**(2011) 12 BOM CK 0126**

**In the Bombay High Court**

**Case No :** Writ Petition No. 9043 of 2011

AL Zubair Exporter — APPELLANT

Vs

Union of India and Others — RESPONDENT

**Date of Decision :** 01-12-2011

**Acts Referred:**

Agricultural and Processed Food Products Export Development Authority Act, 1985 — Section 10, 10(2), 2
Constitution of India, 1950 — Article 14, 19(1)
Export of Raw Meat (Chilled/Frozen) (Quality Control and Inspection) Rules, 1992 — Rule 3.2
Foreign Trade (Development and Regulation) Act, 1992 — Section 5

**Citation :** (2012) 2 ALLMR 383 : (2012) 3 BomCR 162 : (2012) 114 BOMLR 185 : (2012) 276 ELT 442

**Hon'ble Judges :** D.Y. Chandrachud, J;A.A. Sayed, J

**Bench :** Division Bench

**Advocate :** Zubin Behram Kamdin with Mr. Charles Desouza and Mr. Gandhar Raikar, for the Appellant; D.J. Khambata, ASG with Mr. R.V. Desai Mr. Rajinder Kumar and Mr. Prashant Kamble, for the Respondent

**Final Decision :** Dismissed

## Judgement

Dr. D.Y. Chandrachud, J.—The Petitioner has sought to challenge a notification issued by the Union Government in the Ministry of Commerce and Industry on 31 October 2011. By the notification which has been issued in exercise of powers conferred by Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 read with Para 2.1 of the Foreign Trade Policy, 2009-2014 as amended from time to time the Central Government has substituted Chapter - 2 of Schedule 2 of the ITC (HS) Classification of Export and Import Items, with a fresh provision. Chapter - 2 deals with "Meat and Edible Meat Offal." Note 6 to Chapter - 2 is to the following effect :

Note 6. Export of meat and meat products will be allowed subject to the exporter furnishing a declaration, attached with copies of valid APEDA Plant Registration

Certificate(s) to the customs at the time of exports that the above items have been obtained/sourced from an APEDA registered integrated abattoir or from APEDA registered meat processing plant which sources raw material exclusively from APEDA registered integrated abattoir/abattoir.

As a result of the amendment, exporters are now required to certify that (i) the items of export have been obtained/ sourced from an APEDA registered integrated abattoir or from an APEDA registered meat processing plant; and (ii) the raw material has been sourced from an APEDA registered integrated abattoir/ abattoir.

2. The Petitioner is an exporter of buffalo meat and commenced its business in 1992. The Petitioner is registered with the Agricultural and Processed Food Products Export Development Authority ( APEDA ) a statutory body constituted"" under the Agricultural and Processed Food Products Export Development Authority Act, 1985 APEDA has been established under the provisions of the Act for the development and promotion of export of agricultural and processed food products and for matters connected therewith. u/s 2(i) a scheduled product is defined to mean any of the agricultural or processed food products included in the schedule. Meat and meat products are scheduled products under the Act. Section 10 prescribes the functions of the Authority. Section 10(2)(d) empowers the Authority to carry out inspection of meat and meat products in any slaughter- house, processing plant, storage premises, conveyances or other places where such products are kept or handled for the purpose of ensuring the quality of such products.

3. Parliament has also enacted the Export (Quality Control & Inspection) Act, 1963 to provide for the sound development of export trade of India through quality control and inspection. In exercise of powers conferred by the Act, the Union Government has made the Export of Raw Meat (Chilled/Frozen) (Quality Control and Inspection) Rules, 1992. Rule 3.2 prescribes the requirement of an abattoir as follows :

3.2 Requirement of an abattoir For the purpose of assuring the quality of meat for exports it shall be ensured that the abattoir where the animals are slaughtered shall meet with the following requirements;-

(a) All abattoirs servicing raw material requirements of the industry for meat for export and in existence as on the date of commencement of these rules shall comply with the requirements stipulated in IS 4393-1979 Basic requirement for an abattoir.

(b) The abattoir or slaughter houses constructed after the date of the notification of these rules and utilized for purposes of securing raw material for export of meat shall comply with the requirements of IS 4393-1979.

4. On 21 December 2004 a notification was issued by the Director General of Foreign Trade u/s 5 of the Foreign Trade (Development & Regulation) Act, 1992

 

read with Paragraphs 1.1, 2.1, 2.4 and 2.29 of the Foreign Trade Policy, 2004-2009 by which certain amendments were made in Table B of Schedule 2 of the ITC(HS) Classifications of Export and Import Items. In Chapter 2 which deals with Meat and" Edible Meat Offal", the following note came to be inserted :

Export of meat and meat products will be allowed subject to the exporter furnishing a certificate to the customs at the time of export that the above items have been obtained/sourced from an abattoir/ meat processing plant registered with APEDA.

Under the procedure which was enumerated on 3 March 2009 for grant of registration certificates to abattoirs and meat processing plants, the application for registration was to be accompanied with prescribed data in Form II. Item 11 of Form II deals with slaughter facilities. The applicant had to disclose whether the abattoir is a modern abattoir. If slaughter house facilities were not available and raw-materials were outsourced, the places from where the raw-material was sourced had to be disclosed together with the APEDA registration number.

5. The impugned notification has been issued by the Union Government in the Ministry of Commerce and Industry on 31 October 2011. In essence the requirement that is stipulated in Note 6 which forms part of Chapter II of the ITC classification is that the export of meat and meat products would be allowed only subject to the exporter furnishing a declaration together with copies of a valid APEDA plant registration certificate to the customs at the time of export. The certificate has to state that the export items have been obtained or sourced from an APEDA registered integrated abattoir or from an APEDA registered meat plant which sources raw material exclusively from an APEDA registered integrated abattoir / abattoir. The challenge of the Petitioner to the validity of the notification is on the ground that it is discriminatory and is, therefore, violative of the fundamental right under Article 14 of the Constitution and constitutes an unreasonable restraint on the right to carry on business thereby infringing Article 19(1)(g) of the Constitution.

6. In the affidavit in reply that has been filed by Deputy Director General of Foreign Trade the rationale for the notification has been set out. According to the Respondents, the provisions of the earlier notification dated 21 December 2004 were being misinterpreted to mean that only a meat processing plant was required to be registered with APEDA and not an abattoir. This would result in a situation wherein an exporter would furnish to the Customs at the time of export only a certificate to the effect that the meat has been obtained / sourced from an abattoir even though such an abattoir is not registered with APEDA. This, it has been stated in the reply, had resulted in illegal and unauthorised slaughter of animals since the meat for export can be sourced from any abattoir without the requirement of the abattoir being registered with APEDA being fulfilled. The practice in trade, it is stated, is that an animal is slaughtered in an abattoir (most abattoirs being municipal abattoirs) and the carcass is taken to a meat processing plant, generally private, for further processing. In certain cases, the

 

abattoir is attached to its own meat processing plant, this being referred to as integrated abattoir. Presently it is stated, most of the processing plants are procuring carcasses from municipal abattoirs over which APEDA has no control. If the animal is slaughtered at a non- registered abattoir, any defect in quality or any bacterial contamination of the meat cannot be attended to subsequently at the meat processing plant, even though the meat processing plant may be registered with APEDA. An animal slaughtered at a non-registered abattoir may be contaminated and infected with bacteria and pollutants. It is, therefore, submitted that the requirement of APEDA certification / registration will ensure that abattoirs, most of which are municipal, will have to maintain standards of hygiene, safety and cleanliness and ensure compliance with the standards prescribed by the Bureau of Indian Standards and the Export of Raw Meat Rules. Abattoirs, it is submitted, will have to modernize and upgrade with new technology and this will ensure that the local consumers of meat will get a more hygienic and clean product. Moreover, the reputation of Indian meat in the international market is at stake since India is the third largest exporter of meat in the world. In Para 11 of the affidavit, it has been stated that the notification was issued after meaningful discussions with all the affected stake holders including All India Meat and Livestock Exporters Association. The impugned notification was issued after taking into account a communication which was received from APEDA.

7. We do not find any merit in the challenge to the validity of the notification. The earlier notification dated 21 December 2004 stipulated that the export of meat and meat products would be allowed subject to the exporter furnishing a certificate to the customs at the time of export, that the items of export have been obtained / sourced from an abattoir / meat processing plant registered with APEDA. The intention of the notification, in our view, is clear. The Certificate which was required to be furnished to Customs would require the exporter to establish that the meat which was under export had been obtained/sourced from an abattoir and from a meat processing plant registered with the APEDA. The use of the " / meat processing plant" would not be susceptible of the interpretation that either the abattoir or the meat processing plant were registered with APEDA. Such a construction would defeat the very purpose and object of the notification which was to ensure that export goods pertaining to meat were of requisite quality. As a matter of fact, as noted earlier, an applicant for registration of an abattoir/ meat processing plant, was required to make a disclosure in Form II of the forms appended to the notification dated 3 March 2009. The applicant was required to disclose as to whether the abattoir in question was a modern abattoir and if slaughter facilities were not available and raw material was outsourced, whether the place from which the meat was sourced had APEDA registration.

8. The present notification dated 31 October 2011 is clarificatory. The notification now sets at rest an element of doubt which arose under the earlier notification as to whether it was sufficient if the meat processing plant alone was registered with APEDA or whether in addition the raw-material had to be sourced from an

 

APEDA registered integrated abattoir/abattoir. Under the present notification, both the meat processing plant and the place wherefrom the meat is sourced as a raw-material have to be duly registered with APEDA. This was the intendment of the earlier notification dated 21 December 2004. Moreover, the notification has a nexus with the object sought to be achieved which is to ensure that the quality of the meat exports conforms to basic conditions of hygiene and quality. No discrimination is made by the notification. Whether the meat processing plant has an integrated abattoir or is only a stand alone meat processing plant, does not make any difference to the applicability of the notification. In the case of both, a registration is required with APEDA. Moreover, the place from which the raw material is sourced is also required to be registered with APEDA. In our view, the Union Government was not acting ultra vires its statutory powers when it imposed these restrictions. These restrictions were as a matter of fact in existence since 2004 and the notification of 31 October 2011 is clarificatory to set the matter beyond any doubt. The fundamental right of carrying out business under Article 19(1)(g) is subject to reasonable restraints under Article 19(6). The notification does not fall foul of Constitutional provisions.

9. The attention of the Court has been drawn to a judgment of the Delhi High Court of 28 November 2011 dismissing a petition raising a similar challenge. (M/s. Marya Frozen Agro Foods Pvt. Ltd., vs. Union of India W.P. (C) No. 8379 of 2011. The Delhi High Court in the concluding part of its judgment noted an alternate submission of the Petitioner that the condition had been imposed all of a sudden and it will take sometime for persons like the Petitioner there who were otherwise registered with APEDA as a meat processing plant to provide an integrated abattoir. The Petitioner had made a representation on 18 November 2011 by which some time was sought for installation and commissioning of a slaughter line at the plant of the Petitioner. The Division Bench of the Delhi High Court observed that since a representation was made a few days prior to the order, the Respondents shall pass appropriate orders thereon within a period of two weeks. The learned Counsel appearing on behalf of the Petitioners in the present case submitted before the Court that the Petitioners intend to make a representation to the Respondents seeking some time in order to set up an integrated abattoir as well as for making some transitional arrangements in regard to stock of meat presently lying with it. We permit the Petitioner to make such a representation to the Competent Authority in the Union Government. In the event that such a representation is made within two weeks from today, we expect that an expeditious decision will be taken thereon. As regards the existing stock of meat which the Petitioners claim needs to be attended to on an expeditious basis, we will expect the Competent Authority to take a decision within a period of two weeks on receipt of the representation. Subject to the aforesaid, we do not find any case for entertaining the petition. The Petition shall accordingly stand dismissed. There shall be no order as to costs.

 