

A

## ORIENT PAPER MILLS LTD.

v.

## UNION OF INDIA

May 3, 1968

B

[J. M. SHELAT AND K. S. HEGDE, JJ.]

*Quasi-Judicial Power—exercise of—necessity for deciding matters independently of directions given by others. Appeals and Revisions—manner in which quasi-judicial power to be exercised.*

C

Upto February, 1961 certain "printing and writing paper" and "packing and wrapping paper" produced by the appellant Company were subject to exercise duty at the rate of 22 nP. per kilogram though the former was chargeable under Item 17(3) and the latter under Item 17(4) of the First Schedule to the Central Excises and Salt Act, 1944. The Finance Act of 1961 raised the excise duty payable under Item 17(4) to 35 nP. per kilogram with effect from March 1, 1968 and though for some months the Excise Officer continued to levy duty on certain "machine glazed paper" popularly known as "M.G. Poster paper" under Item 17(3) *i.e.* by

D

regarding it as "printing and writing paper", subsequently the excise authorities began to treat this paper as "packing and wrapping paper" and insisted on the appellant paying duty thereon under Item 17(4). The appellant paid the duty at the rate claimed under protest and thereafter applied for refund of the excess on the ground that the duty on that paper should have been levied under Item 17(3). The Assistant Collector rejected the claim. An appeal to the Collector and a revision to the Central Government were also rejected. It was clear from the order of the Collector as well as from the counter affidavit filed on behalf of the Government that the appeal and the revision were rejected on the ground that the question was covered by a direction issued by the Central Board of Revenue to the effect that the paper in question was to be treated as "packing and wrapping paper".

E

On appeal, to this Court

F

HELD :The direction given by the Board was invalid and had vitiated the proceedings before the Collector as well as the Government. The appeals must therefore be allowed and the orders of the Central Government as well as the Collector set aside, and the proceedings remitted to the Collector for deciding the question whether "M.G. Poster paper" should be assessed as "printing and writing paper" or "packing or wrapping paper" afresh. [253 A-C]

G

The question whether "M.G. Poster paper" is "printing and writing paper" or "packing and wrapping paper" is essentially a question of fact. That had to be decided by the authorities under the Act. The power exercised by the Collector and the Central Government was a quasi-judicial power that could not be controlled by the directions issued by the Board. No authority however high placed can control the decision of a judicial or a quasi-judicial authority. There is no provision in the Act empowering the Board to issue directions to the assessing authorities or the appellate authorities in the matter of deciding disputes between the persons who are called upon to pay duty and the department. Although the assessing authorities as well as the appellate authorities are judges in their own cause, when they are called upon to decide disputes arising under the Act they must act independently and impartially. They cannot

H

he said to act independently if their judgment is controlled by the directions given by others. [249 B-C, F-H]

*Aluminium Corporation of India Ltd. v. Union of India*, C.A. 635 of 1964, decided on September 22, 1965; *Mahadaya! Premchandra v. Commercial Tax Officer, Calcutta*, [1959] S.C.R. 551 and *B. Rajagopal Naidu v. State Transport Appellate Tribunal*, [1964], S.C.R. 1; referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos 659 to 664 of 1965.

Appeals by special leave from the judgment and order dated October 5, 1963 of the Government of India, Ministry of Finance, Department of Revenue, New Delhi in Central Excise Revisions Applications Nos. 720 to 725 of 1963.

*S. Ray, R. K. Chaudhury, A. N. Parikh and B. P. Maheshwari*, for the appellant.

*Seiyed Mohammad and S. P. Nayyar*, for the respondent.

The Judgment of the Court was delivered by

**Hegde, J.** These appeals by special leave arise from the orders made by the Government of India, Ministry of Finance, Department of Revenue, New Delhi on October 5, 1963, in Central Excise Revision Applications Nos. 720 to 725 of 1963. Herein a common question of law arises for decision and that is whether "M.G. Poster paper" manufactured by the appellant-company is a "printing and writing paper" chargeable under item 17(3) of the First Schedule to the Central Excises and Salt Act, 1944 (No. 1 of 1944), hereinafter referred to as the Act or whether it is "packing and wrapping paper" chargeable under item 17(4) of the aforementioned Schedule.

The appellant is a public limited company incorporated under the Indian Companies Act, 1913, and an "existing company" within the meaning of the Indian Companies Act, 1956. It is carrying on business, *inter alia*, of manufacturing and sale of various kinds of paper at its factory at Birjrajnagar in the district of Sambalpur in the State of Orissa. In particular, it manufactures "packing and wrapping paper", "printing and writing paper" and "machine glazed paper", popularly known as "M.G. Poster paper". Upto February 28, 1961, the date on which the Finance Bill of that year was introduced in Parliament, "printing and writing paper" and "packing and wrapping paper" were subject to excise duty at the rate of 22 nP per kilogram, though the former was chargeable under item 17(3) and the latter under item 17(4) of the First Schedule to the Act. The Finance Act of 1961 raised the excise duty payable under item 17(4) to 35 nP per kilogram with effect from March 1, 1961. From March 1, 1961,

A to August 1, 1961, the excise officers levied duty on "M.G. Poster paper" under item 17(3) *i.e.* at the rate of 22 nP per kilogram. In other words, during that period the excise authorities treated "M.G. Poster paper" as "printing and writing paper". Subsequently, the excise authorities began to treat this paper as "packing and wrapping paper" and insisted on the appellant paying duty thereon under item 17(4). The appellant paid duty at that rate under protest and thereafter applied to the Assistant Collector for refund on the ground that the duty on that paper should have been levied under item 17(3) and consequently the duty collected was in excess of that leviable under law. The Assistant Collector rejected that claim. Consequently, the appellant went up in appeal to the Collector of Central Excise, who rejected its appeal. Then the matter was taken up in revision to the Government of India. The Government declined to interfere with the orders of the Collector.

D The orders made by the Collector in the various appeals and those made by the Government in the revisional applications are similar in all the cases. Therefore it would be sufficient if we refer only to those made in one of the cases, *viz.*, in C.A. 659 of 1965.

E The contention of the appellant before the Assistant Collector, the Collector as well as the Central Government was that "M.G. Poster paper" is a "printing and writing paper" and it was considered as such, by the Indian Tariff Board, in the Tariff Commission Report published in 1959 and in the specifications published by the Indian Standards Institution. Further it was dealt as "printing and writing paper" in the annual rate contracts entered into between the appellant and the Government of India for supply of papers and paper-boards to the Government. F This contention does not appear to have been examined either by the Collector or by the Central Government. The Collector rejected the appeals of the appellant with these observations :—

G "The crucial point in appeal is whether the paper declared as 'M.G. Poster paper' should be assessed as 'packing and wrapping paper, other sorts' under tariff item No. 17(4) or as 'printing and writing paper, other sorts' under tariff item 17(3).

H The Central Board of Revenue have already made it clear that all types of poster paper of whatever colour including white should not be treated as 'printing and writing paper' but as 'packing and wrapping paper'. As such, the Poster paper has not been wrongly assessed.

I have carefully gone through the available records of the case. Considering all the facts and circumstances, I do not find any reason to interfere with the order passed by the A.C. appealed against. His order is therefore confirmed.”

It is seen from his order that the only ground on which the Collector rejected the appeals of the appellant was that the question was covered by the direction issued by the Central Board of Revenue—hereinafter referred to as the Board.

During the pendency of the revision applications filed before the Central Government, the Collector, in response to the notice served on him, filed his objections in writing. In those objections he pleaded primarily two grounds in opposition to the appellant's claim. They are : (i) that on chemical examination it was found that “M.G. Poster paper” was “packing and wrapping paper” and (ii) the direction issued by the Board was binding on him. As per its order of October 5, 1963, the Government rejected the revision applications in question with these observations :—

“The Government of India have carefully considered all the points raised by the petitioners, but they regret that they do not find any justification for interfering with the order in appeal. The Revision Application is accordingly rejected.”

The order in question is by no means a speaking order; it is not possible to spell out from that order the reasons that persuaded the Government to reject the revision applications. The best that can be said in favour of the Government is that it thought that the direction issued by the Board referred to earlier was decisive of the matter. That was what was stated in the counter-affidavit filed on behalf of the Government of India in these appeals. The only other reason that could have influenced the decision of the Government was the statement of the Collector that on chemical examination it was found that “M.G. Poster paper” was “packing and wrapping paper”. If the Government had taken into consideration any other facts in deciding the revision applications they had clearly contravened the principles of natural justice as the appellant had not been given any opportunity to rebut those facts.

Now it is conceded that “M.G. Poster paper” was never chemically examined and the Collector's statement to the contrary was incorrect. It is not possible to determine whether the incorrect statement made by the Collector had or had not influenced the Government. It may be mentioned at this stage that the appellant had specifically complained to the Government that it had not been supplied with the copy of any report relating to

A chemical examination of "M.G. Poster paper", nor was it given any opportunity to contest the correctness of the facts mentioned in that report. Undoubtedly during the hearing of the revision applications the appellant was not informed that the statement made by the Collector regarding the alleged chemical examination was incorrect, and that statement would not be taken into consideration in deciding the revision-applications.

This leaves us with the question of the directions issued by the Board. The question whether "M.G. Poster paper" is "printing and writing paper" or "packing and wrapping paper" is essentially a question of fact. That had to be decided by the authorities under the Act. It was not denied before us that the Collector and the Central Government while deciding the appeals and the revision applications respectively functioned as quasi judicial authorities. So far as the nature of power exercised by the Central Government under s. 36 of the Act (revisional powers) is concerned, the matter is concluded by the decision of this Court in *Aluminium Corporation of India Ltd. v. Union of India*<sup>(1)</sup>. Therein this Court held that the said power is a quasi judicial power. There is hardly any doubt that the power exercised by the appellate authority, *i.e.* the Collector, under s. 35 is also a quasi judicial power. He is designated as an appellate authority; before him there was a *lis* between the appellant which had paid the duty and the Revenue; and his order is subject to revision by the Central Government. Therefore, it is obvious that the power exercised by him is a quasi judicial power. Dr. Syed Mohammed, appearing for the respondent, did not contend—and we think rightly—that the power exercised by the Collector was not a quasi judicial power.

If the power exercised by the Collector was a quasi judicial power—as we hold it to be—that power cannot be controlled by the directions issued by the Board. No authority however high placed can control the decision of a judicial or a quasi judicial authority. That is the essence of our judicial system. There is no provision in the Act empowering the Board to issue directions to the assessing authorities or the appellate authorities in the matter of deciding disputes between the persons who are called upon to pay duty and the department. It is true that the assessing authorities as well as the appellate authorities are judges in their own cause; yet when they are called upon to decide disputes arising under the Act they must act independently and impartially. They cannot be said to act independently if their judgment is controlled by the directions given by others. Then it is a misnomer to call their orders as their judgments; they would essentially be the judgments of the authority that gave the directions and which authority had given those judgments without hearing the aggrieved

(1) C.A. 635 of 1964, decided on September 22, 1965.

party. The only provision under which the Board can issue directions is r. 233 of the Rules framed under the Act. That rule says that the Board and the Collectors may issue written instructions providing for any supplemental matters arising out of these Rules. Under this rule the only instruction that the Board can issue is that relating to administrative matters; otherwise that rule will have to be considered as *ultra vires* s. 35 of the Act.

In *Mahadayal Premchandra v. Commercial Tax Officer, Calcutta*<sup>(1)</sup>, this Court held that the Commercial Officer while assessing certain transactions should not have solicited instructions from the Assistant Commissioner, nor should he have acted on the basis of those instructions. It was further held that the instructions given by the Assistant Commissioner had vitiated the entire proceedings as "the procedure adopted was, to say the least, unfair and was calculated to undermine the confidence of the public in the impartial and fair administration of the sales tax department."

In *B. Rajagopal Naidu v. State Transport Appellate Tribunal*<sup>(2)</sup>, this Court was called upon to consider the validity of Madras Government Order No. 1298 dated April 28, 1956 issued under s. 43-A of the Motor Vehicles Act, 1939, whereunder certain directions were given to the Transport Authorities in the discharge of their quasi judicial functions. The G.O. in question was struck down by this Court. In the course of the judgment. Gajendragadkar C.J., speaking for the Court, observed thus :—

"In reaching this conclusion, we have been influenced by certain other considerations which are both relevant and material. In interpreting s. 43-A, we think, it would be legitimate to assume that the legislature intended to respect the basic and elementary postulate of the rule of law, that in exercising their authority and in discharging their quasi judicial function, the tribunals constituted under the Act must be left absolutely free to deal with the matter according to their best judgment. It is of the essence of fair and objective administration of law that the decision of the Judge or the Tribunal must be absolutely unfettered by any extraneous guidance by the executive or administrative wing of the State. If the exercise of discretion conferred on a quasi judicial tribunal is controlled by any such direction, that forges fetters on the exercise of quasi judicial authority and the presence of such fetters would make the exercise of such authority completely inconsistent with the well-accepted notion of judicial process. It is true that law can regulate the exercise

(1) [1959] S.C.R. 551.

(2) [1964] 7 S.C.R. 1.

A of judicial powers. It may indicate by specific provi-  
sion on what matters the tribunals constituted by it  
should adjudicate. It may by specific provisions lay  
down the principles which have to be followed by the  
tribunals in dealing with the said matters. The scope  
of the jurisdiction of the tribunals constituted by statute  
B can well be regulated by the statute and principles for  
guidance of the said tribunals may also be prescribed  
subject of course to the inevitable requirement that these  
provisions do not contravene the fundamental rights  
guaranteed by the Constitution. But what law and the  
provisions of law may legitimately do cannot be permit-  
C ted to be done by administrative or executive orders.  
This position is so well established that we are reluc-  
tant to hold that in enacting s. 43-A the Madras Legis-  
lature intended to confer power on the State Govern-  
ment to invade the domain of the exercise of judicial  
power. In fact, if such had been the intention of the  
Madras Legislature and had been the true effect of the  
D provisions of s. 43-A, s. 43-A itself would amount to  
an unreasonable contravention of fundamental rights of  
citizens and may have to be struck down as unconstitu-  
tional. That is why the Madras High Court in dealing  
with the validity of s. 43-A had expressly observed that  
what s. 43-A purported to do was to clothe the Govern-  
E ment with authority to issue directions of an admini-  
strative character and nothing more. It is somewhat  
unfortunate that though judicial decisions have always  
emphasised this aspect of the matter, occasion did not  
arise so long to consider the validity of the Govern-  
ment order which on the construction suggested by the  
respondent would clearly invade the domain of quasi  
F judicial administration."

The rule laid down in the above decisions is fully applicable  
to the facts of this case. It is obvious as well as admitted that  
both the Collector and the Central Government proceeded on the  
basis that the direction given by the Board was decisive of the  
matter. The revision applications filed before the Government  
G were heard and decided by one of the members of the Board. He  
appears to have proceeded on the basis that in view of the direc-  
tions given by the Board nothing more need be said as to the  
point in dispute. It is regrettable that when administrative offi-  
cers are entrusted with quasi judicial functions, often times they  
are unable to keep aside administrative considerations while dis-  
charging quasi-judicial functions. This Court as well as the High  
H Courts have repeatedly tried to impress upon them that their two  
functions are separate; while functioning as quasi judicial officers  
they should not allow their judgment to be influenced by admi-

nistrative considerations or by the instructions or directions given by their superiors. In this case both the Collector as well as the Central Government have ignored the line that demarcates their administrative duties and their judicial functions. A

Dr. Syed Mohammed did not try to justify the direction given by the Board nor did he contend that that direction has any force of law. On the other hand, his main contention was that the grounds urged before this Court were not at all taken before the Collector and the Central Government and therefore the appellant should not be permitted to take those grounds in this Court. We do not think that Dr. Syed Mohammed is right in his contention. Before the Central Government the appellant had definitely contended that no copy of the report relating to chemical examination of "M.G. Poster paper" had been given to the appellant and therefore the same could not have been taken into consideration. At that stage the appellant could not have known that the statement of the Collector relating to chemical examination of "M. G. Poster paper" was incorrect. As regards the validity of the direction given by the Board, it is clear from the notes of argument maintained by the member of the Board who heard the revision applications that that contention had been taken before him, though not in the form in which it was presented before this Court. This what we get from the notes maintained by him :— B C D

"The matter (as to whether 'M.G. Poster paper' is 'printing and writing paper' or 'packing and wrapping paper') was re-examined in detail, in consultation with all the concerned authorities, viz., the Ministry of Commerce and Industries, the Indian Standards Institution and the Chief Chemist. The views of Collectors of Central Excise as well as those of Collectors were also invited. Ultimately it was re-affirmed *vide* the Board's letter No. F. No. 21/36/61/CXIV dated November 6, 1961, that poster paper was correctly assessable as 'packing and wrapping paper' and should continue to be assessed as such. F.M.'s approval was also secured before confirming this position. This therefore should settle the main issue regarding the classification of the poster paper." E F G

From these notes it is clear that at any rate the correctness of the direction issued by the Board was put in issue during the hearing of the revision applications. That apart, we are clearly of the opinion that even if the question of the legality of the direction issued by the Board had not been taken before the authorities under the Act, as that direction completely vitiates the proceedings and makes a mockery of the judicial process, we think we ought to consider the legality of that direction. For the reasons H

A already mentioned, we hold that that direction was invalid and the same has vitiated the proceedings before the Collector as well as the Government.

B Both the appellant as well as the Revenue invited us to decide the case on the basis of the material on record. Ordinarily this Court does not go into questions of fact. That is the duty of the authorities under the Act. We see no exceptional circumstances in this case requiring us to deviate from the ordinary rule.

C For the reasons mentioned above, these appeals are allowed and the orders of the Central Government as well as that of the Collector are set aside, and the proceedings remitted to the Collector for deciding the question whether "M.G. Poster paper" should be assessed as "printing and writing paper" or as "packing and wrapping paper" afresh. The respondents shall pay the costs of the appellant in all these appeals; hearing fee one set.

R.K.P.S.

*Appeals allowed.*