

GALAPPATHTHY
V.
SECRETARY TO THE TREASURY AND 2 OTHERS

COURT OF APPEAL.
DR. R.B. RANARAJA, J.
C.A. 39/96
JUNE 24, 1996.

Imports & Exports (Control) Act - S.21 Customs Ordinance - Licence to Import Motor Vehicle - Duty Waiver - Policy decision of the State - Public Administration Circular 24/93 of 1.10.93.

The petitioner was a member of the 9th Parliament which was dissolved on 26.6.94. He was not returned to Parliament at the Election that followed. He made an application for a Licence to import a Motor Vehicle, and was issued with a licence dated 1.7.94, with an endorsement; that the liability to pay import duty or other dues have to be settled with the Director General of Customs and other relevant Authorities, and further indicated that the licence is valid, subject to certain limits in value and cylinder capacity. The licence was valid till 1.1.95, however it was not shipped by 1.1.95, but the licence was amended on 5.1.95 extending the validity of shipment. The vehicle was landed on 19.2.95.

The Director General, Fiscal Policy & Economic Affairs, informed the petitioner that Her Excellency the President- as the Minister of Finance - had refused a waiver of duty on the vehicles imported by Members of the 9th Parliament who have not been re-elected to the present parliament and who have obtained licenses after 24.6.94 but before 1.8.94 and who have opened letters of Credit before 1.9.94.

The petitioner contends that the said decision is un-reasonable in breach of the petitioner's legitimate Expectation; and therefore should be quashed.

Held :

(1) The licence was valid for shipment of the vehicle upto 1.1.95. The vehicle was not shipped before that date therefore the validity of the license expired on 1.1.95. This was "amended" on 5.1.95 extending the validity of shipment. The date of issue of the 'Amended license' was 5.1.95. A license, the validity of which has expired is of no force, and cannot be suspended or cancelled; it also cannot be amended.

Therefore the purported Amendment is not valid in law. The petitioner did not held a valid license to import a vehicle on the day it landed, thus the petitioner has no enforceable legal right.

(2) The petitioner has breached both conditions with regard to the Cylinder capacity and value of the vehicle by opening Letter of Credit (P3A) - the petitioner who has by his own conduct breached the conditions of the "License" cannot claim its benefit as of right. He has forfeited any benefit he may have been entitled to. Neither can he claim that he had a legitimate Expectation to a benefit, when he himself had breached its conditions.

APPLICATION for a Writ of Certiorari.

Case referred to:

1. *Risley v. Gough* (1953) Tas. S.R. 78.

Faiz Musthapha, P.C. with *Hemasiri Withanachchi* for Petitioner.
S. Sri Skandarajah, SSC for Respondent.

Cur.adv.vult

July 16, 1996.

DR. RANARAJA, J.

The petitioner was a member of the 9th Parliament which was dissolved on 26.6.94. He was not returned to Parliament at the Election that followed. He made an application for a Licence to import a motor vehicle to the Controller of Imports and Exports. He was issued with Licence No. 177416 dated 1.7.94 (P2), in terms of Public Administration Circular No. 24/93 of 01.10.93. The Licence bore the endorsement "The issue of this import Licence has no relevance to the liability to pay import duty or other dues which matters have to be settled with the Director General of Customs and other relevant authorities". A further condition which had to be included in the Licence was that the engine capacity of the vehicle to be imported should not exceed 1500 cc for Petrol vehicles and 2000 cc for Diesel vehicles and the value for Diesel vehicles not to exceed US \$ 10,000 (vide P1). The Licence was valid for shipping up to 01.01.95. It is alleged, the Acting Controller of Imports and Exports informed the Manager, People's Bank by letter P3 dated 23.11.94, that a letter of credit may be opened on the conditions stated in the Licence P2. The letter

of credit **P3A** was opened on **23.9.94**. The letter of credit is in respect of the shipment of **"One Unit Brand New Mitsubishi Turbo Intercooler Pajero 2800 cc Diesel with all std fittings and accessories"** costing **J.Y. 3,350,000/-**. The funds for the importation of the said vehicle was admittedly provided by the People's Bank. **The vehicle was not shipped by 01.01.95**. It is alleged that the Licence was 'amended' on **5.1.95** extending the validity of shipment. The vehicle was landed at the Colombo Port on **19.2.95**.

The complaint of the Petitioner is that,

(a) The Deputy Secretary to the Treasury by his letter **P6** refused to grant a duty waiver on the vehicle in terms of the Cabinet decision dated **14.12.94**.

(b) The Deputy Secretary to the Treasury by letter **P12** dated **5.7.95**, reiterated his position that no duty waiver could be granted in view of the policy decision taken by the Government.

(c) The Director General, Fiscal Policy and Economic Affairs, of the Ministry of Finance by his letter **P17** dated **18.01.96**, informed the petitioner that Her Excellency the President, in her capacity as the Hon Minister of Finance, had refused a waiver of duty on the vehicles imported by inter alia, Members of Parliament of the 9th Parliament, who have not been re-elected to the present Parliament and **who have obtained import Licences after 24.6.1994, but before 01.08.94**, ie: the date of suspension of the issue of import Licences and **who have opened irrevocable letters of credit before 01.09.1994**.

It is the contention of the petitioner that the said decision in **P6, P12** and **P17** are, (a) unreasonable, (b) in breach of the petitioner's legitimate expectation. He submits that the decisions conveyed by **P6, P12** and **P17** should be quashed by a mandate in the nature of a writ of certiorari.

Before looking into the submissions of the Petitioner, it is necessary to consider whether he has the right to invoke the extraordinary remedies by way of prerogative writs.

The petitioner has based his right to relief on Public Administration Circular No. 24/93 (P1) and Licence P2 as "amended" by P4.

Under the provisions of the Imports and Exports (Control) Act, the Controller may issue a Licence subject to any conditions as he may deem necessary, which have to be set out in the Licence. The grantee of the licence is then authorised to import into Sri Lanka goods of such value and quantity subject to the conditions set out in the Licence. The Controller has the power by order in writing to amend, suspend or cancel a Licence issued by him.

Licence P2 was valid for shipment of the vehicle upto 01.01.95. Admittedly, the vehicle was not shipped before that date. Therefore, the validity of the Licence expired on 01.01.95. It is averred that the Licence was 'amended' by P4. The date of issue of P4 is 5.1.95. The question arises whether P2 could have been validly 'amended' on 5.1.95? As section 9 (1) of the Imports and Exports (Control) Act stands, it cannot for the reason, just as much as a Licence, the validity of which has expired and is of no force, cannot be suspended or cancelled, it also cannot be amended. Thus, the purported amendment of P2 by P4 is of no validity in Law. Therefore the Petitioner did not hold a valid Licence to import a vehicle on the day it landed. Thus the petitioner has no enforceable legal right.

This view is supported by the observation of *Gibson J. in Risley v Gough*⁽¹⁾ where he stated, "I cannot construe the word "amended" other than to mean the perfecting or ameliorating an existing thing - Not supplying a vacuum with something that should be there".

As at 01.01.95, P2 became a "vacuum" which could not have been clothed with validity by the purported amendment P4.

Section 21 of the Imports and Exports (Control) Act, provides that the provisions of the Act shall be read and construed as one with the Customs Ordinance. P2 bore the endorsement that it had no relevance to the liability of the petitioner to pay import duty or other dues which had to be settled with the Director General of Customs. However, condition (f) in Public Administration Circular P1 provided that vehicles imported are free from all duties and taxes under section 19 (a) of the

Customs Ordinance but an amount equivalent to 25% of the C.I.F. value will be recovered as a fee by the Controller of Imports or Exports. Since P2 also bore the endorsement that "This Licence is issued in terms of Public Administration Circular No. 24/93 of 01.01.93, it is assumed for the purpose of this order that the petitioner would have been entitled to that concession provided he complied with the other conditions of P1.

Part 1 of P1, which refers to the importation of new vehicles and importation of vehicles less than 3 years old on concessionary terms, states that this concession is subject to the following limits in value and cylinder capacity.

- (i) Petrol vehicles 1500 cc US \$ 8,000.
- (ii) Diesel vehicles 2000 cc US \$ 10,000.

The Petitioner has not annexed any document to prove that these conditions have been varied. Thus, P2 could have been issued to import a vehicle which satisfied those conditions. The letter of credit P3A has been opened for the shipment of "One Brand New Mitsubishi Turbo Intercooler Pajero **2800 cc Diesel**", which exceeds the cylinder capacity of a vehicle that is entitled to the concession (f) in P1. Similarly, the value **Japanese Yen 3,350,000/-** also exceeds the limit of US \$ 10,000/-. The Petitioner has breached both conditions with regard to the cylinder capacity and value of the vehicle by opening letter of credit P3A. The Petitioner has not averred, either in his original petition or amended petition, that the vehicle which was landed at the Colombo Port complied with those conditions in P1. The Petitioner who has by his own conduct breached the conditions of P1, which entitled him to the benefit of importing a vehicle on concessionary terms, cannot claim its benefit as of right. In fact, he has forfeited any benefit he may have been entitled to. He has also forfeited any legal right to remedy by way of certiorari.

The reasons given above would be sufficient to dispose of this application. However, the Petitioner argued that by P1 he was given a benefit and he had a legitimate expectation that he would not be summarily disappointed. The Petitioner obtained Licence P2 on 01.07.94. He has a period of six months to import the vehicle. He

failed to make use of the Licence till it expired. He has obtained the recommendation of the Secretary General of Parliament for duty waiver on 6.2.95, **after the expiry of P2**. He had therefore no right to apply for a duty waiver to the Secretary to the Treasury on the basis of P2. The Petitioner has not produced a copy of the agreement entered into by him in terms of condition 3 (b) of P1, before he made the application for the duty waiver. The 1st Respondent Secretary therefore had every right to reject his application to import a vehicle in terms of Circular P1 alone.

The Petitioner cannot therefore claim that he had a legitimate expectation to a benefit under Circular P1 when he himself had breached its conditions. The mere fact that the 1st Respondent had prima facie refused to grant a waiver on the basis of the change of Government policy would not have precluded him from refusing that benefit for reasons listed above.

In the circumstances of this application, Court cannot grant the relief claimed. The application is dismissed without costs.

Application dismissed.