SUPREME COURT OF INDIA

Union of India and anr.

Versus

International Trading Co. and anr.

7.5.2003

(Shivaraj V. Patil and Arijit Pasayat, JJ.)

Civil Appeal Nos. 4020-4023 of 2003.

JUDGMENT

Arijit Pasayat, J. - Delay condoned.

2. Leave granted.

3. Challenge in these appeals is to the direction given to the Union of India by Division Bench of the Delhi High Court to dispose of applications for renewal filed by the respondents expeditiously, in the background of views expressed on the factual aspects.

4. Shorn of rhetoric and bereft of legal controversy which constitutes bulk of the armoury as regards attack to the legality of judgment of the High Court by which four Letters Patent Appeals were disposed of, the factual background is as follows :

5. The respondents applied for and were granted permits under the provisions of the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981 (in short "the Act") and the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Rules, 1982 (in short "the Rules"). Permits were granted in the Exclusive Economic Zone of India in the prescribed form. The said permit authorized the applicants respondents to obtain on lease and operate Foreign Deep Sea Fishing Vessels in terms of the Act and the Rules. The permit was, however, not renewed after its period of initial currency. Stand of the appellants was that in each case permit was valid for a period of 15 years from the date of issue, since they were granted in accordance with the Government of India's policy relating to fishing of Deep Sea Resources in Indian Exclusive Economic Zone by leased Foreign Deep Sea Fishing Vessels, and were operative for a period of 15 years. There is a marked distinction between a chartered vehicle and a leased vehicle because different periods have been prescribed for currency of the concerned permits. Though applications for renewal were filed with requisite fees, no express order was passed in any of the cases declining to grant permit. However, pay orders covering renewal fee were returned to the appellants. Grievance is made that no reason has been indicated and, there is also no reference to any policy decision for not effecting the renewal. The appellants were taken up by a learned Single Judge. With reference to earlier order passed by Division Bench in the case of ***M/s Golden Ahar Ltd. and anr. v. Union of India*** and the counter affidavit filed by the present appellants the writ applications were dismissed. In the said case the Division Bench noticed that renewal of permission was not a matter of right, since there

was change in Government policy. In larger public interest, the deep sea fishing policy had to be reframed. A Review Committee was appointed which submitted its recommendations, and in that view of the matter there was no question of directing renewal of the permits. It was noticed by the Court that having regard to the policy decision adopted by the Government of India in the year 1996 pursuant to the report of the Review Committee constituted under the Chairmanship of Mr. P. Murari, the Government was in the process of formulating a new deep sea fishing policy. In view of the non-success before the learned Single Judge, the applicants filed Letters Patent Appeals before the High Court, wherein the impugned judgment has been passed. The High Court, *inter alia,* came to the conclusions that renewal of the permit is a valuable right; it could be refused only on cogent and valid grounds; though plea was taken that the renewal period was mentioned by mistake same appears to be an afterthought, and the concerned authorities were required to consider the prayer for renewal of the permit in accordance with law. The authorities were directed to pass an appropriate order thereupon. Principles of natural justice were required to be applied. Though licence has not been granted for a period of 15 years, there has been a legitimate expectation that renewal shall be granted. Policy decision which is contrary to the statute cannot be upheld. The earlier decision in M/s Golden Ahar Ltd. (supra) was not a binding precedent, as several relevant provisions had not been brought to the notice of the Division Bench hearing the case.

6. However, it was held that in the circumstances relief was not available by issuing a Mandamus directing the concerned officials to renew the licence. Consideration was to be made by the statutory authorities at the first instance. With the aforesaid conclusions, the authorities were directed to consider the applications and take a decision within a period of six weeks from the date of communication.

7. In support of the appeals, Mr. K.N. Raval, learned Solicitor General submitted that the High Court has lost sight of the fact that if the licence/permit is renewed, it would be only by going against the specific stipulations in the policy decision. The High Court was not justified in its conclusion that there was legitimate expectation or promissory estoppel involved, and that the policy decision was contrary to the statute. Reference was made to the recommendations made by the Murari Committee which specifically prohibit renewal, extension of existing licence and put prohibition on issuance of permits in future for fishing to joint venture/charter/lease/test fish vessels. The recommendations were approved and accepted. It was pointed out that fishing in Indian Exclusive Zone by foreign vessels is governed and regulated by the Act and the Rules thereunder, while fishing by Indian vessels in the said zone is governed by executive orders.

8. Responding to the aforesaid pleas, learned counsel for the respondents submitted that the High Court's judgment is flawless and suffers from the infirmity to warrant interference. It has rightly turned down the plea that the authorities were not bound by the period indicated in several documents so far as currency of the licence/permits is concerned. Merely because licence was not indicated to be valid for a period of 15 years that did not clothe the authorities with any jurisdiction to refuse renewal. It was highlighted that in respect of 32 vessels a departure was made from the so-called policy and they were permitted to fish in the concerned zone. This clearly establishes the discrimination, and is impermissible in law. The 32 vessels are secondhand deep sea fishing vessels and could not have been imported except against vessel specific import licence granted by Director General of Foreign Trade, which has not been granted though it is a pre-requisite for import. The so-called imports have been made by companies, which were not in existence at the time permits were granted to operate. One of the companies which has been given permission to operate is only Shell Company with no financial resources. The factual aspects brought on record clearly establish that illegally and without any justifiable reasons, they have been permitted to operate, while the same

benefit was not extended to the respondents herein. It was further pointed out that the High Court has not in reality granted any relief to which the appellants were entitled in law. It was merely directed that the applications for renewal were to be disposed of expeditiously preferably within a period of six weeks from the date of communication of its order.

9. By way of reply to the submissions made by learned counsel for the respondents, learned Solicitor General submitted that directions were not merely to consider. Had it been so, and the matter would have been left open to be decided in accordance with law, there could have been no difficulty. But in view of the specific findings recorded by the Division Bench on several aspects more particularly policy being opposed to statute, and/or that the documents established entitlements for renewal, the exercise by the concerned authorities in dealing with the applications for renewal would amount to an empty formality. Further, 32 vessels to which reference has been made stood on entirely different footing. The vessels in question were imported under the prevailing policy of the Government and were registered by the Mercantile Maritime Department under the Merchant Shipping Act, 1958. The said vessels were not in any way connected with the cases at hand which relate to lease and charter permits. The aforesaid 32 vessels were imported as per EXIM policy of the Government. The said EXIM policy in the year 2000-2001 allowed import of deep sea fishing vessels by surrendering special import licence which had been done in the case of the concerned vessels and, therefore, the licences on those cases have no relevance so far as the present appeals are concerned. Even if it is conceded for the sake of argument that there was anything improper in the permission granted it may be ground for taking action against the concerned vessels, but it cannot be a ground to renew licence of the applicants.

10. though there can be quarrel with the proposition that renewal of a permit carries with it a valuable right, it cannot be lost sight of that for outweighing reasons of public interest renewal can be refused. It is not in dispute that licences have not been granted for a period of 15 years. It at the time when the matter is taken up for considering whether renewal to be granted, there is a change in policy; it cannot be said that the right is defeated by introduction of a policy. In such an event, the question of applying doctrine of legitimate expectation or promissory estoppel loses significance. It has not been disputed that in fact the policy decision exists. But the stand of the respondents is that it cannot outweigh the legitimate expectation or the in-built rights. Additionally it is submitted that the issue has to be considered in the background of 32 vessels referred to above.

11. Rival contentions need to be cogitated.

12. Legitimacy of the policy decision has not been questioned by the respondents. What is highlighted is that notwithstanding the policy their rights are unaffected.

13. Doctrines of promissory estoppel and legitimate expectation cannot come in the way of public interest. Indisputably, public interest has to prevail over private interest. The case at hand shows that a conscious policy decision has been taken and there is no statutory compulsion to act contrary. In that context, it cannot be said that respondents have acquired any right of renewal. The High Court was not justified in observing that the policy decision was contrary to statute and for that reason direction for consideration of the application for renewal was necessary. Had the High Court not recorded any finding on the merits of respective stands, direction for consideration in accordance with law would have been proper and there would not have been any difficulty in accepting the plea of the learned counsel for the respondents. But having practically foreclosed any consideration by the findings recorded, consideratin of the application would have been mere formality and grant of renewal would have been the inevitable result, though it may be against the policy decision. That

renders the High Court judgment indefensible.

14. What remains now to be considered, is the effect of permission granted to the 32 vessels. As highlighted by learned counsel for the appellants, even if it is accepted that there was any improper permission, that may render such permissions vulnerable so far as 32 vessels are concerned. But it cannot come to the aid of respondents. It is not necessary to deal with that aspect because two wrongs do not make one right. A party cannot claim that since something wrong has been done in another case; direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution of India, 1950 (in short `the Constitution') cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on par. Even if hypothetically it is accepted that wrong has been committed on some other cases by introducing a concept of negative equality respondents cannot strengthen their case. They have to establish strength of their case on some other basis and not by claiming negative equality.

15. It is trite law that Article 14 of the Constitution applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional.

16. While the discretion to change the policy in exercise of the executive power, when not trammeled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heart best of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reasons, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness.

17. Where a particular mode is prescribed for doing an act and there is no impediment in adopting the procedure, the deviation to act in different manner which does not disclose any discernible principle which is reasonable itself shall be labelled as arbitrary. Every State action must be informed by reason and it follows that an act uninformed by reason is *per se* arbitrary.

18. The Courts as observed in ***G.B. Mahajan v. Jalgaon Municipal Council (AIR 1991 SC 1153)*** are kept out of lush field of administrative policy except where policy is inconsistent with the express or implied provision of a statute which creates the power to which the policy relates or where a decision made in purported exercise of power is such that a repository of the power acting reasonably and in good faith could not have made it. But there has to be a word of caution. Something overwhelming must appear before the Court will intervene. That is and ought to be a difficult onus for an applicant to discharge. The courts are not very good at formulating or evaluating policy. Sometimes when the Courts have intervened on policy grounds the Court's view of the range of policies open under the statute or of what is unreasonable policy has not got public

acceptance. On the contrary, curial views of policy have been subjected to stringent criticism.

19. As Professor Wade points out (in Administrative Law by H.W.R. Wade, 6th Edition) there is ample room within the legal boundaries for radical differences of opinion in which neither side is unreasonable. The reasonableness in administrative law must, therefore, distinguish between proper course and improper abuse of power. Nor is the test Court's own standard of reasonableness as it might conceive it is a given situation. The point to note is that the thing is not unreasonable in the legal sense merely because the Court thinks it to be unwise.

20. In ***Union of India v. Hindustan Development Corporation (AIR 1994 SC 988),*** it was observed that decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest where the doctrine of legitimate expectation can be applied. If it is a question of policy, even by ways of change of old policy, the Courts cannot intervene with the decision. In a given case whether there are such facts and circumstances giving rise to legitimate expectation, would primarily be a question of fact.

21. As was observed in ***Punjab Communications Ltd. v. Union of India and ors. (AIR 1999 SC 1801),*** the change in policy can defeat a substantive legitimate expectation if it can be justified on "Wednesbury reasonableness". The decision maker has the choice in the balancing of the pros and cons relevant to the change in policy. It is, therefore, clear that the choice of policy is for the decision maker and not the Court. The legitimate substantive expectation merely permits the Court to find out if the change of policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made. A claim based on merely legitimate extension without anything more cannot *ipso facto* give a right. Its uniqueness lies in the fact that it covers the entire span of time : present, past and future. How significant is the statement that today is tomorrows' yesterday. The present is as we experience it, the past is a present memory and future is a present expectation. For legal purposes, expectation is not same anticipation. Legitimacy of an expectation can be inferred only if it is founded on the sanction of law.

22. As observed in ***Attorney General for New Southwale v. Quin (1990(64) Australian LJR 327)*** `to strike the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the courts adrift on a featureless sea of pragmatism. Moreover, the negotiation of a legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law; `If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot *ipso facto* give a right to invoke these principles. It can be one of the grounds to consider, but the court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognized general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case. It follows that the concept of legitimate expectation is "not the key which unlocks the treasure of natural justice and it ought not to unlock the gates which shuts the court out of review on the merits', particularly, when the element of speculation and uncertainty is inherent in that very concept. As cautioned in Attorney General for New Southwale's case the Court should restrain themselves and respect such claims duly to the legal

limitations. It is a well-meant caution. Otherwise, a resourceful litigant having vested interest in contract, licences, etc. can successfully indulge in getting welfare activities mandated by directing principles thwarted to further his own interest. The caution, particularly in the changing scenario becomes all the more important.

23. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities and adopt trade policies. As noted above, the ultimate test is whether on the touchstone of reasonableness the policy decision comes out unscathed.

24. Reasonableness of restriction is to be determined in an objective manner and from the standpoint of interests of the general public and not from the standpoint of the interests of persons upon whom the restrictions have been imposed or upon abstract consideration. A restriction cannot be said to be unreasonable merely because in a given case, it operates harshly. In determining whether there is any unfairness involved; the nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing condition at the relevant time, enter into judicial verdict. The reasonableness of the legitimate expectation has to be determined with respect to the circumstances relating to the trade or business in question. Canalisation of a particular business in favour of even a specified individual is reasonable where the interests of the country are concerned or where the business affects the economy of the country. (See ***Parbhani Transport Co-operative Society Ltd. v. The Regional Transport Authority, Aurangabad and ors. (AIR 1960 SC 801), Shree Meenakshi Mills Ltd. v. Union of India (AIR 1974 SC 366), Hari Chand Sarda v. Mizo District Council and anr. (AIR 1967 SC 829)*** and ***Krishnan Kakkanth v. Government of Kerala and ors. (AIR 1997 SC 129)***

25. As noted above, the appellants have relied upon the change in Government policy prescribing that there shall be no grant of renewal/extension for charter/lease permits. Learned Solicitor General has stated that if respondents apply in terms of prevailing EXIM policy, as was done by the aforesaid 32 vessels, due consideration in accordance with law shall be made.

26. Keeping in view the analysis made of legal positions, and in the absence of any material to discount legitimacy of policy, the respondents have not made out a case for interference.

27. In the aforesaid background the residual plea of the respondents regarding legitimate expectation is also sans merit.

28. The appeals deserve to be allowed; which we direct. Cost made easy.

Appeal allowed.