**SUPREME COURT OF INDIA**

Parisons Agrotech (P) Ltd. & Anr.

Vs.

Union of India & Ors.

C.A.No.4027 of 2009

(A.K.sikri and R.F.Nariman,JJ.,)

21.08.2015

**JUDGMENT**

**A.K.Sikri,J.,**

1. Vide Notification No.39 (RE-2007)/2004-2009 dated 16.10.2007 , the Central Government (respondent No.1 herein) prohibited the import of palm oil through Kochi port in Kerala. It was followed by another Notification No.63 (RE-2007)/2004-2009 dated 24.12.2007 whereby the import of palm oil has been prohibited through all the ports of Kerala. These Notifications were issued by the Central Government in exercise of powers conferred by Section 5 read with Section 3 of The Foreign Trade (Development and Regulation) Act, 1992 (hereinafter referred to as the 'Act'). All the appellants filed separate writ petitions challenging the validity of these Notifications on the ground that they were ultra vires the provisions of Section 3 of the Act and, in any case, unconstitutional as offending Article 14 of the Constitution of India. The writ petitions filed by them were dismissed by learned single Judge. Matter was carried in appeal before the Division Bench of Kerala High Court, but unsuccessfully, as these appeals have also been dismissed. It is clear from the above that the issue involved in all these appeals are identical. This was the reason for clubbing these appeals so that they could be heard analogously and decided as one batch. However, for the sake of convenience, we will be referring to the facts from Civil Appeal No.4027/2009 as well as the impugned judgment dated 21.10.2008 which is impugned in the said appeal.

2. The appellants are engaged in refining and manufacture of edible oils, vanaspathi, bakery shortening, margarine etc. Their registered offices and the factories are in the State of Kerala. The main raw material used in the manufacture of RBD palm oil is crude palm oil. The appellants have been importing this raw material from other countries, primarily from Indonesia and Malaysia. Before the issuance of the aforesaid Notifications, this import was through the ports of Kochi and Beypore from where it used to be transported by road to its main factories which are in Kozhikode and Malappuram, in the State of Kerala itself. The impugned Notifications have prevented them from importing crude palm oil through the ports of Kochi and Beypore. Instead, they are forced to import this raw material through the

ports outside Kerala. The effect thereof is that distance from the ports of import to the factories of appellants in Kerala stands increased, in contrast with the situation prevailing earlier. It has led to increased transportation cost for the appellants and that is precisely the cause of grievance.

3. As mentioned above, vide Notification No.39 (RE-2007)/2004-2009 dated 16.10.2007, certain items mentioned therein, which are all different varieties of crude palm oil, were not allowed to be imported through Kochi port. The Notification gives the description of the items and mentions the policy condition in respect thereof by stipulating: "import not permitted through Kochi port". This Notification was amended thereafter with the issuance of Notification No.63 (RE-2007)/2004-2009 dated 24.12.2007 in respect of same items by enlarging the scope of restriction/prohibition with the stipulation: "import not permitted through any port in Kerala".

4. Again, as already pointed out above, these Notifications were challenged on two grounds, viz.:

> "(i) The Notifications are issued purportedly in exercise of powers under Section 5 read with Section 3 of the Act, but these provisions do not confer any such power on the Central Government. Therefore, the Notifications are ultra vires the provisions of Section 3(5) of the Act;
>
> (ii) Imposition of selective restriction and confining the prohibition of import of crude palm oil to the ports in Kerala has not only resulted in invidious discrimination, such an action is manifestly arbitrary, irrational and unreasonable as well it is contended that there is no rational objective which is sought to be achieved with such Notifications and, therefore, they offends the equality clause enshrined in Article 14 of the Constitution."

5. Both these arguments have been repelled by the High Court which has found not only complete justification and rational in issuing such Notifications, it has also held that power for issuing such a Notification can be traced to the provisions of Section 3 of the Act. Before us, the appellants have raised the same arguments and in the process also, submitted that the High Court has not considered the aforesaid twin submissions of the appellants in proper perspective, and, on the contrary, rejected the same in perfunctory manner without dealing with these contentions in the manner they were placed before the High Court. Before we record the arguments of Mr. Naphade, learned Senior Counsel who appeared for the appellants (counsel appearing in other appeals adopted his arguments) in detail, it may be advisable to state the reasons which were given by the respondents in their counter affidavits in support of these Notifications. We would, however, like to record that in the impugned judgment the discussion on this aspect is contained in detail as well.

6. State of Kerala is the largest producer of Coconut which is the raw material for the production of coconut oil. Coconut oil and palm oil are competing products. For production of palm oil, crude palm oil is the raw material which is largely imported. Since the import

price of crude palm oil is much less than the price of coconut oil, the price of coconut oil is higher than that of the palm oil because of the aforesaid reason. It was adversely affecting the farmers in the State of Kerala which led to repeated representations on their behalf to the Government for taking remedial measures. Having regard to the importance of this crop not only for the economy of the State but also livelihood of about 35 lakhs farmers, the State Government has constituted Coconut Development Board (hereinafter referred to as the 'Board') which takes care of the interests of the farmers growing Coconut crop and also takes initiatives and steps for the development of this crop.

7. The significant and marked difference between the price of coconut oil and palm oil manifested the fact that percentage difference between the two stood at 109% in the year 2004, reduced to 50% in December, 2006, to 12% in September 2007 and 0.6% in October 2007. The Board also observed that the import of palm oil in one particular year had a cascading downward impact on coconut oil prices in the subsequent years. For example, the huge import of 1,53,513 tonnes of palm oil in 2004-05 had led to a price decline in coconut in 2005-06 and 2006-07. While the average price of coconut oil is Rs.6,155/- per quintal in 2004-05, in 2005-06, it declined sharply to Rs.4,978/- per quintal with further fall in 2006-07 when the price was Rs.4,459/- per quintal. This raised concern with the policy makers to protect the interest of huge number of small time farmers in the State of Kerala. Such concerns were raised by the Board as well as Union of Coconut Farmers with the concerned authorities including Chief Minister, who in turn, took up the matter with the Central Government at the highest level. The narratives in this regard are stated in the impugned judgment of the High Court itself and the discussion goes, somewhat, in the following manner:

A letter dated 15.08.2005 was written by All Kerala Coconut Farmers' Union to increase minimum support price of copra and to restrict import of coconut oil and copra. In the letter, it is further stated that the steep fall in the prices of coconut, copra and coconut oil is in view of indiscriminate import of coconut and coconut oil from foreign countries. The reiteration of this request is made by yet another letter dated 15.12.2005. Sequel to these two letters, Ministry of Agriculture has written a letter dated 03.02.2006 to Joint Director of General Foreign Trade (JDGFT) enclosing a copy of the letter from All Kerala Coconut Farmers Union, Thrissur to increase minimum support price of coconut oil and to cut import of coconut and coconut oil into the country and in that letter a request is made to JDGFT to offer their comments, if any. The Chairperson of the Board by her letter dated. 06.12.2006 addressed to Director General of Foreign Trade (DGFT) seeks restrictions/prohibition on the import of coconut oil and coconut oil cake and the reason being slump in the prices of coconut and coconut oil in the country and in particular, States like Kerala. This correspondence was forwarded by DGFT Office to Ministry of Agriculture. The Chief Minister of Kerala by his letter dated 19.04.2007 to the Hon'ble Prime Minister has brought to his notice the plight of coconut farmers in the State, in view of steep decrease in the price of coconut, copra and coconut oil and, therefore, a request was made to reverse the decision to cut import duties of palm oil. This was followed by another letter by Hon'ble Commerce Minister to Commerce Secretary requesting the action on the letter of the Board dated 06.12.2006. Then, the another crucial letter dated 08.05.2007, wherein the Deputy Secretary,

Ministry of Commerce forwarded a report of the Centre for Development Studies on import of palm oil on the coconut economy in Kerala to DGFT for its views on the detrimental effect of import of palm oil on coconut prices. In the report, the Centre for Development Studies on imports of palm oil on the coconut economy in Kerala, in clear and unequivocal terms have stated, "some of the recent years that have witnessed large imports of palm oil have also reported high prices. The influence of palm oil imports on domestic coconut oil prices also works out in an indirect manner. The international prices of coconut oil move together with price of palm oil. Even though coconut oil and palm kernel oil are not perfect or close substitutes, many consumers tend to substitute these oils in their use as edible oils. As such the possibility of palm oil imports having a dampening effect on coconut oil prices cannot be ruled out". This is the report of the independent agency set up to make a detailed study on the effect of import of palm oil on the coconut economy in the State. They have given a gloomy picture of the whole scenario in regard to the importation of palm oil into the State and what would be its impact on the coconut oil industry in the State. The report contains the facts and figures for a few previous years and how the large importation of palm oil has cascading effect not only on the prices of coconut and also on the prices of coconut oil. On 05.06.2007, the Chairperson of the Board while bringing to the notice of the Ministry of Agriculture the need for imposing total ban on import of palm oil through the ports of Southern States, has indicated certain details with regard to the price effect of import of palm oil into the State of Kerala on the coconut oil industry in the State.

8. This prompted Ministry of Agriculture to write a letter to the Prime Minister's Office wherein reference was made to the communications received from Chief Minister of Kerala and the Chairperson/Board mentioning about the declining wholesale price of coconut oil on the one hand and increase in wholesale price of edible oil, on the other hand, which are causing hardship to the coconut farmers. In this letter, it was also stated, "that considering the increased trend of edible oil prices as a whole, their department had supported a recent proposal of Ministry of Finance for reduction of duties on crude palm oil and reiterated the suggestion not to allow import of palm oil through Southern Ports as suggested by Chairperson of the Board". They sum it by suggesting that the import of palm oil to Southern Ports particularly through Cochin, Tuticorin, Mangalore and Chennai should be disallowed with immediate effect and also the import duty of crude palm oil should not be reduced further, since it may have adverse impact on the livelihood of oil seed growers, particularly the coconut farmers of Kerala as pointed out by the Chief Minister of Kerala. This was followed by the letter dated 03.09.2007 by the Director of Statistics to the Director General of DGCI and seeking import data of palm oil for last three years in the case of Cochin, Tuticorin, Mangalore and Chennai. This was followed by the fax message requesting the Chairperson to clarify on certain issues narrated in her letter dated 05.06.2007.

9. It is on the basis of the aforesaid material produced before the Central Government which ultimately led to issuance of impugned Notifications. Existence of the aforesaid material, which is based on therecord that was even produced before the High Court as well, is not in dispute. In nutshell, the High Court considered the following material produced before it by the respondents including Union of India:

"(a) Correspondence by the representatives of the coconut farmers with various Ministries including the Hon'ble Prime Minister.

(b) Letter dated 06.12.2006 by the Chairperson of Coconut Development Board addressed to Director General of Foreign Trade (DGFT).

(c) Letter dated 19.04.2007 by the Hon'ble Chief Minister addressed to the Hon'ble Prime Minister.

(d) Letter by Hon'ble Commerce Minister to Commerce Secretary.

(e) Letter dated 08.05.2007 by Deputy Secretary, Ministry of Commerce.

(f) Report of Centre for Development Studies on import of palm oil on the coconut economy in Kerala:"

10. The report in clear and unequivocal terms has stated, "Some of the recent years that have witnessed large imports of palm oil have also reported high prices. The influence of palm oil imports on domestic coconut oil prices also works out in an indirect manner. The international prices of coconut oil move together with the price of palm oil. Even though coconut oil and palm kernel oil are not perfect or close substitutes, many consumers tend to substitute these oils in their use as edible oils. As such the possibility of palm oil imports having a dampening effect on coconut oil prices cannot be ruled out."

11. On analysing the report, the High Court has made the following remarks:

"This is the report of the independent agency set up to make a detailed study on the effect of import of palm oil on the coconut economy in the State. They have given a gloomy picture of the whole scenario in regard to the importation of palm oil into the State and what would be its impact on the coconut oil industry in the State. The report contains the facts and figures for a few previous years and how the large importation of palm oil has cascading effect not only on the prices of coconut and also the prices of coconut oil."

(g) Letter dated 05.06.2007 by the Chairperson of Coconut Development Board to Ministry of Agriculture on the basis of which the High Court recorded the following findings:

"If we go by the tenor of the letter of the Hon'ble Chief Minister and the letter of Chairperson of Coconut Development Board, they are only referring to the plight of the coconut farmers in the State, in view of large scale importation of palm oil which is being used as a substitute to the coconut oil by the poor and middle class families in the State as an alternate for their day to day need of edible oil and this was precise

reason for the Central Government to issue the impugned notification in the public interest and in particular to protect the interest of the coconut farmers in the State."

(h) Letter of the Ministry of Agriculture to Prime Minister's Office."

10. Mr. Naphade, however, argued that this material does not provide any rationale for curbing the import through the ports in Kerala. His submission was that by imposing ban on importation of palm oil through the ports of Kerala alone, no such purpose, as manifested, was going to be achieved. He further submitted that such a ban on importation of palm oil through the ports of Kerala would bring no succour to the coconut oil prices. In support of this submission, he referred to the pleadings in para 6 of the writ petition tabulating the prices of coconut oil and palm oil respectively from time to time with endeavour to point out that there is nothing common as far as prices of the two products are concerned. He further submitted that in the counter affidavit filed by the Union of India, the figures shown in para 6 of the writ petition were not countered by the said respondents. Thus, he argued that there was no rational nexus between the two and no intelligible differentia could be deciphered between the two thereby rendering the decision arbitrary and bringing the decision within the mischief of Article 14. He submitted that the appellants in support of this argument of discrimination, referred to the judgment of Calcutta High Court in Kalindi Woolen Mills (P) Ltd. v. Union of India but the High Court rejected it without suitably dealing with the same. He also submitted that the interest of the consumers was equally important and if the prices of the palm oil are increased upwardly because of increase in transportation cost etc., consumers would also be adversely effected and, therefore, the decision was not in public interest.

11. Having regard to the material that is produced and taken note of by us in extenso, which led to the issuance of the impugned Notifications, we are unable to countenance the submissions made by Mr. Naphade. It is well known that State of Kerala is the largest producer of Coconut and, in turn, there is substantial production of coconut oil as well. It is also a matter of common knowledge that coconut oil as well as palm oil are used for cooking and other common purposes. In that sense, coconut oil and palm oil are competing products. Whereas coconut oil produced from indigenous raw material and for the production of palm oil in India, the raw material i.e. crude palm oil is largely imported. Since the import price of crude palm oil has been much less than the price of coconut oil, the perception of Coconut growers in the State of Kerala was that it was affecting their livelihood. It is a matter of record that there are approximately 35 lakhs farmers in the State of Kerala who sustain their livelihood on Coconut crop. Therefore, it becomes their life sustaining crop. The Coconut crop covers more than 9 lakhs hectares in Kerala and contributes to nearly 35% of the agricultural income of the State which is a sufficient evidence to indicate that it is not only main but important crop of the State. The Coconut growers are predominantly small and marginal with the average size of holding being only half an acre. As already pointed out above, the significant and marked difference between the price of coconut oil and palm oil was manifest the fact that percentage difference between the two stood at 109% in the year 2004, reduced to 50% in December, 2006, to 12% in September 2007 and 0.6% in October 2007. The Board also observed that the import of palm oil in one particular year had a

cascading downward impact on coconut oil prices in the subsequent years. For example, the huge import of 1,53,513 tonnes of palm oil in 2004-05 had led to a price decline in coconut in 2005-06 and 2006-07. While the average price of coconut oil is Rs.6,155/- per quintal in 2004-05, in 2005-06, it declined sharply to Rs.4,978/- per quintal with further fall in 2006-07 when the price was Rs.4,459/- per quintal. It is more than abundantly clear that the restriction is imposed keeping in view the welfare of 35 lakhs farmers in the State of Kerala. Matter was examined at the highest level. The Government had two alternatives before it, either to increase the custom duty i.e. duty on the import of crude oil or to issue impugned Notification. Enhancing the import duty would have all India ramification, whereas the problem was Kerala specific. Therefore, instant step was taken. When a particular decision is taken in the interest of the said farmers which are marginalized section of the society, more so for their survival, this policy decision of the Central Government provides a complete rational in support of the decision having nexus with the objective sought to be achieved.

12. No doubt, the writ court has adequate power of judicial review in respect of such decisions. However, once it is found that there is sufficient material for taking a particular policy decision, bringing it within the four corners of Article 14 of the Constitution, power of judicial review would not extend to determine the correctness of such a policy decision or to indulge into the exercise of finding out whether there could be more appropriate or better alternatives. Once we find that parameters of Article 14 are satisfied; there was due application of mind in arriving at the decision which is backed by cogent material; the decision is not arbitrary or irrational and; it is taken in public interest, the Court has to respect such a decision of the Executive as the policy making is the domain of the Executive and the decision in question has passed the test of the judicial review. In Union of India v. Dinesh Engineering Corporation , this Court delineated the aforesaid principle of judicial review in the following manner:

> "there is no doubt that this Court has held in more than one case that where the decision of the authority is in regard to the policy matter, this Court will not ordinarily interfere since these policy matters are taken based on expert knowledge of the persons concerned and courts are normally not equipped to question the correctness of a policy decision. But then this does not mean that the courts have to abdicate their right to scrutinise whether the policy in question is formulated keeping in mind all the relevant facts and the said policy can be held to be beyond the pale of discrimination or unreasonableness, bearing in mind the material on record. Any decision be it a simple administrative decision or policy decision, if taken without considering the relevant facts, can only be termed as an arbitrary decision. If it is so, then be it a policy decision or otherwise, it will be violative of the mandate of Article 14 of the Constitution."

13. The power of the Court under writ jurisdiction has been discussed in Asif Hameed and Others. v. State of Jammu and Kashmir and Others in paras 17 and 19, which read as under:

> "17. Before adverting to the controversy directly involved in these appeals we may have a fresh look on the inter se functioning of the three organs of democracy under

our Constitution. Although the doctrine of separation of powers has not been recognised under the Constitution in its absolute rigidity but the Constitution makers have meticulously defined the functions of various organs of the State. Legislature, executive and judiciary have to function within their own spheres demarcated under the Constitution. No organ can usurp the functions assigned to another. The Constitution trusts to the judgment of these organs to function and exercise their discretion by strictly following the procedure prescribed therein. The functioning of democracy depends upon the strength and independence of each of its organs. Legislature and executive, the two facets of people's will has no power over sword or the purse nonetheless it has power to ensure that the aforesaid two main organs of State function within the constitutional limits. It is the sentinel of democracy. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. The expanding horizon of judicial review has taken in its fold the concept of social and economic justice. While exercise of powers by the legislature and executive is subject to judicial restraint, the only check on our own exercise of power is the self-imposed discipline of judicial restraint.

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19. When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers."

14. The aforesaid doctrine of separation of power and limited scope of judicial review in policy matters is reiterated in *State of Orissa and Others v. Gopinath Dash and Others*[1]*:*

"5. While exercising the power of judicial review of administrative action, the Court is not the Appellate Authority and the Constitution does not permit the Court to direct or advise the executive in the matter of policy or to sermonise qua any matter which under the Constitution lies within the sphere of the legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. (See *Asif Hameed v. State of J&K*[2]*; and Shri Sitaram Sugar Co. Ltd. v. Union of India*[3]*;* The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or its violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court, it cannot interfere.

6. The correctness of the reasons which prompted the Government in decision-making taking one course of action instead of another is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation.

7. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In the matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown the courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government."

15. As far as classification based on geographical area is concerned i.e. held to be permissible by this Court in *Gopal Narain v. State of Uttar Pradesh and another*[4] held as under:

> "11. Looking at the policy disclosed by Sections 7 and 8 and Section 128 of the Act and applying the liberal view a law of taxation receives in the application of the doctrine of classification, it is not possible to say that the policy so disclosed infringes the rule of equality. This Court in more than one decision held that equality clause does not forbid geographical classification, provided the difference between the geographical units has a reasonable relation to the object sought to be achieved. This principle has been applied to a taxation law in *Khandige Sham Bhat's Case*[(Supra)]. In that case, this Court also accepted the principle that the legislative power to classify is of wide range and flexibility so that it can adjust its system of taxation in all proper and reasonable ways. It is indicated in "Willis on Constitutional Law", at p. 590, that a State can make a territory within a city a unit for the purpose of taxation. So, the impugned section in permitting in the matter of taxation geographical classification, which has reasonable relation to the object of the statute, namely, for providing special amenities for a particular unit the peculiar circumstances whereof demand them, does not in any way impinge upon the equality clause."

16. We would also like to refer to the judgment of this Court in the case of Premier Tyres Limited v. Kerala State Road Transport Corporation wherein this Court held that when a policy decision is taken in the public interest, Courts need not tinker with the same.

17. The locus classicus allowing freedom to the Executive to take economic decisions is remarkably dealt with by this Court in *R.K. Garg v. Union of India*[5] and the following discussion from the said judgment is again worth quoting:

> "8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J., that the legislature should be allowed some play in the joints, because it has to deal with

> complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in *Morey v. Doud, 354 US 457: 1 L Ed 2d 1485 (1957*) where Frankfurter, J., said in his inimitable style:

In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events  self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability. The Court must always remember that "legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry"; "that exact wisdom and nice adaption of remedy are not always possible" and that "judgment is largely a prophecy based on meagre and uninterpreted experience". Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The courts cannot, as pointed out by the United States Supreme Court in *Secretary of Agriculture v. Central Roig Refining Company, 94 L Ed 381 : 338 US 604 (1950)* be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues.

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19. It is true that certain immunities and exemptions are granted to persons investing their unaccounted money in purchase of Special Bearer Bonds but that is an inducement which has

to be offered for unearthing black money. Those who have successfully evaded taxation and concealed their income or wealth despite the stringent tax laws and the efforts of the tax department are not likely to disclose their unaccounted money without some inducement by way of immunities and exemptions and it must necessarily be left to the legislature to decide what immunities and exemptions would be sufficient for the purpose. It would be outside the province of the Court to consider if any particular immunity or exemption is necessary or not for the purpose of inducing disclosure of black money. That would depend upon diverse fiscal and economic considerations based on practical necessity and administrative expediency and would also involve a certain amount of experimentation on which the Court would be least fitted to pronounce. The Court would not have the necessary competence and expertise to adjudicate upon such an economic issue. The Court cannot possibly assess or evaluate what would be the impact of a particular immunity or exemption and whether it would serve the purpose in view or not. There are so many imponderables that would enter into the determination that it would be wise for the Court not to hazard an opinion where even economists may differ. The Court must while examining the constitutional validity of a legislation of this kind,

> "be resilient, not rigid, forward looking, not static, liberal, not verbal" and the Court must always bear in mind the constitutional proposition enunciated by the Supreme Court of the United States in Munn v. Illinois 94 US 13, namely, "that courts do not substitute their social and economic beliefs for the judgment of legislative bodies". The Court must defer to legislative judgment in matters relating to social and economic policies and must not interfere, unless the exercise of legislative judgment appears to be palpably arbitrary. The Court should constantly remind itself of what the Supreme Court of the United States said in Metropolis Theater Company v. City of Chicago, 57 L Ed 730 : 228 US 61 (1912):

The problems of government are practical ones and may justify, if they do not require, rough accommodations, illogical it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere error of government are not subject to our judicial review. It is true that one or the other of the immunities or exemptions granted under the provisions of the Act may be taken advantage of by resourceful persons by adopting ingenious methods and devices with a view to avoiding or saving tax. But that cannot be helped because human ingenuity is so great when it comes to tax avoidance that it would be almost impossible to frame tax legislation which cannot be abused. Moreover, as already pointed out above, the trial and error method is inherent in every legislative effort to deal with an obstinate social or economic issue and if it is found that any immunity or exemption granted under the Act is being utilised for tax evasion or avoidance not intended by the legislature, the Act can always be amended and the abuse terminated. We are accordingly of the view that none of the provisions of the Act is violative of Article 14 and its constitutional validity must be upheld."

18. The aforesaid principle is echoed with equal emphasis in Balco *Employees' Union (Regd.) v. Union of India and Others*[6] in the

following manner:

> "46. It is evident from the above that it is neither within the domain of the courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.
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> 47. Process of disinvestment is a policy decision involving complex economic factors. The courts have consistently refrained from interfering with economic decisions as it has been recognised that economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional or legal limits on power or so abhorrent to reason, that the courts would decline to interfere. In matters relating to economic issues, the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within limits of authority. There is no case made out by the petitioner that the decision to disinvest in BALCO is in any way capricious, arbitrary, illegal or uninformed. Even though the workers may have interest in the manner in which the Company is conducting its business, inasmuch as its policy decision may have an impact on the workers' rights, nevertheless it is an incidence of service for an employee to accept a decision of the employer which has been honestly taken and which is not contrary to law.
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> xx xx xx
> Conclusion
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> 92. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court.
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> 93. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts. Here the policy was tested and the motion defeated in the Lok Sabha on 1-3-2001."

19. Insofar as judgment of Calcutta High Court in Kalindi Woolen Mills (P) Ltd. (supra) is concerned, we have our reservations on the correctness thereof wherein the High Court found that Notification dated 28.04.1989 allowing imports of Woolen rags, Synthetic rags, Shoddy

wool through two ports only, namely, Bombay and Delhi ICD. In any case, insofar as argument based on Article 14 is concerned, the said judgment is distinguishable as in that case the Court did not find any intelligible basis which was disclosed before the Court either in the affidavits filed by the Customs Authorities or in the Import Licensing Control Authorities of the Government of India. Likewise, no rational nexus for imposing the restrictions on importation of the subject goods only through Delhi ICD and Bombay ports disclosed. In the absence of such a justification, on the facts of that case, the Court found the Notification to be violative of Article 14 of the Constitution.

20. In contrast, in the present case, as already pointed out above, the respondents have been able to demonstrate intelligible basis for issuing the impugned Notifications having rational nexus with the objectives sought to be achieved. We, thus, reject the arguments based on Article 14 of the Constitution.

21. The argument of Mr. Naphade to the effect that interests of consumers is equally important which is not taken into consideration needs an outright rejection for more than one reason. In the first place no such case was made out by the appellants either in the High Court or even in the special leave petition filed in this Court. This argument was raised for the first time during oral hearing. There is, thus, no material produced on record to show how the impugned Notification would affect the interests of the consumers. An argument of this nature cannot be raised in the air without having solid foundation with relevant material. In any case, as we have found that the Notifications were issued in the interests of farmer class in the State of Kerala and, therefore, they are in public interest, this argument is of no avail.

22. With this, we advert to the other arguments, namely, whether the Notifications are ultra vires of Section 3 of the Act. Our discussion has to, necessarily, start by noticing the provision of Section 3, which reads as under:

> "3. Powers to make provision relating to imports and exports. - (1) The Central Government may, by Order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports.
>
> (2) The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology: Provided that the provisions of this sub-section shall be applicable, in case of import or export of services or technology, only when the service or technology provider is availing benefits under the foreign trade policy or is dealing with specified services or specified technologies.
>
> (3) All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act,

1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.

(4) Without prejudice to anything contained in any other law, rule, regulation, notification or order, no permit or licence shall be necessary for import or export of any goods, nor any goods shall be prohibited for import or export except, as may be required under this Act, or rules or orders made thereunder."

23. Scope and ambit of the aforesaid provision was considered in *Abdul Aziz Aminudin v. State of Maharashtra*[7], wherein this Court held as under:

"11. It is clear therefore that the power conferred under Section 3(1) of the Act is not restricted merely to prohibiting or restricting imports at the point of entry but extends also to controlling the subsequent disposal of the goods imported. It is for the appropriate authority and not for the Courts to consider the policy, which must depend on diverse considerations, to be adopted in regard to the control of import of goods. The import of goods can be controlled in several ways. If it is desired that goods of a particular kind should not enter the country at all, the import of those goods can be totally prohibited. In case total prohibition is not desired, the goods could be allowed to come into the country in limited quantities. That would necessitate empowering persons to import under licences certain fixed quantities of the goods. The quantity of goods to be imported will have to be determined on consideration of the necessity for having those goods in the country and that again, would depend on the use to be made of those goods. It follows therefore that the persons licensed to import goods up to a certain quantity should be amenable to the orders of the licensing authority with respect to the way in which those goods are to be utilised. If the licensing authority has no such power, its control over the import cannot be effective. It may have considered it necessary to have goods imported for a particular purpose. If it cannot control their utilisation for that purpose, the imported goods, after import, can be diverted to different uses, defeating thereby the very purpose for which the import was allowed and power had been conferred on the Central Government to control imports. It is therefore not possible to restrict the scope of the provision about the control of import to the stage of importing of the goods at the frontiers of the country. Their content is much wider and extends to every stage at which the Government feels it necessary to see that the imported goods are properly utilised for the purpose for which their import was considered necessary in the interests of the country."

24. We may also point out that proviso to sub-section (2) as well as sub-section (4) were inserted by Act 25/2010 w.e.f. 27.08.2010. In any case, we are primarily concerned with the interpretation of sub-sections (1) and (2) of Section 3 as far as present case is concerned. Sub-section (1) empowers the Central Government to make provision for the development as well as regulation of foreign trade by facilitating imports and increasing exports. Thus, the Government is empowered to make provision insofar as they relate to the development of foreign trade and it has also empowered to regulate the foreign trade. The two key words here are 'development' and 'regulation'. It is also important to note that such development and

regulation is aimed at facilitating imports as well as increasing exports. First argument of Mr. Naphade was that regulatory provision has to be for facilitating imports whereas in the present case, it was to curb the imports insofar as ports in Kerala are concerned. Sub-section (2) of Section 3 further empowers the Central Government to make provision for: (i) prohibiting; (ii) restricting; or (iii) otherwise regulating 'the import or export of goods or services or technology'. It can be done in all cases or in specified classes of cases. The submission of Mr. Naphade was that such provisions prohibiting, restricting or otherwise regulating are to be made in respect of import or export of goods or services or technology which essentially were custom based. He referred to the definition of 'import' and 'export' contained in Section 2(e) of the Act which, in relation to goods, means bringing into, or taking out of, India any goods by land, sea or air. He, thus, submitted that insofar as import of goods is concerned, it only meant bringing the said goods into India. That is by crossing the custom barrier, to bring the same in the territory of India. Therefore, sub-section (2) is with reference to goods and not with place. He also submitted that the expression 'otherwise regulating' referred to licence etc. by which the import could be regulated and had nothing to do with the 'place'. Section 5 which existed at the relevant time reads as under:

> "5. Export and import policy. - The Central Government may, from time to time formulate and announce, by notification in the Official Gazette, the export and import policy and may also, in the like manner, amend that policy."

This Section is substituted by amended Section 5 w.e.f. 27.08.2010 and the amended Section reads as under:

> "5. Foreign Trade Policy. - The Central Government may, from time to time, formulate and announce, by notification in the Official Gazette, the foreign trade policy and may also, in like manner, amend that policy:
>
> Provided that the Central Government may direct that, in respect of the Special Economic Zones, the foreign trade policy shall apply to the goods, services and technology with such exceptions, modifications and adaptations, as may be specified by it by notification in the Official Gazette."

25. Mr. Naphade submitted that proviso which is added in the new Section 5 for the first time relates to the place and since it was conspicuously absent in the old provision, it could clearly be inferred that Section 5 as it stood at the relevant time had no bearing as far as place of import and export policy is concerned. On that basis, he argued that Section 3 read with Section 5 did not give any such power to issue Notifications of the nature which is subject matter of these proceedings. He, thus, submitted that power could not be exercised by the Central Government to ban or prohibit the import of palm oil through the ports of State of Kerala alone and if any ban had to be imposed which should have been done in all the ports throughout the country. He further argued that Calcutta High Court in the case of Kalindi Woolen Mills (supra) has specifically held to be so while inculcating Sections 3 and 5 of the Act.

26. These were countered by Mr. Panda, learned senior counsel for the respondents by arguing that the impugned Notifications may be considered with reference to Section 3(2) of the Act not in isolation, but on a harmonious construction of the same with reference to the statement of objects and reasons to the Act along with Sections 2(e), 3(3) and 5 of the Act along with Sections 7 and 11 of the Customs Act, 1962. The Foreign Trade Policy of 2004-2009, the relevant provisions which have already been extracted herein before at Para 5 may also be considered. This approach, according to him, would be in consonance with the ratio of the judgment of this Court *in Union of India v. Asian Food Industries*[8]*:*

> "25. Would the terms 'restriction' and 'regulation' used in Clause 1.5 of the Foreign Trade Policy include prohibition also, is one of the principal questions involved herein.
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> 26. A citizen of India has a fundamental right to carry out the business of export, subject, of course to the reasonable restrictions which may be imposed by law. Such a reasonable restriction was imposed in terms of the 1992 Act."
>
> 27. The purport and object for which the 1992 Act was enacted was to make provision for the development and regulation of foreign trade inter alia by augmenting exports from India. While laying down a policy therefor, the Central Government, however, had been empowered to make provision for prohibiting, restricting or otherwise regulating export of goods.
>
> 28. Section 11 of the 1962 Act also provides for prohibition. When an order is issued under sub-section (3) of Section 3 of the 1992 Act, the export of goods would be deemed to be prohibited also under Section 11 of the 1962 Act and in relation thereto the provisions thereof shall also apply.
>
> 29. Indisputably, the power under Section 3 of the 1992 Act is required to be exercised in the manner provided for under Section 5 of the 1992 Act. The Central Government in exercise of the said power announced its Foreign Trade Policy for the years 2004-2009. It also exercised its power of amendment by issuing the Notification dated 27.06.2006. Export of all commodities which were not earlier prohibited, therefore, was permissible till the said date.
> xx xx xx
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> 43. We are, however, not oblivious of the fact that in certain circumstances regulation may amount to prohibition. But, ordinarily the word "regulate" would mean to control or to adjust by rule or to subject to governing principles (*See U.P. Cooperative Cane Unions Federations v. West U.P. Sugar Mills Association and Others*, whereas the word "prohibit" would mean to forbid by authority or command. The expressions "regulate" and "prohibit" inhere in them elements of restriction but it varies in degree. The element of restriction is inherent both in regulative measures as well as in prohibitive or preventive measures.
> xx xx xx

46. The terms, however, indisputably would be construed having regard to the text and context in which they have been used. Section 3(2) of the 1992 Act uses prohibition, restriction and regulation. They are, thus, meant to be applied differently. Section 51 of the 1962 Act also speaks of prohibition. Thus, in terms of the 1992 Act as also the policy and the procedure laid down thereunder, the terms are required to be applied in different situations where for different orders have to be made or different provisions in the same order are required therefore." He also submitted that the above approach of this Court for harmonious construction finds support from the following ratio laid down by this Court in Bhatnagars & Co. Ltd. v. Union of India :

" In modern times, the export and import policy of any democratic State is bound to be flexible. The needs of the country, the position of foreign exchange, the need to protect national industries and all other relevant considerations have to be examined by the Central Government from time to time and rules in regard to export and import suitably adjusted. It would, therefore, be idle to suggest that there should be unfettered and unrestricted freedom of export and import or that the policy of the Government in regard to export and import should be fixed and not changed according to the requirements of the country.

xx xx xx

It was open to the Government, and indeed national interests made it their duty, to intervene and regulate the distribution of the commodity in a suitable manner."

27. According to us, we need not deal with these submissions elaborately as the aforesaid contention of the learned senior counsel for the appellants need to be discarded on altogether different reason. These arguments ignore the crucial words appearing in sub-section (2) of Section 3, namely, provision for prohibiting, restricting or otherwise regulating, the import or export of goods etc. can be made "subject to such exceptions, if any, as may be made by or under the Order". These words are of wide amplitude giving necessary powers to make such exceptions as the Central Government deems fit while issuing the Notifications or the Order in prohibiting, restricting or regulating import or export of goods etc. In the process, it can restrict the import of particular goods through particular ports or disallow the import through specified ports (See: Asian Food Industries judgment, already extracted above). Of course, such an action cannot be arbitrary or irrational and should be backed sound reasons.

28. In the present case, as already held above, there is a sufficient public good sought to be achieved by laying down the exception banning the imports of crude palm oil through ports in Kerala. That, according to us, provides complete answer to the argument of the learned senior counsel for the appellants. Calcutta High Court in Kalindi Woolen Mills (P) Ltd. (supra) overlooked the aforesaid pertinent aspect which gives sufficient powers to the Central Government to act in the manner it has acted. The argument of Mr. Naphade predicated on the contrast between old and new provisions of Section 5 of the Act, again, would be of no avail in view of our aforesaid discussion holding that sub-section (2) of Section 3 of the Act gives ample power to the Government to issue such Notifications in exceptional cases and

present case falls within those parameters. No other argument was addressed. We, therefore, do not find fault with the view taken by the High Court upholding the Notifications in question. These appeals are accordingly dismissed.

[1]*(2004) 5 SCC 0430*
[2]*(2001) 8 SCC 0491*
[3]*(1989) Supp (2) SCC 0364*
[4] *(2005) 13 SCC 0495*
[5]*AIR 1964 SC 0370*
[6]*(1993) Supp. 2 SCC 0146*
[7] *(1981) 4 SCC 0675*
[8] *(2002) 2 SCC 0333*
[9] *(1964) 1 SCR 0830 : AIR 1963 SC 1470*
[10]*(2006) 13 SCC 0542*
[11] *(1957 SCR 0701*