

*** HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HONOURABLE Ms. JUSTICE J.UMA DEVI**

+ Writ Petition No.29237 of 2018

% Date: 19-12-2018

M/s Shasta Freight Services Pvt. Ltd.,
A company incorporated under the Companies Act, 1956,
Having its Regd. Office at H.No.7-1-638 to 643,
Flat No.205, Bhanu Enclave, Erragadda, Hyderabad-38,
Rep. by its Authorised Representative Srinivas Karra
... Petitioner

Vs.

\$ 1. Prl. Commissioner of Customs,
Hyderabad Customs Commissionerate,
L.B. Stadium Road, Basheerbagh, Hyderabad-04

2. Commissioner of Customs,
O/o the Commissioner of Customs & Central Excise,
Hyderabad-II Commissionerate,
L.B. Stadium Road, Basheerbagh, Hyderabad-04
... Respondents

! Counsel for Petitioner : Mr. P. Balaji Varma

Counsel for Respondents: Mr. B. Narasimha Sarma,
Senior Standing Counsel

< Gist:

> Head Note:

? Cases referred:

- 1) AIR 1952 SC 181
- 2) AIR 1965 SC 895
- 3) AIR 1980 SC 303

**HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HONOURABLE Ms. JUSTICE J.UMA DEVI**

Writ Petition No.29237 of 2018

Order: *(per V. Ramasubramanian, J)*

Challenging an Order-in-Original passed by the first respondent, revoking the licence granted to the petitioner as a Customs Broker, the petitioner has come up with the above writ petition.

2. Heard Mr. P. Balaji Varma, learned counsel for the petitioner and Mr. B. Narasimha Sarma, learned Senior Standing Counsel appearing for the respondents.

3. The petitioner holds a licence as a Customs Broker, under Hyderabad Customs, with permission to transact operations by Mumbai Customs Zone.

4. An offence report was received by Customs Broker Section (CBS), Mumbai from the Directorate of Revenue Intelligence (DRI), Mumbai on 24-01-2017 alleging that the petitioner was carrying out clearances of undervalued assorted consumer goods that were imported from China by using fake Import Export Code (IEC) obtained in the name of M/s. Victor Enterprises. A copy of the offence report along with the relied upon documents and enclosures were forwarded by CBS, Mumbai to the Customs Commissionerate, Hyderabad, vide letter dated 18-8-2017.

5. Therefore, a show cause notice dated 11-10-2017 was issued to the petitioner calling upon them to show cause as to why

the Customs Broker Licence given to them shall not be revoked in terms of Regulation 18(1) read with Regulation 20 of the Customs Brokers Licensing Regulation (CBLR), 2013, for contravention of the provisions of Regulations 11(a), 11(e), 11(k) and 11(n) of the CBLR, 2013. The petitioner submitted a reply dated 06-11-2017 followed by several letters. A personal hearing followed on 18-12-2017. Thereafter, the Enquiry Officer submitted a report dated 10-01-2018.

6. The enquiry report dated 10-01-2018 was forwarded to the petitioner vide letter dated 12-01-2018. Since the petitioner did not send a reply, personal hearings were held on 13-3-2018, 19-3-2018 and 06-4-2018.

7. On 06-04-2018, the petitioner attended the personal hearing and submitted written arguments, which were received by the 1st respondent on 11-04-2018.

8. Thereafter, the 1st respondent passed the impugned order dated 03-07-2018, revoking the licence granted to the petitioner and ordering the forfeiture of the whole of the security deposited by them apart from imposing a penalty of Rs.50,000/-. It is against the said order, that the petitioner has come up with the above writ petition.

9. Mr. P. Balaji Varma, learned counsel for the petitioner, challenges the impugned order primarily on three grounds viz., (i) that the show cause notice was not issued within the time limit prescribed from the date of receipt of the offence report, (ii) that the request for cross-examination of witnesses was denied by the 1st respondent on the ground that he has to pass orders within a period

of 90 days and (iii) that the impugned order was passed beyond the period of 90 days mandatorily stipulated by the Regulations.

10. The very maintainability of the writ petition is opposed by the learned Senior Standing Counsel for the Department on the ground that the petitioner has an effective alternative remedy of appeal to CESTAT under Section 129(A)(1) of the Customs Act, 1962 and that therefore the petitioner can raise all the issues before the Tribunal.

11. However, we are not impressed with the preliminary objection revolving around the availability of alternative remedy of appeal. The petitioner is not raising any dispute on facts. All the three objections raised by the petitioner to the impugned order revolve only around – (i) the question of limitation on admitted facts but not on disputed facts and (ii) the violation of the principles of natural justice. If the petitioner succeeds on these three issues, the question of driving him to the Tribunal would not arise. If the petitioner fails on all these three issues, we can always direct him to raise the contentions on merits before the Tribunal.

12. In exercise of the power conferred by sub-section (2) of Section 146 of the Customs Act, 1962, the Central Board was issuing regulations from time to time. A set of regulations issued in the year 2004 known as “Customs House Agents Licensing Regulations, 2004” were superseded in the year 2013 by a set of regulations known as “Customs Brokers Licensing Regulations, 2013”.

13. Regulation 18 of these Regulations empowers the Commissioner of Customs to revoke the licence of a Customs Broker on certain grounds, with which we are not concerned in the present case. Regulation 19 empowers the Commissioner even to order the suspension of the licence of a Customs Broker, when an enquiry against such agent is pending or contemplated.

14. Regulation 20 prescribes the procedure for revocation of licence and for imposition of penalty. It reads as follows:

“20. Procedure for revoking licence or imposing penalty.—

(1) The Commissioner of Customs shall issue a notice in writing to the Customs Broker within a period of ninety days from the date of receipt of an offence report, stating the grounds on which it is proposed to revoke the licence or impose penalty requiring the said Customs Broker to submit within thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defense and also to specify in the said statement whether the Customs Broker desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs.

(2) The Commissioner of Customs may, on receipt of the written statement from the Customs Broker, or where no such statement has been received within the time-limit specified in the notice referred to in sub-regulation (1), direct the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, to inquire into the grounds which are not admitted by the Customs Broker.

(3) The Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall, in the course of inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material to the inquiry in regard to the grounds forming the basis of the proceedings, and he may also put any question to any person tendering evidence for or against the Customs Broker, for the purpose of ascertaining the correct position.

(4) The Customs Broker shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings, and where the Deputy Commissioner of Customs or Assistant Commissioner of Customs declines to examine any person on the grounds that his evidence is not relevant or material, he shall record his reasons in writing for so doing.

(5) At the conclusion of the inquiry, the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall prepare a report of the inquiry and after recording his findings thereon submit the report within a period of ninety days from the date of issue of a notice under sub-regulation (1).

(6) The Commissioner of Customs shall furnish to the Customs Broker a copy of the report of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, and shall require the Customs Broker to submit, within the specified period not being less than thirty days, any representation that he may wish to make against the said report.

(7) The Commissioner of Customs shall, after considering the report of the inquiry and the representation thereon, if any, made by the Customs Broker, pass such orders as he deems fit either revoking the suspension of the license or revoking the licence of the Customs Broker or imposing penalty not exceeding the amount mentioned in regulation 22 within ninety days from the date of submission of the report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, under sub-regulation (5) :

Provided that no order for revoking the license shall be passed unless an opportunity is given to the Customs Broker to be heard in person by the Commissioner of Customs."

15. The steps to be taken by the Commissioner of Customs and the time limit prescribed for him to take action, before revoking the licence and imposing a penalty upon the Customs Broker, can be easily understood if presented in a tabular column as follows:

Steps to be taken/ Procedure to be followed	Time limit
1. Receipt of offence report	---
2. Commissioner to issue notice to the Customs Broker	Within 90 days of receipt of offence receipt
3. Customs Broker to submit a written statement of defence also specifying whether he wishes to be heard in person	Within 30 days of receipt of show cause notice
4. Commissioner to direct the Deputy Commissioner to inquire into the grounds which are not admitted by the Customs Broker	This direction to be issued upon receipt of the written statement of defence from the Broker or after the expiry of the time limit specified for the submission of the written statement of defence

5. Deputy Commissioner of Customs to hold an enquiry in which the Customs Broker is entitled to cross-examine those who were examined in support of the grounds forming the basis of the proceedings	---
6. Deputy Commissioner to submit a report of the enquiry	Within a period of 90 days from the date of issue of the notice under Regulation 20(1)
7. Commissioner to furnish to the Customs Broker, a copy of the report of the Deputy Commissioner	---
8. Customs Broker to submit his representation against the enquiry report	Within the specified period not being less than 30 days
9. Commissioner to pass orders	Within 90 days from the date of submission of the report by the Deputy Commissioner

16. The first objection of the petitioner to the impugned proceedings is that the show cause notice was not issued within 90 days of receipt of the offence report and that therefore the limitation prescribed in sub-regulation (1) of Regulation 20 was not adhered to. In this case, the offence report is admittedly dated 24-02-2017 and the show cause notice was admittedly issued on 11-10-2017. Therefore, it was obviously after more than 8 months of the offence report that the show cause notice under Regulation 20(1) was issued.

17. But the stand taken by the respondents is that the offence report was first received by the Mumbai Commissionerate and immediately they prohibited the petitioner from transacting business in Mumbai Customs area by an order dated 17-3-2017. The prohibition was continued by a further order dated 11-5-2017. According to the respondents, the Hyderabad Commissionerate, by their letter dated 22-6-2017 sought a copy of the offence report.

Therefore, the copy of the offence report along with necessary enclosures was forwarded by CBS, Mumbai, vide letter dated 18-8-2017 to the Hyderabad Commissionerate.

18. In the light of the stand taken by the respondents as aforesaid, we are of the view that the first objection taken by the petitioner cannot be sustained. An attempt was made by Mr. P. Balaji Varma, learned counsel for the petitioner, to contend that the actual date of receipt of the offence report was not established by the respondents and that there was no rationale as to why the Mumbai Commissionerate which issued a prohibition on 17-3-2017 kept quiet till August, 2017 to send a copy of the offence report.

19. But the aforesaid contention of the learned counsel for the petitioner borders on disputed questions of fact. If the petitioner had chosen to go before the CESTAT by way of an appeal they could have raised these submissions. The petitioner has taken the risk of limiting their contentions only to admitted facts and hence we have to go by the assertion made by the respondents that the offence report was received only on 18-8-2017 and that therefore there was no violation of Regulation 20 (1).

20. The second contention of the learned counsel for the petitioner is that no opportunity to cross-examine the witnesses was granted, despite the petitioner making a request. We have already seen that under Regulation 20(4) a Customs Broker is entitled to cross-examine the witnesses. But Regulation 20 (4) is carefully worded. The entitlement of the Customs Broker to cross-examine, is confined only to "**persons examined in support of the grounds**

forming a basis of the proceedings". The Inquiry Officer viz., the Deputy Commissioner or Assistant Commissioner is entitled under Regulation 20(4) to decline to examine any person on the ground that his evidence is not relevant or material. But he shall record his reasons in writing for so doing. Keeping this in mind, we shall now see the enquiry report to find out whether there was violation of Regulation 20(4).

21. It is seen from paragraph-22 of the enquiry report dated 10-01-2018 that three things formed the basis for the allegations made against the petitioner. They were – (i) Bills of Entry, (ii) the imported goods and (iii) the statements recorded by DRI under Section 108 of the Customs Act, 1962 from Shri Arjun Pilane and Shri Pramod Bhor. In fact, an objection was raised by the petitioner before the Enquiry Officer that the statements recorded from the witnesses are not admissible as they were extracted under coercion. This contention was rejected and the Enquiry Officer asserted in paragraph-22 of his report that he is entitled to rely upon the same.

Paragraph-22 of the enquiry report reads as follows:

"22. Further the CB has contended in para-7 of this letter dated 06-11-2017 that the allegations are not backed by evidence and the statements recorded by DRI are coercive. In this regard it is to put forth that a statement made before the Customs officials under Section 108 of the Customs Act, 1962, is a material piece of evidence unlike a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, the statements recorded under Section 108 of the Customs Act, 1962, can be used as evidence against the CB to the extent of establishing the omissions and commissions of the CB with regard to the contravention of the provisions of the CHALR, 2004 as held in the case of Jasjeet Singh Marwah v. UOI by the Hon'ble High Court of Delhi reported in 2009 (239) ELT 417 (Del.). The statements can therefore be used as substantive evidence to hold the CB liable for violation of CBLR,

2013. Also, Shri Arjun Pilane and Shri Pramod Bhor have declared in their statements that they have given the statement voluntarily and not under any coercion. Therefore, it can be seen that the allegations are based on material evidence like the Bill of Entry filed, goods imported and the statements recorded by DRI under Section 108 of the Customs Act, 1962 which is admissible evidence in the Court of law.”

22. Paragraphs-24, 25 and 26 of the enquiry report also shows that the Enquiry Officer was persuaded to hold the petitioner guilty of violation of the Regulations, on the basis of the oral testimony of the aforesaid witnesses. Therefore, the condition precedent under Regulation 20 (4) for considering the request of the Customs Broker for cross-examination, stood satisfied. Hence, the petitioner became entitled to cross-examination of these witnesses.

23. But unfortunately, the request for cross-examination was rejected by the Enquiry Officer for the reasons stated in paragraph-27 of his report. Paragraph-27 of the enquiry report reads as follows:

“27. As the request for cross-examination of witnesses was made to the Assistant Commissioner (Inquiry Officer) during the 4th PH, necessary correspondence to facilitate the same on 08-01-2018 were made as detailed in para-17 above. While the noticee has further requested for a fresh date and time for cross-examination with at least one week notice; but since the inquiry report has to be submitted within a period of 90 days from the date of issue of Notice as per Regulation 20(5) of the CBLR’ 2013, the same is not possible for consideration. Further it needs to be stated that neither of the witnesses has turned up for cross-examination on the scheduled date, despite even an oral communication about the same to Shri Pramod Bhor. Given that the request for cross-examination of persons (whose statements been recorded) was put forth to the Assistant Commissioner on 18-12-2017 only, efforts to enable the same within the time-constraints of inquiry proceedings as per the Regulation 20(5) of CBLR’ 2013 were made. Moreover, the primary submission, dated 06-11-2017, was neither directed to the Inquiry Officer nor was the CB forthcoming to either attend the PH or submit supporting documents, until withdrawal of the notice by the Principal Commissioner of Customs. In the event of no such withdrawal and given the limitations of time, but keeping in view of the requirements of providing opportunity

of being heard (which were not attended by the CB) and given the non-presentation of witnesses for cross-examination, it is to state that the findings are based on the available documents at hand i.e. the offence report, statements of Arjun Pilane and Pramod Bhor, the Prohibition order and the submissions of the CB, read with CBLR' 2013."

24. Therefore, it is clear that there was a gross violation of the principles of natural justice. Unfortunately for the Department, the principles of natural justice have also been in-built into Regulation 20(4). Therefore, the Enquiry Officer could not have violated the mandate of law. It would have been a different matter if the Enquiry Officer had chosen not to rely upon the statements of those two witnesses, but to proceed only on the basis of other available documents. But in more than one place, the Enquiry Officer affirmed his reliance upon the statements of witnesses, among other things. Therefore, the impugned order based upon such an enquiry report is contrary to the procedure prescribed by Regulation 20(4) and clearly in violation of the principles of natural justice.

25. The third and last contention of the petitioner is that the impugned order was not passed within ninety days from the date of submission of the enquiry report and that therefore the prescription contained in Regulation 20(7) was violated.

26. It is admitted by the respondents that the enquiry report dated 10-01-2018 was received on 12-01-2018 and that the impugned order was passed only on 03-7-2018, which was clearly beyond the period of ninety days.

27. But the explanation sought to be given by the Department is that the petitioner went on dragging the matter and eventually

gave a representation to the enquiry report only on 06-04-2018 and that therefore the petitioner who prevented the 1st respondent from discharging his duties within the timeframe, cannot take advantage of his own wrong.

28. But the above explanation is hardly convincing. We have extracted in the tabular column the timeline within which every single step prescribed in Regulation 20 had to be followed. Under Regulation 20(6), a copy of the enquiry report should be furnished to the Customs Broker specifying a period of not less than thirty days to make a representation against the report. If he did not submit a representation within the time stipulated in the notice under Regulation 20(6), it was open to the Commissioner to proceed to pass orders after providing an opportunity to be heard in person as per the proviso under sub-regulation (7). There was no impediment for the 1st respondent to do this. But he failed to adhere to the time schedule. Therefore, the explanation offered by the respondents for not adhering to the time schedule stipulated in Regulation 20 (7) cannot be accepted.

29. Mr. B. Narasimha Sarma, learned Senior Standing Counsel for the Department, contended that the time limit prescribed in Regulations 20 (1) and 20 (7) are not mandatory but directory. According to the learned Senior Standing Counsel, time limits prescribed in primary and subordinate legislations have been held to be mandatory only when the consequences of not adhering to the time limits is also stipulated, in the Statute itself. Since the consequences of failure to adhere to the time schedule prescribed in

sub-regulations (1) and (7) of Regulation 20 are not spelt out, the learned Senior Standing Counsel contended that the prescription cannot be held to be mandatory. In addition, the learned Senior Standing Counsel contended that no prejudice was caused to the petitioner on account of the violation of the time limit prescribed in Regulation 20. It is not a case where the licence of the petitioner was suspended pending enquiry. Therefore, the learned Senior Standing Counsel contended that the petitioner cannot make much ado about the non-adherence to the time limit prescribed in Regulation 20(7).

30. We have carefully considered the rival contentions.

31. Before proceeding further, it must be pointed out that at least two High Courts namely Madras and Delhi High Courts have construed the time stipulated in Regulation 22 of the Regulations of 2004 and Regulation 20 of the Regulations of 2013 to be mandatory and not directory. The decisions of the Delhi High Court taking such a view are in ***Commissioner of Customs (General) v. S.K. Logistics (2016 (337) ELT 39 (Delhi)***), ***Indair Carrier Pvt. Ltd., v. Commissioner of Customs (General) (2016 (337) ELT 41 (Delhi)*** and ***Overseas Air Cargo Services v. Commissioner of Customs (General) (2016 (340) ELT 119 (Delhi)***). The decisions of the Madras High Court supporting the contention of the petitioner are in ***Sanco Trans Ltd., v. Commissioner of Customs (2015 (322) ELT 170)***. However, the Calcutta and Bombay High Courts took a contrary view, the Calcutta High Court in ***M/s. Ota Falloons Forwarders Pvt. Ltd., v. Union of India*** and the Bombay High

Court in ***The Principal Commissioner of Customs (General) Mumbai v. Unison Clearing Pvt. Ltd.***

32. Interestingly, another judgment of the Madras High Court in ***A.M. Ahamed & Co., v. Commissioner of Customs (2014 (309) ELT 433)*** authored by one of us (VRSJ) is also sought to be pressed into service by the petitioner. But the Court was concerned in that case with Regulation 22 (1) of the 2014 Regulations and it was made clear in paragraph 24 of the said decision that the question of mandatory or directory nature of the Regulations was not raised. In other words, the decision of the Madras High court in *A.M.Ahamed & Co* did not go into the question whether the Regulation is mandatory or directory. No other court may be more competent to say so, since one of us (VRS) was the author of *A.M.Ahamed & Co.*

33. Thus that there are conflicting views of different High Courts, with Madras and Delhi being on one side and Bombay and Calcutta being on another side, on the question whether the Regulation is mandatory or directory. Therefore, it is now necessary to go into the root of the matter.

34. The vexed question as to whether a particular provision in a statute is mandatory or directory has come up time and again before Courts under different circumstances. One of the earliest cases to draw the attention of the Constitution Bench of the Supreme Court was ***Dattatreya Moreshwar v. State of Bombay***¹. ***The Court in that case created a dichotomy between (i) the provisions of statutes creating public duties and (ii) those***

¹ AIR 1952 SC 181

conferring private rights. The provisions of statutes creating public duties were held to be directory and those conferring private rights were considered mandatory. The principle was explained further in the following words.

“When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice of the Courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done.”

35. In **Raza Buland Sugar Co Ltd., v. Municipal Board, Rampur**², another Constitution Bench of the Supreme Court, without referring to the dichotomy created in **Dattatreya Moreshwar** laid down certain independent tests. After holding that the question cannot be resolved merely on the basis of the use of the word “shall” and that the answer to the question would depend upon the facts of each case, the Constitution Bench laid down the following tests **Raza Buland Sugar Co Ltd:**

- 1) To see the object of the statute;
- 2) The purpose for which the provision was made and its nature;
- 3) The intention of the legislature in making the provision;
- 4) The serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other; and
- 5) The relation of the particular provision to other provisions dealing with the same subject.

² AIR 1965 SC 895

36. The decision in **Raza Buland Sugar Co Ltd., v. Municipal Board, Rampur** was quoted with approval by another Constitution Bench in **Selam Advocates Bar Association v. Union of India (2005 (6) SCC 344)**. The decision in **Dattatreya Moreshwar** was followed by the Supreme Court in (1) **Haridwar Singh v. Bagun Sumbrui (AIR 1972 SC 1242)**, (2) **Chander Sain v. State of Haryana (AIR 1994 SC 972)**; (3) **May George v. Special Tahsildar (2010 (13) SCC 98)**; (4) **M/s. Delhi Airtech Services Pvt. Ltd., v. State of U.P.**, and (5) **M/s. M.R.F. Ltd v. Manohar Parrikar**.

37. In **Sharif-Ud-Din v. Abdul Gani Lone**³, the Supreme Court held that the question whether a provision of law is mandatory or not depends upon (i) its language, (ii) the context in which it is enacted and (iii) its object. The Court went on to hold as follows:

"In order to find out the true character of the legislation, the Court has to ascertain the object which the provision of law in question is to sub-serve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision of law relates to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one. Where however, a provision of law prescribes that a certain act has to be one in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another when such act is not done in that manner, the former has to be regarded as a mandatory one."

38. In **M/s. M.R.F. Ltd v. Manohar Parrikar**, the Supreme Court quoted para 1237 and 1238 of the HALSBURY'S Laws of England, 4th edition Reissue Vol.44 (1), dealing with substantive and

³ AIR 1980 SC 303

procedural enactments. It was deduced by the Supreme court from paragraph 1238 of Halsbury's Laws of England ***that the distinction between the mandatory and directory enactments may have to be drawn where the consequences of failing to implement the requirement is not spelt out in the legislation.*** It was pointed out therein that to remedy the deficiency of the legislature in failing to specify the intended legal consequence of non-compliance, it had become necessary for the courts to devise rules. The same requirement, it was pointed out, may be mandatory as to some aspects and may be directory as to the rest. One of the important observations made in ***M/s. M.R.F. Ltd v. Manohar Parrikar***, while quoting from the HALSBURY'S Laws of England reads as follows:

"The court will be more willing to hold that a statutory requirement is merely directory if any breach of the requirement is necessarily followed by an opportunity to exercise some judicial or official discretion in a way which can adequately compensate for that breach."

39. Mr P. Balaji Varma, learned counsel for the petitioner contended that if the time prescribed by Regulation 20 (7) is not held to be mandatory, there can be no check on the power of the authority and they can pass orders at any time they like. In fact, he went to the extent of contending that the time limit prescribed in Regulation 20 (7) should be construed to mean the availability of the power only up to a period of time, beyond which the authority vested with the power cannot invoke his jurisdiction.

40. We are unable to agree with the second part of the contention. It is only in cases where authorities or quasi-judicial bodies would become *functus officio* that the second part of the

argument of Mr. P. Balaji Varma, learned counsel for the petitioner will hold good. To hold that the 1st respondent would lose his authority to pass an order of revocation of licence, upon the expiry of the period of licence, would be to say that he would become *functus officio*. That is an extreme proposition.

41. But the first part of his contention namely, as to whether an authority can take his own sweet time to pass orders, is actually a concern that was expressed even by the Supreme Court, in para 10 of its decision in **Chander Sain**. In paragraph 10 of its decision in **Chander Sain**, the Supreme Court after extracting the relevant portion of the decision in **Dattatreya Moreshwar**, stated as follows:

"Of course that does not mean that the Public Analyst can ignore the time-limit prescribed under the rules. He must in all cases try to comply with the time-limit. But if there is some delay, in a given case, there is no reason to hold that the very report is void and on that basis to hold that even prosecution cannot be launched."

42. Therefore, if the tests laid down in **Dattatreya Moreshwar**, which have so far held the field, are applied, it would be clear (i) that the time limit prescribed in Regulation 20 (7) is for the performance of a public duty and not for the exercise of a private right; (ii) that the consequences of failure to comply with the requirement are not spelt out in Regulation 20(7) (iii) that no prejudicial consequences flow to the aggrieved parties due to the non-adherence to the time limit; and (iii) that the object of the Regulations, the nature of the power and the language employed do not give scope to conclude that the time limit prescribed is mandatory. Hence, we hold that the time limit prescribed in Regulation 20 (7) is not mandatory but only directory.

43. Thus, we have rejected the first and third contentions raised by the learned counsel for the petitioner. But the second contention has been upheld by us. It is curious that the 1st respondent took refuge under the obligation cast upon him to follow the principles of natural justice, for not adhering to the time schedule. But, at the same time, he rejected the request for cross-examination on the ground that the Regulation prescribes a time limit for passing orders. It was a contradiction in terms.

44. Therefore, we hold that the impugned order is vitiated for non-compliance with the principles of natural justice. Hence, the writ petition is allowed and the impugned order is set aside. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V.RAMASUBRAMANIAN, J

J.UMA DEVI, J

Date: 19-12-2018

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L.R. copy to be marked

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