

BOMBAY HIGH COURT

Jagannath Prabhashankar Joshi

Vs.

Varadkar

Appeal No.59 of 1959 and Misc. Petn. No.81 of 1959

(Mudholkar, Ag., C.J. and Shah, J.)

09.09.1960

JUDGMENT

Mudholkar, Ag. C.J

1. This is an appeal from the Judgment of Mr. Justice Shelat in Misc. Petition No. 81 of 1959. This petition was instituted by the two petitioners under Article 226 of the Constitution challenging the decision of the first respondent, the Joint Chief Controller of Imports, Bombay refusing to grant a license to them for importing certain motor vehicle parts and accessories.

2. Prior to August, 1957, the firm of Allied (A to Z) Agencies consisted of three persons as partners, those persons being two petitioners Jagannath Prabhashankar Joshi and Shankerlal Prabhashanker Trivedi and one Shantilal Karsamji Bhatt. This firm carried on business of import and export and was recognized by the Import and Export Authorities as an Established Importer. Certain quota certificates were granted to this firm for importing automobile parts and accessories.

3. By a Deed of Dissolution dated 6th of September, 1957 the firm was dissolved by the retirement of Shantilal as from the 3rd of August, 1957. The firm was thereafter reconstituted and the only members thereof since then are the two petitioners. At the time of Shantilal's retirement, a sum of nearly Rs. 75,000/- was found due and payable to him in consideration of his releasing in favour of the continuing partners his right, title and interest in the assets and goodwill of the firm. On the 9th of September 1957 Shantilal made a declaration in which he has made the following declaration amongst others:

"Under the Deed of Dissolution of Partnership and Release dated 6th September, 1957 made between me (therein called "the Retiring Partner") on the one hand and the said Shri Jagannath Prabhashankar Joshi and Shankerlal Prabhashanker Trivedi (therein called "the

Continuing Partners") on the other hand, I as Retiring Partner having released relinquished transferred all my share right title interest claim and demand whatsoever in the said partnership business including all the stock in trade goods assets debts liabilities cash capital as also the goodwill, tenancy rights, quota rights in the Import and Export Licenses etc. in favour of the said Continuing Partners".

Then again it is stated :

'Accordingly I say that the said Mr. Jagannath Prabhashankar Joshi and Mr. Shankerlal Prabhashanker Trivedi have since the 3rd day of August, 1957 been carrying on the said business for their own benefit in the same firm name and style and at the said place".

It may be mentioned, however, that neither the affidavit nor the Deed of Dissolution contains a clear statement to the effect that the continuing partners have taken over all the assets and liabilities of the dissolved firm.

4. On the 28th of September, 1957 the petitioners made an application to the second respondent, the Chief Controller of Imports and Exports, for the transfer to them of the import quota certificates which were held in the name of the original firm, and forwarded with that application copies of the Deed of Dissolution and of the declaration made by Shantilal. In that application they informed the second respondent that they desired to have the import licenses formerly standing in the name of the old firm transferred to them. On 13th November, 1957, the second respondent informed the petitioners that their request for the transfer of the quota rights could not be considered because the documents furnished by them were defective. He pointed out that the Deed of Dissolution dated 6th of September, 1957 did not state in clear terms that the continuing partners had taken over the entire assets, liabilities and goodwill of the dissolved partnership concern and that in the absence of any statement to that effect in the Deed of Dissolution the Chief Controller of Imports and Exports was of the opinion that the documents were defective. On the 3rd of December, 1957 the petitioners' attorneys addressed a letter to the second respondent expressing their surprise "at the reading and interpretation of the Deed of Dissolution and Release dated the 6th of September, 1957". According to them the recitals and the operative part of those two documents clearly showed that the retiring partner had released and transferred all his 'share right title interest claim and demand whatsoever' in the dissolved firm and then added,

"In other words our clients have as such taken over the said partnership concern together with all assets debts liabilities goodwill tenancy rights etc. thereof absolutely which fact we are instructed by our clients to confirm which we hereby do and say that they have not only in fact taken over all assets, goodwill, cash capital profits debts tenancy rights furniture fixtures etc. including the quota rights under the export import licenses of and belonging to the old firm but they have also undertaken and agreed to pay and discharge

all the debts and liabilities etc. thereof without holding the retiring partner liable or responsible therefor". Along with this letter they enclosed a copy of the document called "deed of confirmation" executed by the petitioners on the 3rd of December, 1957 wherein amongst other things they have stated as follows : "Accordingly, we hereby confirm that we as the Continuing Partners have taken over the entire assets liabilities and goodwill of the said old partnership concern with intent and purpose that the Retiring Partner is not liable to pay any debts and liabilities due or owing by the said old firm to any person or persons whatsoever".

It may be mentioned that according to the petitioners the letter of the 28th of September, 1957 was to be treated as an application. They have further accepted the position that the letter received by them from the second respondent dated the 13th of November, 1957 amounted to a rejection of their application. Along with this letter the second respondent had also forwarded the copies of the documents enclosed by the petitioners along with their application dated the 28th of September, 1957. These documents were again sent by the petitioners' attorneys to the second respondent along with their letter dated the 3rd of December, 1957 and a copy of the Deed of Confirmation of the same date. In their letter addressed to the second respondent and bearing the date 8th of July, 1958 the petitioners have characterized their letter of the 3rd of December, 1957 also as an application to the second respondent.

5. The second respondent did not take any action on this application immediately despite the fact that the matter was very urgent with the result that the petitioners had to send not less than six reminders. Those reminders bear the dates 8-1-58, 11-1-58, 16-1-58, 31-1-58, 4-2-58 and 13-2-58. On the 21st of February, 1958 the second respondent informed the petitioners that the "registered declarations could not be accepted in place of the registered deeds" and that, therefore, the petitioners' request for transfer of the quota rights could not be acceded to on the basis of the documents furnished by them. On the 27th of March, 1958 the petitioners and Shantilal executed a document called "the supplementary deed of dissolution of partnership and release" which inter alia states as follows :

"And whereas it was intended under the said Deed of Dissolution and Release that the partners have taken over to themselves the entire assets, liabilities as also the goodwill of the said old firm including the quota rights in the Export/Import Licenses, it is felt that it was not so stated in clear terms in the said Deed of Dissolution and Release. Now therefore this Indenture witnesses that in order to give clear effect and meaning to the said Deed of Dissolution and Release they the Continuing partners do and each of them doth hereby admit and confirm that they the Continuing partners have in fact taken over for themselves all the entire assets, the name of the said dissolved firm goodwill debts liabilities etc. as also all benefits rights and interests of and belonging to the Retiring Partner in the import/export licenses and the quota rights thereunder"

They sent this document along with a fresh application dated the 27th of April, 1958 to the second respondent. By his letter dated the 6th of June, 1958 the second respondent informed the

petitioners that instructions were sent to the first respondent, the Joint Chief Controller of Imports, that quota licenses admissible to the old firm on the basis of the past imports/exports should "in future" be issued in favor of the petitioners.

6. It may be mentioned that on the 27th of December, 1957 the petitioners had already applied to the first respondent for grant of an import license for the period October, 1957 to March, 1958. It is common ground that an application for grant of an import license for this period had to be made on or before 31st December, 1958. On the 23rd of June, 1958 the first respondent informed the petitioners that their application could not be considered "under the existing instructions" received from the second respondent. On the 8th of July, 1958 the petitioners wrote to the second respondent requesting him to consider their case for the license and issue instructions to the first respondent to grant it. By his reply dated the 23rd of July, 1958 the second respondent informed the petitioners that as they had failed to produce the documents within the licensing period i.e. before the 31st of March, 1958, their request for the license could not be acceded to. It may be mentioned that the petitioners had in the meantime preferred an appeal before the second respondent on the 21st of July, 1958 and later they preferred a revision application on the 9th of September, 1958. The appeal as well as the revision application were rejected by the second respondent. Thereupon the petitioners preferred a petition before the Minister of Commerce and Industry on the 27th of November, 1958. This petition was also rejected. It was thereafter that they made a petition before this Court under Article 226 of the Constitution.

7. The petitioners' case is that the Order of the first respondent dated 23rd June, 1958, the Order of the second respondent contained in the letter dated 22nd August, 1958 and the Order dated 4th October, 1958 are illegal and bad in law. The main ground on which the Order of the first respondent is challenged is that he had no power or authority to refuse to grant a license after the second respondent had given his approval to the transfer of the quota certificates of the dissolved firm in their favor. According to them, once the approval is granted the transfer of quota rights related back to the date of the dissolution of the old firm and therefore they would be entitled by virtue of that approval to the transfer of the quota rights to obtain import licenses as from the date of transfer and not from the date of the approval of the transfer of the second respondent.

8. In order to appreciate this contention it would be desirable in the first place to refer briefly to the conditions upon which imports are allowed in India and then to the provisions of the relevant laws and instructions which govern this matter.

9. Import trade control was first introduced in India in May, 1940 as a war-time measure, under the Defense of India Rules, primarily with the object of conserving India's foreign exchange resources. After the cessation of hostilities and the lapse of the Defense of India Rules in September 1946, import control was kept alive by the Emergency Provisions (Continuance) Ordinance, 1946, for a period of one year, because of the conditions prevailing at that time. Eventually it was replaced by the Imports and Exports (Control) Act, 1947. This Act was

originally intended to be in force for three years only, but apparently because exchange difficulties continued to exist it was extended from time to time and under the present extension it will remain in force till the 31st of March, 1965.

10. In exercise of the powers, conferred by the Act the Central Government promulgated the Imports (Control) Order, 1955. Notifications have been issued by the Central Government from time to time on the basis of the Act and the Order. The Rules and the procedure governing the imports issued by the Government of India are to be found in the Book entitled "Import Trade Control Hand Book of Rules and Procedure, 1956". The instructions contained therein are modified from time to time and these modifications are to be found in another publication of the Government which is issued by it every six months and which bears the title "The Import Trade Control Policy".

11. Mr. R.J. Joshi, who appears for the petitioners, contends that these instructions are not only binding upon the authorities but have a force of law. Mr. Laud, who appears for the respondents, disputes this position, but says that for the purpose of this case, it may be assumed that they are not only binding upon the authorities but have a force of law. We are, therefore, deciding this case upon this footing.

12. Section 3 of the Imports and Exports (Control) Act, 1947 confers power upon the Central Government to make provisions for prohibiting, restricting or otherwise controlling in all cases or in specified classes of cases, and, subject to such exceptions, if any, as may be made by or under the order the import, export etc. of goods of any specified description. It was in exercise of this power that the Imports (Control) Order, 1955 was promulgated by the Central Government. Clause 3 of this Order provides that except as otherwise provided in the Order no person shall import any goods of the description specified in Schedule I, except under, and in accordance with, a license or a customs clearance permit granted by the Central Government or by any officer specified in Schedule II. Clause 5 of the Order provides for the attaching of conditions to the license. The conditions which could be imposed are set out in the Order thus :

"(1) The licensing authority issuing a license under this Order may issue the same subject to one or more of the conditions stated below :

(i) that the goods covered by the license shall not be disposed of, except in the manner prescribed by the licensing authority, or otherwise, dealt with without the written permission of the licensing authority or any person duly authorized by it;

(ii) that the goods covered by the license on importation shall not be sold or distributed at a price exceeding that which may be specified in any directions attached to the license;

(iii) that the applicant for a license shall execute a bond for complying with the terms subject to which license may be granted.

(2) A license granted under this Order may contain such other conditions, not inconsistent with the Act or this Order, as the licensing authority may deem fit.

(3) It shall be deemed to be a condition of every such license that:

(i) No person shall transfer and no person shall acquire by transfer any license issued by the licensing authority except under and in accordance with the written permission of the authority which granted the license or of any other person empowered in this behalf by such authority.

(ii) that the goods for the import of which a license is granted shall be the property of the licensee at the time of clearance through Customs, unless the said license is covered by a letter of authority issued by the licensing authority.

(4) The licensee shall comply with all conditions imposed or deemed to be imposed under this clause".

Clause 6 of the Order deals with the circumstances under which a license may be refused. Those circumstances are as follows :

"(a) if the application for the license does not conform to any provision of this Order;

(b) if such application contains any false, or fraudulent or misleading statement;

(c) if the applicant uses in support of the application any document which is false or fabricated or which has been tampered with;

(d) if the applicant on any occasion has tampered with an import license or has imported goods without a license or has been a party to any corrupt or fraudulent practice in his commercial dealings;

(e) if the application for an import license is defective and does not conform to the prescribed rules;

(f) if the applicant commits a breach of the Import Trade Control Regulations;

(g) if the applicant is not eligible for a license in accordance with the Import Trade Control Regulations;

(h) if the licensing authority decides to canalize imports and the distribution thereof through special or specialized agencies or channels".

13. The categories of importers specified in paragraph 12 of the "Import Trade Control Policy" are as follows :

"(a) Established Importers,

(b) Actual Users.

(c) New Comers, and

(d) Others, who do not fall in any of the above categories".

The expression "Established Importers" is defined in paragraph 15 of this Book as follows :

"Established Importers are persons or firms who have been actually engaged in import trade of the articles comprised in any one serial number or sub-serial number, as the case may be, of the I. T. C. Schedule during at least one financial year (1st April to 31st

March) falling within the basic period as specified for the particular serial number or sub-serial number".

We are concerned here with the imports for the period, 1st October 1957 to 31st March, 1958. Under paragraph 13 of the aforesaid Book the last date for submission of applications by Established Importers for the grant of import licenses was 31st December, 1957. Paragraph 13 further provides that applications received after the said date were liable to be summarily rejected. It further provides as follows :

"Firms which have undergone changes in their constitution should submit their applications for quota licenses to the appropriate licensing authority, if they can do so, by the prescribed date(s), after the sanction regarding transfer of quota rights is issued in their favor".

14. The subject of "Transfer of Quotas" is dealt with in paragraph 72 of this Book. After stating that the system of granting licenses to Established Importers is on the basis of their past imports, it goes on to say that when a change occurs in the constitution of a firm, the reconstituted firm will not be entitled to the quotas of the original; firm until the transfer of the quota rights in their favor has been approved by the Chief Controller of Imports and Exports. The general principles followed in regard to such cases are set out in sub-paragraph (a) of paragraph 72 which runs thus :

"(a) Transfer of quota rights :

(i) Where the business of a firm is transferred, together with all its assets, liabilities and goodwill to another firm so as to constitute it as its successor in all respects, the transferee firm shall get the quota rights of the transferred firm.

(ii) Where a firm is dissolved or wound up or ceases to carry on business without making provision for transfer of its business, assets, liabilities and goodwill, no one will be entitled to the quota rights admissible to that firm.

(iii) Where a firm consists of several partners, and its constitution undergoes a change by retirement of some partners or admission of other partners, the reconstituted firm, continuing the original business in the same name and taking over all its assets and liabilities, shall be entitled to get the quota rights of the original firm. But the retiring partners starting a new business whether in the same line or otherwise would not be entitled to get any quota rights.

(iv) Where a firm changes its name without any change in its constitution, its quota rights will be transferred to its new name provided it has ceased to do business in the old name and title".

Sub-paragraph (e) of this paragraph provides that all transfers or changes in the constitution of a firm must be made by a Deed or Deeds registered with the Registrar of Documents except in

certain cases. It is admitted before us that the present case does not fall within any of the exceptions. Sub-paragraph (t) deals with "Interim Relief" and we would quote it in extenso. It runs thus :

"(f) Interim Relief :

Registration of documents ordinarily takes about 2-6 months. To avoid hardship to the trade, claims for the transference of rights will be considered on the basis of a copy or copies of the relevant deed or deeds duly certified by a competent authority that it is a true copy of the original deed lodged for registration, with the Registrar of Documents. The original receipt issued by the Registrar should also be produced along with the certified copies of the agreement (s). In such cases, transfer of quota rights if otherwise due, will be allowed subject to production of the original deed or deeds in due course". Paragraph 73 provides that parties claiming transfer of quota rights must produce certain documents. Sub-paragraph (iv) of this paragraph provides, among other things, that a partnership concern should produce the deed or deeds of partnership and where a person has retired an affidavit of the retiring partner stating that he has retired and relinquished all his rights in favor of the continuing partner or partners. Now, while an application for grant of a license could be made to the Joint Controller of Imports and Exports, an application for transfer of the quota rights has to be made to the Chief Controller of Imports and Exports, i.e. to a different authority. It is only after the transfer of quota rights is sanctioned by the Chief Controller of Imports and Exports that the re-constituted firm would be entitled to obtain an import license. This position is not disputed before us.

15. In accordance with the aforesaid provisions the petitioners did make an application to the Chief Controller of Imports and Exports for the transfer of the quota rights of the dissolved firm to them. Along with that application they submitted, as already stated, copies of the Deed of Dissolution of the Partnership and the affidavit of the retiring partner dated 9th of September, 1957. After a perusal of the Deed of Dissolution the Chief Controller of Imports and Exports came to the conclusion that this document does not state in clear terms that the continuing partners have taken over the entire assets, liabilities and goodwill of the dissolved firm and upon this ground the Chief Controller of Imports and Exports rejected the petitioners' application. It was contended before us that this interpretation was not correct and that we should ourselves construe the aforesaid Deed of Dissolution. In our opinion, this is not a matter which we could go into in a Writ Jurisdiction. All that we are entitled to look into is whether the public authority acted within the ambit of its powers or transgressed those limits. It is not for us to say whether it has taken a correct view of the facts or an erroneous view of the facts or whether it has interpreted a document rightly or wrongly. Where a public authority has jurisdiction to decide a point, it can decide it rightly or wrongly. If it decides it wrongly, that would be unfortunate, and this Court would not be entitled to sit in judgment over the view taken by it. We, however, find that the interpretation placed upon the relevant recitals in the Deed of Dissolution cannot be regarded as an impossible or even an unreasonable view. The relevant recitals are as follows :

"In pursuance of the said agreement and in consideration of the premises and for the consideration, of the said sum of Rs. 74,319.40 nP by the Continuing Partners paid in manner aforesaid the said partnership be and shall be deemed to have been dissolved with effect from and after the 3rd day of August, 1957 and this Indenture further witnesseth that in consideration of the said agreement and for the consideration aforesaid, He the Retiring Partner doth hereby release and discharge absolutely for ever to and in favor of the Continuing Partners all his share, right, title and interest claims and demands whatsoever in cash, capital etc. including, goodwill of the said firm as also the export/import licenses and quota rights thereof and the tenancy rights in the premises belonging to the same and all and singular the outstanding debts and credits due and owing to the said firm from or by any person or persons whatsoever to have and to hold the same respectively up to and to the use of the Continuing Partners absolutely".

It would be clear from this that the retiring partner has surrendered or given up all his rights in the partnership business including the quota rights under the import/export licenses standing in the name of the old firm and has said that he would no longer be liable in respect of dues from the partnership firm. There are, however, no recitals in the document to show that the continuing partners had taken over the assets and liabilities of the old firm. In these circumstances, it is clear that the petitioners cannot challenge the order of the Chief Controller of Imports and Exports, i.e. the second respondent, rejecting their application for transfer of the quota rights.

16. There is one more thing to be mentioned in this connection and that is, that the Chief Controller of Imports and Exports is an authority who does not reside within the jurisdiction of this Court, and therefore, under Article 226 of the Constitution we have no power to issue a Writ to him for correcting any error made by him. Mr. Joshi, however, argued on the authority of the decision in *A. Thangal Kunju Musaliar v. M. Venkitachalam Potti*¹, that where such authority has an agent within the jurisdiction of this Court it is open to this Court to issue a Writ to that agent directing him to disregard the order made by his principal. The agent, according to Mr. Joshi, is the first respondent, i.e. the Joint Chief Controller of Imports and Exports. We cannot accept this contention. In the matter of the transfer of quota rights the first respondent can in no sense be

¹(1955) 2 SCR 1196 at pp. 1211 and 1212 : (AIR 1955 SC 246 at pp. 254 and 255)

regarded as an agent of the second respondent, because, he does not exercise any delegated function with respect to the transfer of quota rights. The grant of quotas and transfer of quotas is a matter which pertains exclusively to the jurisdiction of the second respondent. The first respondent is no doubt entitled to entertain and deal with applications for the grant of import licenses, but he can do so only upon being satisfied that the applicants before him are armed with quota certificates. All that he is entitled to look into is whether a particular applicant possesses such quota certificate or not. It is not further open to him to consider whether that applicant, though entitled to a quota certificate, has been wrongfully refused such certificate, or whether that applicant, though entitled to a transfer of the quota certificate, has been wrongfully refused such a transfer by the Chief Controller of Imports and Exports. The decision in question, therefore, is

of no assistance to Mr. Joshi.

17. As already stated, the petitioners then made a second application to the second respondent for the transfer of the quota rights and along with that application sent copies of the original deed of dissolution, declaration and the deed of confirmation.

18. On the 11th/21st February, 1958 the second respondent informed the petitioners as follows :

"With reference to the correspondence resting with your letter dated 16-1-58 on the above subject, I write to say that the registered declarations cannot be accepted in place of registered deeds. It is therefore regretted that your request for transfer of quota rights cannot be acceded to on the basis of the declaration dated 3rd of December, 1957 furnished by you".

Thereafter some correspondence ensued between the parties and eventually the petitioners executed a deed on the 27th of March, 1958 called "supplementary deed of dissolution of partnership and release" and sent a copy thereof to the second respondent along with an application for transfer of the quota rights in their favour. It may be noted that this application was subsequent to the expiry of the period for which the quota was asked for. The relevant portion of that document has already been quoted above. Now, this document completely satisfied the second respondent and thereupon, as already mentioned above, he sent a letter dated 6th of June, 1958 to the petitioners informing them that instructions were sent to the first respondent that quota licenses admissible to the old firm on the basis of its past imports-exports should "in future" be issued in favour of the petitioners.

19. Now, according to Mr. Joshi, the words "in future" should be interpreted as referring to the point of time immediately following the dissolution of the firm and not following the date of the order of the second respondent sanctioning the transfer of the quota certificate. In support of his argument, he has relied upon two decisions of the Madras High Court. The first one is of Balkrishna Ayyar, J., in *H. V. Jain v. The Joint Chief Controller of Imports and Exports, Madras*², The 2nd one is at p. 850 of the same volume : *Joint Chief Controller of Imports and Exports, Madras v. H. V. Jain*.³ The latter decision is that of the Appeal Court from the decision reported at page 271 of ILR (1959) Madras. Some of the facts of that case are similar to those of the case before us. Rajamannar, C.J.,

² ILR (1959) Mad 271

³(AIR 1959 Mad 534)

who delivered the judgment of the Court observed at page 857 (of ILR Mad.) as follows :

"The only question then would be whether the rights of the quondam partners could be recognized only on and from the date of the approval by the Chief Controller of Imports and Exports and not from the date of the agreement among the partners to divide the business and the assets and liabilities of the firm. We agree with Balakrishna Ayyar, J., that there is no warrant for such postponement of the rights of the erstwhile partners even

assuming that the approval of the Chief Controller of Imports and Exports is necessary before license could be granted. Once such approval is made the rights of the partners would date from the time when the firm was dissolved and the partners had agreed to divide the quota rights. Mr. Nambiar admitted that the order of the Joint Chief Controller, dated 30th November, 1956, that the case would be considered later after the transfer had been approved by the Chief Controller related to the period July-December 1956. Once that approval by the Chief Controller was communicated, such approval must be deemed to take effect from the date of the dissolution and the agreement between the partners. Much reliance was placed on the words "in future" occurring in the letter of the Chief Controller, dated 9th April, 1957. So far as we were able to discover from the papers placed before us by Mr. Nambiar there is nothing in the original order of approval expressly providing that the rights of the erstwhile partners to the quota would only come into existence on and after the approval of the transfer.....Mr. Nambiar conceded that it was open to the Chief Controller in his discretion to say that the quota rights would be recognized even for a period anterior to the date of approval and that it was open to the Chief Controller to direct the grant of license for periods prior to his approval because there was nothing in paragraph 74 of the Import Trade Control Policy Book to limit his powers. We are unable to agree with this interpretation of paragraph 74".

Then the learned Judges quoted the following passage from the judgment of Rajagopalan, J., in *Itta Venkataramiah Chetty, v. Deputy Chief Controller of Exports*⁴, Madras :

"It is really a little difficult to understand the position taken by the respondent, that rights accrued to the petitioner only on 4th February, 1955. That was not a relevant date at all. The respondent was prepared to admit the devolution of the rights of Janardhana Rao on the petitioner by the sale held by the Official Assignee on 26th November, 1954. The sale deed was registered on 3rd December, 1954. The devolution of rights was complete. It did not depend for its legal effect upon any recognition by the Chief Controller of Imports and Exports. But independent of that factor, even if 4th February, 1955, should be taken as the guiding date for which really there is no jurisdiction, the petitioner's application was on 7th February, 1955, and well within the period during which the quotas could have been issued and utilized by him. There was no real scope for misinterpreting even the letter of the Chief Controller of Imports and Exports dated 4th February, 1955, as the basis for refusing quotas".

and observed as follows :

⁴ Writ Petition No. 569 of 1959

"We are in entire agreement with this reasoning. Sub-clause (b) of paragraph 74 is quite clear that where a firm is dissolved and the partners agree to divide its business, assets and liabilities the partners shall get their respective share in the quota rights according to the provisions of the agreement. Such rights would accrue to each of the partners from the

date of the agreement. The fact that approval of the agreement (assuming such approval is necessary) is given by the Chief Controller of Imports and Exports on a later date, it cannot be said that the rights of the partners would accrue only on and from the date of such approval. The words "in future" can be understood to mean "from the date of the dissolution".

With respect, we cannot accept the view taken by the learned Chief Justice and concurred in by the learned Judge. In so far as quota rights are concerned, Chagla, C.J., in an unreported judgment in *Chimanlal Popatlal v. B.M. Choksey*⁵, observed as follows :

"But this quota has no market-value; it is not ordinarily transferable or assignable. It is merely a license or a permit given to a particular party to enable him to import paper into India and as such it has no inherent value".

Thus, according to this Court a quota right is not a 'property' which is transferable in law. If that view is correct - and with respect we think it is, - it follows that by reason of the dissolution of the partnership, no transfer takes place with respect to quota rights. It is true, that the Import and Export authorities are required to take into account a transfer of quota rights, but that is so, because of the instructions specifically issued in this regard by the Central Government and which are to be found in the Book entitled "Import Trade Control Policy". These rights, such as they are, must be said to be a creation of the Government notifications and would necessarily be exercisable to the extent and in the manner provided in those notifications. In paragraph 72 of the "Import Trade Control Policy" Book it is clearly laid down that when a change occurs in the constitution of a firm, the re-constituted firm will not be entitled to the quotas of the original firm until the transfer of the quota rights in their favor has been approved by the Chief Controller of Imports and Exports. It, therefore, follows that this transfer is a condition precedent to the grant of an import license. The person, in whose favor such a transfer has been recognized or sanctioned, would consequently be entitled to rely upon that transfer only for a period subsequent to such sanction or recognition and not for any anterior period. The date of dissolution of the old firm has thus no relevance whatsoever in so far as the grant of an import license is concerned. An import license is granted by the Joint Chief Controller of Imports and Exports to a person not because he has acquired the rights of a dissolved partnership firm, but because the transfer of the quota rights made in his favor is recognized by the Chief Controller of Imports and Exports. We, therefore, agree with the learned Single Judge that the transfer sanctioned by the second respondent could not entitle the petitioners to obtain an import license in respect of a period prior to the grant of the sanction.

20. Mr. Joshi, however, said that he had made an application for the grant of an import license well within the period specified in paragraph 13 of the Import Trade Control

⁵ dated 17th March, 1957 Appeal No. 12 of 1957

Policy and if there was a delay on the part of the second respondent to sanction the transfer of the

quota in favor of the petitioners, they ought not to suffer. We entirely agree that, no party should be permitted to suffer on account of the delay and laches on the part of any public authority. But, howsoever that may be, we cannot assist the petitioners, because they were themselves remiss in the matter of taking the appropriate steps for securing the sanction of transfer of quota rights in their favor. The document of which they had filed a copy originally was not properly worded and, therefore, though they had made an application to the Chief Controller of Imports and Exports long before the expiry of the period within which they had to make an application for grant of an import license, they had to thank themselves for not executing a document which was properly worded and which would meet the requirements of the instructions laid down by the Government. Further, even when they were told as early as the middle of November, 1957 that that document was defective, they did not execute an appropriate document and forward it immediately to the second respondent, but merely executed a deed of declaration or 'confirmation'. If before the expiry of the period within which they could make an application for grant of an import license they had executed a document like that of the 27th of March, 1958, there would have been no difficulty in their way, but instead they chose to wrangle about the matter and took no satisfactory step till the 27th of March, 1958. They must therefore, at least share the blame for the resulting consequence.

21. There is one more thing which we would like to point out and that is, that an application for the grant of an import license to a firm, which has undergone a change in its constitution, could be made only after the sanction regarding transfer of the quota rights is issued in its favor. That is what is provided in paragraph 13. Therefore, the application made by the petitioners to the first respondent on the 27th of December, 1957 cannot be regarded as a proper application at all. This is made clear in the Form itself which amongst other things requires the following to be answered :

"Whether the constitution of the firm has undergone any change after the issue of the quota certificate to the firm? If so, quota No and date of orders issued by the appropriate authority sanctioning transfer of quota rights in favor of the applicant".

It is clear from this position that unless the quota certificate in favor of the reconstituted firm is sanctioned by the Chief Controller of Imports and Exports, that firm would not be entitled to obtain an import license on the ground of its being an Established Importer and a grantee of a quota certificate.

22. In the circumstances, we must hold that the mere fact that the petitioners made an application for grant of an import license on the 27th of December, 1957 is of no assistance to them. As already stated, their two previous applications for sanction of the transfer of quota were rejected by the second respondent and it was for this reason that they made a third application on the 27th of April, 1958 for the transfer of those quota certificates. They would be entitled to the grant of an import license only subsequent to the sanction of the transfer of the quota certificates in their

favor. This is precisely what the Chief Controller of Imports and Exports told them and what the Joint Chief Controller of Imports and Exports told them. In our opinion the view taken by the authorities is correct. We are further of the opinion that the petitioners' application for grant of an import license made on 27th of December, 1957, though made within the time prescribed in paragraph 13 and though made well before the expiry of the licensing period, could not be considered by the first respondent because at the date of the application the petitioners were not recognized as transferees of quota rights. For these reasons, we affirm the order of the learned Single Judge and dismiss the appeal with costs. The respondents' attorneys are at liberty to withdraw the amount deposited by the appellants in this Court towards their costs.

Appeal dismissed.