

(2000) 12 KL CK 0031
In the High Court Of Kerala
Case No : O.P. No. 34658 of 2000

Harmony Spices Ltd.

APPELLANT

Vs

Director General of Foreign Trade

RESPONDENT

Date of Decision : 15-12-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 12 KL CK 0031

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : C.N. Ramachandran Nair, Antony Dominic and Jayasankar A.K, for the Appellant; K. Ramakumar, for the Respondent

Judgement

M. Ramachandran, J.—The petitioner is a company engaged in export/import and processing of spices. They have filed this Original Petition challenging Exts. P10 and P11 orders issued by the second respondent-Joint Director General of Foreign Trade, Ernakutam. The orders are similar in nature and I may extract the text of the order herein below:

"With reference to your letter dated 6.10.2000 and 10.10.2000 and in continuation of this office letter of even number dated 20.9.2000 on the above subject, you are informed that we have received Advance Licensing Committee Minutes No. 21 dated 28.9.2000 from Hqrs. From the above Minutes, the Committee has decided to stop the issue of DFRC for export of Malabar black pepper in view of the comments furnished by the Spices Board".

The applications filed by the petitioner had thus stood rejected.

2. Exts. P5 and P6 had been submitted by the petitioner requesting for Duty Free Replenishment Certificate (DFRC) Licence. Such licence are issued to eligible persons in view of the Export and Import Policy (EXIM) 1997-2002. The case is that the application for licence was rejected without stating any reasons and without affording them opportunity of showing cause against such action. It is

submitted that the policy of the Government is to be found from the statements issued by the Government from time to time. These are generally issued for five year periods and periodical amendments are notified. The general trend is to allow incentives for exporters, one of which is the Duty Free Replenishment Certificate Scheme (DFRC Scheme), referred to above. Thereby an exporter is entitled to import duty free, the inputs/raw materials which was necessary and required for the manufacture of the exported product. It is stated that the Scheme works on a replenishment basis and an exporter exports first and can replenish the inputs used for manufacturing the exported product by importing them duty free. The extent of imports is based on formulas specified by the Government and published from time to time.

3. As understood by the petitioner, the policy in relation to the present issue is that for the export of every 1 MT of processed Black Pepper (Non-Srilankan) with minimum 2% volatile oil content, the exporter was authorised to import duty free, 1.02 MT of unprocessed Black Pepper (Non-Srilankan) with extraneous matter less than 2% and minimum 2% volatile oil content. The petitioner had become eligible for such privilege in view of the exports made. After submission of application, by Ext. P7 dated 8.9.2000, they had been advised that the applications had been sent over to the first respondent for certain clarifications and communications were awaited. They had no inkling that there was possibility of any rejection of application. In fact, the rejection, evidenced by Exts. P10 and P11, appeared to be rather mysterious, since as late as on 14.9.2000 the petitioners were reassured in their project because of a letter from the Spices Board, a copy of which had been endorsed to them. The text of the letter, which is produced as Ext. P12; may be relevant and is extracted herein below:

"SPICES BOARD

V. JAYA SHANKARA, I.A.S.

CHAIRMAN No.MD/PLC/07/2000 14th September, 2000 Dear Shri. Anil Swamp,
M/s. Harmony Spices Ltd.. Cochin has been taken over by Man Producten, Amsterdam. The Netherlands recently. Man Producten are one of the largest dealers of pepper in the world.

M/s. Harmony Spices Ltd. have applied for DFRC with the JDGFT, Cochin on 21.8.2000. It appears that the application has not been disposed off. May I request you to kindly look into the matter and dispose it off as per provisions of the present policy at the earliest.

With regards.

Yours sincerely, Sd/- (V.JAYASHANKAR)"

Therefore, there was no reason that could be deciphered from the change of attitude, evidenced by Ext. P10 and P11, and especially an adverse report from the Spices Board.

4. Mr. Jayashankar, counsel for the petitioner, points out that there is particular reference to the communication by the Spices Board, a third party, and it shows that this has been one of the reasons for rejection of their application. The further submission is that the minutes, referred to in Exts. P10 and P11, and also a copy of the communication of the Spices Board ought to have been given to the petitioner. Civil consequences follow the orders and since the proceedings have been issued in violation of the principles of natural justice, they are liable to be quashed.

5. Though the proceedings are administrative in nature, nevertheless when they had chosen to reject the applications by relying on outside materials, necessarily the first respondent, according to the petitioner, was obliged to put such material to the petitioner and notice their objections. It is also stated that there has been no advice of any change in the policy of the Government but the Licensing Committee has taken a decision behind their back. The petitioner could have appreciated the shift in the stand, and even suggested of any measures whereby the defect in the application could have been rectified, or application re-presented. The denial of such opportunity was therefore stated as arbitrary.

6. I had heard Sri. K. Ramakumar, Senior Central Government Standing Counsel. He submits that copies of the minutes could be made available to the petitioner, but it will take time and therefore the matter may be posted for further hearing.

7. In view of the urgency shown by the petitioner and even if such materials forthcome, this Court may not be able to resolve the issue as at present, and the matter will have to be delegated back to the concerned authority. It is also clear that Ext. P10 has been passed without hearing the version of the petitioner. The limited prayer of the petitioner is for a direction to the respondents for a reconsideration of Exts. P5 and P6. I am of the opinion that the Original Petition need not be kept pending for the purpose of production and examination of the files concerned.

8. Fairness in administrative action is an essential requirement. In the matter of export/import policy, it has to be ensured that there is more of transparency, as the parties to the contract may be business community of other nations as well. The image of an exporter is as much as image of the country and by a shift in change legitimate expectations are upset, it may have serious repercussions. The impact of Ext. P10 is that the application of the petitioner is stated to be rejected after a few months of its submission. In the meanwhile, in anticipation of a formal sanction, the petitioner might have made arrangements for import, as is admissible as per the relevant norms. The second respondent, who issued the order, is aware of the reason for rejection, since a copy of the minutes of the committee is apparently with them. But that is neither given, nor its contents disclosed. The advice of the Spices Board is also kept as a secret, though Ext. P12 gives an impression that they were in all support to the petitioner. A reference to the hand book procedures, Ext. P2 in fact evidences a liberal approach, and exports in anticipation of licence, even is envisaged. How and why

the processed black pepper fell from grace is not explained. Respondents have not cared to understand the agony of being at the receiving end. There cannot be a situation, which can be more unfair and frustrating while dealing with the rights of a person, who reasonably believe that he is engaged in a lawful pursuit. It is not known as to whether the decision of the committee was made on any relevant materials nor the files had been placed before the first respondent for his independent examination and study. The first respondent was authorised to take a decision and if he had found adverse reports in the files, it was incumbent on him to give an opportunity to the petitioner to put forward their point of view. The Government would have had no prejudice by adopting such a course, and simultaneously it would have instilled confidence in the mind of the exporter in the fairness of the Government who was also to act as protector of interest of an individual. There was no right in absolute terms to reject an application, so long as there was no change in the policy as published and prevailing as on the relevant date.

9. It was stated on behalf of the respondents that there was no directives in these matters entitling a party to a right of hearing. Perhaps, a line to be drawn as between situations where a right of hearing should be given or not to be given is rather thin. According to me, unless there is express prohibition, a statutory functionary if intends to reject an application has to give an opportunity to the affected persons what he has to say. Correspondence in the matter reveals that there were deliberations and even necessity for a clarification. The petitioner was unaware of what was going on behind their back. Even after all these, the petitioner is kept in the dark and he is not advised as to why and what for the application is rejected. When he had satisfied all the required parameters entitling grant of a certificate and the issue of licence was only a formality, a rejection memo, without disclosing the reasons, did not satisfy principles of fairness.

10. Circulars, minutes, clarification and the like are not to be kept undisclosed up in the sleeves of the deciding authority. It should be made known to the general public, who are concerned with these, so that it may be possible for them to adjust their business in conformity with the mandate. Ext. P10 does not satisfy the principles on which rule of law is founded. The minutes though not produced, referred to in Exts. P10 and P11, therefore not to be enforced and the petitioner is to be given a further opportunity to press for his request for the certificate. The reasons for rejecting the request should be communicated to him. Exts. P5 and P6, with any supplementary that may be filed, should be taken up by the first respondent and appropriate orders passed within two months from today.

11. The petitioner will make available a copy of this judgment to the first respondent forthwith.

The Original Petition is disposed of as above.