

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO.32126 OF 2022

Aramex India Private Limited

... Petitioner

V/s.

Union of India and ors.

... Respondents

Mr.Prakash Shah with Mr.Mihir Mehta i/by M/s PDS Legal, Advocates
for the Petitioner.

Mr.Karan Adik with Mr.Satyaprakash Sharma with Ms.Neha Pandey,
Advocates for the Respondents.

**CORAM : NITIN JAMDAR AND
ABHAY AHUJA, JJ.
DATE : 2 FEBRUARY 2023.**

ORAL JUDGMENT:-

Rule. Rule is made returnable forthwith. By consent of the parties, heard finally.

2. The Petitioner is engaged in international carriage of time sensitive documents and parcels on scale. Petitioner was registered as an authorized courier under the Courier Imports and Exports (Clearance) Regulations 1998. The Petitioner is aggrieved by the orders passed by

the Commissioner of Customs, Airport Special Cargo dated 19 August 2019 and 30 September 2019 refusing to renew the registration of the Petitioner.

3. The registration and recognition of a courier as ‘authorized courier’ is regulated by the Courier Imports and Exports (Clearance) Regulations 1998 and the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010. These Regulations have been issued pursuant to the powers vested under section 157 of the Customs Act. The Regulations of 2010 define ‘authorized courier’ under Regulation 3(b) as a person in relation to import and export of goods, as a person engaged in the international transportation of time-sensitive documents or goods on door-to-door delivery basis. The Regulations 5 and 6 deal with clearance of the imported goods. Regulation 7 contemplates application for registration of authorized courier and states that every person intending to operate as authorized courier shall make an application in a prescribed form. The conditions to fulfilled by the applicant are provided in Regulation 8. The application received has to be scrutinized as per Regulation 9.

4. The Petitioner was registered as authorized courier with the Department of Customs. According to the Petitioner, since 1996 its courier license was renewed from time to time. The renewal granted to the Petitioner on 23 June 2017 was for two years. Before the expiry of the registration period, Petitioner made an application for renewal on 8 April 2019 as per the Regulations. The Deputy Commissioner of

Customs called upon the Petitioner to furnish certain documents as regards the application for renewal which documents were furnished by the Petitioner on 4 June 2019 and 18 June 2019. The renewal application was rejected by impugned orders dated 19 August 2019 and 30 September 2019. The Petitioner filed an appeal before the Appellate Tribunal where there was difference of opinion between the members upon the issue of maintainability of the appeal and it was referred to the third member. Upon opinion being received from the third member, the Appellate Bench dismissed the appeal by order dated 27 January 2022 holding that it is not maintainable, after which the Petitioner is before us.

5. We have heard Mr.Prakash Shah, learned counsel for the Petitioner and Mr.Karan Adik, learned counsel for the Respondents.

6. Apart from the contention of the Petitioner that the appeal was maintainable, it is also sought to be contended that while refusing to issue the license or renew the license, no opportunity of any hearing was given to the Petitioner. The Petitioner has relied upon decision of the Division Bench of this court in the case of *A.S.Vason and sons Vs. Union of India*¹. The learned counsel for the Respondents contended that in the case of *A.S.Vason and sons* the Petitioner therein had sought hearing and the Division Bench on the facts and circumstances of the case observed that hearing needs to be given to the Petitioner therein. The learned counsel for the Respondents also sought to

¹ 2009(238) ELT 217(Bom.)

contend that the Tribunal rightly dismissed the appeal as not maintainable as renewing the registration license, is merely an administrative order.

7. Regulation 10 of the Regulations of 2010 deal with registration of couriers. Regulation 10 being subject matter of this petition, it is reproduced as under :-

“Regulation 10. Registration.

(1) *If on scrutiny of the application filed by a person under regulation 7, the Commissioner of Customs is satisfied that the applicant fulfils the requirements of the registration, the said applicant may be registered as an Authorised Courier.*

(2) *The registration granted under sub-regulation (1) shall be valid for an initial period of two years, but may be renewed from time to time, in accordance with the procedure provided in sub-regulation 8.*

(3) *An Authorised Courier who is already registered under Courier Imports and Exports (Clearance) Regulations, 1998 on or before the date of coming into force of these regulations in a Customs airport, shall be considered as an Authorised Courier registered for the purpose of these regulations only on compliance of the conditions stipulated in regulation 8.*

(4) *The Authorised Courier referred to in sub-regulation (3) shall comply with the conditions within a period which shall not exceed a period of three months:*

Provided that the Commissioner of Customs may extend the said period which shall not exceed a period of nine months.

Provided further that nothing contained in this sub-regulation shall apply in respect of condition prescribed under sub-regulation (2) of regulation 8.

(5) *The registration granted under sub-regulation (3) shall be valid for a period of ten years.*

(6) *The Commissioner of Customs may, if he finds that the applicant has been convicted in any court of law, or any criminal proceedings are pending before any court of law*

against the applicant, reject an application filed for registration of Authorised Courier.

(7) The Authorised Courier, who is registered under sub regulation (1) or sub regulation (3), shall transact business in other Customs airports within the country subject to an intimation, as specified in Form - J, to the Commissioner of Customs having Jurisdiction over the Customs airport where he intends to transact business.

(8) The Commissioner of Customs may, on application made before the expiry of the validity of the registration under sub-regulation (2) or sub-regulation (5), renew the registration for a period of ten years from the date of expiration of the original registration or the last renewal of such registration, as the case may be, if the performance of the Authorised Courier is found to be satisfactory with reference to the absence of any complaints of misconduct including non-compliance of any of the obligations specified in regulation 12.

(9) The Commissioner of Customs may, for reasons to be recorded in writing, by order, review the registration granted under sub-regulation (1) or sub-regulation (3) before the expiry of the ten years.”

(Emphasis supplied)

The aspect of the renewal of registration is thus dealt with in Regulation 10(8) as above. The Principal Commissioner of Customs or Commissioner of Customs is empowered on an application made before the expiry of the validity of registration to renew the registration for a specified period. However, this is conditional upon performance of the authorized courier found to be satisfactory with reference to the absence of any complaint or misconduct including non-compliance of any of the obligation under the Regulation 12.

8. In this context, the observations of the Division Bench in the case of *A.S. Vasan and sons* are pertinent. In this case a courier who was

aggrieved by non-renewal under the Regulations of 2010 had approached this court. Allowing the challenge on the ground of lack of hearing, the Division Bench observed that there can be no dispute that the order rejecting application has visited the petitioner with civil consequences. In a case where an order whether it be administrative or quasi judicial, visits the party with civil consequences in absence of any statutory exclusion under the Regulations, there would be a right to a hearing, and the right to hearing would include right to a person being heard in person if such a request is made. The Division Bench accordingly set aside the order of non-renewal on that count. The learned counsel for the Respondents sought to contend that the Petitioner has not asked for hearing; therefore, the decision in the case of *A.S.Vasan and sons* will not apply. The division Bench has however referred to civil consequences flowing from non renewal.

9. In the formative years of judicial review of administrative action general view was that the rules of natural justice would apply only to judicial or quasi-judicial proceedings and not to an administrative action. However, in the Hon'ble Supreme Court in the case of *State of Orissa Vs. Dr. Bipanai Deo*² as back as in the year 1967 has observed that even an administrative order or decision in matters involving civil consequences, has to be made consistent with the rules of natural justice. Law has further developed since then and the concept of natural justice is generally read into administrative actions involving

² AIR 1967 SC 1269

civil consequences, unless the governing statute excludes the application of natural justice by express language.

10. From the scheme of the Regulation 2010 it is clear that the Regulations themselves contemplate an application for renewal. Grant of renewal thereof is conditional upon factual position specified in the Regulations. Not granting registration at the first instance would stand on a different footing than a case where registration is renewed from time to time over a long period and then not renewed.

11. The Petitioner was an authorized courier for almost 25 years and the registration was renewed from time to time. Petitioner states that it has invested substantial amounts towards the business. Therefore, the non-renewal clearly had civil consequences and severe implications for the Petitioner. In these circumstances the petitioner was entitled to an opportunity to explain before taking the impugned decision. The decision taken without giving opportunity to explain will thus have to be set aside. Non-renewal therefore had serious implications for the Petitioner. We therefore are of the opinion that the view taken by the Division Bench in the case of *A.S.Vasan and sons* should also be extended to the Petitioner. In the facts and circumstances of the case the opportunity to the Petitioner be given in form of hearing.

12. In view of our above conclusion it is not necessary to go into issue of maintainability of the appeal and the same is kept open.

13. Accordingly the writ petition is allowed.

(i) The impugned orders dated 19 August 2019 and 30 September 2019 are quashed and set aside. The application for renewal filed by the Petitioner stands revived.

(ii) Respondent No.2 will give a date to the Petitioner within two weeks from today for attendance of Petitioner's representative before Respondent No.2

(iii) After giving opportunity to the Petitioner, the Commissioner would decide as contemplated under Regulation 10 of the Regulation of 2010 within three weeks, subject to earlier time bound commitments.

(iv) The view taken by the Commissioner in the affidavit-in-reply will be treated as *prima facie* opinion of the Respondents.

14. We make it clear that our observation in this decision are only in the context of extending principles of natural justice to the case and not on merits and the Respondent No.2 will decide on its merits. Periods above will commence from the date order is uploaded.

15. Rule is made absolute in the above terms.

(ABHAY AHUJA, J.)

(NITIN JAMDAR, J.)