The Deputy Assistant Iron and Steel Controller and Another

Vs

L. Manickchand, Proprietor, Katrella Metal Corporation, Madras

Civil Appeal No. 1053 of 1971

(J. M. Shelat, G. K. Mitter, I. D. Dua, H. R. Khanna JJ)

05.01.1972

JUDGMENT

DUA, J. -

1. This appeal by special leave is directed against the judgment and order of the Madras High Court, dated March 25, 1971, dismissing at the stage of admission an appeal under clause (15) of the Letters Patent preferred by the appellant against the judgment and order of a learned single Judge of that Court, dated September 1, 1970, allowing Writ petition No. 933 of 1970, filed by the respondent praying for a writ of mandamus directing the Licensing Authority under the Imports and Exports (Control) Act, 1947, to do his public duty and consider the applications for import licence made by the respondent. More than 200 writ petitions were heard together and disposed of by a common judgment of the learned single Judge, the facts in the respondent's Writ Petition No. 933 of 1970, being by common consent, treated as illustrative of all the other cases as well.

2. On December 7, 1968, Lala Manickchand, proprietor of Messrs. Katrella Metal Corporation, Madras, respondent in this Court, submitted an application, as a new unit, for the licensing period 1968-69, for the grant of an import licence for Rs. 9,900/- for importing stainless steel as an actual user for manufacturing hospital requisites. The registration certificate, dated December 31, 1968, issued to the respondent as a small-scale industry by the Additional Assistant Director of Land and Commerce, District Madras North, reads :

> "DEPARTMENT OF INDUSTRIES AND COMMERCE SMALL SCALE INDUSTRIES DIVISION"
>
> #
>
> S. No. 571
>
> Registration No. MS.N.SSI/506/033
>
> ##
>
> CERTIFICATE
>
> This is to certify that M/s. Katrella Metal Corporation, 54 Sydenhams Road, Madras-7, office at 90, N.S.C. Bose Road, Madras-1, is a genuine Small Scale Industry engaged in manufacture of Hospital and Surgical Instruments, Trays, Mugs, Basins and Household Utensils out of stainless steel.

#

(Sd.)

S. GOPALAKRISHNAN,

Additional Assistant Director of Land andCommence,

District Madras North,

December 31, 1968."

##

According to Import Trade Control Policy (1968-69), industries engaged in the manufacture of "Medical and surgical equipments and appliances" were included in the list of priority industries at serial No. 39 of Appendix I in Section 5. The import policy is announced and published by the Government of India, Ministry of Commerce, on the eve of each financial year by means of a Public Notice which is issued in the form of a book called the Import Trade Control Policy, commonly known as the "Red Book". Prior to 1962, the import policy used to be published on half-yearly basis. But with effect from the financial year 1962-63, the Red Book contains the policy for the whole year. As a supplement to the Red Book is the Handbook of Rules and Procedure on Import Trade Control. Its provisions are brought into force by a Public Notice published in the Gazette of India, Extraordinary. It embodies the procedures, rules and regulations governing the submission of applications, grant of licences, their validity and utilisation and other matters relating to import trade control. The instructions contained in the book are applicable subject to future amendments and to provisions of relevant import trade control policy book, vide Clause 6, Chapter II of Handbook of Rules and Procedures, 1968. As is obvious from the preface of the Red Book for the year 1968-69, in formulating the import policy, account is taken of all the suggestions received from individuals, chambers and associations of trade and industry, Export Promotion Councils, Commodities Boards, Board of Trade and others. It appears that according to this policy import for household utensils was not available as a priority item and this necessitated further clarification from the respondent. In the meantime on January 30, 1969, Licensing Instruction No. 4 of 1969, was issued from the Iron and Steel Control Department (I & E Division). It said :

#

"IRON AND STEEL CONTROL (I AND E DIVISION) Office Note : LICENSING INSTRUCTION No. 4/69,

dated January 30, 1969

##

1. It has come to the notice of the Iron and Steel Controller that a large number of applications have been received for import of Stainless Steel Sheet plates and strips from newcomer units during 1968-69. As a measure of precaution, the Regional Office and Licensing section were requested to suspend further issue of licence vide Iron and Steel Controller's telegram, dated January 9, 1969.

2. The position has been reviewed, in consultation with the Department of Iron and Steel, and it has been decided that the application for Stainless Steel Sheets, plates and strips received from newcomer units during 1968-69, should be scrutinised by the Directors of Industries and the Regional Offices and Licensing Sections very carefully, before the import licenses are granted, with a view to ensuring that new units which are not well equipped do not get away with import licences of this sensitive item.

3. For the purpose of scrutinising the applications, it is necessary to call for the following data from the applicants -

(1) Date of Registration of the unit.

(2) Date on which power connection was obtained.

(3) Details of the machinery installed

(4) Value of the machinery installed.

(5) Whether the machinery is imported or indigenous.

(6) The address of the firm from whom the machinery was purchased.

(7) Date of purchase of machinery.

(8) Date of installation of the machinery.

(9) Details of the end products to be manufactured.

(10) Whether the unit is fully equipped to manufacture the items in question.

(11) Past experience of the firm in manufacturing line.

(12) Technicians employed and the their technical qualifications.

(13) Whether any market survey has been conducted for the disposal of the products to be manufactured. If so, the results thereof.

4. Regional Offices and Licensing Sections are directed to write to all the newcomers, who have sent their applications for Stainless Steel Sheets plates and strips to furnish the above information to the respective Directors of Industries direct, endorsing a copy to the Regional Offices and the Licensing sections. Copies of these letters may be endorsed to the respective Directors of Industries, with the request that they should scrutinise the applications with reference to the date that may be furnished by the applicants carefully, and thereafter send their recommendations (revised recommendations as the case may be), to the licensing offices.

5. Regional office and Licensing Sections are directed to take immediate action on the lines indicated above.

#

(Sd.)

C. B. MATHUR,

Officer on Special Duty."

##

3. It is quite clear from these instructions that stainless steel sheets were considered a sensitive item and that a large number of newcomers had applied for import of stainless steel sheets, plates and strips whose applications required close scrutiny. On May 2, 1969, the respondent, while giving information about end-products, stated in a letter that hospital requisites such a surgical bowls, spittoons and trays where intended to be manufactured by the industry. On May 19, 1969 the Chief Controller of Imports and Exports, from the Ministry of Foreign Trade and Supply issued General Licensing Instruction No. 29/69 on the subject of import licences to units engaged in the manufacture of the hospital equipments. These instructions pertained to the import policy of April, 1969 - March, 1970, and referred to "medical and surgical equipment and the appliances" which was the subject-matter of Item No. 39 in Appendix I of the Red Book for that year. In Para 2 it was stated that some Licensing Authorities were treating the Manufacture of "hospital equipment" as priority industry under the general heading "medical and surgical equipment and appliances". It was pointed out that all types of hospital equipment and hospital appliances were not classified as priority industries and it was added by way of illustration that lotion bowls, kidney trays, instrument trays, wash bowls, measuring jugs, ointment jars and medicine cups as end-products were in non-priority category. The sponsoring authorities were accordingly directed to ensure that only those hospital equipment and appliances were to be treated as priority industries which would appropriately be classified as "medical and surgical equipment and appliances". On May 29, 1969, the Chief Controller of Imports and Exports issued General Licensing Instruction No. 31 of 1969 on the subject of "grant of import licence to units engaged in the manufacture of hospitals equipment". After inviting attention to the earlier C.L.I. No. 29/69, dated May 1969, it was stated in this instruction that after further consideration in consultation with the D.G.T.D. a list had been prepared in respect of the end-products which alone would be treated as priority industries under the general heading "medical and surgical equipment and appliances". That list was enclosed for the guidance of the Licensing and Sponsoring authorities and in case of doubt those authorities were directed to refer the matter to headquarters Special Licensing Cell. On October 31, 1969, the Director of Industries, Madras, confirmed the Essentiality Certificate already issued to the respondent. It was observed in that letter that the firm had "installed machinery and taken action to obtain power supply etc. Hence the Essentiality Certificate issued to the firm already is confirmed". On February 23, 1970, a letter was written by the Director of Industries and Commerce, Madras to the Deputy Assistant Iron and Steel Controller, Madras, in which after refereeing to his earlier letter, dated October 31, 1969 and to the respondent's letter dated February 6, 1970, it was stated :

> "In view of the assurance given by the firm that they would manufacture only Surgical Equipment like Sterilisers, Operation Tables, Auto-Claves etc., I recommend that M/s. Katrella Metal Corporation, 54, Sydanhams Road, Madras for whom Essentiality Certificate has been issued for import of stainless steel sheets for the period April-March, 1969 may please be treated as PRIORITY INDUSTRY and licence issued to them on this basis."

Apparently, the Director of Industries was the sponsoring authority in this case. It was in these

circumstances that the respondent filed the writ petition in the High Court in March 30, 1970, claiming a writ of mandamus as stated earlier, the sole grievance being that the respondent's application for import licence had during all this period not been taken up for final disposal. According to the respondent's case in the High Court, the firm's factory had been manufacturing various items since 1962 by purchasing raw material from local market with the annual turnover of about 8 to 10 lakhs. With regard to the respondent's application for import licence for manufacturing hospital and surgical equipment it was added that the Director of Industries had issued the Essentiality Certificate in April, 1969 and recommended the respondent for treating it as a priority industry on February 23, 1970. In the counter-affidavit in that Court it was not contested that the writ petitioner was entitled to have his applications considered. According to Para 10 of the counter-affidavit on which the learned single Judge of the High Court, disposing of the writ petition, relied, it was stated inter alia :

> "In the case of units engaged in the manufacture of non-priority end-products, as in the case of the petitioner, the Chief Controller of Imports and Exports had advised the department to keep the applications pending until the completion of the examination. The petitioner's application could not be therefore be disposed of. However, instructions have since been received vide the Chief Controller of Imports and Exports, New Delhi letter, dated April 8, 1970, which inter alia provides that the applications received by the sponsoring authorities in time may be considered irrespective of the date on which they were forwarded to the licensing authorities and in terms of the licensing policy for 1970-71."

It was added in this para of the counter-affidavit :

> "According to policy for 1970-71, the material stainless steel sheets is a canalised item for non-priority industries and release orders are to be issued on Minerals and Metal Corporation."

In the judgment of the learned Single Judge it was stated to be common ground that the applications of the writ petitioners had to be dealt with in terms of the relevant import policy in force for year 1968-69. However, a little lower down the judgment, after reproducing the relevant portion of Paragraph 10 of the counter-affidavit, it was also observed :

> "Learned counsel for the Central Government urged that the Licensing Authority whoever it is, is prepared to consider the applications of each of the petitioners in this batch of writ petitions, but such appraisal of the applications would be in terms of the licensing policy for 1970-71. Thus in effect, the respondents concede the right of the petitioners to have their applications considered and disposed of in a manner known to law, but the only opposition is that such applications filed and now pending will be considered in the light of licensing policy for 1970-71."

It was in this context that the High Court observed that it was practically conceded that the rule nisi had to be made absolute and that some more directions were necessary. Relying on Rule 7(2) in Chapter II of the Handbook of Rules of Procedure, Import Trade Control for the year 1968, according to which applications for licences were required to be considered in terms of the relevant policy in force, the learned Judge directed :

> "that the Licensing Authority do consider the applications now pending before him

> which were subject-matter this writ petitions within six months from this date bearing in mind the above directions and in particular deal with the said applications, applying the import trade control policy prevailing in 1968-69 or 1969-70, as the case may be according to the dates of application for licence."

4. On appeal before the Division Bench under clause (15) of the Letters Patent it was complained by the appellant, the Deputy Assistant Iron and Steel Controller that the instructions of the learned Judge interfered with the policy introduced in 1970-71 because under the new policy import of stainless steel was canalised through the Minerals and Metals Trading Corporation for non-priority industries. The Division Bench did not consider this objection to be valid because in its view had the applications been considered in time and without delay and the import licence sought granted, these complications would not have intervened. The Department, according to the High Court, could not take advantage of the delay in the disposing of the applications for licence made earlier and then take the plea that they should be disposed of only in accordance with the current policy and instructions given as to canalisation. On this view the appeal was dismissed but time for granting the import licence was extended by a further period of three months from the date of the order viz., March 25, 1971.

5. In this Court the question canvassed at the bar is a very narrow one, namely, whether the application for the import licence in question should be considered in accordance with the policy in force when the licence is granted or when the application is made. No point of mala fides or arbitrariness was argued in the High Court and no serious attempt was made on behalf of the respondent to sustain the impugned order of the High Court on that basis, as indeed, it is not possible for this Court to entertain and adjudicate upon such a plea in this appeal in the absence of a considered opinion of the High Court. The appellants' learned counsel Shri V. S. Desai at the out set drew our attention to Section 3(1)(a) of the Imports and Exports (Control) Act, 18 of 1947 which empowers the Central Government to prohibit, restrict or otherwise control imports and exports and to clause 6(1)(a) of the Imports (Control) Order, 1955, made by the Central Government in exercise of the powers conferred on it by Sections 3 and 4 of Act 18 of 1947. Clause 6(1) of the Order empowers the Central Government or the Chief Controller of Imports and Exports to refuse to grant a licence or direct any other licensing authority not to grant a licence if no foreign exchange is available for the purpose or if the grant of a licence to an applicant is prejudicial to the interest of the State or if it has been decided to canalise imports and distribution thereof through special or specialised agencies or channels. The scheme of this provisions, according to the submission, suggest that the respondent has no absolute right to the grant of licence nearly because his application has been recommended by the sponsoring authority and that the licensing authority may decline to grant the licence on other relevant consideration affecting the larger and more vital interests of the economy of the State and also other relevant factors beyond the control of the State. In this connection the reference was also made to para 91 of Chapter IV of the Import Trade Control Handbook of Rules and Procedure (1968) which reads :

91. "Issue of import licences to actual users for back period" -

> (1) Where an application for the import licence from an actual user is not disposed of during the licensing period concerned on account of any delay or laches on the part of the applicant, no licence against such application will be issued after the expiry of the licensing period or after the close of the monetary ceiling. However, if the delay in the disposal of the application is on the part of the licensing authority or the sponsoring authority or any other Government Department, the application will be

considered on the merits.

(2) While dealing with an import application for a back period in appeal or otherwise, the authorities concerned will consider such an application having regard to the general principles laid down, that is, availability of monetary ceiling, availability of goods applied for from indigenous sources or other commercial channels, essentiality of the goods applied for, stocks held by the applicant, and expected arrivals against licences in hand, past imports and the consumption of the item(s) in question by the applicant, actual production during the preceding period, estimated production and other factors considered relevant and necessary.

(3) "In case where the applications for licences are not disposed of during the licensing period concerned or before the close of monetary ceiling on account of delay on the part of the sponsoring authority or licensing authority or any other Government Department the value of licences issued in such cases will be treated as first charge on the monetary ceiling to be allocated for the next licensing period and the necessary intimation in this regard will be given to the sponsoring authority."

According to Shri Desai the entire position of monetary ceiling, availability of goods applied for from indigenous sources, essentiality of goods applied for and other relevant factors have to be seen for considering the question of issuing import licences to actual users for back periods. These considerations, said Shri Desai, indicate that if availability of goods applied for, from indigenous sources, improves or the position in regard to foreign exchange deteriorates or there is a change in the matter of essentiality of the goods applied for, then, it would be and, indeed, it should be open to the licensing authority to come to a fresh decision on the question of issuing the licence uninfluenced by the conclusion that during the previous licensing period, the situation being more easy, the import licence applied for would have been more readily granted. The import policy is influenced by the condition of foreign exchange which depends on various factors, some of which may even be wholly beyond the control of the State and, therefore, the licensing authority would be entitled to take them into account at the time when the licence is actually issued. Shri Desai in support of his submission relied on the following observations from the decision of this Court in Glass Chatons Importers and Users' Association v. Union of India ((1962) 1 SCR 862 at 866) :

"It is obvious that if a decision has been made that imports shall be particular agencies or channels the granting of licence to any applicant outside the agency or channel would frustrate the implementation of that decision. If therefore a canalization of imports is in the interest of the general public the refusal of imports licences to a applicants outside the agencies or channels decided upon must necessary be held also in the interest of the general public. The real question therefore is : Is the canalization through specialised agencies or channels in the interest of the general public.

A policy as regards imports forms an integral part of the general economic policy of a country which is to have due regard not only to its impact on the internal or international trade of the country but also on monetary policy, the development of agriculture and industries and even in the political policies of the country involving questions of friendship, neutrality or hostility with other countries."

These observations have also been pressed into service by Shri Desai in support of his contention

that canalising of applications for the import of stainless steel having been introduced since April 1, 1970, it is not open now to issue the import licence to the respondent without the application being canalise according to the prevailing procedure. The learned counsel, however, offered, as agreed in the High Court, to consider the respondent's application according to 1970-71 policy.

6. Shri Singhvi on behalf of the respondent controverted the appellant's argument by strongly relying on the letter, dated February 23, 1970, from the Director of Industries to the Deputy Assistant Iron and Steel Controller in which reference was made to the respondent's assurance to "manufacture only surgical equipments like sterilisers, operation tables, autoclaves etc." and it was recommended that import of stainless steel sheets for the period 1968-69 be treated as priority industry and the licence issued to the respondent on this basis. As canalising policy was introduced only on April 1, 1970, when the respondent's case, according to Shri Singhvi's argument, had already been completed as a result of the assurance contained in the letter of February 23, 1971, the respondent's industry was not governed by this policy and was entitled to get the import licence. Shri Singhvi placed strong reliance on Rule 7(2) contained in the Import Trade Control Handbook of Rules and Procedure of 1968 and contended that the applications for licences must be considered in terms of the relevant policy in force at the time of making the application. Reference in this connection was also made to Rule 81(c), according to which the role of the licensing authorities is -

> "(i) to issue licences on the basis of the recommendations of the sponsoring authorities where such recommendations are in consonance with the policy procedure in force;
>
> (ii) in the case of rejections, to communicate reasons thereof to the applicants;
>
> (iii) to take penal action against the licensees or importers for violations of import and export control regulations.
>
> (iv) to watch the utilisation of ceiling, if any."

It was further contended that the recommendation of the sponsoring authority has to be given due consideration by the licensing authority as provided in Rule 80. The learned counsel submitted that if the import police prevailing in 1968-69 is not applied to the respondent, then, the respondent would suffer in respect of the applications made for the years 1969-70 and 1970-71 though this argument was not developed and the counsel was content merely by asserting prejudice to his client. It may be recalled that the respondent applied for the licence as a new unit. Para 82, sub-para 2 contained in the Handbook of Rules and Procedure for 1968, provides :

> "82(2) New Units (Priority industries) -
>
> (a) The new units, both in the large and the small scale sectors, should make their first and second import applications for raw materials and components in a licensing period, through the sponsoring authority concerned, each covering their requirements for six months. Subsequent applications can be made by them on the basis of actual consumption, in the same manner as has been laid down for the existing units engaged in the priority industries.
>
> (b) In the case of proposed units, the sponsoring authority will recommend a licence against the second application only after the unit has gone into production.

#(c) X X X X."##

Para 53 of the Red Book (1968-69) is in the same terms as Para 82(2)(a).

7. Prima facie, without the new units actually going into production, no question of recommendation for a licence against the second application could arise. But the point having not been fully pursued we express no opinion on this aspect. The respondent's learned counsel also submitted that about 163 applications for import licences had been dealt with by the licensing authority and the licences granted to the applicants. Reference in this connection was made to the affidavit of Lala Manickchand filed in the High Court in support of the writ petition in which it was asserted that licences had been issued in March, 1969, to 163 applicants for the value of Rs. 9,900 each. These licences, according to the ascertain in this paragraph, had been granted without any basis, though a little lower done it was added that those applicants were similarly placed as the respondent and, therefore, the issue of import licence to them showed discriminatory conduct violative of rules of natural justice and equality. It was also added that according to the respondent's information another 321 applicants were going to get licences without any proper basis or criteria. The counsel also made a reference to that part of the respondent's affidavit in the High Court where it was stated that if, as the respondent had reliably learnt, the 300 applicants who had asked for import licences were to be granted their prayers then the ceiling limit allotted for the year would be exhausted and the respondent would not get any relief. It was for this reason that prayer was made in the High Court for restraining the Joint Chief Controller of Imports and Exports from issuing any licence to any other person pending disposal of the respondent's application. According to Shri Singhvi on April 9, 1970, and undertaking was given by the State in the High Court that the plea of exhaustion of the quota would not be taken by it for defeating the respondent's claim. This submission was apparently made for the purpose of controverting the contention that the availability of foreign exchange being one of the vital considerations determining the grant of import licence, it is the prevailing position of foreign exchange at the time of granting the licence which has to be seen. Shri Desai having denied any such undertaking in the High Court and our attention having not been drawn to any such undertaking on the record of the High Court, we do not consider it proper to take into account this assertion made on behalf of the respondent. Shri Singhvi relied on a decision of the Madras High Court. Sha Maggajee Saremall and Brothers v. Joint Chief Controller of Imports and Exports, (AIR 1966 Mad 309.) the head-note of which reads.

> 'Where a transfer of quota rights is effected as a result of change in the constitution of the firm, the new constituted firm becomes entitled to the transferred quota as from the date on which the reconstitution was effected and not from the date on which the Chief Controller of Imports purports to accord recognition to such reconstitution.
>
> The fact that a rule by way of an instruction has been introduced in the Red Book limiting the consideration of applications only to the immediately prior period cannot have any value in so far as the rights of parties come in for examination. The rights of the established importer to the licence for the back periods cannot be denied if his application had been kept pending for reasons other than laches on the part of the applicant. An application for import licence for a particular period must be considered only in the light of the policy relevant to that period and cannot be refused on the basis of the later policy which might have changed the position with regard to the licences for the import of the item applied for. Decision in W.A. No. 15 of 1960 (Mad) and in W.P. Nos. 27, 47, 48 of 1961 (Mad) followed."

8. This decision deals with a situation created by the transfer of quota rights effected as a result of change in the constitution of an existing firm which was an established importer and, therefore, cannot lend much assistance in dealing with the facts before us. The unreported decision of this Court in The Municipal Corporation for Greater Bombay v. The Advance Builders India (Pvt.) Ltd., (C.A. No. 1121 of 1970, decided on August 25, 1971 : (1971) 3 SCC 381) also relied upon by Shri Singhvi merely lays down that "where a statute imposes a duty the performance or non-performance of which is not a matter of discretion, a mandamus may be granted ordering that to be done which the stature requires to be done (Halsbury's Laws of England, Third Edition, Volume II, p. 90)". Quite clearly, this decision only reiterates the recognised rule in regard to the grant of mandamus and is of little help to the respondent.

9. In our view the plea of arbitrariness and mala fides having not been pressed in the High Court it is not possible for this Court to consider it. The material on the existing record to which our attention was drawn is to enough to make out a prima facie case of either mala fides or arbitrariness to justify any further scrutiny. Indeed, in the High Court the State had agreed to consider the respondent's application and the only controversy there was as to the year of which the import policy was to govern the respondent's application. For this purpose, reliance was placed neither on the plea of mala fides nor of arbitrariness with the result that we decline to go into these pleas.

10. There is not doubt that speedy disposal of applications for import licences is of the greatest importance. Indeed, the Import Trade Control Handbook of Rules and Procedure, 1968, Paras 302 to 304 have been exclusively devoted to the subject of Checks on delays. They provide :

> 302. (1) Every effort is made to avoid delays in the disposal of applications for licences or correspondence. Reminders in regard to the delayed cases are attended to promptly by the licensing authorities.
>
> (2) Complaints regarding delay addressed to the Chief Controller of Imports and Exports, New Delhi, should be specifically marked 'Complaint against delay' at the top of the communication containing the complaint.
>
> (3) The applicant should also bring cases of delay to the personal notice of the Public Relations Officer in the Import Trade Control office concerned. The Public Relations Officer of the rank of the Deputy Chief Controller of Imports and Exports had been appointed at the head-quarters of the office of the Chief Controller of Imports and Exports, New Delhi. In the regional offices also, Public Relations Officers have been appointed. Addressing of communications to import trade control organisations :
>
> 303. It is noticed that telegrams and letters received by the licensing authorities from the trade by way of reminder do not often contain sufficient details to enable the licensing authorities to locate the previous papers. With a view to avoid delay in the disposal of such communications the trade should give brief details of the reference received by those from the licensing authority concerned, the particulars of the goods sought to be imported and the I.T.C. classification of such goods. The communication should also indicate its subject-matter, the category of the importer, the type of the licence to which it pertains, whether it relates to the grant of the licence or amendment or revalidation thereof or an appeal, and it should also give the number and date of the relevant original application.

304. Enquiries regarding the position of applications -

(a) The arrangement under which the importers could enquire the position of the import application by filling the import enquiry ship has been discontinued.

(b) The licensing authorities will make ever effort to dispose of the applications as quickly as possible. If an application for an import licence is not disposed of within one month from the date of its receipt in the licensing section the licensing authority will issue an interim reply to the applicant. If an applicant does not receive an interim reply even after this time limit, he can bring the matter to the notice of the Public Relations Officer in the import trade control office concerned or book an interview with the officer concerned through the Enquiry Officer in order to know the reasons for the delay in the disposal of his application.

(c) Where a licensing authority calls for certain documents or information from the applicant for any deficiencies in the application are communicated to the applicant, and the applicant has furnished the required documents or information or made good the deficiencies but does not receive any further communication from the licensing authority within 15 days thereafter, he can bring the matter to the notice of the Public Relations Officer or book an interview with the Officer concerned to know the reasons for the delay in the disposal of the application.

(d) Applications for import of capital goods and heavy electrical plant will take somewhat longer time. But in such cases also, if the applicant finds that there has been a delay in the disposal of his application, he can bring the matter of the notice of Public Relations Officer or book in interview with the concerned officer to know the reasons for delay."

This importance is justified because it is necessary for our country to utilise without undue delay the available foreign exchange, the supplies of which are limited, lest due to unforeseen circumstances beyond the control of the State the position in this regard deteriorates. Para 91 of this Handbook, which has already been reproduced, while properly safeguarding the right of the applicants for import licence also points out the consequences of delay and laches on their part. In the present case, as is clear from the respondent's counter-affidavit and from what has already been stated earlier, in the advance copy of the respondent's application, no particular end-use of the stainless steel sheets required was specified and the respondent was asked to furnish particular of the end-use and other required information in April, 1969. The S.S.I. Registration Certificate was for the end-products "hospital and surgical instruments and household utensils". As per policy, there was a ban on issue of licences for stainless steel sheets for manufacture of household utensils. It was in May, 1969, after the expiry of the period 1968-69 that the respondent firm stated that they were going to manufacture hospital requisites such as surgical bowls, spittoons and trays. In the meantime, as in clear, there being a large number of new units who had applied for import licences in April, 1969, the department considered it desirable to have a further scrutiny and fresh instructions came into force with effect from April 16, 1969, (GLI No. 23/69). It is for these reasons, which cannot be considered to be irrelevant, that the application could not be disposed of during 1968-69 period. We are ignoring the fact that according to the counter-affidavit the respondent's application, along with the essentiality certificate, was received in the office of the Deputy Assistant Iron and Steel Controller on April 23, 1969, which was after the expiry of the 1968-69 period, and we are assuming without holding, that the respondent's application had reached the appropriate authority

during are 1968-69 period. It is not possible for us, on the material on the record and on the arguments advanced at the bar, to hold that there was any undue delay, laches or dilatoriness on the part of the department in disposing of the respondent's application during 1968-69. The history of the correspondence between the respondent and the department, as already, noticed, clearly shows that the respondent's application included items of manufacture which were not covered by the priority list and as a result of a large number of new applicants for the sensitive items of stainless steel, the department was compelled to hold a proper scrutiny in the larger interests both of the healthy growth of industry and of the balanced economy of the country. Fresh instructions for this purpose issued on June 4, 1968, became operative and the respondent the naturally required to comply with these instructions. Since the respondent's application contained items which were non-priority end-products this application was kept pending until the completion of its examination, and in our opinion this was not unreasonable. It was on April 8, 1970, that the Chief Controller of Imports and Exports, apparently after proper review of the situation, issued instructions providing for the consideration of applications like those of the respondent irrespective of the date on which they were forwarded to the department in terms of the licensing policy for 1970-71. Though that period has expired, Shri Desai has fairly offered on behalf of his clients even now to consider the respondent's application in terms of the policy for that year.

11. Now, it had to be borne in mind that in the present stage of our industrial development imports requiring foreign exchange have necessarily to be appropriately controlled and regulated. Possible abuses of import quota have also to be effectively checked and this inevitably requires proper scrutiny of the various applications for import licence. In granting licences for imports, the authority concerned has to keep in view various factors which may have impact on imports of other items of relatively greater priority in the larger interest of the over-all economy of the country which has to be the supreme consideration, and an applicant has no absolute vested right to an import licence in terms of the policy in force at the time of his application because from the very nature of things at the time of granting the licence the authority concerned may often be in a better position to have a clearer over-all picture of the various factor having an important impose on the final decision of the allotment of import quota to the various applicants. Shri Singhvi's suggestion that the respondent's concern may have to close down if the import licence is not granted according to 1968-69 policy is difficult to accept in view of the assertion in the writ petition claiming turnover of 8 to 10 lakhs by purchasing raw material from local markets.

12. In our opinion, no case has been made out on the present record for a mandamus to the department to consider the respondent's application for import licence in terms of 1968-69 policy. It is not possible on the existing material to conclude that the department is guilty of any undue laches or delay in dealing with the respondent's application which would justify the Court in granting the mandamus prayed for. The High Court was thus not right in making the impugned order. As Shri Desai has given an under-taking that the respondent's application would be considered in the light of the import policy for 1970-71 even though that period expired long ago, we need say nothing more on this aspect. We would accordingly allow the appeal with the observation that the respondent's application be considered in accordance with the import policy for the year 1970-71 without avoidable delay. In the circumstances of the case there would be no order as to costs.

</html