

PETITIONER:
FEDERATION OF CUSTOMS HOUSE AGENTS ASSOCIATION & ORS.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 15/07/1996

BENCH:
SINGH N.P. (J)
BENCH:
SINGH N.P. (J)
AHMAD SAGHIR S. (J)

CITATION:
1996 SCALE (5)368

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

N.P. SINGH, J

The Federation of Customs House Agents Association and others have filed this appeal against the judgment of the High Court of Delhi, dismissing the writ petition filed on behalf of the appellants, questioning the validity of the Customs House Agents Licensing Regulations, 1984 (hereinafter referred to as the 1984 Regulations) which have been framed by the Central Board of Excise and Customs under Section 146 of the Customs Act, 1962 (hereinafter referred to as the Customs Act).

It may be mentioned that the Customs Act repealed the Sea Customs Act, 1878 under which Customs House Agents Licensing Rules 1960 had been framed (hereinafter referred to as the 1960 Rules). Rule 2 (c) of the said rule defined 'Customs House Agent' to mean a person licensed under those rules to act as agent for the transaction of any business relating to the entrance or clearance of any vessel or the import or export of goods or baggage in any Customs House. Rule 6 prescribed the conditions which had to be fulfilled by the applicant before the grant of licence to act as Customs House Agent, saying:

"6. Certain conditions to be fulfilled by the applicant before the grant of licence.- An applicant for a licence shall-

(a) furnish to the Customs Collector satisfactory evidence as to his respectability, reliability and financial status;

(b) produce satisfactory evidence to the Customs Collector that he would be in a position to muster sufficient clientele and business in the event of his being granted the licence.

(c) furnish an income-tax clearance certificate."

Rule 9 laid down the details and procedure for examination of the applicant with a view to ascertain his knowledge of customs law and procedure and his fitness to render proper service, to importers and exporters. Such examination could be oral or written or both. In view of Rule 10, the Customs Collector was empowered to reject an application for the grant of a licence to act as Customs House Agent, if the applicant failed to pass the examination prescribed under those rules or if the applicant was not considered suitable due to any other reason to be stated in writing. After coming into force of the Customs Act, the Custom House Agents Licensing Regulations, 1965 (hereinafter referred to as the 1965 Regulations) were framed in exercise of the powers conferred by sub-section (2) of Section 146 of the said Act. Rule 2(c) defined 'Custom House Agent' to mean a person licenced under those regulations to act as agent for the transaction of any business relating to the entrance or clearance of any vessel or the import or export of goods or baggage in any Custom House. Regulation 5 provided that an application for a licence to act as a Custom House Agent was to be made in the form prescribed. Regulation 6 prescribed the conditions to be fulfilled by the applicant before the grant of licence:

"6. Certain conditions to be fulfilled by the applicant before the grant of licence.- An applicant for a licence shall-

(a) furnish to the Collector of Customs satisfactory evidence as to his respectability and financial status;

(b) produce satisfactory evidence to the Collector of Customs that he would be in a position to muster sufficient clientele and business in the event of his being granted the licence;

(c) furnish an income tax clearance certificate.

Regulation 9 contained the provision and procedure regarding examination of the applicant with a view to ascertain his knowledge of custom law and procedure and his fitness to render service to importers and exporters. This examination could be oral or written or both to be conducted by the Collector of Customs or by a committee of officers of customs to be appointed by him for that purpose. The regulations which were framed in exercise of powers conferred by sub-section (2) of Section 146 of the Customs Act in the year 1984 referred to above repealed the Customs House Agents Licensing Regulations 1965. Several changes were introduced in the 1984 regulations. Regulation 2(c) defines 'Customs House Agent' to mean a person licensed under the regulations to act as agent for the transaction of any business relating to the entry or departure of conveyance or the import or export of goods at any customs station. In view of regulation 4, the Collector may invite applications for the grant of a licence to act as Customs House Agent in the month of January every year in the form prescribed. Regulations 6 and 8 which are the subject matter of controversy in the present appeal provided the conditions which have to be fulfilled by the applicant and conceive grant of temporary licences as well:

"6. Conditions to be fulfilled

by the applicant, - The applicant or the person referred to in Cl.(b) of sub-regulations (2) and (3) of Regulation 5 as the case may be, shall prove to the satisfaction of the Collector that:

(a) he has the experience of work relating to clearance of goods through the customs for a period of not less than one year; and

(b) the applicant has financial viability supported by a certificate issued by a Scheduled Bank or such other proof acceptable to the Collector evidencing possession of assets of the value of not less than Rs.1 lakh in the case of applicants for the grant of licence in respect of any one of the Customs Stations at Bombay, Calcutta, Madras, Cochin, Kandla, Goa, Mangalore, Tuticorin or Visakhapatnam and not less than Rs.50,000 in the case of the each of the other Customs Stations, situated at places other than those specified above:

Provided that in cases where a Collector's jurisdiction extends to more than one Customs Station the Collector may issue one licence for all the Stations or more than one such station to be specified in the licence, waiving the need for separate compliance of the provisions of Cls. (a) and (b) above for such additional Customs Stations. The Collector may also waive the need for separate compliance of the requirement of Regulation 11 in such cases:

Provided further that in places where there is more than one Collector exercising jurisdiction over different Customs Stations and Custom House Agents, licenced under the Custom House Agents Licensing Regulations, 1965 have been operating in the said Customs Stations on the basis of one licence, it shall be open to such agents to obtain a temporary licence under Regulation 8 from the Collector other than the one who has issued them the existing licence, without being required to comply with the requirements of Regulation 6 in regard to financial viability or the requirements as to fresh deposit in terms of Regulation 11."

"8. Grant of temporary licence.- Any applicant whose application is received within the last date specified in Regulation 4

and who satisfies the requirements of Regulations 5 and 6, shall be permitted to operate as Custom House Agent at the Custom Station for which the application is made initially for the period of one year against temporary licence granted by the Collector in this regard in Form B.

Provided that when evidence is produced to the Collector that the applicant has already availed of two chances for qualifying in the written or oral examination prescribed in these regulation and would like to avail of the third chance as soon as the next examination is held in terms of Regulation 9 and that the applicant has been able to account for the minimum volume of work prescribed for such agents in the course of one year's working, the Collector may extend the aforesaid period of one year for which the temporary licence has been granted by another six months or such further period not exceeding one year to enable the applicant to avail of the third chance for qualifying in the examination in terms of Regulation 9. While granting such extension, the Collector of Customs shall satisfy himself that the requirements of Regulations 10(1)(a) and 10(1)(b) had been fully met by the applicant."

On a plain readings in view of regulation 6, the applicant has to prove to the satisfaction of the Collector that he has an experience of work relating to clearance of goods through the customs for a period of not less than one year. Incidentally, it may be mentioned that clause (a) of Regulation 6 has been substituted by Notification No.74/91(N.T.)-Cus., dated 15.11.1991 and now it read as follows:

"6. Conditions to be fulfilled by the applicant.- The applicant or the person referred to in clause (b) of sub-regulations (2) and (3) of Regulation 5 as the case may be, shall prove to the satisfaction of the Collector that:

(a) is an employee of a licensee and that he possesses a permanent pass in Form G prescribed under regulation 20 and has the experience of work relating to clearance of goods through the customs, for a period of not Less than one year, in the capacity of such a pass-holder; and.....".

This was not required under 1960 rules and 1965 regulations. Regulation 8 provides that an applicant shall be permitted to operates as Custom House Agent at the Customs Station for which the application is made initially for the period of

one year against temporary licence granted by the Collector in Form B. In view of proviso to the said regulation 8, such applicant is entitled to avail of two chances for qualifying in the written or oral examination prescribed in those regulations. However, he may avail of the third chance in the next examination to be held in terms of regulation 9 on the conditions prescribed in proviso to regulation 8. The Collector has empowered to extend the aforesaid period of one year for which the temporary licence had been granted by another six months or such further period not exceeding one year to enable the applicant to avail of the third chance for qualifying in the examination. Regulation 9 gives the details of such examination which is to be conducted twice every year. A licensee may, having regard to the volume of business transacted by him in view of regulation 20 'employ one or more persons to assist him in his work as Custom House Agent'. Such appointment of a person by the licensee is to be made only after obtaining the approval of the Assistant Collector of Customs. Regulation 20(3) prescribes the condition subject to which such persons can be appointed by the licensee to assist him in his work as Custom House Agent. Regulation 20(3) requires such person who has been employed by the licensee to pass the examination conducted by the Assistant Collector of Customs within six months from the date of his appointment to ascertain the adequacy of his knowledge regarding the provisions of the statutes subject to which goods and baggage are cleared through the Customs.

The appellants challenged the validity of regulation 8 aforesaid saying that it has introduced an arbitrary and irrational provision regarding grant of temporary licence before an applicant qualifies at the examination to be held. According to them, 1960 rules and 1965 regulations required the applicant first to appear at the examination and only after such applicant was selected, a licence was to be granted to him to act as Custom House Agent, but regulation 8 of 1984 regulations enables the applicant, who has not at all appeared at any such examination to act as a Custom House Agent on basis of temporary licence granted to him by the Collector. On basis of such temporary licence he can act as Custom House Agent for a period of one year as a matter of course and upto the period of two years on the condition prescribed by proviso to regulation 8 which is per se arbitrary, inasmuch as a person is allowed to act as Custom House Agent on basis of temporary licence without his suitability and qualifications being tested which was a must under the earlier rules and regulations. It was pointed out that the holders of such temporary licences without the evaluation of their merit can transact any business relating to entry or departure of the conveyance or import or export of goods at the Customs Station, at, par with regular licensees who have got the licence after passing the examinations conducted for their selection. In this connection reference was made to the Report of the Study Team on the Customs Department, submitted in the year 1967. In the said report in respect of the clearing agency system it was suggested that the clearing agency rules should be tightened to provide effective control over the clearing agents. For that object strict tests for grant of licence or approval to conduct Custom House business should be held. It also recommended that clearing agents associations should be encouraged to arrange their affairs like a disciplined guild with a code of conduct, fair scales of charges, arrangements for training their staff and regulations regarding employing unqualified or undesirable persons. It was also pointed out

that the aforesaid recommendation, that the clearing agency rules should be tightened to provide effective control over the agents had been accepted by the Government. Reference was also made to the Report of the committee for Subordinate Legislation, submitted in the year 1983 in which the procedure for inviting applications for grant of licence to act as Customs House Agent, conduct of a written or oral examination to satisfy regarding the suitability of the applicant was recommended apart from other requirements. However, it may be pointed out that the said committee itself had felt:

"....the present restriction on the number of Customs House Agents should be done away with and that the licences should be thrown open to all eligible candidates.....".

The committee also recommended:

"The licence should be issued initially for a period of 2 years and performance of the applicant watched. The licence will, therefore, be a temporary one and its conversion into a permanent licence will be conditional on the applicants' showing satisfactory turn over and a minimum level of efficiency."

We are not able to appreciate as to how the Report of the Committee for Subordinate Legislation helps the appellants when the said committee itself recommended that temporary licence should be issued initially for a period of two years and performance of the applicant be watched and the conversion of the temporary licence into a permanent licence should be conditional on the applicants' showing satisfactory turn over and a minimum level of efficiency. Regulation 8 of 1984 regulations, appears to have been framed on the basis of the aforesaid recommendation regarding grant of temporary licence for a period of one year which period can be extended upto 2 years on conditions prescribed in proviso to regulation 8. If regulation 8 has been framed on the pattern suggested by the Committee for Subordinate Legislation, we are unable to appreciate as to how regulation 8 can be held to be invalid, arbitrary or ultra vires.

The learned counsel, who appeared for the appellants, could not point out that a regulation in the nature of regulation 8 could not have been framed in exercise of the power conferred by sub-section (2) of Section 146 of the Customs Act. Sub-section (1) of Section 146 prescribes a bar that no person shall carry on business as an agent relating to the entry or departure of a conveyance or the import or export of goods at any customs station unless such person holds a licence granted in this behalf in accordance with the regulations. None of the clauses of sub-section (2) of Section 146 prescribe any restriction on grant of temporary licence. The Committee for Subordinate Legislation aforesaid had also recommended under the heading 'eligibility conditions' that the applicant must be at least a graduate and the desirable qualification should be at least 3 years experience which could be reduced to 6 months in deserving cases. Then it recommended that such applicant should pass a written examination which shall be held annually. It also recommended that temporary licence should be issued initially for a period of two years and the performance of

the applicant be watched. The Committee did not say that such temporary licence should be issued only after the applicant had passed the written examination, rather it laid emphasis that a temporary licence should be converted into a permanent 'on the applicants showing satisfactory turn over and a minimum level of efficiency'. In this background, it is difficult to hold that when regulation 8 provides for grant of temporary licence for a period of one year before the applicant has qualified in the written or oral examination so prescribed, it is invalid, arbitrary or unconstitutional in any manner. Regulation 8 has proper check and balance in which the experience of work relating to clearance of goods through the customs as well as the performance at the qualifying written or oral examination both have been taken note of. The amendment which was introduced in clause (a) of regulation 6 by the aforesaid notification dated 15.11.1991 links the experience of such applicant acquired in accordance with the regulation 20. It cannot be said that by postponing the qualifying examination for a period of one year and on fulfilling the conditions of the proviso to regulation 8 upto 2 years in respect of temporary licensee, any irrational procedure has been prescribed or adopted. From reading regulations 6, 8 and 20 it is apparent that 1984 regulations have given due weight to the experience as well as to the merit.

It was pointed out that in many countries like United States and Australia, written examination for such Customs House Agents is a must and that test should be held at the threshold. Even under regulation 8 a qualifying written or oral test is a must for a temporary licensee. Regulation 8 requires the applicant who has been permitted to operate as Custom House Agent to qualify at the written or oral examination prescribed within the period of one year and under certain specified conditions within a further extended period of one year.

On behalf of the appellant, reference was made to the judgment of this Court in the case of Chandhrakant Krishnarao Pradhan vs. The Collector of Customs, Bombay, (1962) 3 SOR 108 and it was pointed out that rule 9 of 1960 rules which provided for examination written or oral or both was upheld by this Court. Admittedly, in that case neither there was any controversy nor could have been in respect of grant of temporary licence for a limited period before; qualifying at the written or oral examination, as there was no such provision in those rules. That judgment is of no help to the appellants. Attention was also drawn to the judgment of this Court in the case of D.V.Bakshi vs. Union of India, (1993) 3 SCC 663 where in a different contest regulations 8 and 9 of 1984 regulations had been challenged. A grievance had been made that 100 marks for written test and 50 marks for oral test was arbitrary and irrational. The controversy with which we are concerned was not involved in that case. However, incidentally it may be mentioned that in respect of grant of temporary licence for a period of one year under regulation 8, it was said:

"The importance of the oral interview lies in the fact that the examiners have an opportunity to assess his performance as a temporary licence holder and also seek his clarification in regard to certain matters which might have come to their knowledge during the period he worked as a temporary licence holder. The Regulations

have, therefore, taken care to ensure that he has experience of at least one year as an apprentice to an agent before he applies for the grant of licence. In order to assess his work he is given a temporary licence before he qualifies by clearing the prescribed examination. The authorities have the opportunity of assessing his knowledge regarding the laws and procedure through the written examination. It must be remembered that the customs station is a place of work. Observance of regulations is absolutely essential as movement of very valuable goods takes place and only sufficiently experienced hands can be permitted to act as agents. He must satisfy the authorities that he has adequate knowledge regarding the laws and the procedure connected with the clearance of goods and that he actually is in a position to handle the work from the moment he is licensed. The assessment of his work during the period he holds the licence is, therefore, of great relevance and that can be done at the oral test only. The assessment has to be made on the basis of his performance as a temporary licenceholder and his capacity to handle goods as an agent at the customs station."

It can be said that in the aforesaid judgment this Court has impressed the utility of the temporary licence for purpose of the assessment of the work of such temporary licence holder.

Accordingly, the appeal is dismissed. There shall be no order as to costs.