

**(1982) 12 BOM CK 0007**

**In the Bombay High Court**

**Case No : Writ Petition No. 1717 of 1981**

Extrusion Processes Pvt. Ltd. and another

APPELLANT

Vs

Chief Controller of Imports and Exports and others

RESPONDENT

---

**Date of Decision : 08-12-1982**

**Acts Referred:**

**Citation : (1984) 15 ELT 25**

**Hon'ble Judges : M.L. Pendse, J**

**Bench : Single Bench**

---

## **Judgement**

1. Though this petition was argued at considerable length, the controversy lies in a very narrow compass, and the short question which falls for determination is whether Respondent Nos. 1 and 2 have acted fairly in implementing the policy set out in the Hand Book of Import-Export Procedures, 1980-81 in respect of import of Capital Goods.

2. The facts which gave rise to this petition are required to be stated briefly. Petitioner No. 1 is a Company engaged in the manufacture of aluminium collapsible tubes, rigid cans and containers. Petitioner No. 1 is registered with the Directorate General of Technical Development, Government of India, Industrial Machinery-I Directorate. Petitioner No. 1 claims that it has manufactured nine plants used for the production of extruded aluminium collapsible tubes. All these nine plants are used by Petitioner No. 1 itself. Petitioner No. 1 has exported one complete plant to Zambia. There is some dispute between the parties as to whether the concern at Zambia is a sister concern of Petitioner No. 1 or an independent concern. Respondent No. 3 is a Company incorporated under the provisions of the Companies Act and have made all preparations to commence manufacture of collapsible tubes, rigid cans and containers. Respondent No. 3 Company has acquired lands in the backward area and have completed all infrastructure as electricity, roads etc. to establish a factory. Respondent No 3 had also entered into contracts with foreign suppliers and had made arrangements to open letter of credit and had made provision for finance. The

Hand Book of Import-Export Procedure 1980-81 provides for a procedure in respect of import of Capital Goods including plants and machinery. It further provides that where the value of Capital Goods required exceeds Rs. 20 lakhs, the intending applicant should advertise his requirement in the Trade Journals to enable interested indigenous manufacturers to respond thereto first. It further provides that the advertisement shall set out the sufficient details of the desired product and a copy of the advertisement shall be forwarded to the Directorate General of Technical Development (Coordination Section). It further provides that during the period of 45 days from the date of the publication of the advertisement, the indigenous manufacturers of the product advertised, shall make offer to the intending applicant and the same should be sent directly to the applicant with a copy to the Directorate General of Technical Development (Coordination Section), New Delhi and the sponsoring authority of the advertiser concerned. The Policy further provides that only after a period of 45 days from the date of advertisement the intending importer may apply to the licensing authority for a licence to import the Capital Goods in question. It requires that the import application should state the serial number and the date of the publication of the advertisement, offers received and their individual appreciation by the applicant. It further requires the applicant to state the reasons for rejection.

3. On January 21, 1981 Respondent No. 3 inserted an advertisement in the Indian Trade Journal stating that it was interested in the import of plant and machinery for manufacture of Aluminium Collapsible Tubes. The details and specification of the machinery was set out in the advertisement and it was sufficient if it is mentioned that the following five machines were required by respondent No. 3.

(1) Annealing over; (2) Internal lacquering machine; (3) Decorating plant; (4) Capping machine; and (5) Automatic tube latexing machine.

In the Import Policy for the year 1980-81, two items which form part of the plant for manufacturing aluminium collapsible tubes were included in the O.G.L. (Open General Licence) list and in respect of which import licence was not required. These two items are (1) Impact Extrusion Press; and (2) Automatic trimming, threading, rolling, beading, knurling machine for collapsible tubes. As these two items were in the O.G.L. list, the advertisement given by respondent No. 3 did not include these two machines. Respondent No. 3 before the expiry of 45 days made an application for import of Capital Goods on February 23, 1981 to the Central Government, but that application was not considered as it was not in accordance with the policy. Petitioner No. 1 responded to the advertisement and by letter dated February 24, 1981 informed respondent No. 3 that petitioner No. 1 are eminently suited to manufacture machines and offering technical advice. Petitioner No. 1 claimed that their aluminium collapsible tubes lines are time tested in India and have also exported a complete plant to Zambia against stiff competition. Respondent No. 3 entered into correspondence with petitioner No. 1

seeking opportunity to visit their plant where the machinery manufactured by petitioner No. 1 is in operation, but the response of petitioner No. 1 was lukewarm and it is not in dispute that respondent No. 3 was unable to get a first-hand knowledge of the working of the machinery alleged to have been manufactured by the petitioners.

4. On April 22, 1981 respondent No. 3 addressed a letter to the Secretariat for Industrial Approvals, applying for licence for the machinery required for manufacture of Aluminium Collapsible Tubes. In this letter, respondent No. 3 pointed out that in pursuance of the advertisement issued in the Indian Trade Journal on January 21, 1981 two offers from indigenous manufactures were received but they could not be accepted. The first offer received from Metal Box India Ltd., Calcutta did not quote internal lacquering machine and tube latexing machine. The other offer was from the petitioners, but respondent No. 3 pointed out that the petitioners themselves are engaged in a business of collapsible tubes manufacturing and basically are not the manufacturers of the machine and had no-experience and expertise whatsoever for manufacturing these machines. Respondent No. 3 also pointed out that inspite of the request to arrange for a visit to the plant, which are claimed to have been successfully commissioned, the petitioners have not co-operated in making the arrangement. Respondent No. 3 also pointed out that the experience of the petitioners, if any, is very limited and if the machines are not permitted to be imported, then the project commenced by respondent No. 3 would be inordinately delayed. Respondent No. 3 also pointed out that the question of after sales services would require consideration as the petitioners would be competitors in the manufacture of collapsible tubes with respondent No. 3.

5. It is the claim of the petitioners that they were in a position to manufacture (1) Impact Extrusion Press; and (2) Automatic trimming machine and they were making representation to the Government that since it was manufacturing the two items the import of the same should not be permitted. The petitioners claimed that in accordance with their contention the two items were deleted from the list of Open General Licence in the Import Policy of 1981-82 framed by the Government of India. On April 28, 1981, that is after the Import Policy of 1981-82 came into operation the respondent No. 3 applied for the licence to import the Impact Extrusion Press and the Automatic trimming machine. It is claimed by the petitioners that till August 1981 the petitioners continued its efforts to persuade respondent No. 3 to accept their offer, but respondent No. 3 was not interested. The petitioners became aware in August 1981 that respondent No. 3 was getting clearance for import of the machinery as applied by them on April 22, 1981 and April 28, 1981. Thereafter certain correspondence took place between the petitioners on one hand and respondent Nos. 1 and 2 on the other, and the petitioners also made representation to the Minister for Industries of the Government of India. The petitioners claim that they became aware in September 1981 that respondent No. 3 would be permitted to import the machines, including the Impact Extrusion Press and Automatic trimming

machine, as on September 10, 1981 at the 17th meeting of the Capital Goods Committee a decision was taken to permit the import of the said plant including the two items which were taken off of the O.G.L. list in the year 1981-82. The petitioners continued its efforts with the Minister for Industry to deprive respondent No. 3 of the import permits and thereupon Mr. P. K. Sunkaria, Development Officer, Director General of Technical Development visited the factory of the petitioners on September 13, 1981. Shri Sunkaria after his visit probably made his report and thereupon the Director General of Technical Development called upon the petitioners to furnish certain particulars. The petitioners also made representation to the Engineering Export Promotion Council requesting that Ministry for Industry should be persuaded to prevent grant of import licence to respondent No. 3. Accordingly one Shri A. K. Jajodia, Regional Chairman of the Engineering Export Promotion Council, addressed a letter dated October 6, 1981 to the Joint Secretary, Ministry of Commerce suggesting that he had been advised that the petitioners plan to enter overseas market by supplying complete machinery for manufacture of rigid and collapsible tubes and therefore respondent No. 3 should not be permitted to import the machines. Respondent No. 3 also addressed a letter dated October 9, 1981 to the Government of India seeking early clearance of the import licence. In this letter, respondent No. 3 pointed out that the claim made by the petitioners about the export of one plant to Zambia is not genuine. The petitioners also addressed another representation on October 19, 1981 to the Minister of Industry reiterating the claim that import licence should be refused.

6. The petitioners approached this Court on December 1, 1981 by filling the present petition under Article 226 of the Constitution of India claiming a Writ of Prohibition restraining respondent Nos. 1 and 2 from taking a decision to issue import licence to respondent No. 3 without following the procedure required by law and only after disclosing the materials and reasons relied upon by respondent Nos. 1 and 2 in granting the licence to respondent No. 3 and only after giving the petitioners a full and fair opportunity of hearing. The petition was admitted on December 11, 1981 and de-interim injunction restraining respondent Nos. 1 and 2 from taking any decision to issue import licence to respondent No. 3 was granted. It is required to be stated that prior to this date, on December 1, 1981 itself, an ad-interim injunction was secured by the petitioners and that was confirmed at the time of admission of the petition. On December 11, 1981 itself respondent No. 2, Union of India, informed respondent No. 3 that a decision has been taken to grant an import licence as requested by respondent No. 3 by application dated April 22, 1981 and April 28, 1981. Respondent No. 3 preferred an appeal against the interim order passed by the learned Single Judge and Appeal No. 568 of 1981 was disposed of by Division Bench of this Court on December 23, 1981 whereby the interim order passed by the learned Single Judge was varied enabling the respondents to proceed with the application for import licence but not to clear the machinery for home consumption until the disposal of the petition. There is one more circumstance to

which reference is required to be made at this juncture. During the pendency of this petition, the petitioners took out Chamber Summons calling upon respondent Nos. 1 and 2 for disclosure and inspection of certain documents, and the learned Single Judge made the Chamber Summons absolute and issued the requisite directions by an order dated October 25, 1982.

7. The main thrust of the petitioners is that the Policy was framed by the Government of India for encouraging indigenous manufacturers and to prevent drain on foreign exchange and on the facts and circumstances set out hereinabove, the Government has not acted fairly in over-looking the claim of the petitioners and granting import licence to respondent No. 3. In answer to the petition on behalf of respondent Nos. 1 and 2, Shri Gopalan Rajappan Nair, Deputy Chief Controller of Imports and Exports, Bombay, has filed a return sworn on December 4, 1982. It is claimed in this return that the import is allowed to respondent No. 3 only after it is cleared by D.G.T.D. from indigenous angle and has been duly certified and cleared by the concerned C.G. Committee. It is further claimed that according to the technical advice, the technology adopted in the equipment manufactured by the petitioners is based on the old technology from the equipment imported by the petitioners earlier. It is claimed that since there has been significant technological development in the field and the latest imported machines are much more versatile and sophisticated it was thought proper to permit import to respondent No. 3. The Deputy Chief Controller further points out that the petitioners themselves have imported the critical equipment of these lines, namely the impact extrusion press and the automatic trimmer as an integrated unit and orders for further import of one internal lacquering machine and one automatic elastic machine has been placed in April 1981 by the petitioners themselves. Shri Nair has also filed another affidavit dated December 8, 1982 setting out the reasons why it was not possible for respondent No. 1 to comply with the directions given by the learned Single Judge on the Chamber Summons. On behalf of respondent No. 3, Balkishan Toshniwal, Secretary of respondent No. 3, has filed an affidavit in answer to the petition pointing out that the petitioners are guilty of suppression of very relevant facts and the claim made by the petitioners is false and frivolous. Respondent No. 3 claims that the petitioners have no right to approach this Court and claim that import licence should be refused to respondent No. 3, and that in fact the petitioners have no subsisting or legal right to claim that their machinery should be purchased by respondent No. 3. It is further pointed out that the claim made by the petitioners that they are in a position to manufacture machinery is not only false but the facts clearly establish that the entire effort of the petitioners is to prevent respondent No. 3 from commencing their plant and to prevent competition in regard to the manufacture of collapsible tubes. Respondent No. 3 claims that the Government has acted fairly in considering the claim made by the petitioners and respondent No. 3, and it is not open for the petitioners to claim that the Court should substitute its judgment over that of the Government which had acted after obtaining the reports from the DGTD and the

C. G. Committee.

8. In view of these rival submissions, the short question which requires answer is whether respondent Nos. 1 and 2 have acted fairly in implementation of the Import Policy for the concerned two years. Shri Desai, appearing in support of the petition, relied on the decisions reported in 1972 (2) QB 299, *Regina v. Liverpool Corporation* (1969) 1 All ER 904, *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, *S.L. Kapoor Vs. Jagmohan and Others*, *Kapoor v. Jagmohan and others*, to claim that it is the bounden duty of the Government to act fairly while considering the claims made by the petitioners in accordance with the import policy. There cannot be any dispute about the proposition canvassed by Shri Desai and indeed Shri Noorani, appearing on behalf of respondent No. 3, did not dispute the proposition. The question whether the Government has acted fairly would depend upon the given set of circumstances and there cannot be any general rule of application of fair play. Though the petitioners have claimed that it is necessary for respondent Nos. 1 and 2 to furnish the details about the representation made by respondent No. 3 and the objections raised to the offer made by the petitioners and thereafter give a personal hearing and pass a reasoned order. Shri Desai did not place his case so high at the stage of arguments. The learned counsel submitted that the Government should have at least communicated the grounds of rejection offered by respondent No. 3 and the reasons which prompted the Government to turn down the offer given by the petitioners. Respondent No. 3 has challenged the bona fides of the petitioners about their capacity to manufacture the machines and those challenges are set out in the two letters dated April 22, 1981 and October 9, 1981 addressed to the Government authorities. It was urged that the Government should have furnished the copies of those letters to the petitioners and sought answer of the petitioners in regard to the charges levelled against them. It is not possible to accept the submission. In the first place it is necessary to remember that under the Import Policy for the year 1980-81 the Government provided for a method to ascertain whether the products intended to be imported by an applicant could be indigenously manufactured and a complete code has been prepared for giving sufficiently reasonable opportunity to such indigenous manufacturer to offer their goods. Apart from this, before the import application is granted, it required clearance from the Directorate General of Technical Development and C. G. Committee which are presided over by technical experts. In the present case, it is not in dispute that both the D.G.T.D. and the C. G. Committee have cleared the application made by respondent No. 3 for import of machinery. It cannot be lost sight that grant of import licence is a purely administrative action and depends upon the relevant policy framed by the Government at the particular time and the authority granting the import licence is not a quasi-judicial authority requiring to give a full fledged hearing and a reasoned order. What amounts to a fair play in given circumstances would vary from case to case and in the present case when both the sides have made large number of representations to the Government, it is difficult to hold that

Government has not acted fairly because it accepted the representation of respondent No. 3 and not that of the petitioners.

9. Shri Desai also complained that the grounds furnished in the return filed on behalf of respondent Nos. 1 and 2 are not sufficient. Shri Desai did not dispute that in April 1981 the petitioners have applied for an import licence for impact extrusion press and automatic trimming machine. In respect of these two machines respondent No. 3 has inserted an advertisement on January 21, 1981 and the petitioners offered to manufacture the same indigenously. It is difficult to appreciate how the petitioners themselves sought an import licence for these two machines when they were making offers to respondent No. 3 to manufacture it indigenously. Shri Desai tried to overcome this difficulty by submitting that the petitioners desired to import these two machines as a proto-type with a view to adopt the latest technical development in these machines and then to manufacture identical machines and sell it to the customers. In the first instance, it is difficult to believe such a tall claim made on behalf of the petitioners. But even otherwise, the petitioners cannot expect that respondent No. 3, who wants to commence its factory after investing a large amount, should wait till the petitioners are able to import the machinery, then modulate their manufacture in accordance with the developed technology and then manufacture the machinery which could be sold. In my judgment, on the facts and circumstances of the present case, the Government authorities were perfectly justified in ignoring the claim of the petitioners and accepting that of respondent No. 3.

10. Shri Desai submits that the reasons set out in the return filed on behalf of the Government were never communicated to the petitioners nor Shri Nair who was sworn the affidavit had any personal knowledge about the decision taken by the Government. In my judgment, it is not possible to ignore the contents of the affidavit on this count. Shri Nair has stated that he has persued the requisite files and he is competent to reply to the petition and I do not see any reason to discard his claim. In my judgment, it is not necessary for the Government authorities to put the reasons set out in the return to the petitioners before granting the import licence to respondent No. 3. The reasons set out in the return were known to the petitioners all along because it was the petitioners themselves who had applied for import licence for two machines in April 1981, and it is futile to claim that the information which is in the knowledge of the petitioners should have been communicated to them.

11. Shri Desai then made a grievance that inspite of the order passed by the learned Single Judge on October 25, 1982 the respondents have not disclosed the documents. It is true that the documents as mentioned in the order by the learned Judge were not disclosed, but Shri Nair has filed an affidavit on December 8, 1982 setting out the reasons for non-compliance with the order. On perusal of the affidavit, it is clear that the documents are not in the custody of respondent No. 1. In normal course I would have adjourned the hearing of this petition and compelled respondent No. 2 to give inspection of all the documents

as per the order of the learned Single Judge, but I am not inclined to adopt that course in the present case as I find that the interest of respondent No. 3 is seriously affected by grant of any adjournment. Respondent No. 3 has secured an import licence almost a year back and has been prevented from acting upon it because of the pendency of the petition. After considering the submission of Shri Desai about the fair play on the part of the Government in granting the licence, in my judgment, it would not be appropriate to postpone the result of this petition till the Government complies with the order of the learned Single Judge.

12. A faint submission was advanced by Shri Desai that the application made by respondent No. 3 for grant of licence was sanctioned by the Government inspite of the fact that it was made before the expiry of 45 days from the date of advertisement. The submission is clearly erroneous, because respondent No. 3, though initially filed an application on February 23, 1981, that is within 45 days, a fresh application was filed on April 22, 1981 which was obviously after the expiry of 45 days, and in that application the reasons for rejecting the offer of the petitioners have been stated.

13. Shri Desai then submitted that even in respect of the import of two machines, that is Impact Extrusion Press and Automatic trimming machine which were sought for by respondent No. 3 by application dated April 28, 1981, the Government authorities have not followed the import policy for the year 1981-82. The submission proceeds on the basis that these two items of machinery were taken out of the O.G.L. list for the year 1981-82 and the value of these two machines exceeds Rs. 20 lakhs, and therefore, the advertisement procedure ought to have been followed. Shri Desai complains that the advertisement procedure was not followed and respondent No. 3 was issued import licence straight-away and thereby the Government authorities have acted unfairly. It is not possible to accept this submission. In the first place the claim of the petitioners that the value of these two machines exceeds Rs. 20 lakhs is seriously disputed by Respondent No. 3. Respondent No. 3 claims that the value of these two machines is approximately Rs. 15 lakhs and as such it was not necessary for respondent No. 3 to resort to the advertisement procedure as set out in the Import and Export procedure. The petitioners have placed no material whatsoever on record except their bare statement to substantiate the claim that the value of these two machines is more than Rs. 20 lakhs. It is not possible to rely upon such bare statement to conclude that the value of the machines is more than Rs. 20 lakhs. In any event, the question is one of fact and cannot be investigated in the Writ Jurisdiction.

14. Shri Desai lastly submitted that it is an accepted practice and procedure consistently followed by the Government authorities in the matter of an application for import of any machinery to obtain a clearance from the M. E. I. Division of the Directorate General of Technical Development irrespective of the value of machinery sought to be imported. Shri Desai relied upon contents of paragraphs 18A and 18B of the Petition and claimed that this practice has been

developed to protect indigenous manufacturers and whenever an application for import of machinery is made it is referred to the M. E. I. Division and their remarks are called for. The learned counsel further submitted that the M. E. I. Division directs the applicant for import licence to the manufacturers who are registered with D.G.T.D. and clearance by D.G.T.D. is not sufficient because the procedure adopted by the M. E. I. Division is not complied with. Shri Desai urged that the averments made in paragraphs 18A and 18B of the petition are not specifically denied by respondent Nos. 1 and 2, but in my judgment, that makes little difference to the submission that the Government authorities have not acted fairly. Even assuming that what is averted by the petitioners as accepted practice and procedure is correct, still the failure would not vitiate that grant of import licence. After all M.E.I. is only a division of D.G.T.D. and it is not in dispute that D.G.T.D. has given clearance for import. In my judgment, the challenge in the petition is without any substance and is required to be repelled. On perusal of the petition and the returns, an inescapable conclusion arises that the petitioners are fighting this litigation with a view to prevent respondent No. 3 from entering into market of manufacture of collapsible tubes and becoming competitor to the petitioners. In my judgment, the claim of the petitioners that the Government has not acted with fair play is without any substance and the petitioners are not entitled to any relief whatsoever.

15. Accordingly, the petition fails and the rule is discharged with costs.