

# SUPREME COURT OF INDIA

Probhudas Morarjee Rajkotia

Vs.

Union of India

Writ Petn. No. 46 of 1965

(P. B. Gajendragadkar, C.J.I., K. N. Wanchoo, J. C. Shah, S. M. Sikri and V. Ramaswami, JJ.)

04.02.1966

## JUDGEMENT

### **RAMASWAMI, J.:**

1. Controls on exports and imports were introduced as an emergency measure during the last war in respect of certain commodities and were kept alive after the lapse of the Defence of India Rules by the Emergency Provisions (Continuance) Ordinance, 1946 which was later replaced by the Imports and Exports (Control) Act, 1947 (18 of 1947). Under S. 3 of the Imports and Exports (Control) Act, 1947, the Central Government was authorised by order published in the Official Gazette, to provide 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, carriage of goods of any specified description. By sub-section (2) of S. 3. It is provided that all goods to which an order under sub-section (1) applies shall be deemed to be goods of which the import or export has been prohibited or restricted under S. 19 of the Sea Customs Act In exercise of authority under S. 3 of the Imports and Exports (Control) Act, 1947 the Central Government issued notifications from time to time prohibiting, restricting or otherwise controlling the export and import of several commodities. By a consolidated order dated December 7. 1955, known as the Imports (Control) Order, 1955. Restrictions on the import of certain goods were imposed by Cl. 3 of

the said order. By Cl. 3, it was provided that no person shall import any goods of the description specified in Sch. 1, except under, and in accordance with, a licence or a customs clearance permit granted by the Central Government, or by an officer specified in Sch II. For implementing the scheme of controlling imports, various provisions were made in Cls. 3 to 11 of the Imports (Control) Order.

2. The Government of India makes known its import policy every six months by issuing in the Government Gazette the procedure and the conditions for eligibility of licences and for the grant of import licences. This policy is published in a handbook called the "Import Trade Control Policy" The policy is obviously framed having regard to requirements for home consumption of commodities to be imported, the foreign currency situation and the economy of the country as a whole. With effect from April 1, 1963, the Government of India promoted a scheme called "Special Exports Promotion Scheme for Engineering Goods" The object of the scheme was to give incentive to the manufacturers in India to export their finished products outside India and at the same time grant to the said exporters import licences for materials upto the extent of defined percentage of the F. O. B. value of goods exported. The further object of the scheme was to create a market in the foreign countries for Indian goods not only from the standpoint of earning foreign exchange but also from the standpoint of enhancing the prestige of the Indian goods exported to those countries

3. Para 5. 4 of the Scheme states.

"The value for which an import licence is given will be determined with reference to the F. O. B. value of exports and will be up to the monetary extent mentioned in Annexure V. This provision is, however, subject to the provisions that in addition to any action which may be taken to stop corrupt or fraudulent practices.

(i) in cases where the Licensing Authority considers that the value of the goods exported in over invoiced, it shall be open to the Licensing Authority either to refuse to issue any licence against such export or to reduce the value of the licence to such figure as he deems fit: and

(ii) In cases where the Licensing Authority considers that there has been a mis-declaration of the description of the products exported, no licence will be issued against such exports and suitable action may also be taken against the person concerned."

4. The petitioners are partners in a registered firm carrying on business as exporters and importers in the firm name and style of Transworld Trade Link Corporation (hereinafter called the "firm"). On or about May 28, 1963, the firm entered into a contract with Messrs. Tigray Agricultural and Industrial Development Ltd., incorporated in Ethiopia (hereinafter referred to as the T. A. I. D. L.). In

pursuance of the contract, the firm exported machinery from October, 1963 till August, 1964. The contractual goods so shipped were of the F. O. B. value of Rs. 9,44,540.80 P. In payment of the exports the firm received this amount through the Bank of India Ltd., Bombay, who were authorised dealers in Foreign Exchange. The petitioners alleged that they became entitled to Import Licences and sought import entitlement which accrued to the petitioners under the export promotion Schemes amounting to Rs. 4,39,670. The petitioners accordingly applied to the Licensing Authorities in the prescribed manner for issuing import licences. The Licensing Authorities issue to the firm import licences for Rs. 3,77,333, but for the balance of Rs. 62,337 import licences were not issued. In spite of repeated requests made by petitioner No. 1 the respondents did not issue import licences for the balance of Rs. 62,337. It is alleged for the balance of Rs. 62,337. It is alleged by the petitioners that on January 29, 1965 Sri S. Than of the Ministry of Commerce wrote to them requesting them to consider grant of a loan of Rs 5,00,000 to T. A. I. D. L. but the petitioners declined to grant any such loan. The case of the petitioners is that the action of the respondents in refusing to grant import licences for the balance of Rs. 62,337 was influenced by this extraneous circumstance and was consequently mala fide.

5. The petitioners have accordingly moved this Court for grant of a writ in the nature of mandamus under Art. 32 of the Constitution directing the respondents to grant to the petitioners import licences for the balance of Rs. 62,337 in accordance with the provisions of the Special Exports Promotion Scheme. Cause has been shown by the Attorney-General on behalf of the respondents to whom notice of rule was ordered to be given.

6. On behalf of the petitioners it was argued, in the first place, that the act of the respondents in declining to grant import licences for the balance of Rs. 62,337 was arbitrary and had unlawfully infringed the fundamental right of the petitioners to carry on their business. It is contended that under Cl. 5.4 of the Scheme the petitioners were entitled to import licences upto the "monetary extent mentioned in Annexure V" . "It was conceded that the petitioners had no absolute right to the grant of a licence to the maximum amount prescribed and the Controller had the discretion to impose a restriction. It was submitted, however, that the discretion had to be exercised reasonably and not arbitrarily. The legal proposition for which the petitioners contend is undoubtedly correct. The Licensing Authority would normally issue an import licence upto the monetary extent prescribed but, having regard to the special considerations such as difficult foreign exchange position or other matters which have a bearing on the general interest of the State, import licences for a smaller percentage may be granted to the exporters. It may be assumed that by the use of the expression "upto the monetary extent mentioned in Annexure V" in Cl. 5.4., the authorities are not clothed with an arbitrary power to fix the percentage of the value of the goods exported for awarding an import licence. In the present case, however, the affidavit of the respondents indicates that the power has not been exercised in an arbitrary manner. In para 6 of the counter-affidavit the respondents said that complaints were made by the Ethiopian importer with regard to the quality and condition of machinery supplied by the petitioners. It appears that the Indian Embassy in Ethiopia got the machinery inspected and examined by a qualified engineer. The report of the engineer shows that the machinery being supplied by the petitioners was damaged, incomplete and defective. For the purpose of granting import licence the respondents have, therefore, not taken into account the total. F. O. B. value but imposed a suitable reduction in the import entitlement. The allegation of the respondents is supported by the report of the engineer which is Annexure III of the counter-

affidavit. We accordingly reject the argument of the petitioners that the value of import entitlement was arbitrarily reduced by the Licensing Authority in this case.

7. It was next contended on behalf of the petitioners that Sri S. Than, Director (Foreign Trade) of the Ministry of Commerce had requested Sri N. C. Bhatt, the firm's representative to grant a loan of Rs. 5,00,000 to T. A. I. D. L. to enable the latter to operate the machinery sold by the firm. It is alleged that the petitioners were not willing to advance the loan and it was for this reason that the respondents had not issued import licences to the firm for the balance of Rs. 62,887. The argument of the petitioners is that the refusal to advance a loan of Rs. 5,00,000 to T. A. I. D. L. was an extraneous and irrelevant circumstances and the conduct of the respondents in refusing to issue import licences for the balance of Rs. 62,337 was mala fide. The respondents have denied in the counter-affidavit that the refusal to grant the import licence for the balance of Rs. 62,337 was, in any way, connected with refusal of the petitioners to advance a loan of Rs. 5,00,000 to T. A. I. D. L. In para 16 of the counter-affidavit the respondents say that Sri Than was not directly concerned with the question of import entitlement. It is further stated that the request of Sri Than for the loan was made on January 29, 1965 but previous to that date the petitioners had already been granted import entitlement to the extent of Rs. 3,77,333 and the petitioners had imported scarce commodities like stainless steel against the grant of the import entitlement. We are, therefore, unable to accept the argument of the petitioners on this aspect of the case.

8. Lastly the argument was put forward by the petitioners that the failure of the respondents to grant licence for the balance of Rs. 62,337 is discriminatory and violates Art. 14 of the Constitution. In para 16 of the petition it is stated that "other Exporters and Importers covered by the said Schemes have been granted import licences and the failure of the respondents to grant the said licences to the firm is discriminatory and violates Art. 14 of the Constitution" But it is not mentioned in the petition as to who were the persons who were similarly placed and who have been given import licences by the authorities. There is no specification of the persons who have been differentially treated. The plea of violation of equal protection of laws under Art. 14 of the Constitution has not been properly pleaded in this case. It cannot be too strongly emphasized that to make out a case of denial of the equal protection of the laws under Art. 14 of the Constitution, a plea of differential treatment is by itself not sufficient. An applicant pleading that Article 14 has been violated must make out that not only he had been treated differently from other but he has been so treated from persons similarly circumstanced without any reasonable basis, and such differential treatment is unjustifiably made-See *Ramchand Jagdish Chand v. Union of India*, 1962-3 SCR 72: (AIR 1963 SC 563). It is manifest in the present case that the petitioners have not furnished sufficient particulars to justify the plea of infringement of Art. 14 of the Constitution. We accordingly hold that the case of the petitioners on this point should be rejected.

9. For the reasons expressed, we are of opinion that the petitioners have not made out a case for the grant of a writ under Art. 32 of the Constitution. The petition fails and is accordingly dismissed with costs.

Petition dismissed.

