

CALCUTTA HIGH COURT

N.C. Jute Mills

Vs.

T.N. Kaul

Matter No. 343 of 1968

(Sabyasachi Mukharji, J.)

18.07.1975

ORDER

Sabyasachi Mukharji, J.

1. The petitioner is a public limited company under the Companies Act, 1956. The petitioner owns two jute mills, i.e. Albion Jute Mills and Lothian Jute Mills at Budge Budge in West Bengal and a factory at Varanashi in Uttar Pradesh known as Sahu Chemicals and Fertilizers, Messrs. Sahu Jain Ltd., was at all material times the managing agents of the petitioner. On Monday, the 13th May, 1968, there was a search at the premises No. 11, Clive Row, Calcutta and the search continued on the 14th and 15th May, 1968 and certain documents and papers were seized. The propriety of the search and the validity of the seizure are the subject-matters of challenge in this application under Article 226 of the Constitution. The search was conducted by virtue of an authorization issued by the respondent No. 1 Assistant Director, Enforcement Directorate, Ministry of Finance under Section 19-D of the Foreign Exchange Regulation Act, 1947. As a result of this search certain documents were seized. I am told that after the seizure, there was an adjudication proceeding under Section 19-E of the Foreign Exchange Regulation Act, 1947, and there was an appeal preferred which is pending before the Appellate Board. In this application two main grounds were urged. The first ground was that the issue of authorization by the respondent No. 1 was illegal and the respondent No. 1 had no reason to believe that any documents including any books of account or foreign exchange correspondence relevant to the proceeding under the Act were secreted at the premises when the search was conducted. Secondly, it was urged that there has been non-compliance with the requirements of sub-section (2) of Section 19-D of the Foreign Exchange Regulation Act, 1947. It is, therefore, necessary to refer to the provisions of Section 19-D of the Act. The said section provides as follows:

"19-D. Power to search premises.- (1) If an officer of Enforcement, not below the rank of Assistant Director of Enforcement, has reason to believe that any documents which in his opinion will be useful for or relevant to any proceeding under this Act, are secreted in any place he may authorize any officer of Enforcement to search for and seize or may himself

search for and seize such documents.

(2) The provisions of the Criminal Procedure Code, 1898, relating to searches shall, so far as may be, apply to searches under this section subject to the modification that subsection (5) of Section 165 of the said Code shall have effect as if for the word 'Magistrate', wherever it occurs, the words 'Director of Enforcement or other officer exercising his powers', were substituted."

2. In the affidavit-in-opposition in answer to this rule nisi issued in this case, the respondent No. 1 has given reasons for the authorization. After denying the allegations made on behalf of the petitioner, he has craved leave to refer to the letter of the Reserve Bank of India dated 3rd January, 1966 to the Deputy Director, Enforcement Directorate and to the complaint filed by the City Trade and Industry Ltd., New York, against the petitioner company in the Supreme Court, New York. The copies of the aforesaid documents have been annexed to the said affidavit-in-opposition. He has further stated that limited examination of the seized documents had brought to light documents which appear to be useful or relevant and it appeared that the export of jute carpet backing cloth of the approximate value of 30 million U.S. Dollars or more were made by New Central Jute Mills Co. Ltd. on consignment basis to City Trade and Industries Ltd. of U.S.A. who were their agents and not on the basis of outright sale from one principal to another and the proceeds of re-sale price of the goods in U.S.A. and Canada were much higher than the value of the exports declared by the petitioner for the purpose of repatriation in the relevant invoices and G.R.I. forms. In paragraph 14 of the affidavit-in-opposition he has stated that the petitioner was an exporter of jute goods. From 1959 till about March, 1964 the petitioner had exported large consignments of jute and carpet backing cloth to one City Trade and Industry Ltd., New York, of the value of several millions of U. S. Dollars. In relation to certain matters regarding the petitioner his attention was drawn amongst others to certain documents, namely, the letter dated 3rd January, 1986 from the Reserve Bank of India, Exchange Control Department, to the Deputy Director, Enforcement Directorate and a complaint of the City Trade and Industries Ltd. against the company filed in the Supreme Court of the country of New York. He has further stated that going through the said documents and upon making certain discreet enquiries and after careful consideration he had reason to believe that it was necessary to make careful enquiries about the allegations and further documents and papers which would be relevant or useful to the said enquiry or proceedings under the Foreign Exchange Regulation Act were secreted in the offices of the petitioner New Central Jute Mills Co. Ltd. Sahu Jain Ltd. and Sahu Jain Services Ltd. and their Directors at No. 11, Clive Row, Calcutta, and as such he passed the order for search. The letter of complaint of the City Trade and Industry Ltd. against the petitioner was filed before the Supreme Court of the City of New York in September 1965. A copy of certain extract from the complaint of the City Trade and Industries Ltd. against the petitioner has been annexed to the affidavit-in-opposition. The said extract reveals the allegations made by the City Trade and Industry Ltd. against the petitioner company. It is stated that the said City Trade and Industry Ltd. had to bear the expenses of one employee of the petitioner company M. Sivaram. It further stated that the claim of the New Central Jute Mills Co. Ltd. against the City Trade and Industries Ltd. included the sum of Rs. 44,100 representing United states Dollars paid by the City Trade and Industries Ltd. to an English machinery firm for the account of and as the down payment by New Central Jute Mills Co. Ltd. at the request of New Central Jute Mills Co. Ltd., for the reason that the Reserve Bank's approval for payment thereof by New Central Jute Mills Co. Ltd. was not readily forthcoming and included payment of Rs. 52,500 representing

United States Dollars forwarded to Switzerland by City Trade and Industries Ltd. at the request and for the account of New Central Jute Mills Co. Ltd., and other obligations of New Central Jute Mills Co. Ltd. to City Trade and Industries Ltd. which the New Central Jute Mills Co. Ltd. had acknowledged as owing by New Central Jute Mills Co. Ltd. to City Trade and Industries Ltd. Forwarding this complaint in the letter dated 3rd January, 1966 the Deputy Controller had written to the Deputy Director, Enforcement, to consider the matter and take necessary action.

3. The question is, whether from the aforesaid materials it could be said that the respondent No. 1 had reasons to authorise the search in terms of Section 19-D of the Act. As I have mentioned before, the section requires that he must have reason to believe that the documents which would be useful to the proceedings are secreted. So, it is not only necessary that he should have reason that the documents would be useful or relevant which are to be found, but information must be such that it must lead to the formation of belief that the documents are secreted. For the proposition that requirements of Section 19-D had been fulfilled in this case, counsel for the respondent No. 1 drew my attention to the observations of the Supreme Court in the case of *R.S. Seth Gopikisan Agarwal v. R.N. Sen, Asstt. Collector of Customs*¹, and the observations appearing at paragraphs 6 and 7 of the judgment as also in paragraph 9. The scope and effect of Section 19-D and the extent to which materials can be scrutinised by the Court were exhaustively dealt with in the judgment delivered by Arun K. Mukherjee, J. in a Bench decision in the case of *Hindusthan Motors Limited v. T.N. Kaul*² a judgment to which I was also a party. After reviewing all the relevant cases and the relevant provisions including the cases referred to and relied upon on behalf of the petitioner, it was observed that fulfillment of the condition precedent to the exercise of the power conferred by sub-section (1) of Section 19-D was justiciable. If the jurisdiction of the officer who exercised the power was challenged in a court of law, it was incumbent upon the officer concerned to prove by giving satisfactory evidence of objective facts that the condition precedent had been fulfilled. The officer concerned had to show that he had reason to believe that documents which would, in his opinion, be relevant to or useful for proceedings either pending or contemplated under the Foreign Exchange Regulation Act were secreted or were likely to be secreted. The officer whose jurisdiction was challenged had to prove to the satisfaction of the Court the fulfillment of the condition precedent by reference to facts or materials which were known to him prior to the issue of authorization or warrant for search. Materials or facts which came into the possession of the officer subsequently were not, however, altogether irrelevant. Though such facts and materials standing by themselves alone could not establish the jurisdiction of the officer, they could be used to corroborate the officer's contention that he had the requisite reason to believe. In this case, apart from the two documents, one of September 1965 and another of June 1966, in which certain allegations had been made by City Trade and Industries Ltd. regarding transactions they had with the New Central Jute Mills Co. Ltd., there is no further document or materials indicated in the affidavit filed on behalf of the respondent. It may also be mentioned that the said allegations of the City Trade and Industries Ltd., as it appears, were not unknown to the respondent. The Reserve Bank authorities were kept informed about the said complaint. The complaint made by City Trade and Industries Ltd. was ultimately dismissed by the American Court asking the parties to go to arbitration according to

¹ AIR 1967 SC 1298

² in Appeal No. 280 of 1970, Judgment delivered on 25th March, 1971 (Cal)

arbitration clause and it appears from the statement made in the affidavit-in-reply that the arbitration was held in India and *ex parte* an award was made in favour of the New Central Jute Mills Co. Ltd. For information given in 1966 search in 1968 cannot be justified. For formation of

belief in 1968 that documents were secreted or likely to be secreted it is not proper to refer to transactions or information which came into possession two and a half years ago. The belief required is not that documents useful would be found at a particular place but that those documents are 'secreted'. These statements were also known to the respondents and in respect of which it is not stated that this information was not known to the respondents prior to the filing of the complaint by the City Traders. These, in my opinion, cannot be justification for the formation of belief that the documents were 'secreted' to Â authorize a search. Apart from the said fact no other materials were placed before me. In the aforesaid view of the matter I am of the opinion that in this case the respondents have failed to establish that they had reasons to believe that the documents were secreted or were likely to be secreted.

4. The second ground of challenge in this case was about non-compliance with the provisions of sub-section (2) of Section 19-D of the Act. It was stated that the reasons were not recorded. In this connection counsel for the respondents drew my attention to the observations of the Supreme Court in the case of *R.S. Seth Gopikisan Agarwal v. R.N. Sen, Assistant Collector of Customs and Central Excise, Raipur*³, and the observations of the Court appearing at paragraph 9. Reliance was also placed on the observations of the Supreme Court in the case of *Radha Kishan v. State of Uttar Pradesh*⁴, in aid of the proposition that even if search was invalid, seizure was good. Such a proposition by itself in my opinion is not correct. What is meant by is that the materials gathered by search can certainly be utilised even though search was illegal. In this case I am not concerned with the validity of the adjudication proceedings consequent upon the search and seizure. I am concerned with the documents that have been seized as a result of the search. In the aforesaid case namely, *Hindustan Motors Ltd., v. T.N. Kaul*⁵, it was further held that the procedural safeguards under Section 165 (1), (3) and (5) were all engrafted on all the operations of search conducted by virtue of the powers conferred by sub-section (1) of Section 19-D of Foreign Exchange Regulation Act, 1947. In this case no evidence was adduced to show that the said procedural formality had been observed. Therefore, there was violation of the provisions of subsection (2) of Section 19-D of the Act also.

5. In the result the petitioner succeeds and the rule is made absolute, I direct that the said authorization on the 13th May, 1968, be quashed. The respondents are directed to return the documents seized as a result of the said illegal search. But this will not authorize the petitioner to claim the return of the documents which have been exhibited or made exhibits in any adjudication proceedings. Apart from the said documents all other documents seized as a result of the said search should be returned.

6. The Rule is made absolute to the extent indicated above. Let writs in the nature of *certiorari* and *mandamus* issue accordingly. In the facts and circumstances of the case there will be no order as to costs. Operation of this order is stayed for six weeks.

Petition allowed.

³ AIR 1967 SC 1298

⁵ Appeal No. 280 of 1970, D/-25-3-1971 (Cal)

⁴ AIR 1963 SC 822 at p. 824