

J. Fernandes & Co

Vs

The Deputy Chief Controller of Imports and Exports and Others

Writ Petition No. 615 of 1970

(CJI A. N. RAY, K. K. Mathew)

07.03.1975

JUDGMENT

RAY, C.J. -

1. This writ petition is for a mandamus directing the respondents to cancel four orders mentioned in the petition and to issue quota certificate to the petitioners in respect of their past imports.
2. The petitioners are a partnership firm. The petitioners are successors to J. Fernandes & Company of which Josinho Fernandes was the sole proprietor, hereinafter referred to as the original concern.
3. In the month of October, 1961, the original concern booked orders for purchase of surveying and mathematical instruments and surgical and scientific instruments with a German firm. The orders were accepted by the German firm, as will appear from the letter dated November 7, 1961.
4. On December 19/20, 1961, Goa was liberated. Prior to the liberation of Goa import licences were granted to the citizens of Goa by a Government department known as "Junta do Comercio Externo" which means the Board of External Trade. The original concern is alleged to be an importer registered with the Junta prior to the month of December, 1961. After the liberation of Goa the representatives of Goa Chamber of Commerce and Industry saw the Administrator of Goa with regard to applications for import. On January 18, 1962 the original concern applied to the Administrator of Goa for issuing an import licence for 32,652.10 pounds for surveying and mathematical instruments and surgical and laboratory equipments, along with necessary papers of firm commitments.
5. The original concern obtained a licence on February 12, 1962. The licence was No. 47. The original concern was allowed to import instruments, microscopes, laboratory apparatus and utensils all worth 32,652.10 pounds. The original concern opened a letter of credit on February 21, 1962 for 50 per cent of the licence.
6. The Central Government on February 21, 1962 informed the Administrator, Goa, that the Central Government withheld action on all pending cases where import had been authorised. The Central Government gave two reasons. First, the Government were of the view that any relaxation of import would result in serious drain on foreign exchange, and second, that it was difficult for any authority to be satisfied about the firm commitments and some abuse was possible. Pursuant thereto the Administrator, Goa, issued directions to suspend issue of letter of credit and all cases relating to firm commitments entered into before December 18, 1961 which were till then, not disposed of,

should be frozen.

7. On April 2, 1962, the Administrator of Goa issued a Press Note that imports into Goa, Daman and Diu would be governed by three principles. First, import would be allowed in cases (a) where letters of credits had been opened with the Banco National Ultra Marines on or before December 18, 1961; (b) where goods were shipped on or before December 20, 1961. Second, imports of certain specified items were banned. Third, imports would be allowed of certain goods to the extent of 50 per cent of imports actually made in the quarter of September, October and November, 1961.

8. The petitioner's licence No. 47 was revalidated on May 28, 1962 for 16,000 pounds for which the petitioner had not till then opened letter of credit. February 27, 1962 is the date when the Administrator of Goa had suspended to issue fresh letter of credit. In the month of July, 1962, the petitioner effected imports of goods for the full value.

9. The Imports and Exports Control Act, 1947, was applied to Goa, Daman and Diu from October 1, 1963.

10. In October, 1964, the original concern was taken over by the petitioner.

11. In 1967 the Hand Book for the year 1967 declared the period April 1, 1961 to March 31, 1966 as the basic period and any one year during the period could be selected as the basic import by the concerned party who would become the established importers.

12. On May 15, 1967 the petitioner applied to the licensing authorities for recognising the change in the constitution of the firm and fixation of quota for which they could import the goods. The licensing authorities recognised the change in the constitution but refused to fix the quota on the ground that the original licence No. 47 granted to the original concern on February 12, 1962 was not issued in accordance with the procedure followed for the issue of licence at that time. The petitioner filed an appeal against the order. The appeal was rejected. The petitioner filed a review application which was rejected.

13. The petitioner's grievances are these : First, licence No. 47 dated February 12, 1962 was a licence issued in accordance with the procedure followed for the issue of licence at that time. The directions of the Central Government were illegal. The Central Government was not competent to issue directions to the Administrator of Goa except through the President in view of Articles 239 and 240 of the Constitution. Second, the provisions of the Goa, Daman, Diu Administration Ordinance No. 2 of 1961, hereinafter referred to as the Ordinance and Goa, Daman, Diu Administration Act 1 of 1962, hereinafter referred to as the Act cured all irregularities of the State, if any, for the grant of licence. Third, refusal to consider the application affects the fundamental right of the petitioner to carry on trade and business. Fourth, the petitioner's fundamental right under Article 14 is violated because the respondents discriminated against the petitioner. The respondents granted licences to six parties. It is said that the conditions, namely, shipping before December 20, 1961 and opening of letters of credit before December 18, 1961, could only operate in respect of licences issued by the Portuguese Government. When by reason of policy, these were the conditions applied, the same should have been applied even to those who were given licences under the old laws by the Portuguese Government or those who were given licences by the Administrator of Goa under the operation of the old laws. There is no distinction between the cases of the petitioner and the case of six traders mentioned in Annexure R-4 at page 169.

14. The contention of the petitioner that six traders have been granted licences whereas the petitioner was not, and, there was violation under Article 14 is unacceptable. These six licences were issued before liberation between the period February 12, 1961 and December 4, 1961. The six licences were issued prior to the liberation of Goa. The liberation of Goa was on December 19, 1961. On December 20, 1961, Goa became a Union territory. The licence on which the petitioner bases the claim was dated February 12, 1962. The petitioner was not admittedly issued any licence before the liberation of Goa. Between the liberation of Goa and the application of the petitioner for licence, the Government of India issued on January 3, 1962 to the Chief Civil Administrator, Goa, certain directions regarding the issue of import licence. The original concern had not opened letter of credit before December 18, 1961 and the goods in question were not shipped prior to December 20, 1961. The application of the petitioner was subsequent to the issue of directions dated January 3, 1962 by the Government of India that imports would be allowed if letter of credit had been opened before December 18, 1961 or shipment had taken place before December 20, 1961. The classification of persons with reference to the grant of import licence depending on whether it was granted before the liberation or after the liberation of Goa is a valid classification based on intelligible differentia having a rational nexus with the object of import licence policy. There is no violation of Article 14. The petitioner stands on a different footing and does not belong to the class of persons who were given import licences during the Portuguese rule before the liberation of Goa.

15. The petitioner challenges the orders dated September 28, 1968 rejecting the petitioner's application for the issue of a quota certificate. The Government rejected it on the ground that licence No. 47 dated February 12, 1962 was not issued in accordance with the procedure prescribed for issue of licences, at that time. The Government relied on paragraph 33(n) of the Hand Book of Rules, 1968. In short, that paragraph is that licence would be given only for the basic period between April 1, 1961 and March 31, 1966 to established importers. The Government took the stand that the petitioner is not eligible because there was no valid licence. The petitioner does not challenge the validity of any provision of the Imports and Exports (Control) Act, 1947, or any provision of any statutory orders issued thereunder. The petitioner does not challenge the validity of paragraph 33(n) of the Hand Book of Rules of Procedure. There is no challenge to the authority of the Deputy Chief Controller of Imports and Exports to pass an order in the light of paragraph 33(n) of the Hand Book.

16. Really, the petitioner's contention is that the licensing authorities misapplied or wrongly applied the Imports and Exports Control Act. A petition under Article 32 will not be competent to challenge any erroneous decision of an authority. (See *Gulabdas & Co. v. Assistant Collector of Customs* (AIR 1957 SC 733 : 1957 SCJ 709) and *State of J. & K. v. Mir Gulam Rasul* ((1961) 3 SCR 969 : AIR 1961 SC 1301).) A wrong application of law would not amount to a violation of fundamental right. Das, C.J. said in the case of *Gulabdas & Co.* that if the provisions of law are good and the orders passed are within the jurisdiction of the authorities there is no infraction of fundamental right if the authorities are right or wrong on facts. In the case of *Gulabdas & Co.* the petitioners challenged the order of the Assistant Collector of Customs. The Customs authorities assessed duty under Item 45(4) of the Indian Customs Tariff. The petitioners in that case contended that the duty should have been assessed under Item 45(a). This Court held that there was neither any violation of fundamental right under Article 19 or any unequal treatment and the petition was not maintainable. This Court in the case of *Smt. Ujjam Bai v. State of U. P.* ((1963) 1 SCR 778 : AIR 1962 SC 1621), as also in the case of *Bhatnagar & Co. Ltd. v. Union of India* (1957 SCR 701, 712 : AIR 1957 SC 478), held the same view that any erroneous decision would not be a violation of Fundamental Rights.

17. The petitioner relied on Sections 3, 4 and 7 of the Goa, Daman and Diu (Administration)

Ordinance, 1962. Section 3 of the Ordinance in short stated that authorities who, immediately before the commencement of this Ordinance, were exercising lawful functions in connection with the Administration of Goa, Daman and Diu or any part thereof shall, unless otherwise directed continue to exercise in connection with such administration their respective functions. Section 4 of the Ordinance speaks of continuance of existing laws and their adaptation until amended or repealed by a competent Legislature. Section 7 says that all things done and all actions taken on or after the appointed day which was December 20, 1961 and before the commencement of the Ordinance, viz., March 5, 1962 by the Administrator or any other officer which have been done or taken in good faith and in a reasonable belief that they were necessary for the peace and good Government of Goa, Daman and Diu, shall be as valid and operative as if they had been done or taken in accordance with law.

18. The petitioner also relied on Sections 4, 5 and 9 of the Act. Section 4 speaks of officers who before the commencement of the Act were exercising lawful functions would continue to exercise their respective functions. Section 5 of the Act speaks of continuance of existing laws and their adaptation until amended or altered by the competent Legislature. Section 9 of the Act speaks of validation of certain action and indemnity of officers for certain acts similar to Section 7 of the Ordinance.

19. Sections 3 and 4 of the Goa, Daman and Diu (Administration) Ordinance No. 2 of 1961 and Sections 4 and 5 of the Goa, Daman and Diu (Administration) Act No. 1 of 1962 do not support the case of the petitioner. These provisions in the Ordinance and the Act same into force on March 5, 1962. The import licence was issued on February 12, 1962 which is prior to the coming into force of the provisions of the Ordinance and the Act. After the liberation of Goa the Portuguese laws were not in force and, therefore, the petitioner cannot take recourse to the Portuguese laws for the validity of the licence which was issued on February 12, 1962. The Chief Civil Administrator was subordinate authority to the Government of India and was bound to obey the directions of the Central Government. The Chief Civil Administrator had no authority to issue a licence in disregard of the directions of the Central Government. Such a licence would not confer any right on the petitioner (see *State of Punjab v. Jagdip Singh* ((1964) 4 SCR 964 : AIR 1964 SC 521 : (1966) 1 Lab LJ 749)).

20. The petitioner cannot draw any sustenance either from Section 7 of the Ordinance or Section 9 of the Act for three reasons. First, the scope of validation is limited to such acts which were done in good faith had with the reasonable belief that they were necessary for peace and good Government. The licence was issued in contravention of lawful directions given by the Government of India. The licence was not issued in good faith or in a reasonable belief that they were necessary for the peace and good Government of Goa, Daman and Diu. Second, the validation was not intended to protect breaches of directions issued by the new sovereign. (See *Pama Chibar v. Union of India* ((1966) 1 SCR 357 : AIR 1966 SC 442)).

21. If the licence dated February 12, 1962 was validated by Section 7 of the Ordinance that validation would be an answer to any move on the part of the respondents to cancel that particular licence. What was deemed to be valid by . . . legal fiction for a certain purpose, notwithstanding the infirmity in granting it, cannot confer any right on the petitioner to claim in future as a matter of right, any import quota. The validation would be only in respect of past transactions. Third, in the year 1967 the Government of India laid down the conditions that imports made under licences issued through inadvertence or mistake in the past would not be considered for issuing the import quota certificate. This is a matter of policy. Normally, courts do not go into such policy decision.

The policy decision is also not challenged by the petitioner. If the policy is followed and in a given case a licence was issued contrary to the procedure or by mistake or inadvertence, the decision in the year 1968 in the light of the policy enunciated in 1967 cannot be regarded erroneous simply on the ground that the original licence erroneously issued in 1962 might be validated under Section 7 of the Ordinance.

22. Any revalidation of the licence on May 28, 1962 by the Administrator would not assist the petitioner in regard to obtaining quota rights. On April 12, 1962 the Administrator himself issued a Press Note specifying the conditions subject to which imports would be allowed. Revalidation was in violation of the terms and conditions set out by the Chief Civil Administrator in his Press Note dated April 2, 1962. It is not correct to say that the Chief Civil Administrator revalidated the licence dated February 12, 1962 on May 28, 1962. The Chief Civil Administrator merely extended the validity of the licence for a further period of 90 days. It is not a case of revalidation of a defective licence but a case of extension of the duration of the licence. If the original licence was defective mere extension of the duration of the licence could not cure the defect. In any event, the protection, if any, of the validating section in the Ordinance would not extend beyond March 4, 1962 because the acts validated under Section 7 of the Ordinance must have been done between December 20, 1961 and March 4, 1962.

23. The directions issued by the Central Government are impeached by the petitioner to be in violation of Articles 239 and 240 of the Constitution. Under Article 1(3)(c) of the Constitution, Goa, Daman and Diu became part of the territory of India by acquisition. Goa, Daman and Diu became a Union territory on and from the date of their acquisition by the Government of India. Under Article 239(1) a Union territory shall be administered by the President acting through an Administrator. Article 240 empowers the President to make regulations for the peace, progress and good Government of the Union territory. In the present case no Presidential Regulation was relied on by either side.

24. Parliament has power under Article 246(4) to make laws with respect to any Union territory. The executive power of the Union under Article 73(1)(a) shall extend to the matters with respect to which Parliament has power to make laws. The Union Government has, therefore, power to issue executive directions to the Administrator of a Union territory. So long as there is no conflict between a direction issued by the Central Government and a Presidential Regulation made under Article 240, the Administrator of a Union territory is bound to carry out the orders and directions given by the Central Government. The decision of this Court in *Shamsher Singh v. State of Punjab* ((1974) 2 SCC 831 : 1974 SCC (L & S) 550) is that the powers conferred on the President by Article 239 are to be exercised by him on the aid and advice of the Cabinet. Therefore, the directions issued by the Central Government are valid because of the combined effect of Article 73 and Article 246 which confers power on the Union Executive to exercise powers in respect of matters with respect to which Parliament has competence to make laws.

25. In the present case, the Chief Civil Administrator himself declared in a Press Note dated April 2, 1962 the terms and conditions subject to which import licence would be granted. The alleged revalidation of licence No. 47 in the month of May, 1962, took place subsequent to the Press Note and contrary to the terms and conditions. It was really not a revalidation of the licence but an extension of the period. If the licence itself was defective, there could not be any validation of the licence as was contended for by the petitioner.

26. There is no particular statute or Portuguese law which confers any right on the petitioner to get

an import licence in the circumstances in which it was issued to him. Even if pre-liberation laws continued to be in force with effect from March 5, 1962 that would not take away power of the Central Government to modify or alter the pre-existing procedure for issuing import licences, after liberation, in exercise of its executive powers under Article 73(1) of the Constitution.

27. The petitioner contended that the original concern was an importer registered with the Junta prior to December, 1961. The respondents denied that allegation. The petitioner in the rejoinder alleged that it is to be presumed that the original importer must have been registered with the Junta, prior to the liberation. No materials were shown to establish that the original concern was a regular registered importer. The contention on behalf of the respondents that the licence was issued without following the regular procedure and by inadvertence or mistake is borne by the facts and circumstances of the case particularly because the Chief Civil Administrator had no authority to issue any import licences in contravention of the directions of the Central Government issued on January 3, 1962.

28. The petitioner relied on the decision of this Court in *M/s. Andhra Industrial Works v. Chief Controller of Imports* ((1974) 2 SCC 348 : AIR 1974 SC 1539), in support of the proposition appearing at page 1542 (SCC p. 352) of the Report. The proposition stated there is that one of the instances in relation to laws regulating the citizen's right to carry on trade or business guaranteed by Article 19(1)(g) may be catalogued as where the impugned action is based on a misconstruction of the intra vires statute or is so contrary to the established procedure or rules of natural justice that it results in violation of a fundamental right. In the case of *M/s. Andhra Industrial Works* the proposition which was extracted from *Ujjambai's case* (supra) is that an order of assessment made by an authority under a taxing statute which is intra vires, cannot be challenged under Article 32 as repugnant to Article 19(1)(g) on the sole ground that it is based on a misconstruction of a provision of the Act or of a notification issued thereunder. In *Ujjambai's case* it was said that when assessment proceedings are repugnant to rules of natural justice there is an infringement of the right guaranteed under Article 19(1)(f) and 19(1)(g). In support of that proposition reference was made to *Tata Iron and Steel Co. Ltd. v. S. R. Sarkar* ((1961) 1 SCR 379 : AIR 1961 SC 65 : (1960) 11 STC 655), *K. T. Moopil Nair v. State of Kerala* ((1961) 3 SCR 77 : AIR 1961 SC 552) and *Madanlal Arora v. Excise and Taxation Officer* ((1962) 1 SCR 123 : AIR 1961 SC 1565 : (1961) 12 STC 387).

29. In the case of *Andhra Industrial Works* (supra) an objection was raised on behalf of the respondents that the petition was not competent because there was no violation of Fundamental Rights. This Court upheld that objection and said that neither the Imports and Exports (Control) Act nor any order thereunder was alleged to be ultra vires nor was the Import Control Policy impeached. A policy statement was held to be not a statutory document. No person can on the basis of a policy statement claim a right to the grant of an import licence. This Court also held that there is no absolute right much less a fundamental right to the grant of an import licence.

30. This Court in *Deputy Assistant Iron and Steel Controller v. L. Manickchand, Proprietor, Katrella Metal Corporation, Madras* ((1972) 3 SCR 1 : (1972) 3 SCC 324) held that no one has any vested right to an import licence in terms of the policy in force at the time of his application. There is no misconstruction of any statutory provision in the present case. In the present case, it cannot be said that there is no authority of law to reject an application for import licence.

31. For these reasons, the petition fails and is dismissed. Parties will pay and bear their own costs.

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