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**Court** : Kolkata

**Decided On :** Feb-18-1960

**Reported in** : AIR1960Cal561

**Judge** : D.N. Sinha, J.

**Acts** : Constitution of India - Article 226

**Appeal No.** : Matter No. 168 of 1958

**Appellant** : Empire Watch Co. and ors.

**Respondent** : Joint Chief Controller of Imports and Exports and ors.

**Advocate for Def.** : A.C. Mitra and ;A.K. Banerji, Advs.

**Advocate for Pet/Ap.** : Atul Gupta and ;P.K. Sen Gupta, Advs.

**Disposition** : Application dismissed

**Judgement** :
ORDER

**D.N. Sinha, J.**

1.The facts in this case are shortly as follows : The petitioners, Sunil Kumar Dey and Hrishikesh Dey together with their brother, Binode Behari Dey, carried on a business in co-partnership under the name and style of 'Empire Watch Co.' This business, which is situated at No. 5, Radha Bazar Street, Calcutta, was originally founded by their father in 1892. The three brothers were carrying on business in co-partnerships since February 1946. This business had a quota-right and a quota-license for the import of watches etc. On or about 24th July, 1955 the partnership firm was dissolved. A formal deed of dissolution was drawn up, dated 10th December, 1955. Binode Behari Dey retired from the firm, and the petitioners Nos. 2 and 3 reconstituted the firm among themselves. The said Binode Behari Dey became entitled to carry on business under the name and style of 'Gama Dayton and Co.', a name hitherto associated with the Empire Watch Co. There are various other terms in the deed of dissolution which, it is unnecessary, to relate here. One term, however, is of importance and is set out below:

'Binode Behari Dey shall be entitled to one-third share and Sunil and Hrishikesh Dey shall be entitled to two-third share in the existing quota license as on 24th July, 1955 of the firm of Empire Watch Co., and they shall be entitled to apply to the authorities concerned for separate allotment of their respective share in the said quota license, so that they can import watches etc. from abroad, separately in the respective share quantities. After such separate allotment of the respective one-third and two-third shares of the said existing quota licence to the respective parties they shall be deemed as independent separate units. Binode Behari Dey shall have no connection with the fresh or revised. quota licence that may be issued in the name of M/s. Empire Watch Co. after 24th July, 1955.'

2. On the 29th December 1955 the petitioners wrote to the Chief Controller of Imports and Exports New Delhi (hereinafter referred to as the C. C. I.) stating that one of the three partners of the firm or Empire Watch Co. proposed to retire from the firm with his one-third share and wanted that a one-third share of the present quota right of the firm should be transferred to him. The enquiry was as to whether this proposal would meet with approval under para 74(iii) of Section 1 page 19 of the Red Book issued for the licensing period July-December 1955. It is obvious that the statements made in the letter were not true, inasmuch as the firm had

already been dissolved, and there was already an agreement embodied in the deed of dissolution for division of the quota-licence. On the 11th January, 1956 the C. C. I. replied to say that if the partners agreed by a registered deed to divide this business together with all its liabilities, assets and goodwill then the question of division of the quota rights could be considered. Before the request could be considered, certain documents were asked to be produced including the Income-tax Clearance Certificate in respect of the dissolved firm as well as the new concern. On the 30th January, 1956 the Joint Chief Constroller of Imports, Calcutta, informed the petitioners that they should approach the C. C. I., New Delhi, for necessary sanction in respect of transfer of quota rights in terms of the instructions as contained in paras 74 and 75 of the Red Book for July-December 1956 period. On the 23rd March, 1956 the petitioners wrote to the C. C. I. New Delhi informing him that there had been a change in the constitution of the partnership and that Shri Binode Behari Dey having retired, the petitioners Nos. 2 and 3 were left to continue the business. The petitioners, in this letter, took the stand that they were entitled to the whole of the existing quota right of the firm of Empire Watch Co., and not two-thirds thereof. On the 29th March, 1956 applications were made in the form prescribed for established importers, for the issue of licenses in favour of Empire Watch Co. for the period January-June, 1956. I have directed that the various applications be all collected in a brief, which has been done, and I direct that this brief be treated as part of the record. The applications for this period are to be found at pages 1 to 4. It will be seen that the petitioners were claiming to be entitled to the whole of the existing quota right of the partnership firm, and for the issue of a licence for the maximum quantity permissible thereunder. In the meanwhile, Binode Behari Dey had also applied for a division of the quota rights and allotment of one-third share therein to him. On the 25th June, 1956 the C. C. I. wrote to the petitioners that it did not appear from the deed of dissolution that the petitioners were entitled to the entirety of the quota rights, but there appeared to be an express stipulation for a division thereof, and the grant of one-third share to Binode Behari Dey. The petitioners were asked to produce certain documents. On the 16th July, 1956 the petitioners furnished various documents, including Income-tax Clearance Certificate, but continued to claim that they were entitled to the entirety of the quota right. This position was

however not accepted, and the C. C. I. New Delhi, wrote back to say that the petitioners were not entitled to more than two-thirds share. On 30th November, 1956 the petitioners sent a solicitor's letter containing long arguments in support of the case put forward by the petitioners, claiming the whole of the quota right. On the 9th January, 1957 tile C. C. I., New Delhi, replied to it by saying that unless a written agreement about the use of quota rights admissible to the dissolved firm of Messrs. Empire Watch Co., in very clear terms was produced, or an interpretation of the existing terms was obtained from a Court of law, the existing quota certificate issued in the name of the dissolved firm would be cancelled. On the 17th January, 1957 the petitioners wrote to say that a decision from a court of law would require a long time and, therefore, they had decided that a quota licence to the extent of two-third share in the quota rights of the dissolved firm may be issued to them, and quota license for the remaining one-third share to Binode Behari Dey, without prejudice to the rights and contentions of the parties as may be decided in a suit which would be filed in the Calcutta High Court. It would be noted that this is for the first time that the petitioners asked for a quota license in respect of a two-third share. The C. C. I., New Delhi thereupon asked that the matter may be put in the form of an affidavit signed by the three brothers. After some correspondence, such an affidavit was forwarded on or about 15th February, 1958. Meanwhile, on the 29th September, 1956 the petitioners applied for the issue of quota licenses in respect of the period July-December, 1956. Copies of these applications are to be found in the special brief, at pages 5, 6 and 7. In these applications, also, the petitioners claimed the whole of the quota right and not a two-third share. On the 28th March, 1957 applications were made for licenses for the period January-June 1957, copies whereof are to be found in the special brief at pages 9 to 14. On the 7th March, 1958 the petitioners were informed by the C. C. I., New Delhi that the quota rights of the dissolved partnership had been divided and the petitioners were entitled to quota license for two-third share, on the basis of imports-exports standing in their name. On the 13th June, 1958 the Joint Chief Controller of Imports and Exports, Calcutta wrote to the petitioners a letter, copy whereof is Exhibit 'J' annexed to the petition. It was stated therein that in respect of the applications for licenses for the period July-December 1956 and January-June 1957, no licenses could be issued since the transfer of quota rights were approved

after the expiry of the licensing period. Another letter was received from the Joint Chief Controller of Imports and Exports, Calcutta by the petitioners, dated 23rd June, 1958 a copy whereof is Exhibit 'K' to the petition. The position was explained therein in greater detail. It was explained that applications had to be made before the last date prescribed for the licensing period, complete in all respects. The petitioners, however, applied in full compliance with the requirements, only on or about the 31st August, 1957 and the transfer of quota right was effected in March, 1958. Therefore, no quota license for the period July-December 1956 or January-June 1957 could be considered, for want of a valid quota certificate and no licenses for these periods could be granted, lathis application which has now been made, the petitioners challenge these two documents namely Ex. 'K', whereby the respondent No. 1, the Joint Chief Controller of Imports and Exports, Calcutta, has declined to issue quota licenses for the periods July-December 1956 and January-June 1957.

3. The first thing that strikes me is, as to how, any order can be made now, for the issue of licenses for periods which have expired long ago. The whole concept of the import trade control and the policies prepared and published from time to time, is to impose a control over imports from abroad during a particular period: For every licensing period, which normally is of six months' duration, there is published a Red Book containing the import trade control policy. This is based on the existing factors, at the time when the policy is framed. These factors depend on world conditions as prevailing from time to time. The import trade control was first introduced in May, 1940 as a war-time measure, under the Defence of India Rules, primarily with the object of conserving India's foreign exchange resources. At first, import trade control was limited only to a few commodities; but with the unabated growth of exchange difficulties, it became necessary in the interest of the economic stability of the country, to expand its scope. With the cessation of hostilities and the lapse of the Defence of India Rules in September 1946, import control was kept alive by the Emergency Provisions (Continuance) Ordinance, 1946, for a period of one year. This was replaced by the Imports and Exports (Control) Act, 1947, which, in its turn was extended in 1950 by an amending Act to March 1955 and thereafter further extended in 1955 to March, 1960. In exercise of powers given by the said Act, notifications have been issued by the Central

Government from time to time and these are the basis on which the import trade control is based. The rules and procedure are to be found in a Red Book issued by the Government of India described as 'Import Trade Control, Hand Book of Rules and Procedure.' There is also another Red Book issued for every licensing period by the Government of India in its Ministry of Commerce and Industry entitled 'Import Trade Control Policy'. All parties before me have proceeded on the footing that the policies contained in the respective Red Books are binding. In view of the facts I have stated above, the point of dispute between the parties is now clear. The firm of Empire Watch Co. had a quota right, as an established importer of certain commodities like watches etc. At a certain point of time, the firm was dissolved. In terms of the deed of dissolution, the petitioners Nos. 2 and 3 became entitled to two-third share of the quota rights and Binode Behari Dey became entitled to the remaining one-third share. The petitioners Nos. 2 and 3 made an application for the issue of licences for the periods July-December 1956 and January-June 1957 on the footing that they were entitled to the whole of the quota right. This position was not acceptable to the authorities, and there was long correspondence, with the result that ultimately the petitioners Nos. 2 and 3 agreed to have the quota right apportioned in the proportion of two-third and one-third. The requisite documents which it is necessary to furnish on that footing, were not furnished before August 1957 and the actual approval of the C. C. I., New Delhi, was made in March, 1958. According to the petitioners, they are entitled to the issue of licenses for the periods July-December 1956 and January-June 1957, even though there has been such delay in the apportionment of the quota right and the furnishing of documents. According to the respondents, they are not entitled to the issue of licenses for such periods, by reason of the fact, that the petitioners did not obtain a division of the quota right within the licensing period, nor did they make applications complete with all particulars required and documents necessary to be produced, within the time laid down by the Import Trade Control Policy of the Central Government, which is binding on all parties. It is, therefore, necessary to decide as to which stand is justified. I have already mentioned above the genesis of import control. I have mentioned the Imports and Exports (Control) Act, 1947 under which various notifications have been published from time to time most of which have been incorporated in a consolidated order

No. 17/55 dated 7th December, 1955 known as the Imports (Control) Order, 1955. Under the said order, no person can import any goods of the description specified in Schedule I (known as the I. T. C Schedule) except, and in accordance with, a license or a custom clearance permit granted by the Central Government, or by any officer specified in Schedule II. Every application for a license must be made to the appropriate licensing authority, in the proper form. For the purpose of import license, every calendar year is divided into two half yearly periods viz., January-June and July-December, which are known as the licensing periods. The import policy has to be announced on the eve of each licensing period, by means of public notices, which are consolidated and issued in the form of a 'Red Book' --a publication which is available to the public for a price. An application has to be made separately for each kind of goods in the I. T. C. Schedule, for each licensing period, in the appropriate form. Importers are divided into several categories like established importers', 'new-comers' or 'actual users'. So far as the petitioners are concerned, they are in the category of established importers. Such applications must be made within a particular time. The last date for submission of application is invariably indicated in the half-yearly Red Book. For example, in the Red Book for July-December 1956 the last date for submission of application for established importers is stated to be 1st October, 1956. The applications received after the prescribed date are not rejected, but are considered on merits, but in that event the period of validity is curtailed by the number of days the application has been delayed. It has been laid down however, that no application made after 30th November 1956 would be entertained. The rule is that no application made after the 30th May in the January-Tune licensing period and 30th November in the July-December licensing period can be entertained. The period for which the licenses are valid are set out in the policy statement Section II. For example, for the period July-December 1956 the validity of licenses in respect of watches and parts thereof is six months. The point to be noted is that the applications have to be made within the prescribed date, 'complete in all respects'. The next thing to understand is a 'quota certificate'. A quota certificate is issued to an established importer, in token of the acceptance of his past imports of a particular commodity, in a year selected by him within the basic period, by a licensing authority. Normally the basic period runs from 1st April, 1945 to 31st March 1952. Out of this, the

importer selects his best year. Once a quota certificate is issued to an established importer, it is no longer necessary for him to submit his documents of past imports in respect of his application for a quota license. Quota licenses are given to established importers on the basis of valid quota certificates. It is calculated as a percentage of the total value of imports in the best year selected by the importer. We now come to the question of the transfer of quotas. When a change occurs in the constitution or the name of the firm, to which a quota right has been granted, or the business changes hands, the transferee, or the re-constituted firm, will not be entitled to any part of the quota of the original firm until the transfer or division of the quota right in its favour has been approved by the C. C. I. or the relevant licensing authority.

The particular Rule which is applicable to the facts of this case runs as follows:

'86 (b) Division of Quota Rights: Where a firm is dissolved, and the partners agree to divide its business, assets and liabilities and its goodwill is taken over by one of the partners or none of them is allowed to use it, the partners shall get their respective share in the quota rights according to the provisions of the agreement.'

Parties claiming transfer or division of quota rights are required to produce certain documents, e.g. the [Income-tax Clearance Certificate, advertisements in two newspapers notifying a claim for transfer of quota rights, and calling for objection. Deed of transfer, and various other documents mentioned in para 87 at page 36 of the Book of Rules and Procedure.

4. It would be apparent from the above summary of the rules that in a case like the present, it was the duty of the petitioners to apply for a division of the quota right originally granted to the partnership firm, upon dissolution thereof. The basic thing to be remembered is that no quota license can be granted after dissolution, to the firm unless the quota right has been divided. The following is the Rule laid down in para 86 of the Book of Rules and Procedure:

'When a change occurs in the constitution or the name of the firm or the business changes hands, the re-constituted firm will not be entitled to the quotas of the original firm until the transfer of the quota rights in their favour has been approved

by the Chief Controller of Imports and Exports or other licensing authorities in cases covered by Clause (d) below.'

In this case we are not concerned with the other licensing authorities. The sole question for determination, therefore, is as to whether the petitioners made a proper application in proper time for their quota licences for the two periods with which we are concerned in this case, namely July-December 1956 and January-June 1957. Since it is admitted that the firm was dissolved as and from the 24th July 1955, it would be necessary in order to get a license in the name of the old firm as re-constituted, to have the quota right divided before any such licenses could be issued. Coming now to the facts of this case, we find that applications were made for the issue of licenses by the petitioners for the period July-December 1956 on the 29th September 1956 and for the period January-June 1957 on the 28th March 1957. In these applications, the petitioners claim, not a division of the quota right but for the issue of a license in respect of the whole quota right of the partnership firm as originally granted. This was contrary to the rules, and no license could be granted unless the division had been approved by the C.C.I., New Delhi. If the applications were, quite in order, then of course, they were made within time. Being defective however, the question is whether the rules were satisfied by the mere making of such defective applications. As I have stated above, the definite rule is that no quota license can be granted in the case of dissolution and reconstitution unless the division of quota rights is sanctioned by the C. C. I., New Delhi. Firstly, therefore, it was incumbent upon the petitioners to have the quota right divided and approved by the C. C. I. Secondly, upon the division of the quota right, they should have made an application or applications within the time permitted, such applications to be 'complete in all respects'. What then is the meaning of the expression 'complete in all respects'? It obviously means that it should be made in the prescribed form, containing the prescribed particulars and supported by the prescribed documents, and it should be made within the prescribed time. Mr. Gupta appearing on behalf of the petitioners has strenuously argued that if an application is made for the division of the quota right and the authorities sit on it, and delay the matter beyond the licensing period or the prescribed time for making applications, it cannot take away the rights of a citizen to get a license. He has showed me certain instances where applications

have been made within time, but licenses have been issued, one or even two years afterwards. I do not see how these instances help him on the facts of the present case. If the applications are made in time, but it is the authorities who make a delay, it is conceivable that a license may be granted after the licensing period. But such is not the case here. In this particular case, the dissolution took place long before the licensing periods in question. The petitioners first of all gave a false information to the authorities, namely that a dissolution was merely proposed, when in fact, it had already been effected. Next, when the authorities came to know about it and threatened to take steps, applications were made for the issue of licenses, but upon an untenable footing, namely for the whole quota right granted to the original partnership firm. Having taken this untenable stand, the petitioners fell into difficulties in the matter of producing necessary documents. It led to a prolonged correspondence and ultimately the petitioners had to climb down and be satisfied with a division of the quota rights and allotment to them of a two-third share in the quota right. The result was that the applications for licenses could only be said to be complete in all respects, when in August, 1957 all the documents had been submitted and on the 7th March, 1958 when the division was approved of by the C. C. I., New Delhi. The Joint Controller of Imports, Calutta, was never in a position to grant a license for the periods in question prior to the 7th March 1958. The question is whether on that date it could be said mat the applications for licenses were made within the prescribed time, or whether the delay was attributable to the licensing authority. Obviously they were not. For the period July-December 1956 the last date was 30th November 1956 and the last date for the period January-June 1957 was 31st May 1957 and the applications were not in order on those dates, due to the petitioners' own fault. Mr. Gupta argues that this delay was not due to any mistake or error or laches on the part of his clients. He says that his clients did everything that, was possible, and even agreed to file a suit in the High Court for the declaration of their rights, and consequently, they are even now entitled to the issue of a license for the periods mentioned above. In my opinion, it would be quite contrary to the whole scheme of the import trade control regulations, to issue a license for a period which has expired more than three years from now. The import trade control policy is always changing. It depends on a variety of factors, including world-trade conditions,

availability of foreign exchange, the prevailing political atmosphere and so on. Unstable as these factors are it is obvious that the policy undergoes, and must undergo, changes from time to time. Indeed, there is a reorientation every six months. Goods which may be allowed to be imported in one period may be absolutely debarred in another. It is well known how the importation of watches has been almost stopped totally during the recent licensing periods. Apart from the question whether the right to the issue of a license is a right which can be enforced by a writ in the nature of mandamus, the court must be extremely hesitent to order the issue of licenses for periods which have long ago expired, because it is not aware, and cannot possibly have all the materials before it to show whether the policy has undergone a change in the interval. It may well be that it would be impossible to carry out such orders. It is true that instances have been given where applications have been made within time but licenses have been granted after delay of even two years. In such a case, there might exist facts, which justify the issue. It may be, that in respect of such applications, the import policy has not varied and no harm has been done by the issue of a belated license. In the present case, however, we are dealing with items, in respect of which the import control policy has sharply changed in recent times. It is impossible for the court to decide as to, whether it would be administratively possible to issue such licenses after the period has expired long ago. I am, however, content to base my decision upon the rules and regulations relating to the issue of such licenses. As I find the rules and regulations, the basic requirement for the issue of a quota license in the case of a dissolved firm, which has been re-constituted, is that the original quota right must be divided and the division must have the approval of the C. C. I., New Delhi. So far as the respondent No. 2 is concerned, namely the Chief Controller of Imports and Exports, New Delhi, he is outside my jurisdiction and I cannot issue a writ upon him. Indeed, the writ asked for is against the respondent No. 1, the Joint Chief Controller of Imports and Exports, Calcutta, who has the authority for the issue of licenses in Calcutta. In my opinion, it is sufficient answer for me to say that he could not possibly issue licenses for the relevant periods, as there had not been a division of the quota rights, approved by the C. C. I., New Delhi, within time. That there is a time-limit prescribed for applications is not denied. It is not also disputed that the rules require such applications to be complete in all respects

and made within the prescribed time. No such applications appear on the record. Undoubtedly a position may arise where a firm is dissolved at a point of time when there is very little time for making an application complete in all respects within the prescribed time. In such a case there is provision in the Rules & regulations for interim relief. How such an interim relief is to be availed of, appears in para 86(f) at page 35 in the book of Rules and Procedure. The petitioners in this case did not follow that prorcedure. They just made an application claiming the full quota rights of the original firm and insisted that they were entitled to the whole of the quota rights, to fee exclusion of Binode Behari Dey, who on the other hand, correctly applied for his one-third share. Under the circumstances, the respondent No. 1 was not bound, and indeed, was not in a position to issue the licenses, as I have stated above, the earliest date upon which he came to be in a position to issue license was on the 7th March, 1958, a date which was long after the expiry of the prescribed time. In my opinion, therefore, he took the correct stand, namely that the applications for licenses for the periods abovenamed were not made in accordance with the rules and regulations, within the prescribed time and, therefore, could not be granted. Mr. Gupta has advanced an argument regarding the hardship suffered by his clients. Obviously, that cannot be a ground for non-observance of the rules and regulations. Indeed, in being called upon to issue a high prerogative writ, the first thing to be considered is as to whether the respondent No. 1 has acted in accordance with the law or in violation of it. Since it has hot been established that he has acted in violation of the law, it is not possible for me to command him to do something which is not based upon the law, merely on the ground that it would cause hardship to the petitioners.

5. The result is that this application must fail and the Rule must be discharged. All interim orders are vacated. There will be no order as to costs.

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