

M/s Ajoomal Lilaram and Another

Vs

Union of India and Others

Civil Appeals Nos. 3741-3742 Of 1982

(O. Chinnappa, V. B. Eradi JJ)

13.12.1982

ORDER

CHINNAPPA REDDY, J. –

1. It transpires from the facts which we shall presently set out that the National Agricultural Cooperative Marketing Federation of India, 'NAFED' for short, is a law unto itself and its officers are not unduly concerned either about carrying out the Export Trade Instructions issued by the Government of India or about filing truthful affidavits in the Supreme Court of India.
2. On June 23, 1982, the Chief Controller of Imports and Exports, Ministry of Commerce, Government of India, issued Export Instruction No. 59 of 1982 on the subject of export policy of Niger seeds during 1982-83. Paragraph 2 and 3 of the Instruction are important and may be fully set out. They are as follows :

On a review of the position it has been decided to allow export of Niger seeds within an overall ceiling of 10,000 (ten thousand) tonnes through the canalising agency, viz., the National Agricultural Cooperative Marketing Federation of India Ltd. (NAFED) subject to minimum export price of Rs. 8500 (Rupees eight thousand five hundred) per metric tonne. While the NAFED can continue to undertake exports themselves, private parties will also be allowed to export Niger seeds as Associates of NAFED against firm commitments backed by irrevocable Letter of Credit subject to availability of ceiling. Export by private parties will be allowed on first come, first served basis. For this purpose, the exporters should register their contracts with the NAFED. The NAFED will stop registration of contracts as soon as the ceiling is exhausted.

The NAFED will be responsible to monitor the ceiling and ensure that export of Niger seeds not exceed the overall quantity of 10,000 M. T. during 1982-83. In other words, the export will be allowed only against the balance quantity left unutilised out of the ceiling of 10,000 tonnes released vide Export Instruction No. 15/82 dated April 7, 1982.

3. Pursuant to the Trade Instruction, a Trade Notice was published by the Joint Chief Controller of Imports and Exports on the same lines. We may mention here that out of the 10,000 tonnes, export of which was to be allowed, the NAFED reserved to itself the right to export 5000 tonnes and decided to allow its associates to export the remaining 5000 tonnes.
4. On the faith of the Trade Notice, the petitioner in Special Leave Petition No. 10230 of 1982

entered into a contract with M/s Curtis (Confirmers) Limited of London on July 7, 1982 for the sale and export of 1000 metric tonnes of Indian Niger seeds at the price of Rs. 8560 per metric tonne, f.o.b. at any India port. Shipment of 200 metric tonnes was to be by October 1982, 300 metric tonnes by February 1983 and 500 metric tonnes by March 1983 at buyer's option with one month's clear notice. The payment was to be by "firm, irrevocable credit, to be opened through first-class bank for 10 per cent value now and for balance 90 per cent to be opened 15 days prior to shipment." The petitioner forwarded the contract to NAFED on July 22, 1982 with a request that the contract may be registered and promising to send the letter of credit in two or three days. An Irrevocable Documentary Letter of Credit was duly opened by the Banque Nationale de Paris on behalf of the foreign buyer in favour of the petitioner for the amount of Rs. 8,56,000 being 10 per cent of the total value of the goods. The letter of credit also stipulated that within 15 days before each shipment, "the credit value was to be increased to cover the amount of each shipment and that would be advised as an amendment to the credit". The Letter of Credit was forwarded to the NAFED by the petitioner on July 26, 1982 with a request that the quantity of 1000 metric tonnes might be reserved for him for export. The NAFED sent a reply on August 6, 1982. "We will revert in the matter shortly." On September 3, 1982 the petitioner reminded the NAFED both by letter and telegram about his request for allotment of quota. The petitioner also sent a telegram to the Government of India that matters were unduly delayed though he had completed all the formalities. It appears that meanwhile, the NAFED wrote to the Ministry of Commerce, Government of India, on September 17, 1982 informing the Government of India that it was for the NAFED and its Board of Directors to formulate guidelines regarding release and modalities of export. A copy of the guidelines formulated by the NAFED on September 16, 1982 was enclosed. Two statements containing the names of the applicants for quotas and other particulars were also enclosed. The first statement showed the names of 22 applicants whose requests for allotment of quotas were said to be backed by Letter of Credit. The appellants in the appeals before us are included in this list though this was denied in the counter-affidavit filed on behalf of the NAFED. More about it later. The second statement contained a list of 34 names of applicants whose contracts were not backed by any Letters of Credit. On receipt of this letter the Government of India by their letter dated September 30, 1982 objected to the guidelines said to have been approved by the NAFED as they were contrary to the guidelines issued by the Government of India. It was pointed out that according to the instructions of the Government of India the allotment had to be made on first come first served basis whereas according to the guidelines prepared by the NAFED the quotas were to be allotted by a committee consisting of the Chairman and officials of the NAFED, the Government and the trade, after considering all the applications received within a certain specified period. In fact the guidelines issued by the Government of India required that registration of applications should be stopped as soon as the ceiling limit was reached on a first come first served basis. Further, the guidelines prepared by the NAFED provided that Letters of Credit would have to be submitted within three weeks after allotment and this was again contrary to the guidelines issued by the Government of India which required that the Letters of Credit should be made available for registration of the requests for allotment of quotas. The letter of the Government again and again emphasised that quotas should be allotted on first come first served basis to exporters against firm commitments, backed by irrevocable Letters of Credit, subject to availability of ceiling. The Government asked the NAFED to refer to the fact that the letter of the NAFED itself showed that there were 22 parties who had registered their contracts for export, whose requests for allotment were backed by Letters of Credit and that the total of their requests came to 1859 tonnes. On the other hand, it was pointed out, the requests of the other 34 parties for quotas were not backed by Letters of Credit. The Government of India finally instructed the NAFED to ensure that exports of Niger seeds were undertaken in conformity with the instructions issued by the Government of India E. I. No. 59/82

dated June 23, 1982. The NAFED was reminded that while the NAFED was only a canalising agency for export of Niger seeds, the export would have to be undertaken by them only within the policy as laid down by the Government. The NAFED was further told that a Trade Notice had already been issued by the Joint Controller of Imports and Exports and that it was not for the NAFED to issue another Trade Notice as proposed by it.

5. The instructions of the Government of India reiterated by their letter dated September 30, 1982 fell on deaf ears. The NAFED ignored the instructions of the Government of India and persisted in the error of its ways. At a meeting held on October 16, 1982 the NAFED purported to select applicants for export quotas neither on a first come first served basis as originally announced in the Trade Notice nor only from among applicants whose contracts were backed by Letters of Credit. They proposed to give time to the selected applicants to produce Letters of Credit.

6. The petitioners moved the Delhi High Court under Article 226 of the Constitution for redress but their writ petition were dismissed in limine. They have come to this Court under Article 136 of the Constitution. As we were told that the applicants who had been selected for allotment of quotas had been able to secure a higher price from their buyers and therefore, allotment of quotas to the petitioners would result in considerable loss of foreign exchange, we were anxious to know the present attitude of the Government of India in the matter. The Government of India has now appeared before us through the learned Additional Solicitor-General and a counter-affidavit has been filed on their behalf by a Deputy Secretary in the Ministry of Commerce.

7. The NAFED has no clear or definite answer to the petitioners' claim. First, it was said that the Letter of Credit furnished by the petitioner did not conform to the requirement of the Trade Notice, but the argument was not pursued as it was seen from the file produced by the Government of India that the Letters of Credit furnished by such of the selected applicants for quotas as did furnish Letters of Credit were all similar to those produced by the petitioners. In fact, some of the chosen ones furnished no Letters of Credit and it was proposed to give them time for the production of Letters of Credit. This, of course, was not in accordance with the terms stipulated by the Trade Notice. It is also clear from the letters which the NAFED addressed to the Government of India that it was never for a moment doubted by anyone that the Letters of Credit produced by the petitioners conformed to the requirements of the Trade Notice. The present stand is a clear afterthought and a pretence. In the counter-affidavit filed on behalf of the NAFED it was stated that 22 applicants for allotment claimed that they had firm contracts backed by Letters of Credit for full value. The total quantity covered by these applications was 4859 tonnes. It was asserted that the petitioners did not fall in this category. It was stated that the petitioners came in the category of those who had secured a price of Rs. 8600 per tonne but whose contracts were not backed by Letters of Contracts. The learned counsel who appeared for the NAFED also submitted before us, on instructions, that the petitioners were not among the 22 applicants whose contracts were considered by the NAFED as backed by Letters of Credit. But a perusal of the file produced by the Government of India exposed the statement made in the affidavit filed on behalf of the NAFED as false. The NAFED had itself prepared a statement showing "Enquiries received from private parties backed by Letters of Credit for export of Niger Seeds". This statement was sent to the Government of India along with its letter dated September 17, 1982 and it contains a list of 22 names. Both the appellants in the appeals figure in it. It is clear to us the statement in the counter-affidavit is false. It is also clear to us that the learned counsel was misled and wrongly instructed to argue before us that the appellants were not included in the list of 22.

8. It appeared to us that a copy of the letter dated September 17, 1982 of the NAFED to the

Government of India was not made available even to the learned counsel. We repeatedly asked for it and we could ultimately get it from the file produced by the Government of India.

9. One of the submissions made to us was that the selected applicants had secured a higher price per tonne and that would help to earn more foreign exchange. In the first place their contracts are not backed by Letters of Credit as stipulated by the Trade Notice and they were not eligible for registration. In the second place the ceiling had already been reached and for that reason also they could not be registered.

10. The counter-affidavit filed by the Government of India fully disregarded the trade instructions issued by the Government of India as well as the Trade Notice issued pursuant to the trade instructions. In paragraph 27 of the counter-affidavit, it is expressly stated : "I submit that the answering respondents have no objection if relief is granted to the petitioners provided they fulfil the requirements of the export instructions issued by respondents 1, 2 and 4." In the circumstances we have no option but to allow these appeals. Necessary directions have already been issued by us on November 29, 1982. The appellants are entitled to get their costs in each of these appeals from the 6th respondent, the National Agricultural Cooperative Marketing Federation Ltd. We fix the costs at Rs. 5000 in each appeal.

</html