

PETITIONER:
CHANDRAKANT KRISHNARAO PRADHANAND ANOTHER

Vs.

RESPONDENT:
THE COLLECTOR OF CUSTOMS, BOMBAYAND OTHERS

DATE OF JUDGMENT:
11/08/1961

BENCH:
HIDAYATULLAH, M.
BENCH:
HIDAYATULLAH, M.
GAJENDRAGADKAR, P.B.
SUBBARAO, K.
SHAH, J.C.
DAYAL, RAGHUBAR

CITATION:
1962 AIR 204 1962 SCR (3) 108
CITATOR INFO :
RF 1985 SC 613 (5)

ACT:

Custom House Agents-Licence-Rules governing grants thereof-Validity-Agent's liability for short collection of custom duties-Custom House Agents Licensing Rules, 1960, rr. 4,6(a), 6(b), 6(c), 8,9(2) (p), 10 (1) (c), 11, 16 (g), 15(k), 12,17,19, 22 Forms C. D.-Sea Customs Act, 1878 (8 of 1878), as amended by Act 21 of 1955, ss.4, 9,39 (1), 202-Constitution of India, Arts.19 (1)(g) 19 (6).

HEADNOTE:

The petitioners were working as Dalals at New Customs
109

House, Bombay, under licences issued under s.-202 of the Sea Customs Act, 1 878. In 1955 by an amending Act, s. 202 was substituted by another section and, by sub-s.(1) of s. 202 it was enacted : "no person shall act as an agent for the transaction of any business relating to the entrance or clearance of vessel or the import or export of goods or baggage in any custom house unless such person hold'\$ a licence granted in this behalf in accordance with the rules made under sub-section (2) ". By sub-s. (2) the Chief Customs-authority was empowered to make rules for the purpose of carrying out the provisions of the section. Section 4 provided that "when any person was authorised by the owner of the goods to be his agent in respect of such goods for all or any of the purpose, of thisAct....such person shall for such purposes be deemed to be the owner of such goods". The petitioners who, after the enactment of the news.202, had to apply for licences to be granted in accordance with 'the rules framed under sub-s(2), challenged the validity of certain of the rules on the ground that they contravened Arts. 14 and 19 of the Constitution of India and also that they were in excess of the rule-making power conferred by s.202 (2). In particular, they questioned power validity or r. 12 under which inter alia the agent was required to enter into a bond in Form C by which he was made liable for short collection of customs duty under s. 39 and

also to furnish security which might be increased or decreased by the Customs-collector.

Held : (1) that the rules in question though they were headed as framed under s. 202 of the Sea Customs Act, 1878, cannot be impugned on the ground that some of them go beyond the special purposes of that section and seek to further some of the general purposes of other parts of the Act, since the Chief Customs authority is also empowered under s. 9 of the Act to make rules consistent with the Act "generally to carry out the provisions of the Act."

(2) that rr. 4 and 8 under which the Customs-collector could limit the number of licences to be granted at the Customs House and applications could only be made if the Customscollector published a notice inviting applications, do not contravene Art. 19 of the Constitution, as they are only designed to advance public interest.

(3) that rr. 6(a) and 6(b) which require the applicant, to furnish to the Custom's collector satisfactory evidence as to his respectability, reliability and financial status and that he would be in a position to muster sufficient clientel,

110

and business in the event of his being granted the licensee, are reasonable restrictions within the meaning of Art. 19(6) and are valid.

(4) that cl. (p) of r. 9(2) which requires the licensee to have a working knowledge of the procedure in the matter of refund of claims, appeals and revision petitions under the Sea Customs Act, is valid, since it is necessary where an agent handles goods of the principal.

(5) that r. 10 (1)(c) which gives the Customs-collector a wide discretion to reject an application for the grant of a licence, if he considers the applicant to be not suitable, is an unreasonable restriction upon the right of the successful candidate to carry on his avocation, and is invalid. If a candidate is found fit under the other rules and has successfully passed the examination, he should only be rejected under a rule which requires the Customs-collector to state his reasons for the rejection, and the rules must provide for an appeal against the order.

(6) that r. 11, in so far as it prescribes a renewal fee of Rs. 50, is invalid inasmuch as it has thereby provided not for a fee but for a tax to raise revenue. It would be open to the Government to frame a rule in which the renewal fee to be charged is reasonable in the circumstances.

(7) that rr. 15(g), 15(k), 17 and 19, are designed to have a control over agents, including firms which act as agents, who stand in a fiduciary capacity both in regard to their own clients and the Government, and are valid.

(8) that r. 22 which enables the Customs-collector to cancel a licence for non-compliance by the agent with the other rules or for misconduct on the part of the agent, which in the opinion of the Customs-collector, renders him unfit to transact business in the Custom House, is within the rule-making power of the Customs-authorities and is valid.

(9) that the words "the person chargeable with the duty or charge" in s. 39(1) of the Act are wide enough in their ambit to take in, not only the real owner but also a "deemed owner" within the meaning of s.4 of the Act.

(10) that on its true construction of s.39(1) it is only the goods of the defaulting owner in respect of which, the agent is also the deemed owner that would suffer the penalty of detention, but not the goods of a different owner,

111

even though the agent may be authorised to deal on his

behalf.

(11) that r. 12 read with Form C, which makes an agent liable for short collection of customs duties under s. 39, is valid and the rule is not invalid on the ground that it enables the Customs-authorities to make a proper adjustment of the security to be obtained from each individual agent commensurate with the volume and type of business which he might transact.

Held, further (Subba Rao, J. dissenting,) that r. 6(c), which requires the applicant to produce an income-tax clearance certificate, is connected with the enquiry into his respectability and financial status to find out if he can be trusted with other persons' money and goods, and is valid.

K. Raman and Co. v. State of Madras, A. I. R. 1953 Mad. 84, distinguished.

Per Subba Rao, J.-Non-production of an income-tax clearance certificate is not germane to the issue of a licence under the Custom House Agents Licensing Rules, 1960, and the principle in K. Raman and Co. v. State of Madras, A. I.R. 1953 Mad. 84, is applicable. Accordingly, r. 6(c) constitutes an unreasonable restriction on the right of an applicant to do business as Custom-house agent, and is invalid.

JUDGMENT:

ORIGINAL JURISDICTION: Petitions Nos. 80, 80A, 81 and 116 to 213 of 1960.

Petitions under Art. 32 of the Constitution of India for enforcement of Fundamental Rights.

S. V. Gupta, M. C. Bhandare, S. N. Andley, Rameshwar Nath and P. L. Vohra, for the petitioners.

H. N. Sanyal, Additional Solicitor-General of India, D. N. Mukherjee and P. D. Xenon, for the respondents.

Porus A. Mehta, J. R. Gagrath, and G. Gopalakrishnan, for the interveners.

1961. August 11. The judgment of Gajendragadkar, Hidayatullah, Shah and Raghubar Dayal, JJ., was delivered by Hidayatullah, J., Subba Rao, J., delivered a separate judgment.

112

HIDAYATULLAH, J. -These writ petitions raise identical questions, and a common argument was addressed to the Court in all of them. Petitions Nos. 80 and 80A of 1960 have been filed by two petitioners. One petitioner holds a permanent licence and the other, a temporary licence renewable triennially, to work as Dalal's at New Customs House, Bombay. In the other petitions also, petitioners Nos. 1 to 50 hold permanent licences, and petitioners Nos. 51 to 99 hold temporary but renewable licences. Some of the permanent licences were issued in 1936, and some of the temporary licences were issued as far back as 1944. These licences, whether permanent or temporary, were issued under s. 202 of the Sea Customs Act, 1878, prior to its amendment by the Sea Customs (Amendment) Act, 1955 (Act 21 of 1955). They were issued after a brief enquiry and subject to the fulfilment by the applicant of the following conditions :

"(1) He must produce at least 2 certificates of character each from a Justice of Peace or other persons of known respectability.

(2) He must certify that he has not been convicted of any criminal offence.

(3) He must declare that he will have no

claim to any accommodation in the Custom House.

(4) He must also give a security of Rs. 2000 in cash or Government paper having an equivalent market value and execute a Bond for Rs. 2000 on It fifteen rupees Stamp Paper in the attached form."

In 1955, by the amending Act, s.202 was substituted by another section. The section now reads :

"202. (1) With effect from such date as the Central Government may, by notification in the Official Gazette specify, no person shall act as an agent for the transaction of any business relating to the entrance or
113

clearance of any vessel or the import or export of goods or baggage in any Custom-house unless such person holds a licence granted in this behalf in accordance with the rules made under sub-section: (2).

(2) The Chief Customs authority may make rules for the purpose of carrying out the provisions of this section and in particular such rules may provide for-

(a) the authority by which a licence may be granted under this section and the period of validity of any such licence;

(b) the form of the licence and the fees payable therefor;

(c) the qualifications of persons who may apply for a licence

(d) the :restrictions and conditions (including the furnishing of a security by the licensee) for his faithful behaviour as regards the custom-house regulations and officers) subject to which a licence may be granted ;

(e) the circumstances in which a licence may be suspended or revoked; and

(f) the appeals, if any, against an order of suspension or revocation of a licence, and the period within which- such appeals shall be filed."

As A result of the enactment of this section, the original licence, whether permanent or temporary. would have become ineffective after. the date to be specified by the Central Government. It became necessary for the petitioners and others to apply for licences granted in accordance with the rules framed- under sub-s. (2). These rules were framed, and public notices were issued. inviting applications ; but the dates were postponed
114

till the rules were published in the Gazette on May 14, 1960. It is not necessary to refer to the prior history of these rules and to the many representations that were made, as they are not relevant. On June 18 1960, a public, notice (No. 87) was issued fixing June 25, 1960 as the last date for making applications for the new licences, and the persons affected were informed that the. operation of the new licences under the rules would commence on July 14, 1960. On June 27, 1960, Writ Petitions Nos. 80 and 80A of 1960 were filed, followed by Writ Petitions Nos. 81 and 116 to 213 of 1960 filed on July 12 1960. An ex-parte ad interim stay of the revocation of the existing licences was obtained from this Court, and subsequently, the respondents

undertook to issue to the petitioners special temporary licences renewable yearly till the disposal of these petitions.

Prior to the. Custom House Agents Licensing Rules, 1960, there were four classes of Agents. They were (1) Clearing Agents, (2) Dalals., (3) Muccadams and (4) Baggage Clearing Agents. According to the petitioners, there were, 100 licensed Clearing Agents, 200 licensed Dalals, 270 Muccadams and about 15 Baggage Clearing Agents. The duties and functions of these four classes of agents were different. Whether these distinctions were always maintained and whether they grew out of regulations or usage is hardly necessary to enquire. By the Rules of 1960, these classes were merged into one, and all licensed agents were placed on an equal footing. In other words, there is to be hereafter one class of agents'

Though the petitioners holding "permanent' licences and the petitioners holding 'temporary' licences with a term to run out have relied upon the fact that their licences are still valid, there was no serious attempt to deny that under s. 202(1) they would be rendered ineffective after the date to be fixed by Government. The "permanent' licences

115

also are not in a favourable position in this regard. If the first sub-section requires that fresh licences to work as Custom House Agents be obtained, the distinction between permanent and temporary licences ceases to be material. No part of s.202 was challenged as being void or ultra vires. In these petitions, only the Rules & are challenged as in breach of the fundamental rights under Arts. 14 and 19 of the Constitution and Also as being in excess of the rule-making power conferred by sub- s. (2) of s. 202. Form prescribed under the Rules for taking security from the approved agents is also questioned as being in excess of the power to make rules and contrary, in certain respects, to the Sea Customs Act itself. It may be mentioned that the petitioners in all the Writ Petitions are Dalals; but at the hearing, certain Clearing Agents obtained permission to intervene, and were also heard.

Since the Sea Customs Act,' in general and s. 202, in particular were. not challenged in the petitions, we must start with the premise that the authority to insist , on fresh licences under the Rules in the case of all the operators was properly exercised. The first question to consider is whether the Rules, speaking generally, were validly framed and the next question to consider is whether any of the. Rules individually challenged goes beyond the Sea Customs Act, or offends against the Constitution.

In questioning the Rules generally, the petitioners submit that these Rules could only be framed for the purpose of carrying out the purposes of s.202 [provide sub-s. (1)], or, to provide for the, matters 'mentioned in cls. (a) to (f) of s. 202(2). Some of the Rules. it is submitted, go beyond the general purpose of the section, which is to license agents and the special 'topics mentioned there, and seek to further some of the purposes of other parts of the Act. Mention in this connection

116

is-made specially of Form 'O' prescribed by the Rules, under which the agents personally and the security furnished by them have been made liable for short collection of Customs duty, etc. The question whether the agents are liable, in any event,. for such short collection under s. 39 is a question, which will have to be examined on merits separately, but for repelling the argument in its present

from, it is sufficient to say that it is robbed of all its force by a. 9 of the Sea Customs Act. under s. 202(2), the Chief Customs-authority is empowered to make rules for the purposes of that section. That purpose is the licensing of agents and the regulation of their conduct and functions. But the Chief Customs-authority is also empowered by s. 9 to make rules consistent with the Sea Customs Act "generally to carry out the provisions of this Act". The power to make rules under s. 202 is not the only power which the Chief Customs-authority can exercise, and it is only too clear that power can also be derived from S. 9, if there be need. Thus, if it is necessary that the agents must carry out certain provisions of the Act, a rule can be made in the exercise of the two powers together. Though the impugned Rules are headed as framed under s.202 of the Sea Customs Act., they cannot be questioned, if they carry out not only the special purposes of s.202 but also certain other purposes of the Act, because the two powers will concur to sustain them. It is only when a rule or rules are pointed out, which subserve neither the special purpose of the section nor the general purposes of the Act that they can be successfully questioned. In short, therefore, the petitioners' case on the individual Rules alone remains to consider.

The first contention is that under the impugned Rules, the number of licences to be granted at the Customs House can be limited by the Customs collector, and that applications can only be made, if the Customs-collector publishes a notice inviting

117

applications. This restriction, it is contended, is unconstitutional, as it interferes with the right of all the petitioners to carry on their profession or a vocation freely as contemplated, by Art, 19. The Rules bearing upon these matters are rr.4 and 8. The latter Rule says that the number of licences to be granted would be fixed by the Customs collector, having regard to the volume of import and export business transacted through the Customs House, and the number is capable of being revised from time to time. The former empowers the Customs-collector to invite applications, as and when he considers it necessary. It cannot be said that the Rules are not designed to advance public interest, because even a processions or trade has sometimes to be limited in the public interest, when we pointed out to Mr. Gupta that this kind of limitation on the number of persons allowed to hold licences is common, as, for example, porters in a railway station, taxicab drivers and so on, he stated that at least during the transitional period, the old operators might have been given licences on production of proof that they held licences previously. The argument is really not one based upon the interests of the public but upon the interests of the present holders of the licences. Public interests in the context must override private interests. It cannot be said that all the present operators are equally desirable, and if their number exceeds the requirement of the Customs House, it is obvious that some retrenchment in their numbers may legitimately be made, Every one has an equal chance of applying for the existing vacancies, but he must stand in competition with the others. There is no limitation on the number of applications that can be made, and thus, every operator will get a chance to have his case examined. It is to be expected that the most experienced and the most efficient will get preference, and no claim can be made on behalf of the incompetent and the inefficient that they should

118

receive equal treatment. Once the number is limited to the requirements of the business, it is manifest that the Customs collector will invite applications only, as and when occasion demands. These Rules, in our opinion, cannot be said to 'offend against the Constitution.

The next contention is about rr.6(a), (b) and (c), which require the applicant to furnish to the Customs-collector satisfactory evidence as to his respectability, reliability and financial status, and that he would be in a position to muster sufficient clientele and business in the event of his being granted the licence. The applicant has also to furnish an income-tax clearance certificate. These conditions are challenged as being unreasonable restrictions upon the right to carry on a profession or avocation. Serious attempt was not made to establish that the condition about respectability and reliability was unconstitutional. It was, however, pointed out that evidence about financial status created a class barrier between the rich and the poor and only the rich were to be preferred. By the words "financial status" is not meant that the applicant must be a wealthy person; what is required is that he should not be financially embarrassed, and proof that he is in easy circumstances. It is obvious that the agents under the Act deal with vast sums of money and valuable articles, and it may be necessary to scrutinise the financial position the applicant to find out whether or not he would be exposed to temptations. A person heavily indebted or insolvent cannot be trusted in the same way as a person who is not so embarrassed, and an enquiry into financial status is so much in the public interest, that we cannot say that the condition must necessarily be unreasonable. Similarly, the argument, that new entrants would find it difficult to assure that they would have sufficient clientele and business and would thus be discriminated against, is not correct. The Customs House is not a place where persons can be allowed to learn a

119

profession or to take a chance. The movement of goods, the due performance, of the duties and functions under the Sea Customs Act and observance of the regulations are not easy matters for a person, who is not sufficiently experienced and who has not got the backing of a certain amount of business and the experience which such business affords. It may be necessary for a person to apprentice himself for some time to get to know the importers and exporters, and to prove to the Customs authority that by reason of his apprenticeship and his business connections he would be in a position to handle the work in the Customs House from the moment he is licensed. The Rule is designed to avoid entry into the Customs House premises of persons who, being there, are unable to do business, and merely add to the number of persons present.

The last condition is the production of an income-tax clearance certificate. The petitioners rely upon a decision of the Madras High Court reported in *K. Raman and Co. v. State of Madras* (1). In that case, it was held that the fact that a person was in arrears of income-tax was not germane to the issue of a licence under the Yarn Dealers Control Order, and that the insistence on the production of an income-tax clearance certificate was extraneous to the carrying on of the business. The position of an agent who handles other persons' moneys and goods is different from that of a dealer who deals with goods on his own behalf. As part of an enquiry into an applicant's respectability,

reliability and financial status, an enquiry can also be made to see whether he has discharged his debts to the State. If a person is liable to income-tax and pays it punctually, he would have no difficulty in proving it. If, however, for some good reason the payment has been delayed, there would be nothing to prevent him from proving it.

(1) A.I.R. 1953 Mad'. 8A.

120

insistence upon the production of the certificate is, in our opinion, connected with the enquiry into his respectability and financial status. to find out if he can be trusted with other persons' money and goods.

The next Rule which is questioned is r. 9, which provides for an examination of the applicant. This examination follows a scrutiny of the application under the other Rules, and embraces questions on various subjects. The duties of the agents require them to handle goods, and the examination is designed to find out whether a candidate knows the elements of the law relating to the arrival, entry and clearance of vessels and goods. Objection is not raised to the examination as a whole but only to cl. (p) of r. 9 (2) under which a candidate is supposed to know the procedure in the matter of refund of claims, appeals and revision petitions under the Sea Customs Act. It is contended that these are matters in which an agent is not interested as an agent, but are matters for the owner and the Customs-authorities to know. It is true that the curriculum for the examination is somewhat extensive; but it is also, clear that what is expected of the candidate is knowledge, not necessarily exhaustive but sufficient, of the laws relating to the arrival, entry and clearance of vessels and goods. We do not think that it is wrong for the authorities to insist upon at least a working knowledge of the laws applicable to the kind of work the agents are required to do. When licences are issued under other laws, a candidate is sometimes required to answer questions relating to the law under which the licence is issued. One well-known example is the questioning of a candidate about the rules of the road when he is issued a licence to drive a mechanically propelled vehicle. These Rules advance efficiency, and the additional know, ledge about refunds, appeals and revisions under the Act may be necessary where an agent handles

121

goods of a principal, who is himself not present to file appeals or revisions or to claim refunds. The Rule, in our opinion, is perfectly valid.

Rule 10 is the next subject of attack. It provides that the Customs-collector shall reject an application, for the grant of a licence (a) if the candidate fails to pass the examination, or (b) the number of vacancies do not justify the grant of such licence, or (c) the applicant is not otherwise considered suitable. Objection is taken to cl. (c). It is said to confer a very wide discretion on the Customs-collector, and reference is made to sub-r.(2), in which it is provided that no appeal shall lie from the order. of the Customs-collector rejecting an application. It is further pointed out that in July, 1960, the Rules were amended by the addition of r. 25, under which an appeal is to lie to the Chief Customs-authority against every order of the Customs-collector-(i) rejecting an application for the renewal of a licence granted under these Rules; (ii) rejecting a fresh application made in accordance with r. 17; and (iii) refusing the grant or renewal of a special temporary licence under r. 24. It is argued that even though an appeal has been provided for these matters., no appeal has

been provided for the rejection under r. 10(1)(c). No doubt, other reasons may exist for rejecting the application of a candidate, as for example, when he is found to be a leper or an epileptic ; but one would expect that an order of 'this kind would' be backed by reasons to be recorded in writing. It must be remembered that there is first a scrutiny of the application and an enquiry into the respectability, reliability and financial status of the candidate. Then, follows an examination, If a' candidate satisfies 'all the above condition's, there would hardly be any ground left. for rejecting his application, except probably his physical unfitness to. do. the work, The Rule which: is framed is so gel general that it leaves to discretion of the

122

Customs-collector to reject a candidate for a trumpery reason (which he need not state), even though the candidate may be otherwise suitable. In our opinion, if a candidate is found fit under the other Rules and has successfully passed the examination, he should only be rejected under a rule which requires the Customs-collector to state his reasons for the rejection, and the rules must provide for an appeal against that order, as they do in the other cases. As the Rule stands, it cannot be considered to be a reasonable restriction upon the right of the successful candidate to carry on his avocation.

The next Rule which is questioned is r. 11, which enjoins the payment of a fee of Rs. 50 both for a fresh application as well as renewal of the licence. In so far as the fee for the grant of a licence in the first instance is concerned, it cannot be said that the charge is exorbitant. It is not disputed that a fee is an amount collected to reimburse the Government for the expenses of licensing. It must reasonably be measured against the cost which may be entailed in the process of granting licences. In the initial stage, the Customs-authorities have to scrutinise applications, subject the candidates to an examination, and provide them with licences to carry on their work. A fee of Rs. 50 initially may not be considered unreasonable, regard being had to the services involved. The same, however, cannot be said in the case of renewals. It is pointed out in the petition that formerly the charge was only 50 nP. It is averred in the petition that all that the licensing authority does, is to make an endorsement on the licence that it is renewed for a further period. It has been ruled in this Court that under the guise of a fee there must not be an attempt to raise revenue for the general funds of the State. In our opinion, a renewal fee of Rs. 50 does not entail services which can be reasonably said to measure against the charge. It may be pointed out that, though this averment was made in the petition,

123

no. attempt was made by the answering respondents to traverse it.. In our judgment the renewal fee of Rs. 50 ceases to be a fee, and is, in its nature, a tax to raise revenue. Such an impost cannot be justified' as a fee, and we accordingly, hold that this charge is improper. It would, however, be open to the Government to frame a rule in which the renewal fee to be charged is reasonable in the circumstances.

The next objection is to sub-r.(g) and sub-r.(k) of Rs. 15. Sub-rule (g) requires a Custom House Agent to pay over to Government all sums received for payment and to account to his client for monies in his hands. Sub-rule (k) requires him to maintain accounts in such form and manner as may be

directed from time to time by the Customs-collector, and submit them for inspection to the Customs--collector or an officer authorised by him. No exception can be taken to sub-r.(g) which only states what must be regarded as an inevitable obligation on the part of the Agent. Sub-rule (k) is said to be excessive control on the part of the Customs-authorities of the way in which the agent may keep his own account. :The licensing of an agent creates an assurance,, in the minds of the prospective clients, and the Rule is designed to ensure that the monies which the agents handle are properly accounted for. In our opinion, these Rules are salutary, and further the control over the agents, who stand in a fiduciary capacity both in regard to their own clients and the Government.

Rule, 17, which enjoins upon a firm which acts as a licensee to report to the Customs collector as early as possible and, in any event, within a period of three days of a change in the constitution of the firm, is next challenged. It is said that the period of three days is too short ; but it" must be remembered that 'a large number of transactions may go through without the licensing authority being aware that the constitution of a firm has changed. The Rule is designed to bring promptly to the notice

124
of the Customs-collector the change in the constitution of the firm, so that he may be in a position to decide for himself whether the licence in the changed circumstances should be allowed to operate or be suspended or revoked. In our judgment, this Rule, cannot be questioned.

Mr. Porus Mehta who argued the case on behalf of the Clearing Agents, stated that the newly constituted firm is required to make a fresh application which is to be dealt with in accordance with the provisions of rr. 6 to 13. According to him, every change in the, constitution of the firm requires the firm to go through the entire process of scrutiny and examination, which he' terms unnecessary. The rule is designed to ensure that the new members of firm answer the requirements which have been laid down in Rules 6 to 13, and these requirements may be necessary, if new entrants come in. It is to be noticed that pending the disposal of the application, the Customs-collector is authorised by the rule in his discretion to allow the existing firm to carry on the business of Custom' House Agents. This softens the rigorous of the rule, because the work of the agents in proper cases would not be hampered, and the application would stand over for disposal to a later date.

Rule 19 which also enjoins the maintenance and inspection of accounts by a firm was criticised in the same manner as was r. 15, and for the reasons which we have given, we hold it to be conducive to the proper control of the financial activities of a firm as licensee.

Rule 22 deals with the cancellation of the licence for failure of the agent to comply with Any conditions of the bond executed by him, under "the Rules, for failure to comply with any of the, provisions of the Rules and for misconduct on.. his part which, in the opinion of the Customs-collector renders him unfit, to transact business in the

125

Customs House. It is contended that, the rules are so exhaustive and numerous that no agent would ever -be able to keep out of the operation of that-Rule, and that he would be' perpetually exposed to the penalty of suspension or revocation of his licence. Rules are made for

compliance and not for breach, and even though strict, they are all designed to ensure efficient and proper working on the part of the agents. A rule insisting upon such compliance with the other rules on pain of penalty cannot be said to be outside the rulemaking power of the Customs-authorities. Every order of suspension or revocation is subject to appeal, and there is thus room for interference if the Customs-collector acts arbitrarily or perversely. In our opinion, with the existence of an appeal, the rigour of the rule, if any, is taken away except in those flagrant cases, where suspension or revocation of the licence would be merited.

Lastly, it is contended that the Rules control a licensed agent in a manner which makes him an unpaid servant of the Customs-authorities. This is one way of looking at the matter. The right way to look at it is that a profession is being regulated, and the profession is one in which an agent deals with the property of another and by the law is deemed to be owner of the property. A person in such a high fiduciary position must, of necessity, be subjected to strict control, and the licensing authority in holding him forth to the prospective principals as a reliable and trustworthy person must see that persons acting on the faith of the assurance of the licence are in no way damning. The Rules, therefore, subserve a very salutary and necessary principle, and, in our judgment, are designed to advance public interest and cannot be questioned, unless a person wishes to act, dishonestly and wants to avoid control. It is wellknown that many underhand practices are common at Customs Houses, and the Customs-authorities

126
have to be vigilant in preventing them. They must, therefore, see that they do not license the wrong type of person is and in the interests of the Revenue and more so, in the interests of persons who employ licensed agents, these Rules have, been framed. Looking at the Rules generally, we are of opinion that though they, are strict, they are Absolutely necessary, and their strictness would be felt only by persons, who, are not otherwise honest.

The main argument in the case is upon r.12 read with Form It, which is the bond which every applicant has to execute in favour of the President of India, and its enforcement against the applicant under certain 'circumstances. Under r. 12, it is provided that before a licence is granted under the Rules, the Customs collector shall require the applicant to enter into a bond in Form 'C' for the due observance of these Rules. and the conditions of his licence and also to furnish a security of Rs. 3,000 in cash or securities and a solvent surety for a sum of Rs. 2,000. The surety is required to execute a separate bond in, Form 'D'. A proviso added to the 'Rule says that the security may be: increased or, decreased by the Customs--collector at any time, should he, consider it necessary to do so, having regard to the volume and-type of the business which the applicant will transact as Custom House Agent. It may be mentioned here, that the four classes of agents which had grown in the past have now been fused into one, and an agent under the Rules may not confine his activities to those of any one or more of the four classes previously existing. Objection, however, is taken to the basic figure of security and particularly, the cash security of Rs 3000, which are innovations under the present Rules. Reference is made to the provisions of Form 'C', in which it is provided as follows:

"It is also agreed and declared that the President of India may apply the above sum of Rs..... in making good wholly or in part, any short collection of duty or other charges in respect of any transactions made by the said..... on behalf of importers in the event of such sums remaining unpaid,, even after issue of demands under section 39 of the Sea Customs Act."

The petitioners contend. that the increased security, particularly, in cash, puts an unreasonable restriction upon the right to carry on the profession or avocation. They point to the fact that in the, past a security of Rs. 2,000 had been considered adequate, and from 1937 onwards, that security alone was demanded. They also contend that as Dalals they are only required, to present the shipping bills and the assessment or appraisal of the customs duty is the function of the Customs Officer. If any mistakes are made, due to an error on the part of the Customs-authority, or even due to a wrong declaration of the real value of the goods by the importer, the collection of duty should be made from the owner of the goods and not from them. They also contend that this is the meaning and intent of s. 39, which, in terms, makes the owner of the goods liable to make up for the short collections and puts no responsibility on the agents. They further. contend that the last clause of the bond, quoted earlier, makes the agent liable for payment of the balance of the duty before any attempt is made to recover it from the owner or importer.

The last point need not detain us long, because it is raised on the existence of the word "even" in the clause "even after issue of demands under section 39 of the Sea Customs Act". The word "even" does not mean that the agent's security can be touched before the notice is given. It rather indicates that the security would be utilised to make up the deficit only when a notice

128

is given and if even after notice there is no compliance. This would indicate that before the security is so utilised, a notice must go to the agent or his principal, and the bond makes the notice a sine qua non of an action to recoup the deficit duty from the security amount.

The larger question whether the agent can be made responsible for the short collection of duty under s.39 may be deferred for the moment. Previous to the promulgation of the- Rules, there were, as already stated, four classes of Agents, and their duties, by custom and usage, were also different. It is now contemplated to make a single class of agents and also to restrict the number of such agents. It is quite clear, therefore, that the amount of business which would be done by the agents who are licensed, would grow significantly. Also, each agent would be entitled to do all kinds of businesses which were handled separately. This justifies the demand for increased security, and it should be noticed that there is room for the reduction of the duty in individual cases, if the amount of business which the agent would carry on, would be small. Similarly, there is provision for demanding increased security from a person who does or is expected to do a much larger amount of business as an agent. There is thus no room for a proper adjustment of the amount of security to be obtained from each individual licensed agent, commensurate with the volume and type of business which he will transact. We do not, therefore, consider that r. 12 is defective on this ground. Before we deal with s. 39, it is necessary to review certain

other sections of the Sea Customs Act. Under the Sea Customs Act, it is not obligatory upon a principal to appoint a licensed agent. An importer or exporter, as the case may be, can also appoint any person with the approval of the Customs-collector as

129

his agent, who need not be a licensed agent. (R.3). The Rules are meant to control action of agents, particularly the licensed agents. Under the Act, the position of an agent, whether licensed or not, is indicated in s. 4, which reads

"When any person is expressly or impliedly authorized by the owner of any goods to be his agent in respect of such goods for all or any of the purposes of this Act. and such authorization is approved by the Customs-collector, such person shall, for such purposes be deemed to be the owner of such goods."

One of the duties of the owner of the goods is to make a declaration of the real value of the goods in a bill of entry or shipping bill. Under s. 29, on the importation into, or exportation from, any customs-port of any goods, whether liable to duty or not, the owner of such goods must, in his bill of entry or shipping bill as the case may be, state the real value, quantity and description of such goods to the best of his knowledge and belief, and must subscribe a declaration of the truth of such statement at the foot of such bill. Under the same section, the Customs-collector may require the production of invoices, broker's note, policy of insurance or other document to satisfy himself about the real value, quantity or description of such goods. The Customs-Collector is also authorized to inspect the goods for the same purpose. Under ss. 29A and 29B, there may be an assessment of duty prior to the examination of the goods and a provisional assessment of duty and its payment even prior to, the production of the documents above mentioned or the inspection of the goods. Section 30 of the Act defines "real value" and that is the value on which the assessment of the goods takes place. That section is not dependent upon the 'declaration of the owner, but defines "real value" in terms of a formula which, on its application determines of the real value, apart from any declaration.

130

Section 31 provides for the examination of ad valorem goods, and if the real value such goods is correctly stated in the bill of entry or shipping bill, the goods are assessed in accordance therewith. Section 32 provides for the procedure, if it appears that such goods are properly chargeable with a higher rate or amount of duty than that to which they were subject according to the value stated in the bill of entry or shipping bill. The Officer may then detain the goods and collect the proper duty. Sections 33, 34A and 35 deal with abatement allowed or disallowed under certain circumstances. Sections 36, 37 and 38 deal with the alteration of import and export duties or tariff valuations. When the proper duty has been paid according to the checks and inspections, if any, the goods are allowed to be cleared.

Section 39, as the marginal note, shows correctly, deals with payment of duties not levied, short-levied or erroneously refunded., The first subsection, provides as follows :

"(1) When customs-duties or charges have, not been levied or have been short-levied through

inadvertence, error, or collusion or misconstruction on the part of the Officers of Customs, or through misstatement as to real value, quantity, or description on the part of the owner

or when any such duty or charge, after having been levied, or has been, owing to any such cause, erroneously refunded, the person chargeable with the duty or charge which has not been levied or which has been so short-levied or to whom such refund has erroneously been made, shall pay the duty or charge or the deficiency or repay the amount paid to him- in excess., on a notice of demand being issued to him within three months from the relevant date as defined in sub-section (2);

131

and the Customs-collector may refuse to pass any goods belonging to such person until the said duties or charges or the said deficiency or excess be paid or repaid,"

The second sub-section need not be quoted, because, it does not bear upon the controversy.

The contention of the Petitioners is that although in the first paragraph of s. 39(1) the word "owner" may comprehend an agent who is deemed to be an owner, if authorised under the Act, the section does not use the word "owner" in the latter part, and speaks of "the person chargeable with the duty", meaning thereby a change over to the real owner of the goods in contradistinction to the agent. They urge that this is even more apparent from the words of the fourth paragraph of the first sub-section which authorises the Customs-collector to refuse to pass any goods belonging to "such person" which must mean the goods belonging to the real owner, who is properly chargeable with the duty. It is contended, therefore, that as the agent is not within the reach of s.39, the demand of duty from him cannot be made, and that the provisions of the bond by which the agent and his security are made liable, are beyond the provisions of s. 39 and thus invalid.

One, thing is clear that the Customs-authorities may have no dealing with the real owner of the goods where the agent has been authorised to deal with them for the purposes of the Sea Customs Act or any of its provisions. Section, 4 clearly lays down a fiction, that if the agent is authorised by the real owner in respect of any of the matters in the Act, the Customs-authorities would deal' with the agent as if he were the owner. The effect of the fiction is, therefore, to make- an agent answerable to the Customs-authorities within the four corners of his authorisation. The fiction operates only within those limits. An agent may be authorised

132

to declare the real value and to pay the customs duty or other charges. If an agent is authorised in this manner, under the fiction created by s. 4 he would be regarded as the owner and would be dealt with as such, by the Customs authorities.

It bar, already been pointed out that the real value, quantity and description of the goods have to be declared in the bill of entry or the shipping bill. A form was shown to us at the bearing in which the declaration has to be made either by the real owner or the agent. The form emphasises also that all responsibility for the declaration and for the

payment of the proper duty and charges may be taken by an agent. Once an agent has made a declaration and has also been authorised to pay the duty etc., it is to him that the Customs-authorities would look for payment or additional payment, and it is to him that refunds would be made. The Customs-authorities would not deal with the real owner, and that is the scheme of the Act.

When s. 39 says that where customs duties or charges have not been levied or have been short-levied through inadvertence, error collusion or misconstruction on the part of the officers of Customs, or through misstatement as to real value, quantity or description on the part of the owner, it refers not only to the real owner,, but also to an agent, if the latter can be deemed to be the owner., This is indeed, conceded by the petitioners. The question then arises, what does the section mean when it speaks of "the person chargeable with the duty or charge which has not been levied or which has been so short-levied, or to whom such refund has erroneously been made"? Obviously enough, the person to be charged, in so far as the Customs-authorities are concerned, is not the, real owner but the agent, a fictional owner of the goods. If a 'fictional owner, can be read into the first part

133
of the section there is no reason why the words "the person chargeable with duty" cannot also be applied to him. In the circumstances in which the agent makes a declaration with authorisation from the real owner, the agent is the person chargeable with the duty. Otherwise, for the duty chargeable in the first instance the agent would be the person chargeable with the duty and 'for any short payment he would cease to be such a person and the Customs-authorities would have to deal with the real owner, who made no declaration or payment. The words "the person chargeable with the duty...", therefore, have advisedly been used not to exclude the agent but to describe in a neutral way the person from whom such a demand can be made. They are wide enough in their ambit to take in, not only the real owner but also a "deemed owner" under the Act. So far, there is no difficulty, and the objection of the learned counsel for the petitioners that a simpler method would have been to use the word "'owner" in this part of the section ,is without substance, because the legislature may express its meaning and intention in different ways.

The critical argument, however, is, on the. fourth paragraph of s. 39(1). There, it is provided that if the excess charge is not paid, "the Customs-collector may refuse to Pass any goods belonging to 'such person' until the said duties or charges or the said deficiency or excess be paid or repaid". It is contended that an agent deals with numerous owners at the same time, and if this paragraph is applied literally, then the Customs-collector would be entitled to refuse to pass the goods belonging to other Owners, handled by the same agent. This argument, in our opinion, does not represent the true state of the law. An agent, when he works for different owners with authorisation, undoubtedly becomes a fictional owner of the goods belonging to them; but he does not become. a single, owner in respect of the good belonging to

134
different clients. He becomes an owner quoad each client and his ownership of the goods is diversified and is not one. The agent, therefore, stands in the shoes of several persons at the same time, and is himself a multitude of owners. It is only when short payment has been made in his

capacity as one fictional owner, that he can be asked to pay that which he ought to have paid in the first instance. He is exposed to the penalty of having his goods detained in the, same capacity as owner quoad his defaulting client, and the goods within his control for the same client will be detained until the duty has been paid. It is only the goods of the defaulting owner in respect of which he is also the deemed owner, that would suffer the penalty of detention but not the goods of a different owner, even though the agent may be authorised to deal on his behalf. It is in this way that the section must be read' without contradiction in its several parts, because to read it as suggested by the petitioners, creates a contradiction between the first paragraph and the other paragraphs that follow. An authorised agent is an owner for all purposes of the Act (including payment of duty). If one were to say that in the other paragraphs of s. 39(1) he is not included, then the fiction which is created by s. 4 would cease to be worked out to its logical limits. Once it is held that the words ",'the person chargeable with the duty..... are apt to describe not only the real owner but also his authorised agent (and there is no reason why these words should be restricted), the fourth paragraph falls in line with the others, and the ownership of the agent is, therefore, limited to one client at a' time, and the goods of that client of which the agent is also the deemed owner, are exposed to the. penalty of detention. It must be remembered that the Act makes the 'goods' liable to duty and the payment of duty by owners clears the goods. The law goes further, and says that other goods of the owner are also liable for an deficit, if the

135

liable to duty are 'cleared.' before the full duty has been paid.

The condition in the bond is limited by the operation of s.39 to the transactions of one constituent at a time, and the for feature of security is also limited to the constituent in default. The bond prescribes for recouping of the deficiency in the customs duty or charges from the security, even after notice is given. This notice must be given within three months from the relevant date as demand in the section. The limit of three months also applies to the agent as the deemed owner in the same way as it does to the real owner. If no notice. is given, then the bond, on its own terms, cannot be enforced. In our opinion, the contentions of the petitioners are not, sustainable. In the result, the petitions must fail except to the extent that we declare r. 10(c) to be an unreasonable restraint upon the right of the petitioners to carry on their avocation and r.11 when it prescribes a renewal fee of Rs. 50, invalid inasmuch as it has provided not for a fee but for a tax. Subject to this, the petitions are dismissed. The petitioners will pay the costs of the other side (one set only), as they have lost substantially.

SUBBA RAO, J.-I have, had the advantage of', perusing the judgment prepared by my learned brother, Hidayatullah, J. I agree with him except in regard to r. 6(c) of' the Custom House Agents Licensing Rules, 1960 (hereinafter called the Rules). Rules 6(c) says : "An applicant for a licence shall furnish an income-tax clearance certificate." The Rules were made to regulate the conduct of the clearing agents so that they may discharge their duties to the satisfaction of not only the Customs Authorities but also the public. In my view, the production of income-tax clearance certificate is extraneous to the issue, of a licence to a customs house

agent. How' does the 'production of such a certificate improve the credentials of an applicant

136

for selection as a customs house agent, An applicant may be financially sound and also otherwise duly qualified; he may have discharged all his debts, and paid all his taxes except a small portion of his income-tax: he may not have paid the income-tax for good reasons. Yet, if he goes. not produce the income-tax clearance certificate, he is disqualified. What is. the reasonable nexus between the production of such a certificate and a person's right to do business as a clearing agent ? There is none, except a remote and fanciful presumption that a man who pays the income-tax. may also pay the dues payable to the Customs Authorities. In K. Raman & Co., Tellicherry v. State of Madras (1), in the context of issue of a licence under the Yarn Dealers Control Order, as Judge of the Madras High Court,, I have held,

"the fact that a person is in arrears of income-tax is not germane to the issue of a licence under the Yarn Dealers Control Order. It is a, circumstance extraneous to the petitioner's right to carry on his business. The Income-tax Act provides an adequate machinery for realising the arrears due from an assessee. I am of the view that the restriction imposed is unreasonable and is not in the interests of the general public."

I still adhere to that view. Every taxing Act has a machinery for collecting the tax imposed by it, but the said rule, in effect and substance, provides for an additional machinery for collection of income-tax. I would, therefore, hold-that the nonproductive of an income-tax clearance certificate is not germane to the issue of a licence under the said Rules. I would therefore strike out r.6(c) of the Rules on the ground that it constitutes an unreasonable restriction on the right of an applicant to do business as customs, house agent,

(1) A.I.R. 1953 mad. 84.

137

BY COURT: In accordance 'with the opinion, of the majority, the petitions must fail except to the extent that we declare r.10 (c) to be: an unreasonable restraint upon the right of the, petitioners to carry on their avocation, and r.11, when it prescribes a renewal fee of Rs. 50, invalid inasmuch as it has provided not for a fee but for a tax. Subject to this, the petitions are dismissed. The petitioners will pay the costs of the other side (one set only), as they have lost substantially.

Petitions dismissed except for slight modification