

(1990) 11 DEL CK 0026

In the Delhi High Court

Case No : Civil Miscellaneous Appeal No's. 4154, 4441, 4442, 4443-48 and 4808 of 1990 and Civil Writ Petition No. 2760 of 1990

Bhati Devi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-11-1990

Acts Referred:

Citation : (1991) 43 DLT 297

Hon'ble Judges : M.K. Chawla, J;Arun Kumar, J

Bench : Division Bench

Advocate : P.N. Lekhi, Rajiv Dutta, Rajiv Nayar, H.N. Salve and Indu Malhotra, for the Appellant;

Judgement

M.K. Chawla, J.

(1) The petitioner is engaged in the trade and business activity of importing and dealing in spices. She has filed the present petition praying for the grant of the following reliefs : -

"(A)issue a writ of mandamus and/or writ order or direction in the nature of mandamus and subordinates to issue Import licenses for the import of cloves cassia/cinnamon on the pending applications before them only on the basis of the current import policy in force; (b) issue a writ of mandamus and/or writ, order or direction in the nature of mandamus and direct the respondents, their servants, agents, subordinates to first process the applications which are pending for the licensing years 1988-89 in accordance with the current Import policy in force and after the expiry of the utilisation period of the same the applications pending for the licensing years 1989-90 be also processed in accordance with the current import policy in force ; (c) issue a writ of mandamus and/or a writ order or direction in the nature of mandamus and direct the respondents, their servants, agents, subordinates not to issue or process the applications invited for the licensing period 1990-91 till the expiry of the utilisation period of the licensing period 1989-90 ; (d) issue a writ of mandamus and/or a writ order or

direction in the nature of mandamus and direct the respondents, their servants, agents, subordinates, in the alternative without prejudice to the rights of the petitioner, not to issue any further licenses for the import of cloves and cassia/cinnamon uptill the present imported stock available in the country is sufficient for meeting the requirement of the country ; and (e) any other writ, order or direction which may be deemed fit and proper in the facts and circumstances of the present cases."

(2) Along with the writ petition, she also moved an application for the grant of certain ad interim Orders on the same terms. At the time of the issuance of the show cause notice to the respondents, the Division Bench of this court, on 28th of August, 1990 passed the following order on the stay application : 1 st

"IN the meantime, pending applications for grant of licenses for import of cloves and cassia/cinnamon shall be processed in accordance with the policy at present in force. We, however, made it clear that pending applications in this case means, the applications which are made under the new policy i.e. April 1990-March, 1993."

(3) Subsequently, the petitioner moved a fresh application (CM 4354/90), on which the following order was passed on 5th Sept., 1990 :-

"IN the meantime, the respondents are restrained from issuing any licenses under the old policy in respect of cloves and cassia, for the licencing years 1988-89. dusty."

(4) On 18th Sept., 1990, the order dated 28th August, 1990, was modified in these terms :-

"AFTER hearing the parties, we are of the opinion that the interim order passed on 28.8.90 in Cm 4154/90 should be modified by deleting the last sentence of that order, namely, "We, however, made it clear that the pending applications in this case means the applications which are made under the new policy ; i.e. April 1990-March 1993. Ordered accordingly. The interim order, as modified today will continue till the disposal of the writ petition. We, however, make it clear that pending applications would mean all applications which are pending and include all applications made under the old as well as new policies and which have not yet been disposed of."

(5) The petition moved another application, (CM 4571/90), for clarification of the order dated 5.9.90. On the said application, the following order was passed on 20.9.90 :- 1st

"THIS application has been moved by the petitioner for clarification of the order dated 5.9.90 to the effect that it is still continuing. We have not modified or varied the order dated 5.9.90 and in our view, it is in force. We, however, made it clear that all pending applications will be processed in accordance with our order dated 28.8.90 as modified by our order dated 18.9.90 as soon as possible without any delay: Cm stands disposed of."

(6) In spite of these orders, and the clarification, made thereon, on different dates, the grievance of the petitioner is that respondents no. 2 and 3 have now issued a public notice on 12/10/90, purportedly declaring its import policy under para 167 Am 1990-93. Submission of the learned counsel for the petitioner is that they have no grievance and/or cannot challenge the said policy declared by the government under this para of the import policy which has earlier been kept in abeyance, but since the respondents 1 to 3 are intending to grant licenses under this public notice on the applications made for the licencing year 1980-90, the public notice is liable to be misinterpreted and/or abused and or can cause mischief, because during the licencing year 1989-1990, on applications have been called for by the respondents as no policy for issue of any license had been announced for that licencing year. The further submission is that the respondents 1 to 3 should clarify that this public notice is the announcement of the import policy under para 167AM 1990-93 and licenses under this public notice will be issued for licencing year 1990-91 only.

(7) The stand of the respondents as disclosed in their counter-affidavit of Shri B.N. Bannerjee. Deputy Chief Controller of Imports and Exports, Govt. of India, in brief is :-

"THAT they are considering to grant the licenses on the pending applications which are received during the year 1989-90, but this proposal is still under consideration. The matter according to the learned counsel, has been referred to Ministry of Law for interpretation of this court's order. The matter has also been referred to the Ministry of Finance. And the final decision will be taken keeping in view all the relevant aspects including giving another opportunity to those persons who could not apply during 1989-90 to submit their applications which will be treated at par with the pending application."

(8) In view of this stand of the respondents, the apprehension of the petitioner that the respondents are intending to grant licenses under the public notice dated 12.10.90 on the applications made for the licencing year 1989-90 are misplaced, as the matter of the grant of licenses to the bonafide applicants is still under consideration of the Government.

(9) It is not the case of the petitioner that the respondents have granted import licenses to any person under the new policy so far. Therefore, at this stage, the petitioner cannot have any grievance. By the various orders passed by this court, referred to above, this court has already directed the respondents to dispose of the pending applications as per the new policy, and we hope those will be disposed of expeditiously according to law.

(10) At this stage, we may note that on a more or less similar grounds M/s Suresh Chand & Co having the same business address as that of the petitioner in the present writ petition, almost claiming the same relief filed a writ, (C.W. 241)1/90). Another Bench of this Court disposed of the said writ petition with the following observations :

"LEARNED counsel for the petitioners states that he does not wish to press prayers (a) & (b) made in the writ petition and confines his arguments only to prayer (c). The only prayer of the petitioner now is that a direction be issued to the Government not to issue an, further licenses for the import of cloves and cassia uphill the present imported stock available in the country is sufficient for meeting the requirement of the country. In our view this is a question of policy to be decided by the Government. We cannot grant any such relief under Article 226 of the Constitution of India. Moreover, the petitioner cannot make any grievance at this stage because there is nothing placed on record by the petitioner showing that any license has been granted by the Government contrary to the policy. The petitioner is making a grievance only in anticipation of grant of license on the basis of some apprehension. We, Therefore, see no ground to interfere. Dismissed."

(11) We see no reasons to differ with the view taken by the said Bench in the case of M/s Suresh Chand & Co. To us, the present writ petition appears to be pre-mature. The same is dismissed with no orders as to costs.

(12) In view of the above order, no orders on these applications are called for. The same also are dismissed.