

M/s Exen Industries

Vs

The Chief Controller of Imports and Exports and Others

Civil Appeal No. 971 of 1967

(G. K. Mitter, A. N. Ray JJ)

22.01.1971

JUDGMENT

MITTER, J. -

1. This is an appeal by certificate under Article 133(1)(b) of the Constitution of India granted by the High Court of Judicature for the State of Punjab at Delhi against its order and judgment, dated January 6, 1966, dismissing in limine the appellant's application for the issue of an appropriate writ directing the respondents to grant to the appellants 50 per cent. of the balance of the six licences applied for by them on applications made between April 23, 1964 and October 28, 1964, of the total value of Rs. 56,483/- and for other reliefs.

2. The facts are as follows : The appellant firm which is engaged in the manufacture of fountain pens, ball pens etc., was constituted of three partners, namely, K. N. Vora, J. L. Mehta and A. M. Bhuta. After retirement of one of the partners, the firm consisted of only two persons H. T. Vora and G. J. Mehta in November 1958. The firm had always been getting import licences as actual users for the importation of raw materials from the Chief Controller of Exports and Imports and from the Iron and Steel Controller, Respondents 1 and 2 herein, through the Plastic Directorate. In December, 1963, G. J. Mehta also retired from the partnership and Messrs. Sontokbai H. Vora was admitted as a partner in his place. On the same day the partners executed an agreement of dissolution of partnership which inter alia provided -

(1) That the partnership would stand dissolved so far as the retiring partner was concerned as from December 5, 1963.

(2) The machinery, raw materials etc. lying in stock at the time of the dissolution of the partnership would be equally divided between the parties.

(3) The continuing partner would be entitled to continue and carry on business in the name of the dissolved firm and would also be entitled to its goodwill and the continuing partner would have the sole right of import licences which were in hand and which would be received against the pending applications. According to the petition presented before the High Court, the appellant communicated the said change to the Respondents 1 and 2 and it appears that even after the dissolution of the firm several licences were received by the continuing partner without any objection from the retiring partner. Between the dates mentioned above the appellant submitted six applications for the grant of import licences which were required for the purpose of carrying on the business of manufacture pursued by the firm. The

appellant also purchased new machinery and equipment so as to enable it to increase its production capacity. This averment in the petition is said to be supported by a statement of comparative figures of manufacture as certified by chartered accountants of which a copy was annexed to the petition. There was some correspondence between the appellant and the Assistant Development Officer of the Government of India on the question of the appellant's claim to licences in view of the fact that Messrs. Premier Products, a business started by the retiring partner had reported commencing manufacturing fountain pens etc. with the portion of the machinery allotted to him as a result of the dissolution of the firm and the partition of its assets. The appellants claimed to have satisfied the Assistant Development Officer with full and necessary particulars. In order to avoid delay in the matter of the investigation taken up by the Assistant Development Officer the appellants prayed for issue of at least 50 per cent. of ad hoc licences pending final decision of the matter by a letter, dated March 10, 1965. They received two ad hoc licences on April 9, 1965. But in spite of their best efforts and representations made to the Deputy Secretary, Ministry of Commerce of the Government of India as its Secretary the appellants were unable to secure 50 per cent. of the balance of the actual users' licences to which they claimed to be entitled. Ultimately the Assistant Controller by letter, dated November 18, 1965, informed the appellants that as licences of raw materials had been issued to Premier Products, Bombay no further licences could be issued to them. This was repeated by the Under Secretary to the Government of India in his letter, dated December 3, 1965 wherein it was stated that as the machinery and equipment of the original firm had been equally divided, it had been decided that both the firms i.e., the old and the new ones, should be registered with D.G.T.D., and the raw material allocations previously made to the undivided firm should be equally divided between the two firms.

3. It is against this decision that the appellants moved an application to the High Court for issue of a writ on the ground that the refusal had been against the policy, procedure and conditions governing the grant and issue of actual users' licences as published in the Gazette of India as a public notice and embodied in an Official publication called the 'Import Trade Control Policy' popularly known as the Red Book and the Hand Book. In these two publications detailed provisions have been made for the division of the licences in the event of a change in the constitution of a firm (sic) pending applications, pending licences, future licences and future licences entitlements. According to the appellant the two books also lay down conditions for grant of licence to actual users and make separate provisions for division of licences in the case of pending applications for the grant of licences and pending licences in the case of change of constitution of the firm. The appellants claim that these publications however do not make any provisions for division of the licence entitlements for the future inasmuch as actual users are given licences for the licensing period only on the basis laid down by the Red Book and the Hand Book. Paragraph 73 of the Hand Book to which our attention was drawn, lays down the basis of licensing of actual users. They provide for taking into account various matters which are all set out in the petition. Paragraph 88 of the Hand Book provides for changes in the name, constitution or ownership of the actual users' business after the issue of the actual users' license but before and after the importation of the goods. According to the petition this paragraph does not deal with the division of future licences to actual users inasmuch as the same has to depend on the basis laid down and contained in Paragraph 73 of the Hand Book. The appellants claimed in their petition that the licensing authorities are bound to act judicially and reasonably while granting or refusing licences in exercise of the discretion vested in them by law

and they could refuse the licence under the provisions of Clause 6 of the Imports (Control) Order, 1955, and under Paragraph 73 of the Hand Book, but the reason given for refusal to give the balance of import licence to them was not a valid one and the refusal was unfair and arbitrary based on extraneous considerations without proper application of the mind on the part of the respondents. It was in the above circumstances that the appellants approached the High Court for the issue of a writ and the said application was rejected in limine.

4. It was submitted before us that clearly the facts laid down in the petition called for some explanation by the respondents to justify their refusal as the ground which was put forward as the basis of the refusal cannot bear scrutiny. It appears to us that the grievance of the appellants is not unjustified. The petition supported as it was by numerous annexures which contain copies of representations made by the appellants to the various authorities and their replies, obviously established a prima facie case for investigation and the High Court should have, to say the least, called upon the respondents to show cause why a rule should not be issued.

5. Learned Counsel appearing for the respondents did not suggest that a prima facie case for enquiry had not been made out. The grant of actual users' licences to manufacturers is of vital importance to them if they are to carry on their business and courts ought not to uphold any refusal of such licences if they appear to be arbitrary or based on extraneous considerations. It may be that the respondents could have satisfied the High Court that there was sufficient cause for refusal apart from the grounds put forward by them in the letters of November 18, 1965 and December 3, 1965. However the High Court though competent to decline to exercise its extraordinary jurisdiction under Article 226 of the Constitution when it finds that the petition is frivolous or without substance should not throw it out in limine if a prima facie case for investigation is made out. The High Court can reject a petition in limine if it takes the view that the authorities whose acts were called in question had not acted improperly or if it felt that the petition raised complicated questions of fact for determination which could not be properly adjudicated upon in a proceeding under Article 226 of the Constitution. We may, in this connection, refer to a recent judgment of this Court in *Century Spinning and Manufacturing Co. Ltd. v. The Ulhasnagar Municipal Council*, (C.As. Nos. 2130 and 2131 of 1969, decided on February 27, 1970 : (1969) 1 SCC 582 : (1970) 3 SCR 854 : AIR 1971 SC 1021.) where it was stated that :

"..... a party claiming to be aggrieved by the action of a public body or authority on the plea that the action is unlawful, high-handed, arbitrary or unjust is entitled to a hearing of its petition on the merits..... The High Court has given no reasons for dismissing the petition in limine, and on a consideration of the averments in the petition and the materials placed before the court we are satisfied that the Company was entitled to have its grievance against the action of the Municipality, which was prima facie unjust, tried."

6. Following the above dictum we allow the appeal, set aside the order of the High Court and remand the case to the High Court with a direction that the petition be re-admitted to the file and be dealt with and disposed of according to law. The High Court will issue a rule to the authorities concerned and the Union of India and dispose of the petition expeditiously. In the circumstances, we make no order as to costs of the hearing before this Court.

</html