(1991) 01 BOM CK 0062

In the Bombay High Court

Case No : Writ Petition No''s. 121 of 1991 and 3632 of 1990

Dr. Venkatesh Kabde APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 29-01-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 226
EXPORT (QUALITY CONTROL AND INSPECTION) ACT, 1963 — Section 16A, 3, 6, 7

Citation : (1991) 56 ELT 307

Hon'ble Judges : S.M. Jhunjhunwala, J;M.L. Pendse, J

Bench : Division Bench

Advocate : Shri Anand Grover, for the Appellant; Shri K.B. Bulchandani and Shri S.M. Shah, for the Respondent

Judgement

Pendse, J.

Rule, returnable forthwith.

Shri Bulchandani and Shri Shah waive service on behalf of the respondents.

Heard counsel.

1. Both these petitions filed under Article 226 of the Constitution of India, the first by Sitting Member of the Parliament and the second by the Employees Association of Export Inspection Council/Agency can be conveniently disposed of by common judgment, as the issues raised in the two petitions are identical. By these petitions the petitioners are seeking a declaration that Notifications dated October 6, 1990 and October 19, 1990 are ultra vires the provisions of Section 16A of the Export (Quality Control and Inspection) Act, 1963 as well as violative of Article 14 of the Constitution of India.

2. The Export (Quality Control and Inspection) Act, 1963 was enacted by the Parliament to provide for the sound development of the export trade of India through quality control and inspection and for matters connected therewith.

Section 3(1) of the Act confers power upon the Central Government to establish Export Inspection Council. Section 6 provides that if the Central Government after consulting the Council, is of the opinion that it is necessary for the development of the export trade of India, then it may notify commodities which shall be subject to quality control or inspection or both prior to export. In accordance with the powers conferred u/s 6, the Government notified the export of engineering products and also export of footwear and footwear components to be subjected to quality control or inspection prior to export.

Section 16A was introduced by Export (Quality Control and Inspection) Amendment Act, 1984 and inter alia provides that if the Central Government is satisfied that circumstances exist which render it necessary or expedient so to do in the public interest, then by notification in the Official Gazette, the Government may suspend or relax the operation of all or any of the provisions of the Act in respect of notified commodity. In exercise of powers conferred u/s 16A(1), the Government of India, Ministry of Commerce issued Notifications dated October 6 and October 19, 1990 providing that sub-section (d) of Section 6 of the Act shall not apply for the export of engineering products and export of footwear and footwear components by Star Trading Houses, Trading Houses and Export Houses recognised by the Central Government. Section 6(d) of the Act prohibits the export in the course of international trade of a notified commodity unless it is accompanied by a certificate issued u/s 7 that the commodity satisfies the conditions relating to quality control. This requirement of a certificate issued u/s 7 is dispensed with by the two notifications in respect of export of engineering products and export of footwear and footwear components, respectively by the Star Trading Houses, Trading Houses and Export Houses recognised by the Central Government. The two petitions challenge legality of these notifications.

3. Shri Grover, learned Counsel appearing on behalf of the petitioners, raised two contents to challenge legality of the notifications. The first submission of the learned counsel is that powers u/s 16A(1) of the Act can be exercised only when the Central Government is satisfied that circumstances exist which render it necessary or expedient in the public interest to suspend or relax operation of any provisions of the Act, and there is nothing on record to indicate that such circumstances existed before exercise of powers. We are unable to find any merit in the submission for more than one reason. In the first instance we must bear in mind that there is a presumption of exercise of statutory powers by the Central Government in the bona fide manner and there is no complaint in the petition that the powers are exercised mala fide to favour a particular party. Secondly, provisions of sub-section (3) of Section 16A of the Act demand that every notification issued u/s 16A of the Act shall be laid, as soon as may be after its issue, before each House of Parliament while it is in session, and powers have been conferred on the Parliament to make any modification in the notification or even to revoke it. This statutory power conferred upon the legislative body clearly indicates that the policy decision taken by the Central Government in exercise of powers u/s 16A of the Act is subject to legislative approval of both

the Houses of Parliament. It is therefore obvious that the Courts should be extremely reluctant to disturb the exercise of power by the Central Government. Shri Grover did not dispute that jurisdiction of the Court to examine sufficiency of the material available to the Central Government is extremely limited, but urged that in the present case there are no circumstances whatsoever in existence to suspend the provisions of sub-section (d) of Section 6 of the Act in respect of export of engineering products and footwear and footwear components. The submission is not correct. In the return filed on behalf of the respondents it is pointed out that the Government decided to exempt the Star Trading Houses, Trading Houses and Export Houses from the purview of compulsory pre-shipment inspection because these houses have been established credentials in markets abroad and have been recognised by the Central Government Keeping in view their past track record in the field of exports. The return further claims that bulk of the exports of these houses have been made without obtaining the compulsory pre-shipment inspection certificates and these houses have been able not only to sustain the markets abroad but have also registered the growth in exports of the products. The return further points out that these houses are having substantial high export performance as stated in Para 217 of the Import and Export Policy (April, 1990 to March, 1993) Volume I. In the return filed by Dulal Chandra Majumdar sworn on January 25, 1991 in paragraph 8 it is pointed out that during the year 1989-90 as against the total export of Rs. 27,600 crores approximately, the Export Inspection Agencies issued certificate of inspection of consignments worth about Rs. 3,777.15 crores, and that is the small percentage of total export subject to pre-shipment inspection. The return further recites that value of exports control by the Export Inspection Agencies as follows :-

From the contents of this return, it is obvious that the Government had enough material available while exercising powers u/s 16A(1) of the Act and the exercise of the powers cannot be faulted on the ground of non-availability of the circumstances.

4. Shri Grover then submitted that Section 6 of the Act prescribes that the Government can notify commodities which shall be subjected to qualify control or inspection after consulting the Council. It was contended that if the inclusion of commodities are after consulting the Council, then its exclusion also must be only after consulting the Council, and in the present case notifications were issued without consulting the Council. The submission is devoid of any merit. In the first instance the return clearly points out that notifications were issued only after consulting the Council. Secondly, we are unable to find any merit in the contention that exclusion cannot be without consultation of the Council. Section 16A nowhere provides that powers can be exercised only after consultation with the Council and it is not permissible for the Court to read such restriction while interpreting the statutory provisions. In our judgment, the challenge to the notification is without any substance and both the petitions must fail.

5. Accordingly, both the petitions fail and rule in each is discharged with costs.

