Sankak Prasad Mitra, J.

1. This is an appeal from the Judgment and Order of Sinha J. (as he then was) dated the 25th November, 1953. The facts briefly are that prior to the 1st of June,

1951, the export of Aluminium to Pakistan was permissible under an Open General licence. There was no prohibition on such exports. BY a Notification dated the 1st June, 1951, the Government of India, imposed a prohibition. M/s. Sovachand Mulchand the appellant before us applied on the 10th July, 1951 to the Land Customs Authorities at Sealdah for a permit to export a certain quantity of aluminium warp to Mymonsingh in Eastern Pakistan. The Government of India on July 12, 1951, rejected the application: but since the notification of the 1st June, 1951 had not been communicated to Sealdah. a wagon was allotted to the petitioner on the 13th July, 1951 for despatch of goods on the 14th. As the goods were not tendered, the Railways, we were told, cancelled the allotment. On the 11th July, 1951, the notification of the 1st June, 1951. reached Sealdah. The petitioner did not get in touch with the authorities at Sealdah and on the 16th July, 1951, made another application to the Land Customs at Naihati for a permit to export the same quantity of adminium to Mymonsingh. The Naihati authorities gave the requisite permission as they were not aware of the 1st June notification. The petitioner thereupon exported aluminium to Eastern Pakistan

2. On the 31st August, 1951, the Collector of Central Excise and Land Customs gave a notice to the petitioner alleging that the petitioner had exported the said consignment of aluminium in violation of the notification of the 1st June, 1951. In this notice it was alleged (a) that the Land Customs Officer refused to pass the goods under an Open General Licence; (b) that the Railways had cancelled the wagon which was allotted to the petitioner; (c) that the petitioner came to know that the instructions restrict line the export of aluminium ware had not till then reached the Naithatl Land Customs Station; (d) that in order to defeat the export trade control restrictions the petitioner speedily transported the consignment by a lorry to the Naithati Land Customs station; (e) that taking advantage of the fact that the officer at Naithati was not aware of the notification, the petitioner submitted a fresh export application dated the 16th July 1951; and (f) that having obtained a permit from the officer at Naihati. the petitioner exported the said consignment to Eastern Pakistan. The petitioner was charged with exportation of the consignment in contravention of Section 19 of the Sea Customs Act. 1878 deliberately and with full knowledge of the illegality of the petitioner's action. The petitioner was called upon to explain why action should not be taken against the petitioner under

Section 167(8) of the Sea Customs Act, 1878 for this deliberate and wilful breach of Section 19 of the Act. It was stated in this notice that if no reply were received within seven days from the receipt of this 'memo'.the case would be decided ex parte. This show cause notice was signed by an Officer "For Collector of Central Excise & Land Customs. Calcutta.'

3. The petitioner save a reply to this show cause notice. The date of the reply does not appear from page 20 of the Paper Book In this reply the petitioner staled, inter alia, that (a) the consignment which was passed at the Naihati Land Custonis station was completely different from the one for which the petitioner had applied for an Open General Licence to the Sealdha Authorities and (b) the petitioner had no information about any restriction on the movement of aluminium ware to Eastern Pakistan.

4. The Collector of Central Excise & Land Customs, Calcutta, passed an order on the 12th December, 1951, imposing on the petitioner a personal penalty of Rs. 15,000.00. The petitioner thereupon made an application to this Court under Article 226 of the Constitution challenging the Collector's order of the 12th December, 1951. In the petition no specific Writ has been asked for: but the Rule Nisi which this Court had issued called upon the respondents to show cause

'why an order in the Nature of a Writ of Certiorari should not be made by this Court directing the said respondents to certify and produce before this Court all records therein for quashing the order of imposition of penalty dated the twelfth day of December one thousand nine hundred and fiftyone and alt proceedings in connection therewith in the said petition mentioned and why an order in the nature of a Writ of Mandamus should not be made by this Court directing the said respondents to forbear from giving effect to the said order dated the twelfth day of December one thousand nine hundred and fifty one and also why the same should not be rescinded or cancelled and/or why further orders or directions should not be made by this Court as it thinks fit and proper.....'.

5. This application was heard by Sinha, J. (as he then was). On the 25th November, 1953. Sinha J discharged the Rule principally on the ground that the Collector if Customs was not a judicial or quasi judicial body and acted purely in a

ministerial capacity. There was, therefore, no question of any hearing before the Collector or observance by the Collector of the principles of natural justice.

6. Before we proceed any further it is worth-while reminding ourselves of the principles governing the issue of a Writ of Certiorari. These principles are as follows:

1. A Writ of Certiorari can be issued for correcting an error of jurisdiction e.g. where inferior Courts or Tribunals have passed orders either (a) without jurisdiction: or (b) in excess of Jurisdiction: or (c) as a result of failure to exercise jurisdiction

2. A Writ of Certiorari can be issued when a Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order or where for instance, the procedure adopted was opposed to the principles of natural justice

3. A Writ of Certiorari can be issued where there is an error of law (but not an error of fact) apparent on the face of the record, e.g., it is manifest that the conclusion of law made by the inferior Court or tribunal is based on (a) obvious misinterpretation of statutory provision or (b) ignorance of it or (c) disregard of it or (d) reasons erroneous in law. Every case must, however, depend on its own facts and it is difficult and inexpedient to lay down any general test to determine which errors of law can be described as errors apparent on the face of the record

4. A Writ of Certiorari can be issued where a Tribunal has refused to admit admissible and material evidence or has admitted inadmissible evidence which influenced the impugned finding

5. A Writ of Certiorari can be issued if a finding of fact is based on no evidence at all, but a finding of fact based on insufficient or inadequate evidence cannot be the subject-matter of this Writ

(6) Reference may in this connection be made to *Syed Yakoob v. K. S. Radhakrishnan* : [1964]5SCR64 and *T. Premasagar v. Standard Vacuum Oil Co. Madras* : (1964)ILLJ47SC

7. In this appeal principally two points have arisen for our decision Firstly, we have to determine whether the Customs Officer concerned was a judicial or a quasi judicial authority And secondly we have to decide whether in the instant case there has been a violation of the principles of natural justice In other words, it is the second principle stated above that is really important for our purposes in this appeal provided however, that the Customs authorities are quasi judicial bodies

8. So far as the first point is concerned Mr. G P Kar, learned Counsel for the respondents, conceded on the first day of his arguments that the Customs authorities were quasi judicial bodies This concession was made on the basis of certain decisions of the Supreme Court but on the second day of his arguments Mr Kar withdrew this concession and contended before us that the Supreme Court's views which were expressed after the order of the Collector of Customs that had been challenged in these proceedings would not affect that order at all.

9. The question vigorously argued on behalf of the appellant, is whether sufficient opportunities were given to the appellant to represent its case before the Customs Authorities Mr Kar wanted to urge that this question cannot be agitated at all in the present appeal inasmuch as at the relevant time the Collector of Customs was only an executive or administrative Officer and there was no obligation on him to act in a judicial or quasi-judicial manner. The order of adjudication in the present case was passed on the 12th December, 1951. We have, therefore, to consider according to Mr. Kar, what was the existing law on that date. An indication of that law can be found in the case of *Maqbool Hussain v. State of Bombay* : 1983ECR1598D(SC) . The Supreme Court, says Mr. Kar, held in that case that the customs authorities were not judicial tribunals. Up to that date, therefore, the law of the land was that the order which the customs authorities used to pass under Section 167 of the Customs Act, was an administrative order and not a judicial or quasi judicial order. A Writ of Certiorari, therefore, does not lie in this case. The law which the Supreme Court pronounced in *Maqbool Hussain's* case, : 1983ECR1598D(SC) was changed subsequently in *F. N. Roy v. Collector of Customs* : 1983ECR1667D(SC) and more specifically in *Sewpujanrai Indrasanarai Ltd. v. Collector of Customs* : 1958 CriLJ1355 . The Supreme Court's later view has been that the order of confiscation or penalty under the Sea Customs Act is a

quasi judicial order. Mr. Kar has argued that the law which the Supreme Court pronounced in 1957 cannot have any retrospective effect in view of the provisions of Section 6 of the General Clauses Act. Mr. Kar has also contended to strengthen his arguments further that under Article 141 of the Constitution, the law declared by the Supreme Court is binding on all Courts within the territory of India. And Article 13(3) clearly indicates that an order or decision of the Supreme Court is one of the sources of law in India.

10. Before we enter into this controversy Mr. Kar has raised, let us try to appreciate what precisely was decided in *Maqbool Hussain's case*, : 1983 ECR 1598 D (SC). There, the Supreme Court said that the customs authorities were not judicial tribunals and the adjudging of confiscation, increased rate of duty or penalty under the provisions of the Sea Customs Act did not constitute a judgment or order of a court or judicial tribunal necessary for the purpose of supporting a plea of double jeopardy. The Supreme Court itself in *Indo China Steam Navigation Co. v. Jasjit Singh* : 1964 CriLJ 234 explains *Maqbool Hussain's* case in the following words:

'In : 1983 ECR 1598 D (SC), while dealing with the impact of the confiscation of goods under the relevant provisions of Section 167 of the Act and the question about the constitutionality of a subsequent prosecution launched against a person whose goods had been confiscated, this Court had occasion to consider the effect of the order of confiscation in relation to the provisions of Article 20 of the Constitution, and it was held that the proceeding before the sea customs authorities under the Act was not a prosecution and the order was not a punishment inflicted by a Court or judicial tribunal within the meaning of Article 20(2) and so, the impugned prosecution was not incompetent or invalid. It would thus be seen that one of the points which this Court had to consider in that case was whether the Collector who had passed the order of confiscation, was a Judicial Tribunal within the meaning of Article 20, and the answer rendered by this Court was in the negative.'

11. It is against this background that *Maqbool Hussain's case*, : 1983 ECR 1598 D (SC) has to be understood by the High Courts. The decision

cannot be considered to be a decision that the customs authorities were not quasi judicial tribunals. The Supreme Court in Indo China Steam Navigation Co.'s case, : 1964 CriLJ234 proceeds to observe as follows:

"It is true that in giving this answer (that is the answer in the negative), his court has observed that the customs officers are not required to act judicially on legal evidence tendered on oath and they were not authorised to administer the oath to any witness. The appeals, if any, lie before the Chief Customs Authority which is the Central Board of Revenue and the power of revision is conferred on the Central Government which certainly was not a judicial authority-It would be noticed that the last observation is purely in the nature of an obiter observation because the status of the Central Board of Revenue or the Central Government in dealing with appeals or revision applications under Sections 190 and 191 of the Act did not fall to be considered in that case, was not argued and naturally had not been examined; and so this observation cannot be treated as a decision on the question which has been argued before us in the present appeal. The result, therefore, is that it is no longer open to doubt that the Customs Officer is not a Court or Tribunal though in adjudicating upon matters under Section 167 of the Act he has to act in a judicial manner. It may be conceded that neither the Central Board of Revenue, nor the Central Government is a Court within the meaning of Article 136.

12. It is clear, therefore, that in spite of the Supreme Court's observations in Maqbool Hussain's case, : 1983ECR1598D(SC) it was open to the High Courts even after 1953 to hold that the customs officer must act in a judicial manner. In fact, doubts had arisen in High Courts as to the true meaning of the decision in Maqbool Hussain's case, : 1983ECR1598D(SC) as we shall presently see.

13. In Asst. Collector of Customs v. Soorajmull Nasarmall : AIR1952 Cal656 in a judgment delivered by our Appellate Court on the 19th February, 1952, before the Supreme Court's decision in Maqbool Hussain's case, : 1983ECR1598D(SC) on the 17th April, 1953, Harries, C. J. (sitting with Banerjee, J.) held that the customs authorities in levying additional duty and imposing fine for misdescription of Goods under the provisions of the Sea Customs Act, 1878, act in a judicial or quasi judicial capacity. The Appellate Court said that the customs authorities were

required to follow the elementary rules of natural justice namely, to give an aggrieved person an opportunity of being heard and give a fair trial before adjudging the person guilty of any offence, and then to fine him; and where a Court or Tribunal which is called upon to exercise judicial or quasi judicial functions discards all rules of natural justice and arrives at a decision which is contrary to all accepted principles of justice, this Court can and must interfere.

14. This decision, as I have said, of our Appellate Court was followed by the Supreme Court's Judgment in : 1983ECR1598D(SC) . Then came before another Division Bench of our Court the unreported case of the Collector of Customs v. Shewpujawai Indrasanrai Ltd., which was an appeal from original Order No. 7 of 1953 (Cal). The judgment was delivered on 3-7-1953. Das J held that the authority of the decision in : AIR1952 Cal656 has been shaken if not wholly taken away by the Supreme Court's decision in : 1983ECR1598D(SC) (supra). Das. J. accordingly also held that, the finding of the customs authorities in such cases could not be assailed in a proceeding under Article 226 of the Constitution.

15. By July, 1953, therefore, there were two conflicting decisions of our Appellate Courts -- one in Soorajmull Nagarmal's case, : AIR1952 Cal656 and the other in Shewpujanrai's case. A. F. O. O. No. 7 of 1953 D/- 3-7-1953 (Cal). Sinha. J. in Bimalananda Singh v. Collector of Central Excise, Matter No. 2 of 1953 (Cal) was faced with this conflict and was about to refer the matter to a larger Bench This is what Sinha, J said:

'It will be observed that the point for decision in Maqbool Hussain's case, : 1983ECR1598D(SC) was whether the customs authorities constituted a Court for the purpose of Article 20(2) of the Constitution. The question remains as to whether it was by implication decided that they did not constitute even a quasi judicial body bound by the principles of natural justice. This aspect of the question came to be considered in the unreported case of A. F. O. O. No. 7 of 1953 D/- 3-7-1953 (Cal)'

16. After quoting Das, J.'s views, : have already referred to, Sinha, J. says:

'If the matter rested there, I should have to refer it to a larger Bench to decide which point of view was correct and whether the case of Soorajmull Nagarmul : AIR1952 Cal656 had really been overruled.'

But Sinha, J. did not refer the matter to the larger Bench as His Lordship was satisfied on the of is before him that even if the principles of natural justice applied these principles had been duly followed. The reason why I am referring to this judgment, is that the Learned Judge was in doubt as to whether anything had been decided by implication in Maqbul Hussain's case, : 1983ECR1598D(SC) . From the later observation of the Supreme Court. I have already quoted, it appears that nothing was decided there even by implication.

17. In the appeal now before us, however. Sinha, J. has adopted the latter Division Bench view in A. F. O. O. No. 7 of 1953, D/- 3-7-1953 (Cal). (supra).

18. The first case in which the Supreme Court gave a definite indication of its mind on this matter was the case, of : 1983ECR1667D(SC) of its judgment the Supreme Court said:

'It was then stated that the petitioner had not been given personal hearing in the appeal that he preferred to the Central Board of Revenue and the application in revision to the Government. But there is no rule of natural justice that at every stage a person is entitled to a personal hearing.....'

19. These observations could only be made if the Supreme Court was of the view that the customs authorities were not merely executive or administrative bodies but were at least quasi judicial bodies.

20. The Supreme Court made the position, clear in its subsequent decisions. All those decisions have been summarised in Indo China Steam Navigation Co's case, : 1964 CriLJ234 . In paragraph 9 of his judgment Gaiendragadkar. C. J. speaking for the Supreme Court, says'

'It is settled by decisions of this Court that the Customs Officer who initially acts under Section 167(12A) is not a Court or Tribunal, though it is also settled that in adjudicating upon the question as to whether Section 52A has been contravened

by any ship and by such contravention the said ship has made itself liable to confiscation under Section 167(12A), the Customs Officer has to act in a quasi judicial manner. In AIR 1958 SC 849. this Court has held that an order of confiscation or penalty passed under the Sea Customs Act is not a mere administrative or executive act but really a quasi judicial act, and therefore, an application for a Writ of Certiorari lies in respect of such order under Article 226 of the Constitution. In expressing this conclusion, S.K. Das. J. who spoke for the Court, has referred to two earlier decisions where this point had been considered and it was held that In holding his proceedings under the Sea Customs Act. the Collector acts judicially, vide : 1983ECR1667D(SC) and Leo Roy Frey v. Supdt. District Jail, Amritsar : 1958 CriLJ260 . Similarly, in Thomas Dana v. State of Punjab : 1959 CriLJ392 this Court has observed that the Collector and other Officers in the hierarchy mentioned by the Sea Customs Act may have to act judicially in the sense of having to consider evidence and hear arguments in an informal way: even so, the Act does not contemplate that in doing so, the said authorities are functioning as a Court'

21. The position, therefore, appears to be that the law has always been that the customs officers and other authorities specified in the said statute act in a quasi judicial capacity and must observe the principles of natural justice. In Maqbool Hussain's case, : 1983ECR1598D(SC) the Supreme Court merely decided that the customs authorities were not a Court or Tribunal for the purpose of Article 20(2) of the Constitution. The Supreme Court did not decide that they were not functioning in quasi judicial capacities or were' not bound by the principles of natural justice. Having regard to the later exposition of the law by their Lordships of the Supreme Court repeatedly in several decisions that followed Maqbool Hussain's case, : 1983ECR1598D(SC) the High Court in my view, cannot come to any other conclusion. We hold therefore, that the Collector of Central Excise and Land Customs in the instant case was a quasi judicial authority and he had to observe the principles of natural justice.

22. Now, the only other principal point to be decided in this appeal is whether these principles of natural justice have been violated. We are not impressed by the appellant's contention that the appellant was not aware of the relevant notification.

Ignorance of law simpliciter. is no excuse whereby the appellant can escape the consequences prescribed in the relevant provisions of the Sea Customs Act. But at the same time we cannot brush aside the contention that the appellant did not knowingly commit an offence and a fair opportunity should have been given to the appellant to represent its case before the Collector of Customs, I shall discuss this point, elaborately, later in this judgment but at the moment let us try to recapitulate what, indeed, is meant by the expression 'principles of natural justice'? Uptill now no precise definition of natural justice has evolved either from statutory provisions or judicial decisions. But upon considering a large number of authorities particularly in recent times it may be possible to lay down certain general principles It should be clearly understood, however, that these principles do not exhaust the concept altogether but they provide a general guide to Courts of law while considering observance or violation of natural justice in a particular case

23. In stating these principles, one by one, I know, it is difficult to avoid overlappings; but for the sake of clarity the repetitions appear to be necessary. The principles, I have in mind, are as follows:

1. The requirement of natural justice in any given case must depend to a great extent on the facts and circumstances of the case in point.
2. The requisites of natural justice depend, inter alia, on (a) the circumstances of the case, (b) the nature of the enquiry, (c) the rule under which the tribunal is acting, and (d) the subject matter that is being dealt with.
3. A domestic tribunal is under a duty to act in good faith, and to listen fairly to both sides. It has no power to administer an oath and need not examine witnesses. It could obtain information in any way it thought best, always giving a fair opportunity to those who are parties to the controversy to correct or contradict any relevant statement prejudicial to them.

In other words, the person accused should know the nature of the accusation made; and should be given an opportunity to state his case. If any reliance is placed on evidence or record against a person, then that evidence or record must be placed before him for information, comment and criticism No natural justice

requires that there should be a kind of formal cross-examination. Formal cross-examination is procedural justice. It is governed by rules of evidence. It is the creation of courts and not a part of natural justice but of legal and statutory justice. The only obligation which the law casts on a domestic tribunal is that 'they should not act on any information which they may receive unless they put it to the party against whom it is used and give him a fair opportunity' to explain it. (What is a 'fair opportunity' must 'depend on the facts and circumstances of each case'; but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts). In other words, the procedure followed in courts of law need not be followed to conform to the principles of natural justice.

4. If a witness deposes against the accused, the accused must ask for an opportunity, to cross-examine the witness to test the veracity of the witness' evidence. The domestic tribunal has no duty cast on it voluntarily to tender a witness for cross-examination. If the accused does not ask for an opportunity to cross-examine after coming to know of the evidence adduced against him, the accused cannot later be heard to complain that the principles of natural justice were denied to him. The aggrieved party has, however, a right to cross-examine if the rules under which the proceedings are taking place, give that right to the party concerned or affected.

(5) All that is required is to give the citizen an opportunity of defending himself. The opportunity that has to be given is not necessarily that oral evidence would be adduced. When a party does not ask for an opportunity for granting a personal hearing, there can be no injustice in not following that course.

(Reliance may be placed in this connection on *University of Ceylon v. Fernando*, 1960 (1) WLR 223; *Russell v. Duke of Norfolk*, (1949) 1 All ER 109 at p. 118; *Board of Education v. Rice*, 1911 AC 179 at p. 182; *Local Govt. Board v. Arlidge*, 1915 AC '20 at pp. 132, 133; *Byrne v. Kinematograph Renters Society Ltd.* (1958) 2 All ER 579; *Joseph Jone v. State of Travancore Cochin*, : (1956)ILLJ235SC ; *Hari v. Deputy Commr. of Police, Bombay* : 1956 CriLJ1104 *M/s Fedco (P) Ltd. v. S. N. Bilgrami* : [1960]2SCR408 ; *Kishenlal Agarwalla v. Collector of Customs* :

AIR1967 Cal80 ; State of Mysore v. Shivabasappa : (1964)ILLJ24SC ; Union of India v. T.R. Varma : (1958)ILLJ259SC . State of Madhya Pradesh v. Chintaman, AIR 1961 SC 1623; R v. Architects' Registration Tribunal. (1945) 2 All ER 131; Bimalananda Singh v. Collector of Central Excise. Matter No. 2 of 1953 In the Original Side of this Court: Rex v. Housing Appeal Tribunal, (1920) 3 KB 334; and Radhakissen More v. E. Raia Ram Rai. Matter No 181 of 1951 in the Original Side of this Court (Cal)

24. In the present appeal it has been urged on behalf of the respondents that the application of the principles of natural justice presents no difficulty. A show cause-notice was given to the appellant. In that notice the charge against the appellant was clearly stated; the evidence on which the charging officer relies, has also been mentioned; and the appellant was called upon to explain its conduct. The appellant did not ask for a personal hearing before or a personal interview with the Collector of Central Excise and Land Customs. The appellant never wanted to inspect any records or documents in the possession of the Land Customs Authorities. It came forward with a written reply and the only material point in that reply was that the appellant was not aware of the notification of the 1st June, 1951. When the goods were booked at Naihati for Eastern Pakistan.

25. The explanation, argues learned Counsel for the respondents, which hiP appellant gave, was of no substance. The notification was duly published in the Gazette in the manner prescribed by law It became the law of the land as soon as it was published. And ignorance of the law could never be an excuse which any Court or tribunal would entertain in that ryent, anyone who contravened a statute could escape the consequences merely by statingthat the relevant legal provisions were not known to him.

26. The respondents' counsel has argued further that on this aspect of the case the decision of Sinha J. is in favour of the respondents and the appellate Court ought not to disturb his findings on the factual position. Moreover, in this appeal the adjudicating officer's assessment of evidence and his conclusions based on that evidence. can-not be challenged inasmuch as this was only an application under Article 226 of the Constitution.

27. *Prima facie* these are strong contentions and one's inclination may be to accept them; but we have to examine the facts of this case in greater details to determine whether the principles of natural justice have been properly observed in this case.

28. Firstly, I do not think that the respondents' counsel is right in saying that Sinha J's decision on this point is in the respondents' favour. In fact, Sinha, J. has said towards the end of His Lordship's Judgment: - -

'It is possible to conceive of a case where it would be impossible for the tribunal to give any decision without hearing evidence. I agree with Mr Kar that in this particular case the records are clear enough, but at the same time since the petitioners have taken a categorical stand that the consignments although they tally in many respects are different, that matter could not be conclusively decided without Hearing some evidence. Inasmuch as the definite case made by the petitioners goes against the recorded documents, it is all the more necessary to give them an opportunity of proving their case. But that question would have arisen if the officer was exercising a judicial or a quasi-judicial capacity. As I am to proceed on the footing that he was acting merely in a ministerial capacity no such question arises '

29. It is clear, therefore, that Sinha, J. did not come to any positive conclusions on denial of natural justice which the appellant had been canvassing before him on the ground that the customs officer was not exercising any judicial or quasi judicial function. Since we are of opinion that having regard to the Supreme Court's subsequent expositions of the law on the subject, it is now impossible to hold that the customs authorities in these matters are merely executive or administrative bodies, we naturally have to examine closely the facts of this case for a proper appreciation of the appellants' grievance that it did not have adequate opportunities of representing its case.

30. While discussing the broad principles of natural justice we have stated *inter alia*, that one of the essential requisites is that the enquiring officer may obtain information from whichever source he likes; but if he relies on any evidence or record against any person, then that evidence or record must be placed before

that person for information, comment and criticism.

31. In the instant appeal we have to see whether this particular principle has been adhered to.

32. The show cause notice in this case has been signed 'For Collector of Central Excise and Land Customs Calcutta' : vide page 19 of the Paper Book. The final order imposing the penalty appears to be the order of J.W. Orr, the then Collector of Central Excise and Land Customs, Calcutta (see page 14 of the Paper Book). In paragraph 6 (at page 30) of the affidavit of Satchidananda Banerjee, the Superintendent, Land Customs Central Preventive Circle, Calcutta, affirmed on the 16th June, 1953, it is stated that 'Enquiries were made by Shri S.N. Roychoudhury, an Inspector of Land Customs, Central Preventive Circle, pursuant to my orders at the Sealdah Goods Office and it was found on such enquiry that the petitioner was allowed a wagon for booking 110 bags of aluminium ware on the 14th July, 1951, on depositing a sum of Rs. 35.00 vide a letter No. DWA/CL/13 dated the 13th July, 1951 written by the Divisional Superintendent of Railway to the petitioner. But as the goods were not tendered by the petitioner for carriage the wagon was cancelled. I call upon the petitioner to produce the said letter at the time of the hearing of this application.'

33. These averments show that the enquiry was made by S.N. Roychoudhury who must have given some kind of information and that information was not placed before the accused.

34. In paragraph 2 of this affidavit Satchidananda Banerjee has explained why he has affirmed the affidavit-in-opposition in this application. He says:

'I am looking after this matter on behalf of the Respondents Nos. 1 and 3 (that is the Collector of Central Excise and Land Customs, Calcutta and the Union of India) and am acquainted with the facts thereof. The investigation in this case was conducted by me and/or under my supervision. Mr. J. W. On was transferred to Bombay in June, 1952 and the present Collector of Land Customs Mr. D.P. Anand has had nothing to do with the decisions complained against by the petitioner'

35. This paragraph makes it clear that the Collector had merely approved of the information or report which Satchidananda Banerjee may have given or made to him as Satchidananda was the person who had either conducted the enquiry or caused investigations to be made under his supervision.

36. These comments which I have made are further substantiated by what Satchidananda says in paragraph 17 of his affidavit (page 32 of the Paper Book). [sic] has, inter alia, stated :

'I say that no evidence was taken by the Collector and the entire fact on which the Department relies has been set out in the notice to show cause. The facts are supported by records which were before the Collector'

37. There is nothing to show in this appeal that the 'records which were before the Collector' were shown to the appellant to enable the appellant to make its comments thereon or offer its explanations thereto.

38. What I have said uptill now is further justified by J.W. Orr's own statements in paragraph 3 of his affidavit-in-opposition affirmed on the 30th June, 1953. In this paragraph he says:

'On or about the 20th November, 1951, the above case of the petitioners was placed before me for adjudication. Prior thereto I have had nothing to do with the case. I went through the connected papers relating to the case and the explanation given by the petitioners. I carefully considered all the facts and circumstances of the case and I arrived at certain conclusions which are stated in my order dated the 12th December, 1951. The petitioner did not ask for hearing and it did not appear that it was necessary to hear them. I made my order dated the 12th December, 1951 bona fide and honestly and to the best of my ability and conviction '

39. It is true that the petitioner did not ask for personal hearing and, as such, no duty was cast on the Collector to offer a personal interview. It is also correct that the Collector acted bona fide and honestly. We have not heard anything to the contrary in this appeal. But the point is that he himself says that there were

'connected papers' relating to the case and he had taken into consideration those 'connected papers' to arrive at his conclusions. And these 'connected papers' were never disclosed to the appellant to give a fair opportunity to the appellant to meet the charges, if any, or the allegations, if any, contained therein.

40. In fact since a writ of certiorari was issued by this Court we called upon the department concerned to produce before us the relevant files and we find from the notings in one of the files shown to us that both in respect of the show cause notice and the final order the Collector acted merely on information supplied and reports made to him by other employees or officers of his department. The information and the reports were never placed before the accused and the accused never had opportunities of dealing with them. In these circumstances, we are unable to hold on principles already well established that the rules of natural justice have been observed in this case. We are clearly of the view that it was the [sic] the Collector to place the aforesaid information and reports before the appellant and to invite the appellant's comments and criticisms, if any, on the information and reports. Whether the appellant asked for it or not, it should have been given the opportunities of controverting the allegations made against the appellant by the said officers. The appellant, in this case, was only informed of the Collector's conclusions on fact; but the records on which those conclusions were based, were never brought to the appellant's notice. The Collector has drawn inferences on the appellant's motives or intentions without giving to the appellant a fair opportunity to offer its explanations as to the facts on record. It may be that the appellant would have remained silent. It may be that the appellant's replies would have been unconvincing; but the principles of natural justice demanded that the appellant should have had reasonable opportunities of explaining its actions. It is not enough that a person appears to be dishonest. Justice requires that the person must be proved to be dishonest. It is true that an officer or a tribunal acting in a quasi-judicial capacity, in the absence of express rules governing its conduct, is not bound by the ordinary laws of evidence or procedure; but in human conduct there are certain recognised principles which are invariably followed to establish a person's guilt. It is this invariable practice which the rules of natural justice are concerned with. These aspects of the matter, the learned Trial Judge had no occasion, to consider in this case as the principal point before the trial court was

whether the Collector of Customs was an administrative or a quasi-judicial authority.

41. We have cited many of the relevant authorities on this question already; but there is one case which appears to be similar to ours and, I think, that case should be specially mentioned, I mean the decision of this Court in *Dullchand v. Collector of Central Excise* : AIR1965 Cal156 In this case, the order of confiscation of seized betelnuts passed against the petitioner by the Collector of Central Excise and Land Customs under section 167 (8) (Sea Customs Act) was quashed in a proceeding for a Writ of Certiorari on the ground of violation of the rules of natural justice. The petitioner was not given an opportunity to explain the reports of experts regarding quality, nature and origin of the betelnute on which the order was based. Sinha, J. was of the view that since the charges were that the petitioner had committed offences which were punishable by confiscation and fine the proceedings were penal in nature. In such a case, the onus lay on the Customs authority to establish the guilt of the accused. As domestic tribunals, the Collector of Customs constituted administrative tribunals of a quasi judicial nature, THEY are entitled to make enquiries from various channels; but if they wished to use the result of such enquiries to the prejudice of the accused, such results must be made known to the accused and he must be given opportunity to deal with the same. Otherwise, there would be a violation of the rules of natural justice.

42. To our mind the principles which Sinha, J, enunciated in *Dulichand's case*, : AIR1965 Cal156 apply to the facts of this appeal before us. We hold that the Collector of Central Excise and Land Customs did not observe the rules of natural justice.

43. The next question that naturally arises for our consideration, is the effect of violation of the principles of natural justice, In *Ridge v. Baldwin*. (1963)3 All ER 66 at p. 81 Lord Reid speaking for the House of Lords (Lord Devlin dissenting) observed that a decision given without regard to the principles of natural justice was void We find that these observations of Lord Reid, our Supreme Court has accepted, in *Calcutta Dock Labour Board v. Jaffar Imam* : 1966 CriLJ189 . We accordingly hold that the order of the Collector of Central Excise and Land Customs,

in the instant appeal, is void.

44. Before, however, we proceed to make our final orders there are certain other points which have been argued in this appeal that require to be dealt with.

45. One of the points is on the relevance of motive or intention in determining an offence and the punishment to be inflicted in matters covered by Section 167 (8) of the Sea Customs Act. We have seen Sinha, J.'s observations in Dulichand's case, : AIR1965 Cal156 (supra). In *Bernardo v. Collector of Customs* : AIR1960 Ker170 . the facts were that petitioner was travelling with a car by ship from Colombo to Genoa The ship touched at the port of Cochin en route; and contraband currency was found concealed in a secret chamber in the car. The petitioner was not aware of the concealed currency. In paragraph 16 at page 175 Raman Nayar, J observer

'I am inclined to agree with the arguments advanced on behalf of the petitioner that, if he was unaware of the presence of the currency notes, in his car, he could not properly be described as a person concerned in an offence under item 8, and that by the mere physical act of transport without knowledge on the part of the person concerned of the presence of the offending article, the person cannot be said to have imported or exported the article contrary to any prohibition or restriction. But on the findings in this case the question does not arise (Nor do I see much relevance in the citations of the three English caseswith regard to an offence similar to that under item No 81 under section 167 of the Sea Customs Act in determine what mens rea if any is required for an offence under item No. 8)'.

46. This is only an obiter dictum of the Kerala High Court on the language used in the third column of item No. 8 in section 167 of the Sea Customs Act, namely, 'such Goods shall be liable to confiscation; any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding one thousand rupees'. It should also be observed that Item No. 81 of Section 167 (which has been Introduced later) uses the word 'knowingly' which is not to be found in item No. 8. But in this connection the observations of Supreme Court in : 1964 CriLJ234 are relevant. In paragraph 22 at page 1149 Gajendragadkar, C. J. has said:

'On the other hand, the scheme of section 167 supports the contention of the Additional Solicitor General that if we read section 52-A along with section 167 (12A), it would be clear that the legislature intends, by necessary implications, the exclusion of *mens rea* in dealing with the contravention of section 52A. Section 167 (12A) provides that if a vessel constructed, adopted altered or fitted for the purpose of concealing goods under section 52A, enters or is within the limits of any port in India or within the Indian Customs waters, such vessel shall be liable to confiscation and the Master of such vessel shall be liable to a penalty not exceeding Rs. 1,000.00. It would be noticed that in column 1, section 167(12A) reproduces the material words of 52A and does not add the words 'knowingly or wilfully'. It is significant that the word 'knowingly or wilfully' are used in several other provisions contained in section 167. Section 167(14) and section 167(61) use the word 'wilfully' in respect of the commission of the offences that are specified. Similarly, section 167(3) and section 167 (81) use the word 'knowingly' and Section 167(78) use the word 'intentionally'. 'Similarly, in section 167(8), though the words 'knowingly or wilfully' are not used, we have the expression 'concerned in', and they may introduce considerations of *mens rea*'. Thus, where the legislature wanted to introduce the knowledge or intention actuating the commission of the offence as an essential element of the offence, it has used 'appropriate words to indicate that intention' The failure to use a similar word in section 167 (12A) cannot, therefore, be regarded as accidental, but must be held to be deliberate. In our opinion, there is some force in this argument as well.' (Portion in ' ' marks was originally underlined in this judgment-Ed.)

47. Ordinarily, it may seem, as Mr. G. P. Kar for the respondents contended, that the element of *mens rea* does not enter Item No. (8) of section 167; but having regard to the Supreme Court's observations underlined (here in ' ') above it is difficult 'for us to express that opinion We have to till the Supreme Court says anything to the contrary proceed on the footing that the element of *mens rea* is at any rate a relevant factor to be taken into consideration in an offence alleged to have been committed under item (8) of section 167. This principle the customs authorities must bear in mind in investigations carried on by them.

48. The next contention of Mr. G. P. Kar, learned Counsel for the respondents, is that this petition should be thrown out in limine, as the petitioner has not specified in the prayers in the petition, the Writs which are asked for. The petitioner cannot leave to this Court the burden of finding the appropriate writs. Mr. Kar refers to order 7 Rule 7 of the Code of Civil Procedure which provides that every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for and the same rule shall apply to any relief claimed by the defendant in his Written Statement. Mr. Kar also refers to Rule 8 of Chapter VII of the Original Side Rules which provides, inter alia, that pleadings shall include plaints, Written Statements, petitions, Statements of Facts and Counter Statements of Facts. Learned Counsel suggests that from these provisions it is reasonable to infer that on the Original Side of this Court a petition even under Article 226 of the Constitution should specifically contain the reliefs which the petitioner seeks. It is true that when the present petition was affirmed the Rules of this Court relating to applications under Article 226 of the Constitution had not come into force. Now, of course, rule 11 of these Rules prescribes that the prayers in the petition shall distinctly state the particular writ or writs which the petitioner requires to be issued and the particular direction or directions which are prayed for. Where leave is asked for making an application in a representative capacity, Rule 11 says, there must be a distinct prayer to that effect. Mr. Kar's point is that whether this Rule was there or not it was the petitioner's duty to specify the writ or writs in its prayers and since the petitioner has failed to do so. this application ought to be dismissed

49. We have no doubt whether the Rule was there or not, it was desirable to specify the writs. But can we throw out this application simply on the ground that the prayers are defective? To my mind, this Court ought not to adopt that course particularly bavin' regard to the decisions on this point of our Court and of the Supreme Court at the time the present application was made. I will now refer to some of these authorities. In *Charanjit Lal y Union of India* : [1950]1SCR869 Mukher-iaa, .T. (as he then was) observes at p. 53 as follows:--

'.....Article 32 of the Constitution Rives us very wide discretion in the matter of framing our writs to suit the exigencies of particular cases, and the application of the petitioner cannot be thrown out simply on the ground that the proper writ or direction has not been prayed for.'

50. In *Nihar Kumari v. Commr. of Police*, AIR 1953 Cal 170 f FB) it is stated that merely because Article 226 has not been specifically mentioned (in the cause title) and the proper writ or direction has not been prayed for, it cannot be said that the application is not one under Article 226 of the Constitution. The Full Bench relied on the observations of Mukherjea, J. in *Charanjit Lal's case*, : [1950]1SCR869 cited above. Then in *Regional Provident Fund Commr. Bombay v. Shree Krishna Metal Manufacturing Co., Bhandara* : (1962)ILLJ427SC an appeal was preferred against a decision of the Bombay High Court. In the prayers of the petition only an appropriate writ was asked for to restrain the Regional Provident Fund Commissioner from enforcing certain provisions of the Employees' provident Funds Act, 1952, against the petitioner. The Bombay High Court allowed the writ petition and an appropriate writ was issued. The Regional Provident Fund Commissioner went to the Supreme Court with the High Court's Certificate. The Supreme Court dismissed the appeal.

51. In view of these authorities we are unable to accede to the contention of learned counsel for the respondents that this appeal be dismissed on the ground of defects in the petition. We have also to point out that before the learned Trial Judge no objection on this ground was taken

52. The next point of the respondents is that the petitioner had alternative remedies under the Sea Customs Act by way of appeals to higher authorities and, as such, this application under Article 226 should have been refused. In answer to this point as well certain relevant authorities have to be relied on. In *British India Steam Navigation Co. Ltd. v. Jaslit Singh* : AIR 1964 SC1451 , it is stated, that the Supreme Court 'generally' does not entertain appeals against the orders passed by a tribunal unless the alternative remedies provided by the relevant Act by way of appeals or revisions have been pursued by the aggrieved party. Against the order of confiscation and fine passed by the Collector of Customs under the Sea

Customs- Act, an appeal is competent. and against the decision of the appellate authority, a revision also lies The rule that a party who applies for the issue of a high prerogative writ should, before he approaches the Court, have exhausted other remedies open to him under the Law. 'though not one which bars the jurisdiction of the Court to entertain the petition or to deal with it', is a rule which Courts have laid down for the exercise of their discretion. If an ap-peal is entertained against an order passed by the Collector of Customs and jurisdiction of the Supreme Court is allowed to be invoked under Article 136, it would lead to this anomalous result that the Supreme Court may have to re-examine questions of fact determined by the Collector of Customs and an argument impeaching the validity or propriety of the order of fine may also have to be considered. And these precisely are the matters which the legislature has left to the determination of the appellate and the revisional authorities as prescribed by sections 190 and 191 of the Sea Customs Act. Besides, the High Courts should be 'slow in encouraging' parties to circumvent the special provisions made providing for appeals and revisions in respect of orders which they seek to challenge by writ petitions under Article 226- (Where, however, the writ petitions were presumably admitted because they raised question of some importance which had already been raised by some appeals properly brought before the Supreme Court under Article 136, the Supreme Court allowed Counsel to argue these writ petitions on the question of construction alone)

53. This Judgment is undoubtedly a pointer to the fact that writ petitioners should be generally discouraged when the Act itself prescribes other remedies; but repeatedly the Supreme Court has indicated that this is not an absolute principle which ought to be invariably followed.

54. Now, the opinion in British India Steam Navigation Co.'s case, : AIR 1964 SC1451 was expressed in 1964 Two years later in M. G Abrol v. Shantilal Chhotelal & Co., : [1966]1SCR284 Subbarao. J., as he then was. delivering the majority iudgment observed in a paragraph 15 at P 202 as follows: -

'Lastly, it was argued that the High Court should not have exercised its jurisdiction under Article 226 of the Constitution, as the respondents had an effective remedy

by way of appeal to higher customs authorities But the High Court rightly pointed out that the respondents had no effective remedy for they could not file an appeal without depositing as a condition precedent the large amount of penalty imposed on them (under Section 189 of the Sea Customs Act, 1878, the owner of the goods if desirous of preferring an appeal must deposit in the hand-- of the Customs Collector the amount demanded by him as duty or penalty) That apart 'the existence of an effective remedy does not oust the jurisdiction of the High Court, but it is only one of the circumstances' that the High Court should take into consideration in exercising its discretionary jurisdiction under Article 226 of the Constitution In this case, the High Court thought fit to exercise its jurisdiction under Article 226 of the Constitution and we do not see any 'exceptional circumstances to interfere with its discretion'.'

55. It has been urged on behalf of the respondents that this was a majority decision whereas the earlier one in 1964 was the unanimous decision of five Learned Judges of the Supreme Court. Our attention was drawn to the case of the Keshab Mills Co., Ltd. v. Commr. of Income Tax, reported in : [1965]56ITR365(SC) in which Gajendra-Radkar, C. J. has made certain observations on the circumstances in which the Supreme Court should review or revise its earlier decisions. The Learned Chief Justice has said that in reviewing and revising its earlier decisions the Supreme Court should ask itself whether in the interest of the public good or for any other valid and compulsive reasons, it is necessary that the earlier decision should be revised.

56. I do not see how this judgment is relevant for us in this appeal. The fact remains that the Supreme Court has to a certain extent revise its earlier opinion and it is the latest opinion that ought to be followed by High Courts in India. Moreover, the judgment in : AIR 1964 SC1451 was not a judgment directly on section 167(8) and section 182 of the Sea Customs Act.

57. There is one other aspect of this matter. In Municipal Council, Khurai v. Kamal Kumar : [1965]2SCR653 , it has been observed that the High Court would not ordinarily entertain a petition under Article 226 of the Constitution where an alternative remedy is open to the aggrieved party. The High Court has, however,

jurisdiction to grant relief to such a party if it thinks it proper to do so in the circumstances of the case. In a case in which the High Court has chosen to exercise its discretion in favour of the respondents it would not be right for the Supreme Court to interfere with the 'exercise of that discretion; unless it is satisfied that the action of the High Court was arbitrary or unreasonable. Similar views were also expressed in M. G. Abrol's case, : [1966]1SCR284 supra.

58. In the present appeal also the trial court has exercised its jurisdiction under Article 226. The reason why, I say so is, that Sinha, J. has nowhere stated in his judgment that this application cannot be entertained as the petitioner has an alternative remedy under the Sea Customs Act. It has not been argued before us that Sinha, J. has dealt with the merits of this case either arbitrarily or unreasonably or that this point was ever taken before His Lordship. We would not be justified, therefore, in disallowing this appeal on the ground that there is an alleged alternative remedy

59. Before I conclude, it is in the fitness of things, that we should express our gratitude to Mr. Sachin Roy, Barrister-at-Law who has argued this case on the third day of the hearing on behalf of the respondents in the absence of Mr. G. P. Kar with remarkable ability. Our attention was drawn to most of the relevant authorities in support of the respondents' case and we received considerable assistance from him.

60. The only other outstanding point is the order that we ought to make on this application. We have to remember the observations of the Supreme Court in AIR 1964 SC 111. In paragraph 22 of the judgment at p. 118 Gajendragadkar, J. (as he then was) has stated:

'In writ proceedings if an error of law apparent on the face of the record is disclosed and a writ is issued, the usual course to adopt is to correct the error and send the case back to Special Tribunal for its decision in accordance with law. It would, we think, be inappropriate for the High Court exercising its writ jurisdiction to consider the evidence for itself and reach its own conclusions in matters which have been left by the legislature to the decisions of specially constituted tribunals.'

61. To our mind, the same principles should apply to this case and in making our order we have also taken into consideration the order of Sinha, J. in : AIR1965 Cal156 , which was a case, inter alia, under Section 167(8) of the Sea Customs Act, 1878 read with the Land Customs Act of 1924.

62. The result it that this appeal is allowed. The Rule is made absolute and the order of the Collector of Central Excise and Land Customs, Calcutta, dated the 12th December, 1951 is quashed and or set aside by a Writ in the nature of Certiorari and there will be a Writ in the nature of Mandamus directing the respondents not to give effect to the same. The Respondents may, however, if they are so minded, proceed with the show cause notice in accordance with law. There will be no order as to costs.

Ghose, J.

63. I agree.