

PETITIONER:
MESSRS FEDCO (P) LTD. & ANOTHER

Vs.

RESPONDENT:
S. N. BILGRAMI & OTHERS

DATE OF JUDGMENT:
09/12/1959

BENCH:
GUPTA, K.C. DAS
BENCH:
GUPTA, K.C. DAS
SINHA, BHUVNESHWAR P.
GAJENDRAGADKAR, P.B.
SUBBARAO, K.
SHAH, J.C.

CITATION:
1960 AIR 415 1960 SCR (2) 408
CITATOR INFO :
E 1963 SC1811 (104)
R 1982 SC 902 (23)

ACT:
Import Licence, Cancellation of-Constitutional validity-
Reasonable opportunity of being heard, meaning of-Imports
Control Order, 1955, cls. 9, 10-Constitution of India, Arts.
19(1)(f) and (g), Art. 31.

HEADNOTE:
The petitioner company applied to the Chief Controller of Imports and Exports, Government of India, New Delhi, for five import licences and obtained them from the joint Chief Controller of Imports and Exports, Bombay, purporting to grant the same on the authority of the former, and placed orders for goods covered by these licences, some of which actually arrived in Bombay. Before the goods could be cleared, the company received a notice from the Chief Controller stating that whereas there were reasons to believe that these five licences had been obtained by fraud, the Government, in exercise of the power specified in cl. 9 of the Imports Control Order, 1955, proposed to cancel them unless sufficient cause was shown before the Chief Controller. The petitioner company by a telegram requested the Chief Controller to furnish particulars of the alleged fraud and give an opportunity to inspect the relevant papers and documents relied upon by him. By a letter it gave an explanation stating that the petitioners were the victims of foul play by some one bent upon causing damage to them and bringing them in the bad books of the authorities. In that letter the company reserved to itself the right to add to, amend or alter the explanation after it had obtained inspection of the said papers and the particulars of the alleged fraud. The representatives of the company met the Chief Controller as also the Director of Administration of his office and renewed the request for the said particulars and the inspection. No particulars were furnished, nor was inspection allowed, but the Chief Controller told the representatives that the issue of the licences had not been

authorised by him and the same had been fraudulently obtained and the Director of Administration told them that the recommendations against which the disputed licences were granted by the joint Controller were not genuine, but the said representatives, instead of denying the fraud alleged, ascribed it to some other party as they had done before. It was contended on behalf of the petitioners that cl. 9(a) of the Imports Control Order, 1955, infringed Arts. 19(1)(f) and (g) and 31 of the Constitution and that no reasonable opportunity was given to the petitioners of being heard as required by cl. 10 of the Imports Control Order.

409

Held (per Sinha, C.J., Gajendragadkar, Das Gupta and Shah, JJ.), that cl. 9 of the Imports Control Order does not give unbridled authority to cancel a licence nor is there any scope for arbitrary action in this regard in view of the provision of cl. 10 of the Order which amply fulfils the requirement of natural justice.

It is not correct to contend that before a licence can be cancelled under cl. 9, it must be shown not merely that fraud was committed but that the licensee was also a party to the fraud. The entire scheme of control and regulation of imports by licences being based on the grant of licences on a correct statement of fact, that basis disappears if the grant is obtained by fraud or misrepresentation, and it is wholly immaterial whether the licensee is or is not a party to such fraud or misrepresentation. The provision for cancellation of a licence under cl. 9, therefore, constitutes a reasonable restriction on the rights conferred by Art. 19(1)(f) and (g) of the Constitution and, being imposed by a valid law, cannot contravene Art. 31.

There can be no absolute standard of reasonableness and what constitutes reasonable opportunity of being heard in the peculiar facts and circumstances of each case is a matter to be decided by the Court. The Court has to satisfy itself that the person against whom action was proposed had a fair chance of convincing the authority that the grounds on which such action was proposed were either non-existent or did not justify it. So judged, it could not be said that the omission to give the petitioners, in the instant case, who were more concerned to show that the company was not a party to the fraud than that no fraud had at all been committed, further particulars or inspection of the papers amounted to a denial of reasonable opportunity of being heard.

Per Subba Rao, J. Judged in the light of well recognised principles, there can be no doubt that the Chief Controller of Imports, acting under cls. 9 and 10 of the Imports Control Order, 1955, performs a quasi-judicial function and is bound to follow the principles of natural justice in cancelling a licence.

Rex v. Electricity Commissioners, Ex Parte London Electricity joint Committee Co., [1924] 1 K.B. 171, Rex v. London County Council, Ex Parte Entertainments Protection Association Ltd., [1913] 2 K. B. 215 and Province of Bombay v. Khusaldas S. Advani, [1950] S.C.R. 621, referred to.

The language of cl. 10 clearly indicates that when the charge is one of fraud, the affected party is entitled to know the particulars of the alleged fraud and to inspect the documents on which it is based and to a personal hearing.

It was impossible, in the facts and circumstances of this case, to hold that the petitioners, who did not admit having committed the fraud and must be assumed to be innocent, were afforded reasonable opportunity of being heard within the meaning of

410

cl. 10 of the Order to prove their innocence. Unless the particulars were given to them and the documents shown to them it was not possible for them to know if any fraud was at all committed and if so by whom. The order of cancellation of the licences was, therefore, arbitrary and must be quashed.

JUDGMENT:

ORIGINAL JURISDICTION: Petition No. 171 of 1958.

Petition under Article 32 of the Constitution of India, for enforcement of fundamental rights.

Purshottam Tricumdas, Porus A. Mehta, S. N. Andley, J. B. Dadachanji, Rameshwar Nath and P. L. Vohra, for the petitioners.

C. K. Daphtary, Solicitor-General of India, N. S. Bindra, B. H. Dhebar and T. M. Sen, for the respondents.

1959. December 9. The judgment of Sinha, C.J., Gajendragadkar, Das Gupta and Shah, JJ., was delivered by Das Gupta, J. Subba Rao, J., delivered a separate judgment.

DAS GUPTA J. The first petitioner is a Company registered under the Indian Companies Act having its registered office in Bombay and is engaged in the business of dyes, chemicals, plastics, and various other goods. The second petitioner is the Chairman and a Director of the first petitioner Company. In this petition for enforcement of fundamental rights under the Constitution they pray for the issue of a writ of certiorari or other appropriate writ, direction or order quashing an order made by the first respondent, the Chief Controller of Imports and Exports, Government of India, New Delhi, by which he cancelled five import licences which had been granted to the first petitioner by the Joint Chief Controller of Imports and Exports, Bombay. There is also a prayer for an order on the second respondent, the Collector of Customs, Bombay, directing him to assess the goods of the petitioner Company which have been landed in Bombay having been imported on the strength of these licences and allow the petitioner company to clear them. Of these five licences, two were dated July 24, 1958, two dated August 16, 1958, and the fifth
411

dated September 4, 1958. The total value of the imports authorised by these five licences was Rs. 25,75,000. The petitioners contend that these five licences were granted to the petitioner Company on five applications sent by them by registered post to the Chief Controller of Imports and Exports, Government of India, New Delhi—three sent on June 17, 1958, one on June 26, 1958, and the last on July 22, 1958. It is further stated that in respect of each of these applications a letter was received by the Company from the office of the Chief Controller of Imports and Exports, Government of India, New Delhi, intimating that their application had been forwarded to the Joint Chief Controller of Imports and Exports, Bombay with the necessary comments and asking the Company to contact this officer, the Joint Chief Controller of Imports and Exports, Bombay, direct in the matter. The petitioner Company wrote in each case to the Chief Controller of Imports and Exports, New Delhi, acknowledging receipt of these letters and at the same time to the Joint Chief Controller of Imports and Exports, Bombay, requesting that the licences should be issued to them at an early date. After the licences were received by the Company from the office of the Joint Chief Controller of Imports and Exports, Bombay, the Company placed orders for

the goods covered by these licences and some of the goods actually arrived at Bombay. Before however any of these goods could be cleared the Company received a notice dated September 24, 1958, stating that whereas there was reason to believe that these five licences had been obtained fraudulently, the Government in the exercise of the powers specified in para. 9 of the Imports Control Order, 1955, proposed to cancel the said licences unless sufficient cause against that was furnished to the Chief Controller of Imports and Exports, New Delhi, within 10 days of the date of the issue of the said notice'. On September 26, the petitioner Company's solicitors sent a telegram to the Chief Controller of Imports and Exports, New Delhi, requesting him to give particulars of the alleged fraud and to give them an appointment for inspection of papers

412

and documents relied upon by him. On September 27, Company wrote a letter to the same officer in which they gave a written explanation pointing out various facts and stating that they were victims of foul play by some person interested in causing damage to them and involving their reputation and in order to bring them in bad books with the authorities. In the concluding portion of this letter the Company stated: " We also reserve our right to add to, amend or alter the explanations contained in this letter hereafter and to submit such further explanations as may become necessary after taking inspection of all the papers and after getting the particulars of the alleged fraud. We shall thank you to give us also an opportunity of a personal hearing in the matter." This written explanation was handed over to the first respondent by the Company's representatives at an interview with him on September 30. At that interview also, it is said, the representatives of the Company pointed out to Mr. Bilgrami that in the absence of any particulars of the alleged fraud and without inspection of the papers relied upon by him it was not possible for the petitioners to give a complete explanation and that they reserved their right to give further explanation on getting the said particulars and inspection of the said papers. The Company's representatives had another interview with Mr. Sundaram, Director (Administration) in the Chief Controller's Office on October 14, 1958. At this interview the petitioners again requested Mr. Sundaram to give them particulars and that they might be permitted to inspect the papers. No particulars were however furnished and no inspection was allowed; but on that very date when they had this interview with Mr. Sundaram the first respondent made the order of cancellation. The ten grounds set out in Cls. A to L of para. 15 of the petition as the basis for the relief resolve on analysis into four only. These are:-

(1) Clause 9(a) of the Import Control Order under which the order of cancellation has been made is itself unconstitutional, being violative of the petitioners'

413

rights under Art. 19(1)(f) & (g) and Art. 31 of the Constitution ;

(2) The Order of cancellation has been made without compliance with the mandatory requirement of cl. 10 of the Imports Control Order to give the licensee "a reasonable opportunity of being heard ";

(3) The first respondent, Mr. Bilgrami, had no authority in law to make any order under cl. 9 of the Import Control Order;

(4) The petitioners have been denied equal protection of

laws under Art. 14 of the Constitution inasmuch as other persons similarly situated have been given a proper opportunity and a personal hearing before taking any action against them, while the petitioners have been denied a proper opportunity to show cause for the cancellation of licences and personal hearing in the matter.

Of these four grounds, the third ground, viz., that Mr. Bilgrami had no authority in law to make an order under cl. 9 of the Imports Control Order was made in apparent ignorance of the fact that the Chief Controller of Imports and Exports, became competent to make an order thereunder in consequence of an amendment made in the Order, in 1958. As the clause originally stood the relevant words were: " The Central Government or any other officer authorised in this behalf may cancel any licence granted under this order.....By the amendment made on February 27, 1958, the words ,or the Chief Controller of Imports and Exports " were inserted after the words "the Central Government " in this clause. The position on the relevant dates in September and October, 1958, therefore was that the Chief Controller of Imports and Exports, New Delhi, had authority to cancel any licence granted under the Imports Control Order without being specially authorised in that behalf. It was apparently in view of this position which was pointed out by Mr. Bilgrami in his affidavit in opposition that the learned Counsel for the petitioners did not press this ground at all. Nor did he press the fourth ground, viz., that the petitioners' right under

53

414

Art. 14 of the Constitution has been infringed. It is obvious that if the order has been made without the petitioners having been given a reasonable opportunity of being heard that itself would entitle them to the relief prayed for. The question whether or not other persons were given a fair opportunity of being heard is entirely irrelevant.

In opposition to this application, Mr. Bilgrami, the first respondent, contends inter alia that the provision for cancellation of a licence under cl. 9 of the Order does not contravene any of the fundamental rights granted under Art. 19(1)(f) and (g) and Art 31 of the Constitution and that the petitioners were given adequate and reasonable opportunity of being heard before the order of cancellation was made. Mr. Bilgrami has stated in the affidavit that while it is true that four applications for licence-three dated June 17, and one dated June 26, 1958, were received in his office, the fact is that all these four applications were rejected and that it is now found that while these four rejected applications were lying in his office, four similar applications bearing the same dates and containing the same particulars and a fifth application bearing the date July 22, 1958, somehow made their appearance in the office of the Joint Chief Controller of Imports and Exports, Bombay, along with five separate letters, one in respect of each application, containing recommendations for issue of licences purporting to have been issued from the office of the Chief Controller of Imports and Exports, New Delhi, under the signature of one Shri M. L. Gupta, Deputy Chief Controller of Imports and Exports. The respondent contends that the purported signatures of Shri M. L. Gupta on these letters were not genuine. Mr. Bilgrami also contends that though these letters purported to state that the issue of licences was authorised by him he did not in fact give any authority, and that when the petitioners' representatives

interviewed him on September 30, 1958, they were told of the " general nature of the fraud " and that he further told them that the issue of the licences had not been authorised by him as they purported to be and that they had been obtained

415

fraudulently. The respondents further contend that when again on October 14, 1958, the petitioners had an interview with Mr. Sundaram, the Director of Administration in the office of the Chief Controller of Imports and Exports, Mr. Sundaram told them expressly that the recommendations against which the disputed licences were granted to the petitioners were not genuine.

The first contention on behalf of the petitioners is that cl. 9(a) of the Imports Control Order is itself invalid as it violates a licensee's rights under Art. 19(1)(f) and (g) and Art. 31 of the Constitution. Clause 9(a) is in these words :-

Cancellation of Licence:-The Central Government or the Chief Controller of Imports and Exports or any other officer authorised in this behalf may cancel any licence granted under this order or otherwise render it ineffective :-

(a) If the licence has been granted' through inadvertence or mistake or has been obtained by fraud or misrepresentation.....

As in the present case there is no question of the licences having been granted through inadvertence or mistake it is not necessary for us to consider whether the provision for cancellation of licences on the ground that they have been granted through mistake or inadvertence is invalid. The question in the present case is whether the provision for cancellation of licences on the ground that they have been obtained by fraud or misrepresentation is " a reasonable restriction in the interests of the general public " on the exercise of the petitioners' right under Art. 19(1)(f) and It has to be noticed first that here is no case of unbridled authority to cancel a licence nor is there any scope for arbitrary action. If a provision for giving a reasonable opportunity of being heard had not been made in the Order itself, it would have been necessary to consider whether this had still to be given, because rules of natural justice required it. No discussion about the requirements of the rule of natural justice is however called for here, as cl. 10 of the Order provides that no action shall be taken under clauses 7, 8 or 9,

416

unless the Licensee/Importer has been given a reasonable opportunity of being heard. It is proper to state that the learned Counsel for the petitioners does not attack the validity of the, provisions on the ground that it gives unbridled authority to cancel a licence, or that the requirements of natural justice have not been sufficiently fulfilled by clause 10. His argument is that though it may not be unreasonable that a licence should be cancelled if the licensee himself has practised fraud in obtaining it, cancellation is wholly unreasonable if it is made merely on the ground that it has been obtained by fraud, without it being further shown that the licensee himself has been a party to the fraud. It appears to us that in most cases, if not in all cases, where a licence is obtained by fraud or misrepresentation it would be reasonable to think that the person in whose favour the licence has been obtained, cannot but be a party to the fraud or misrepresentation. The petitioners' Counsel submitted that it is possible to imagine a case where an

enemy of the person in whose favour the licence is granted procures such grant by means of fraud with the deliberate motive of accusing this person later on of fraud and thereby subjecting him on the one hand to criminal prosecution and on the other hand damaging his reputation and ruining his business. It is unnecessary for us to decide in the present case whether this may ever happen. Clearly however the fact that fraud by which the grant of the licences has been induced by an enemy is wholly immaterial on the present question. The entire scheme of control and regulation of imports by licences is on the basis that the licence is granted on a correct statement of relevant facts. That basis disappears if grant of the licence is induced by fraud or misrepresentation. Whether the licensee himself or some other party is responsible for the fraud or misrepresentation, the fact remains that in such cases the basis of the grant of licence has disappeared. It will be absolutely unreasonable that such a licence should be allowed to continue. We are therefore of opinion that the provision that licence may be cancelled, if it is found, after giving a

417

reasonable opportunity to the licensee to be heard, to have been obtained by fraud or misrepresentation is a reasonable restriction in the interests of the general public on the exercise of the fundamental right of a citizen guaranteed under Art. 19(1)(f) and (g) of the Constitution. The cancellation being under a valid law there can be no question of any right under Art. 31 of the Constitution having been infringed.

This brings us to the main contention pressed on behalf of the petitioners, viz., that the licensee has not been given a reasonable opportunity of being heard before the order of cancellation was made. There can be no doubt that if a reasonable opportunity to be heard as against the proposed order of cancellation has not been given the order would be an unjustified interference with the petitioners' right. It is necessary therefore to examine the material on the record to see whether the petitioners have succeeded in showing that no reasonable opportunity has been given.

The requirement that a reasonable opportunity of being heard must be given has two elements. The first is that an opportunity to be heard must be given; the second is that this opportunity must be reasonable. Both these matters are justiciable and it is for the Court to decide whether an opportunity has been given and whether that opportunity has been reasonable. In the present case, a notice to show cause against the proposed order was given; it was stated in the notice that the ground on which the cancellation was proposed was that the licences had been obtained fraudulently; and later on, a personal hearing was given. It must therefore be held that the requirement that an opportunity to be heard must be given was satisfied. What the petitioners' Counsel strenuously contends however is that though an opportunity was given that opportunity was not reasonable. In making this argument he had laid special stress on the fact that particulars of the fraud alleged were not given and an opportunity to inspect the papers though repeatedly asked for was not given. It is now necessary to consider all the circumstances in order to arrive at a conclusion whether the omission to give particulars of fraud and

418

inspection of papers deprived the petitioners of a reasonable opportunity to be heard.

There can be no invariable standard for "reasonableness" in such matters except that the Court's conscience must be satisfied, that the person against whom an action is proposed has had a fair chance of convincing the authority who proposes to take action against him that the grounds on which the action is proposed are either non-existent or even if they exist they do not justify the proposed action. The decision of this question will necessarily depend upon the peculiar facts and circumstances of each case, including the nature of the action proposed, the grounds on which the action is proposed, the material on which the allegations are based, the attitude of the party against whom the action is proposed in showing cause against such proposed action, the nature of the plea raised by him in reply, the requests for further opportunity that may be made, his admissions by conduct or otherwise of some or all the allegations and all other matters which help the mind in coming to a fair conclusion on the question. The action proposed in the present case viz., the cancellation of the five licences was proposed on a tentative conclusion by Mr. Bilgrami on the basis of the material in his possession that the five licences had been obtained fraudulently. The main grounds on which this tentative conclusion appears to have been based were that four applications-three dated June 17 and one dated June 26, 1958, similar in all particulars to the four which are now found in the office of the Joint Controller of Imports and Exports, Bombay, had been actually received but had been rejected and were lying in the Chief Controller's Office; that four similar applications, bearing the same dates and same particulars which were lying in the Bombay Office and also a fifth application dated July 22, were accompanied by five forwarding letters purporting to have been signed by Mr. M. L. Gupta recommending the prayer for licence and containing a statement that the first respondent had authorised such issue of licences on those applications but these signatures purporting to have been of Mr. M. L. Gupta were not really his

419

signatures ; that while the forwarding letters purported to state that the issue of these licences prayed for had been authorised by Mr. Bilgrami as the Chief Controller of Imports and Exports, New Delhi, he himself knew that such issue had not been authorised by him. We find that in the very notice that was given to the petitioners' company to show cause against the proposed action of cancellation, it was stated that these licences appeared to have been obtained by fraud. On the question of particulars of fraud, it has been stated by the first respondent in his affidavit that at that stage no particulars of the fraud could be given by him as they were unknown to him, but that he did inform the petitioners' representatives Mr. Parikh, a director of the Company the second petitioner Mr. Rangwala, who is the Chairman of the Company and the Company's solicitor, Mr. Hussaini Doctor of the "general nature of the fraud". In para 23 of his affidavit Mr. Bilgrami has made the following statement:-

" I say that the Director of the petitioners' Company, Shri B. K. Parekh and Shri Rangwala and their attorney's partners, Mr. Huseni Doctor saw me on the 30th September, 1958. I told them that the issue of the licences had not been authorised by me as they purported to be and that they had been obtained fraudulently, though at that stage I was unable to say how exactly and by whom the fraud was committed. As also the investigation by the Police was already in progress, it was not possible to give minute

particulars of the fraud. When the petitioners were told as above, the petitioners' chairman started raising contentions suggesting that the fraud might have been committed by reason of the Gujarati Maharashtrian and anti-Muslim feeling amongst the employees of his firm."

The affidavit in reply was sworn by Mr. Rangwala himself. We find therein repeated denials of Mr. Bilgrami's assertion that the Company's representatives were told of the "general nature of the fraud". It was worth noting however that as regards the categorical statement made in para. 23 as to what

420

Mr. Bilgrami told Mr. Rangwala and others and what they told him there is no clear denial. Dealing with para. 23 of Mr. Bilgrami's affidavit in para. 20. of his own affidavit in reply Mr. Rangwala after saying that the first respondents, statement does not say anything as to how exactly and by whom the fraud was committed but simply added that the first respondent did not say anything beyond the fact that the licences had been obtained by fraud. It is significant that no specific denial was made of Mr. Bilgrami's assertion that to Mr. Rangwala, Mr. Parekh and Mr. Huseini Doctor he had himself stated that the "issue of the licences had not been authorised by him as they purported to be". No less important is the fact that Mr. Rangwala does not deny the assertion made by Mr. Bilgrami that he (Mr. Rangwala) in the course of that interview on September 30, suggested that the fraud might have been committed by reason of certain feelings amongst the employees of his firm. It is reasonable therefore to believe that besides stating that the licences had been obtained fraudulently Mr. Bilgrami definitely informed the Company's representatives on September 30, 1958, that though issue of the licences had been purported to be authorised by him-with apparent reference to the forwarding letters recommending the issue of the licences-this had not actually been authorised and further that on receipt of this information the Company's representatives instead of saying that no fraud had been practised and that Mr. Bilgrami was making a mistake in thinking that he had not authorised the issue of the licences and that perhaps his memory had failed him took refuge behind the plea that it was not the Company but some enemy of the Company who had perpetrated the fraud.

The petitioners' representatives had also an interview with Mr. Sundaram on October 14, 1958. While we have not got any statement of Mr. Sundaram himself as to what happened in that interview we find apart from Mr. Bilgrami's affidavit in para. 24 that Mr. Sundaram also informed the petitioners' representatives at that interview that the recommendations

421

against which the disputed licences were granted to the petitioners were not genuine, (which assertion was repeated in slightly different words in para. 29), the fact that the first respondent's letter dated December 18, 1958, a copy of which Mr. Rangwala annexed to his affidavit in reply concluded with the following words:-

"It may be stated that the fact that the following letters referred to above were not genuine were mentioned to the representatives of your firm when they interviewed Shri D. R. Sundaram, Director, (Administration) on October 14, 1958."

Though annexing a copy of this letter to his affidavit in reply Mr. Rangwala did not state that this statement in the concluding portion of the letter was not true. This justifies the conclusion that Mr. Bilgrami's assertion that

Mr. Sundaram told the Company's representatives that the forwarding letters containing the recommendations on the basis of which the licences had been issued were not genuine is true. Mr. Bilgrami's statement in para. 29 of his affidavit is that when Mr. Sundaram informed the Company's representatives of this they had no explanation to give. Dealing with para. 29 of this affidavit in para. 23 of his own affidavit Mr. Rangwala did not state that Mr. Sundaram did not tell them that the licences issued were on the basis of documents which were not genuine, or that on being so told they had no explanation to offer.

On a consideration of the entire background in which the notice for cancellation was issued, what was stated by the petitioners in their letter dated September 27, and what we find to have taken place at the interviews on the 30th September and the 14th October, specially the fact that the Company's representatives appeared to have been more concerned to show that the Company was not a party to the fraud than to show that there was no fraud practised at all, we are of opinion that the omission to give further particulars or inspection of papers did not deprive the petitioners of a fair chance of convincing Mr. Bilgrami that the grounds on which cancellation of the licences was proposed did not exist, or even if they existed,

54

422

they did not justify cancellation of the licences. We are therefore of opinion that the opportunity that was given to the petitioners in the present case amounted to a reasonable opportunity of being heard against the action proposed.

The petitioners are therefore not entitled to any relief.

The petition is accordingly dismissed with costs.

SUBBA RAO J.-I have had the advantage of perusing the judgment of my learned brother, Das Gupta, J. I regret my inability to agree with his conclusion.

The facts are fully stated in the judgment of my learned brother and I shall, therefore, briefly restate only the material facts. The first petitioner, M/s. Fedco (Private) Limited (hereinafter called the Company) is a Company registered under the Indian Companies Act having its registered office in Bombay. It is engaged in the business of dyes, chemicals, plastics and various other goods. The second petitioner is the Chairman and a Director of the first petitioner Company. The Company sent five applications by registered post to the Chief Controller of Imports and Exports, New Delhi, (hereinafter called the Chief Controller). Three of the applications were dated June 17, 1958, one was dated June 26, 1958, and the last was dated July 22, 1958. In the said applications the Company prayed for the issue of import licences to enable them to place orders and import different types of goods from West In regard to each of these applications, received a letter purporting to be from the Chief Controller intimating them that their applications had be-en forwarded to the Joint Chief Controller of Imports and Exports, Bombay, (hereinafter called the Joint Controller) with the necessary comments. The Company acknowledged the receipt of these letters, Thereafter five licences were received from the Office of the Joint Controller, Bombay, and two of them were dated July 24, 1958, another two were dated August 16, 1958, and the fifth was dated September 4, 1958. On the basis of the said licences, orders were

423

placed with a foreign company in West Germany and goods of considerable value actually arrived in the Bombay port. By

letter dated September 23, 1958, the Joint Controller asked the Company to return the said five licences granted to them without entering into any commitments. After some correspondence between the Company and the Chief Controller, the former received a notice dated September 24, 1958, from the latter to the effect that the Government had reason to believe that the said licences were obtained fraudulently and therefore they proposed to cancel the said licences unless sufficient cause was shown against such action being taken within ten days of the issue of the said notice. On October 16, 1958, the Company received an undated order from the Chief Controller purporting to cancel the said five licences. The Company and their manager filed the present petition under Art. 32 of the Constitution praying for a writ of certiorari or other appropriate writ quashing the order of the Chief Controller cancelling the said five licences and directing the Collector of Customs, Bombay, to assess the goods of the Company which had been imported into India and allow them to clear the same.

Mr. Purshottam Trikamdas, learned Counsel for the petitioners in support of his contentions raised before us two points, viz., (1) cls. 9 and 10 of the Imports Control Order, 1955, (hereinafter called the Order) where under the licences were cancelled infringe the fundamental rights of a citizen under Art. 19(1)(f) and (g) of the Constitution inasmuch as the said provisions constitute an arbitrary and unreasonable restriction on the said rights; and (2) the Chief Controller has not complied with the provisions of cl. 10 of the Order as he failed to give the Company reasonable opportunity of being heard before the licences granted to them were cancelled and therefore the act of the Chief Controller in cancelling the licences infringes the rights of the Company under Art. 19(1)(f) and (g) of the Constitution.

The first point need not be considered as I am clearly of the view that no "reasonable opportunity" within the meaning of cl. 10 of the Order was given to the

424

petitioners by the Chief Controller. The material parts of cls. 9 and 10 of the Order read:-

clause 9. "Cancellation of Licences. The Central Government or any other Officer authorised in this behalf may cancel any licence granted under this Order or otherwise render it ineffective

(a) if the licence has been granted through inadvertence or mistake or has been obtained by fraud or misrepresentation;"

Clause 10. "Applicant or Licensee to be heard. No action shall be taken under Clauses 7, 8 or 9, unless the licensee/Importer has been given a reasonable opportunity of being heard."

It is not disputed that the Central Government delegated its powers to act under these clauses to the Chief Controller. The first question is, what is the scope of the enquiry under cl. 10 of the Order? Is it purely an administrative act or is it a quasi-judicial act? The criteria to ascertain whether a particular act is a quasijudicial act or an administrative one have been laid down with clarity by Lord Justice Atkin in *Rex v. Electricity Commissioners, Ex Parte London Electricity Joint Committee Co.(1)*, elaborated by Lord Justice Scrutton in *Rex v. London County Council, Ex Parte Entertainments Protection Association Ltd.* (2) and authoritatively restated by this Court in *Province of Bombay v. Khusaldas S. Advani* (3). They laid down the following conditions: (a) the body of persons must have legal

authority; (b) the authority should be given to determine questions affecting the rights of subjects and (c) they should have a duty to act judicially. All the three conditions are satisfied in this case. Under the said clauses authority is conferred on the Central Government or any other officer authorized in this behalf to cancel any licence granted under the Order and the cancellation of a licence certainly affects the rights of subjects. A clear duty to act judicially is imposed by cl. 10 on the said authority. He has to give to the affected party "reasonable opportunity of being heard". It is therefore clear that under

(1) [1924] 1 K.B. 171.

(2) [1931] 2 K.B. 215.

(3) [1950] S.C.R. 621.

425

cls. 9 and 10 of the Order, the Chief Controller performs a quasi-judicial act and is therefore bound to follow the principles of natural justice in cancelling a licence. Clause 10 clearly and without any ambiguity describes the principles of natural justice by using the three well-known words and phrase, viz., 'reasonable opportunity' and 'of being heard'. They imply that when the charge is one of fraud the affected party is entitled to know the particulars of fraud alleged, to inspect the documents on the basis of which fraud is imputed to him and to a personal hearing to explain his case and to absolve himself of the charge made against him. Without these elementary safeguards provided by the authority, the opportunity to be heard given to the licensee becomes an empty formality. With this background I shall scrutinize the relevant facts to ascertain whether any such reasonable opportunity was given to the petitioners in this case. The question falls to be decided only on the affidavits filed by the parties. I shall assume for the purpose of this petition that the affidavit filed by the Chief Controller represents what all had taken place between him and the representatives of the Company. The notice dated September 24, 1958, issued to the petitioners laconically states that 'the licences granted by the Joint Controller to the Company were fraudulently obtained and therefore it was notified that the Government of India, in exercise of the powers specified in paragraph 9 of the Order proposed to cancel the said licences unless sufficient cause against the proposed action was furnished to the Chief Controller within ten days of the date of the issue of the notice. On receipt of the said notice, the petitioner Company sent a telegram through their Solicitors requesting the Chief Controller not to publish the said notification. On September 26, 1958, the Company's Solicitors sent another telegram to the Chief Controller requesting him to give them the particulars of the alleged fraud and to give them an appointment for inspection of papers and documents relied upon by the Chief Controller. On September 27, 1958, the Company sent a letter to

426

the Chief Controller pointing out the relevant facts and stating that the petitioner Company had accepted the licences honestly and had at no time any reason to doubt the bona fides of the grant of the licences to them; that they suspected they were victims of foulplay by some persons interested in causing damage to them and to their reputation; that Mr. B. K. Parekh, a Director of the petitioner Company, and the Company's Solicitor, Mr. Hooseini Doctor, met the Chief Controller on September 30, 1958, and handed over the explanation to him and also personally told him that in the absence of any particulars

of the alleged fraud and without inspection of the papers relied upon by the Chief Controller, it was not possible for the petitioner Company to give a complete explanation and that the petitioners reserved their right to give further explanation on getting the said particulars and inspection of the said papers. They also requested the Chief Controller to give the Company a personal hearing to meet the charges after giving the necessary particulars and the inspection of papers asked for. The Chief Controller told them that the issue of the licences had not been authorized by him as they purported to be and that they had been obtained fraudulently, though at that stage he was not able to say how exactly and by whom the fraud was committed. He also did not give them the particulars of fraud. The Director of the Company suggested that the fraud might have been committed by reason of the Gujarati Maharashtrian and anti-Muslim feeling amongst the employees of the Company. On behalf of the petitioner Company, the Chief Controller was told that it was not possible for the Company to give a complete explanation and that they reserved their right to give further explanation. The petitioners were not allowed inspection of the papers. By their letter dated October 3, 1958, the Company recorded what took place at the said interview and sent it to the Chief Controller. The petitioners again wrote another letter to the Chief Controller reminding him that they had not received any particulars of the alleged fraud. This letter was personally handed over to Mr. Sundaram,

497

the Director of Administration in the Office of the Chief Controller on October 14, 1958. At that interview, Mr. Sundaram, told the petitioners that the recommendations against which the disputed licences were granted were not genuine. On October 16, 1958, the Chief Controller cancelled the said five licences issued to the petitioner Company. On the aforesaid facts, which we have assumed for the purpose of this petition, can it be said that the Chief Controller gave the petitioners a "reasonable opportunity of being heard" to enable them to establish that no fraud had been committed in getting the said licences?

The learned Solicitor General, appearing for the respondents, contended that the Company admitted the fraud, that their only defence was that the fraud might have been committed by reason of the Gujarati Maharashtrian and anti-Muslim feeling amongst the employees of the Company and that therefore the fact that the Chief Controller told the petitioners that the issue of the licences had not been authorized by him and the fact that Mr. Sundaram told the petitioners on October 14, 1958, that the recommendations against which the disputed licences were granted to the petitioners were not genuine, were, in the circumstances, sufficient disclosure of the particulars of fraud and that, therefore, reasonable opportunity within the meaning of cl. 10 of the order had been given to the petitioners. I find it very difficult to accept this argument. The argument assumes that the petitioner Company accepted the version given by the Chief Controller or by Mr. Sundaram. For the purpose of this petition it must be assumed that the petitioners were innocent. The notice was given to them to show cause why the licences given to them should not be cancelled on the ground of fraud. By letters and in person they requested the Chief Controller to give them the particulars of the fraud, and to allow them to inspect the relevant documents so that they might give a further explanation to show cause against the cancellation of the

licences. The affidavit filed by the Chief Controller only discloses that he, in his conversations with the Solicitor and the Director of

428

the Company, mentioned to them that he did not issue the licences. In the affidavit he admits that they asked for particulars and for the inspection of the documents; but he says that the petitioners were told sufficiently what was against them and their demand for the inspection of the papers was mischievous. But what he told them about the particulars of the alleged fraud is, in his own words:

" I told them that the issue of the licences had not been authorised by me as they purported to be and that they had been obtained fraudulently, though at that stage I was unable to say how exactly and by whom the fraud was committed.

" The conversation with Mr. Sundaram on October 14, 1958, does not carry the matter further. He has not been authorized by the Central Government to make an enquiry and the fact that he told the petitioners that the recommendations against which the disputed licences were granted were not genuine, even if true, does not carry the matter any further. The fact, therefore, remains that notwithstanding specific request by the petitioners no particulars were furnished to them, no facilities for inspection of the relevant documents given and no date was fixed for the enquiry in regard to the alleged fraud.

The learned Solicitor General asked, what was that that the petitioners could have gained if the particulars were given and if they were allowed to inspect the relevant documents? This is a lopsided way of looking at things. The question should have been, what reasonable opportunity to be heard was given to the petitioners to establish their innocence ? That apart, without apportioning any blame either on the petitioners or on the respondents, many possibilities can be visualized, viz., (i) the petitioners were guilty of fraud; they knew that their applications were rejected by the Chief Controller, they got similar applications surreptitiously introduced in the Bombay Office with forged recommendations under the signature of the Deputy Chief Controller, New Delhi, Mr. M. L. Gupta, and obtained the licences by practising fraud on the Joint Chief Controller, Bombay; (ii) a third party,

429

presumably a rival businessman or members of the staff of the Company, evolved a complicated scheme of fraud to cause damage to the Company and their reputation. the Company's enemies came to know that the applications of the Company were rejected, then forged fresh applications, got them surreptitiously introduced in the Bombay Office and got the licences issued in favour of the petitioners: this is a rather far-fetched theory; (iii) after the applications were rejected, fresh applications were filed in the New Delhi Office, got forwarded to the Joint Chief Controller, Bombay, with the directions issued by the Deputy Chief Controller, New Delhi; (iv) the original applications filed by the Company were ordered, and not rejected, by the Chief Controller or his Deputy and they were sent in due course along with the recommendations duly signed by the Deputy Chief Controller to the Joint Controller, Bombay, and that the licences were issued in the usual course: the Office of the Chief Controller New Delhi, after realizing that licences were issued contrary to rules or orders that licences should not be issued in respect of goods to be imported from soft currency areas, set up a false case of the original

applications being rejected and the fresh applications substituted in the Bombay Office. The aforesaid are some of the possibilities and there may be many others. When notice was issued to the petitioners on the ground of fraud, they were certainly entitled to the particulars thereof. The Chief Controller could have given the following particulars: (i) the petitioners' applications were rejected on a particular date; (ii) the orders of rejection were communicated to them on a particular date; (iii) that he did not issue any letters to the petitioners as regards the forwarding of their applications or the recommendations to the Joint Chief Controller, Bombay; (iv) after the rejection of their applications, the Office of the Chief Controller did not receive any letters from the petitioners; (v) that the applications on which the licences were issued were not the same applications sent to the Delhi Office; (vi) that the signature of Mr.

55

430

M. L. Gupta was forged; and (vii) that there is nothing in the Bombay Office to show that they received any applications from the Delhi Office. If these particulars were given to the petitioners, they might have by inspecting the documents proved that there was no fraud, that there was no order rejecting the applications, that the despatch book showed that the applications were forwarded to the Bombay Office and that the original applications were not in that Office, that the despatch book and the receipt book showed the correspondence that passed between the Chief Controller and the petitioners, and that the signature of Mr. Gupta on the recommendations was genuine. It is not as if the petitioners admitted that they committed the fraud. When they were confronted with the notice, unless the particulars were given to them and the documents shown to them, it was not possible for them to know whether a fraud was committed at all and, if committed, how was it committed. Only for the purpose of explaining that no fraud was committed by them, they asked for the particulars, for inspection of the relevant documents and for a personal hearing: all these were denied to them. In the circumstances, I find it not possible to hold that the petitioners were given reasonable opportunity of being heard within the meaning of cl. 10 of the Order. The stakes are high and the order of cancellation was made arbitrarily and in utter disregard of the principles of natural justice. I should not be understood to have expressed any opinion on the merits of the case. It may be, or it may not be, that the petitioners were guilty of fraud; but they should have been given a reasonable opportunity of being heard before they were condemned as having committed the fraud and their licences were cancelled. I, therefore, direct the issue of a writ of certiorari quashing the order of the Chief Controller cancelling the licences granted to the petitioners.

ORDER OF COURT

In accordance with the opinion of the majority the Petition is dismissed with costs.

431