

(2003) 05 DEL CK 0019
In the Delhi High Court
Case No : Civil Writ No. 180 of 1981

Creative Handicrafts

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-05-2003

Acts Referred:

Citation : (2003) 4 AD 602 : (2003) 105 DLT 147 : (2003) 71 DRJ 688

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : Pravin Bahadur, for the Appellant; G.L. Rawal, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Mahajan, J.—The petitioner has filed this petition challenging the decision of the Government to withdraw the Cash Compensatory support in respect of exports made after 1.1.1970. Cash compensatory support in respect of exports was introduced w.e.f. 1.4.78 pursuant to the Government's policy announced on 29.3.1978. In January, 1979, the Government announced a policy decision to withdraw or cancel the Cash Compensatory scheme in respect of exports made from 1st January, 1979 to 31st March, 1979. The challenge to this policy has been made mainly on the ground that the respondents were duty bound to honour their unequivocal assurance given by it with the intention or knowledge that such commitment would be acted upon by the petitioners and they were thus estopped by the principles of promissory estoppel from withdrawing the said scheme as the petitioners had legitimately expected that the scheme would continue till the end of financial year 1978-79 and had made firm commitments in that regard.

2. The challenge to the decision of the Union to withdraw the cash compensatory scheme from 1st January, 1979, in my opinion, is no longer res-integra inasmuch as the Supreme Court in a judgment reported as P.T.R. Exports (Madras) Pvt. Ltd. and others Vs. Union of India and others, has held that a person has no

vested right to have export or import licenses in terms of the policies in force at the date of his making application and grant of license depends upon the policy prevailing as on the date of the grant of license. It was held that the Court, Therefore, would not bind the Government with a policy which was existing on the date of application as per previous policy. A prior decision would not bind the Government for all times to come. When the Government is satisfied that change in the policy was necessary in the public interest, it would be entitled to revise the policy and lay down new policy. The Court, Therefore, would prefer to allow free play to the Government to evolve fiscal policy in the public interest and to act upon the same. Equally, the Government is left free to determine priorities in the matters of applications or allotments or utilisation of its finance in the public interest. It is equally entitled, Therefore, to issue or withdraw or modify the export or import policy in accordance with the scheme evolved. It was, Therefore, held that such a policy decision cannot be challenged on the ground of promissory estoppel or legitimate expectations. Some of the observations of the Court which are relevant for the present case are as under:-

"In the light of the above policy question emerges whether the Government is bound by the previous policy or whether it can revise its policy in view of the changed potential foreign markets and the need for earning foreign exchange? It is true that in a given set of facts, the Government may in the appropriate case be bound by the doctrine of promissory estoppel evolved in *Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd.*, . But the question revolves upon the validity of the withdrawal of the previous policy and introduction of the new policy. The doctrine of legitimate expectations again requires to be angulated thus : whether it was revised by a policy in the public interest or the decision is based upon any abuse of the power? The power to lay policy by executive decision or by legislation includes power to withdraw the same unless in the former case, it is by mala fide exercise of power or the decision or action taken is in abuse of power. The doctrine of legitimate expectations plays no role when the appropriate authority is empowered to take a decision by an executive policy or under law. The Court leaves the authority to decide its full range of choice within the executive or legislative power. In matters of economic policy, it is a settled law that the Court gives the large leeway to the executive and the legislature. Granting licenses for import or export is by executive or legislative policy. Government would take diverse factors for formulating the policy for import or export of the goods granting relatively greater priorities to various items in the overall larger interest of the economy of the country. It is, Therefore, by exercise of the power given to the executive or as the case may be, the legislature is at liberty to evolve such policies.

An applicant has no vested right to have export or import licenses in terms of the policies in force at the date of his making application. For obvious reasons, granting of licenses depends upon the policy prevailing on the date of the grant of license or permit. The authority concerned may be in a better position to have the overall picture of divers factors to grant permit or refuse to grant permission

to import or export goods. The decision, Therefore, would be taken from divers economic perspectives which the executive is in a better informed position unless, as we have stated earlier the refusal is mala fide or is an abuse of the power in which event it is for the applicant to plead and prove to the satisfaction of the Court that the refusal was vitiated by the above factors.

It would, Therefore, be clear that grant of license depends upon the policy prevailing as on the date of the grant of the license. The Court, Therefore, would not bind the Government with a policy which was existing on the date of application as per previous policy. A prior decision would not bind the Government for all times to come. When the Government are satisfied that change in the policy was necessary in the public interest, it would be entitled to revise the policy and lay down new policy. The Court, Therefore, would prefer to allow free play to the Government to evolve fiscal policy in the public interest and to act upon the same. Equally, the Government is left free to determine priorities in the matters of allocations or allotments or utilisation of its finances in the public interest. It is equally entitled, Therefore, to issue or withdraw or modify the export or import policy in accordance with the scheme evolved. We, Therefore, hold that the petitioners have no vested or accrued right for the issuance of permits on the MEE or NQE, nor the Government is bound by its previous policy. It would be open to the Government to evolve the new schemes and the petitioners would get their legitimate expectations accomplished in accordance with either of the two schemes subject to their satisfying the conditions required in the scheme. The High Court, Therefore, was right in its conclusion that the Government are not barred by the promises or legitimate expectations from evolving new policy in the impugned notification."

3. It is thus clear that the petitioner having no vested right to have import or export licenses for export of good, he cannot challenge the policy on the ground of promissory estoppel or legitimate expectation. The matter being fully covered by the aforesaid judgment of the Supreme Court, in my opinion, the petitioner is not entitled to any relief in this petition and the same is, accordingly, dismissed with no order as to costs.