A GAJANAN VISHESHWAR BIRJUR

v.

UNION OF INDIA AND ORS.

JULY 12 , 1994

B [S.C. AGRAWAL AND B.P. JEEVAN REDDY, JJ.]

Customs Act, 1962—Sectoin 111 (d)—Confiscation of books—Books imported are writings, speeches and works of Mao, besides works of Marx, Engels and Lenin—Confiscation orders passed holding that import of said C *books in violation of Notification No. 77 dated 22nd September, 1956—Orders devoid of any findings in terms of Notification No. 77—Absence of specific violation of any particular clause even in show cause notices—Orders of confiscation—Held : Not Invalid—Constitution of India, 1950--Arts 19(1)(c) and 19(1)(g).*

D **The petitioner, a distributor and publisher of Marxist literature, imported books comparising mainly the writing of Mao. Books were confiscated holding that the import of the said books was in violation of the Notification No. 77 dated 22nd September, 1956. Petitioners challenged the validity of confiscation of books in this writ petition.**

E **Allowing the writ petition, this court**

HELD : 1.1. The confiscation orders are totally bald and devoid of any findings in terms of Notification No.77. The order does not say which F **of the books fall within the mischief of which clause of the Notification. It is not as if the Notification prescribes these books by name, i.e. by title. It only says that import of books containing matter of the nature mentioned therein is prohibited. The books imported are writing, speeches and works of Mao, besides the works of Marx, Engels and Lenin. If they were proposed to be confiscated, it was obligatory upon the authority to say** G **which book contained words of the nature mentioned in the Notification. Even the show cause notices did not specify which particular clause of Notification No.77 was violated by which imported book. [470-H; 471-A-B]**

1.2. The order of confiscation affects not only the fundamental right H **of the petitioner to carry on his occupation bad business but also his**

fundamental right of freedom of speech and expression (including his freedom to propagate the thought and ideas which he thinks are in the best interest of this nation). In such as case, it was required of the officer to point out which book contains works, signs or visible representation which are likely to incite or encourage any person to resort to violence or sabotage for the purpose of overthrowing or under mining the government established by law in India or in any state thereof or its authority in any area or that they attract any of the other clauses in Notification No.77. Absence of such specification both in the show cause notices and the final orders must be held to initiate the action taken. [471-G-H; 472-A-B]

Maneka Gandhi **v.** *Union of India,* **[1978] 2 SCR 621 and** *Oudh Sugar Mills Ltd.* **v.** *Union of India,* **AIR (1970) SC 1070, referred to.**

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 598 of 1979.

Under Article 32 of the Constitution of India.

A.K. Pande for the Petitioner.

Joseph Palli Vella and C.V. Subba Rao for the Respondents.

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. The validity of confiscation of books imported by the petitioner from Peoples Republic of China is questioned in this writ petition filed under Article 32 of the Constitution. The petitioner is a distributor and publisher of Marxist literature. In the year 1978, he imported books comprising mainly the writing of Mao Zedong (in both English and Indian languages). The books were imported by sea through Bombay and Calcutta Ports. They were seized at the said ports. Show cause notices were issued by the Assistant Collectors of Customs of both the places calling upon the petitioner to show cause within seven days why the seized books be not confiscated for violating Notifications No.25 dated 9th March, 1960, No. 77 dated 22nd September, 1956, No. 158 dated 26th November, 1969 and No. 186 dated Ist December, 1962 under Section 111(d) of the Customs Act, 1962. As many as sixteen show cause notices were issued by both the authorities put together. On receipt of show cause notices, the petitioner wrote to them protesting about the mere seven days'

A time given to him for filing his explanation. He wanted atleast a month's time for submitting his explanation. He submitted further that the Notifications referred to in the show cause notices were not available to a layman like him and requested for supply of copies thereof. The Assistant Collector of Customs, Calcutta replied to him stating that he has little option in the matter in view of the statutory notifications and that it is open to the B petitioner to make a personal representation, if he so desires. He, however, made no reference to the request of the petitioner for supply of copies of the notifications. Thereafter, orders of confiscation were passed holding that the import of the said books is in violation of the Notification No.77 dated 22nd September, 1956. The final orders do not say that any other C notification was violated. Complaining against the said orders, the petitioner approached this Court in the year 1979. Though the disposal of the books was stayed, his request for release of the books was not granted. The petition has come up for hearing after a period of fifteen years which period has seen cataclysmic changes in the communist world. Probably, no one would care to seize or confiscate the writings of Mao, if they are D imported today. That, of course, is later history.

The main submission of the writ petitioner is that he has a fundamental right to propagate Marxist thought as expounded by Lenin and Mao Zedong and that inasmuch as the books imported by him have not been E prescribed, he has a right to import and distribute them. He submits that the books are in no way prejudicial to the security of the State or public order and, therefore, the notifications banning the import of the said books are violative of his fundamental right under Article 19(1)(a). He seeks to invoke Article 19(1)(g) as well.

F

In the counter affidavit filed on behalf of the Government of India, it is stated that Section 3(1) of the Import and Export (Control) Act, 1947 empowers the Central Government to prohibit import of goods of any specified description and that the goods imported despite the said prohibi- G tion are liable to confiscation under Section 111(d) of the Customs Act. It is submitted that there was no duty cast upon the Assistant Collectors or Customs to supply the copies of notifications to the petitioner. They were also not bound to inform him of the date of hearing in the absence of an explanation from him. The confiscation is fully warranted by Notification H No. 77 and is unobjectionable.

Notification No. 77 dated 22nd September, 1956, as published in the Gazette of India, Part II-Section 3 dated 22nd September, 1956 reads as follows:

> "S.R.O. 2116.--In exercise of the powers conferred by section 19 of the Sea Customs Act, 1878 (8 of 1878), as in force in India and as applied to the State of Pondicherry, and in supersession of the notification of the Government of India in the Ministry of Finance (Revenue Division) No. 49-Customs, dated the 2nd August, 1952, the Central Government hereby prohibits the bringing by sea or by land into India or the State of Pondicherry of any newspaper, news-sheet, book or other document containing words, signs or visible representations which are likely to—
>
> (i) incite or encourage any person to resort to violence or sabotage for the purpose of overthrowing or undermining the Government established by law in India or in any State thereof or its authority in area; or
>
> (ii) incite or encourage any person to commit murder, sabotage or any offence involving violence; or
>
> (iii) incite or encourage any person to interfere with the supply and distribution of food or other essential commodities or with essential services; or
>
> (iv) seduce any member of any of the armed forces of the Union or of the Police forces from his allegiance or his duties or prejudice to the recruiting of persons to serve in any such forces or prejudice the discipline of any such forces; or
>
> (v) promote feelings of enmity or hatred between different sections of the people of India; or which
>
> (vi) are groosly indecent or are scurrilous or obscene or intended for black mail."

We may now notice the final orders of confiscation. One of the orders passed by the Collector of Customs, Calcutta on April 17, 1979, is filed as an annexure to the writ petition. It reads as follows:

"Subject : Datained foreign (Postal) Packets contaning objectionable publications. Selected works of Mao Vol.IV Mao Tse Tung Ki Sankalita Grantha-4, 1, Quotations from Chairman Mao Tse Tung, Mao Tse Tung five essays on Philosophy.

The publications referred to above were examined by the Customs at Calcutta and were found to contain objectionsable Government of India, Ministry of Finance (Deptt. of Revenue & Insurance) Prohibitory Notifications No. 77 dt. 22.9.56, read with Ministry's letter No. NIL. The publications involved were, accordingly, liable to confiscation under section 111(d) of the Customs Act, 1962. the addressee of the packets were, therefore, called upon to intimate to this office whether they had any objection to the publications in question being confiscated or whether they would prefer a personal hearing before the Assistant Collector of Customs, Postal Appraising Department, Calcutta-1, in the matter.

The addressee did not respond to the Show Cause memo issued on 21.3.1979 in the Customs House Notice Board and hence the cases are being adjudicated ex-parte on their merits.

As the entry or importation of these publications into India cannot be allowed in terms of the Government of India's prohibitory Notifications and Ministry's letter No. cited above, these are liable to confiscation.

Order

I, accordingly, order that the publications in question be confiscated absolutely under section 111(d) of the Customs Act '62'."

(Para-2 of this order says that the petitioner did not respond to the show cause memo dated 21st March, 1979. It is, however, admitted in the counter-affidavit that in response to earlier show cause notices the petitioner did indeed ask for more time and for supply of copies of the notifications. It appears probable that the petitioner did not respond to subsequent show cause notices.

It would be seen immediately that the confiscation orders are totally bald and devoid of any findings in terms of Notification No.77. The order

does not say which of the books fall within the mischief of which clause of the Notification. It is not as if the Notification proscribes these books by name, i.e., by title. It only says that import of books containing matter of the nature mentioned therein is prohibited. The books imported are writings, speeches and works of Mao, besides the works of Marx, Engels and Lenin. If they were proposed to be *confiscated,* it was obligatory upon the authority to say which book contained words of the nature mentioned in the Notification. In this context, it is relevant to note that even the show cause notices did not specify which particular clause of Notification No.77 was violated by which imported book. Some of the show cause notices make interested reading. One of the notices (filed as an annexure to the writ petition) issued by the Calcutta officer says: "on examination, the above mentioned publications appear to offend one or more of the G.O.I.E.(D.R.) Notfn.No.25 of 9.2.(3?).60, Notfn.No.77 of 22.9.56 and Notfn.No.158 of 26.11.69 and Notfn.No.186 dated 1.12.62 which prohibits the export into India of any such publications. The publications, therefore appear to be liable to confiscation under section 111(d) of Customs Act, 62." The casual manner in which the matter has been dealt with is self-evident.

Though it is stated that in the counter affidavit - and also in one of the letters written by the Assistant Collector of Customs, Calcutta to the petitioner - that the works of Mao Zedong are banned by Notification No.77, the Notification does not bear out the said assertion. The Notification is a general one saying that books containing words which have the effect of inciting or encouraging any person to do any of the acts specified therein are banned. In such a situation, unless the order specifies and/or refers to the words or portions having a particular effect within the meaning of Notification No.77, the order cannot be sustained. The mere fact that the petitioner did not submit his explanation is no answer. It would have been an answer, if the show cause notices had specified the offending material and the petitioner had failed to respond. But that is not the case here. As pointed out above, the show cause notices themselves are bald and drawn up in a casual manner. It must be remembered that the order of confiscation affects not only the fundamental right of the petitioner to carry on his occupation and business but also his fundamental right of freedom of speech and expression (including his freedom to propagate the thoughts and ideas which he thinks are in the best interest of this nation). In such a case, it was required of the officer to point out which book

A contains words, signs or visible representations which are likely to incite or encourage any person to resort to violence or sabotage for the purpose of overthrowing or undermining the government established by law in India or in any State thereof or its authority in any area or that they attract any of the other clauses in Notification No.77. Absence of such specification both in the show cause notices and the final orders must be held to vitiate the action taken.

In *Maneka Gandhi* v. *Union of India,* [1978] 2 SCR 621, it was observed (by Bhagwati,J.):

> "It is true, and we must straightway concede it, that merely because a statutory provision empowering an authority to take action in specified circumstances is constitutionally valid as not being in conflict with any fundamental rights, it does not give a carte blanche to the authority to make any order it likes so long as it is within the parameters laid down by the statutory provision. Every order made under a statutory provision must not only be within the authority conferred by the statutory provision, but must also stand the test of fundamental rights. Parliament cannot be presumed to have intended to confer power on an authority to act in contravention of fundamental rights. It is a basic constitutional assumption underlying every statutory grant of power that the authority on which the power is conferred should act constitutionally and not in violation of any fundamental rights. This would seem to be elementary and no authority is necessary in support of it."

To the same effect are the observations of Hegde,J. in *Oudh Sugar Mills Ltd.* v. *Union of India,* A.I.R. (1970) S.C. 1070. The learned Judge said:

> "It must be remembered that right to trade is a guaranteed freedom. That right can be restricted only by law, considered by the Courts as reasonable in the circumstances. Not only the law restricting the freedom should be reasonable, the orders made on the basis of that law should also be reasonable."

In view of our opinion on the validity of the orders of confiscation, it is unnecessary to go into the question whether Notification No.77 is itself

violative of Article 19(1)(a) or 19(1) (g) of the Constitution. A

Before parting with this case, we must express our unhappiness with attempts at thought control in a democratic society like ours. Human history is witness to the fact that all evolution and all progress is because of power of thought and that every attempt at thought control is doomed to failure. An idea can never be killed. Suppression can never be a successful permanent policy. Any surface serenity it creates is a false one. It will erupt one day. Our constitution permits a free trade, if we can use the expression, in ideas and ideologies. It guarantees freedom of thought and expression - the only limitation being a law in terms of clause (2) of Article 19 of the Constitution. Thought control is alien to our constitutional scheme. To the same effect are the observations of Robert Jackson,J. In *American Communications Association* v. *Douds,* 339 U.S.382, 442-43 [1950], with reference to the U.S. Constitution: B C

> "thought control is a copyright of totalitarianism, and we have no claim to it. It is not the function of our Government to keep the citizen from falling into error; it is the function of the citizen to keep the Government from falling into error. We could justify any censorship only when the censors are better shielded against error than the censored." D

The learned counsel for the petitioner requested lastly that his client is entitled to damages/compensation for the illegal seizure and confiscation of the said publications. He submitted that he has been disabled from selling the said books which he had purchased at a substantial cost. Today, he says, the said publications have lost their value on account of passage of time and are no longer saleable. People generally do not buy old publications, submits the counsel. Though we find some force in the submission, we do not have any specific data before us regarding the value of the said books or with reference to their saleability today. We, therefore, leave the petitioner to work out his remedies at law in a separate proceeding. We, however, think that he is entitled to substantial costs. Accordingly, we allow the writ petition and quash the impugned orders of confiscation. The petitioner shall be entitled to his costs which we quantify at Rs.10,000/-. All the books seized shall be returned to the petitioner forthwith. E F G

A.G. Petition allowed.