
(1978) 08 DEL CK 0022

In the Delhi High Court

Case No : Civil Writ Appeal No. 802 of 1977

Jain Shudh Vanaspati Ltd.

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 11-08-1978

Acts Referred:

Citation : AIR 1979 Delhi 122 : (1978) 2 ILR Delhi 722

Hon'ble Judges : V.S. Deshpande, J;H.L. Anand, J

Bench : Division Bench

Advocate : A.K. Sen, B. Kirpal and Daljit Singh, for the Appellant;

Judgement

H.L. Anand, J.

(1) This petition under Article 226 of the Constitution of India, by a company, which carries on the business of the manufacture and sale of refined and hydrogenated oil, and its Managing Director, challenges the validity of certain restrictions on the importation of Palm Oil and the manufacture of referred Palm Oil. The petition was filed in the following circumstances :-

(2) Jain Sudh Vanaspati Limited, a joint stock company, for short the Company, petitioner No. 1, carries on the business, inter alia. of the manufacture and sale of refined and hydrogenated oil. Petition No- 2 is its Managing Director and holds, along with the other members of his family, controlling interest in the company. The manufacture and sale of refined oil is regulated by the Vegetable Oil Product Producers (Regulations of Refined Oil Manufacture) Order, 1973, for short, the order of 1973, issued u/s 3 of the Essential Commodities Act, 1955, for short, the Act. Clause 3 of the Order of 1973 provides that no producer shall manufacture for sale refined vegetable oils in excess of the quantity determined in the manner set out in sub-clause (a) or sub-clause (b) of the said clause. The expression "producer" is defined to mean the person carrying on the business of manufacturing any vegetable oil product. By an order of March 2, 1977 (Annexure 2), Clause 3 of the Order of 1973 was amended, inter alia, by the

addition of a proviso which excepted inter alia, the manufacture of "refined imported palm oil" from the operation of the aforesaid Clause. Earlier, in the new import policy, it was announced that open general licenses would be issued, inter alia, for the import of palm oil pursuant to which it was noticed by a Public Notice of January 17, 1977 (Annexure 3) that "with a view to overcoming the shortage of edible oils in the country, it has been decided to allow import of edible oils for direct human consumption, or for refining and blending for direct human consumption". The Public Notice listed Palm Oil among the oil of which the import will be allowed with the result that any person, including the vegetable oil manufacturers, could freely import palm oil: Subsequently by a public notice of May 27 1977 (Annexure 4), it was notified that on a-review of the position it had been decided that "licenses for import of edible oils. and oil seeds will be granted on the basis of firm commitment entered into by the applicant with the overseas suppliers" and the prospective applicants were advised that applications for grant of such licenses should, Therefore, be accompanied by photostat copies of firm offer and acceptance. According to the petitioners, taking advantage of the aforesaid policy, the company concluded contracts with foreign suppliers of palm oil and made applications for the grant of open general licenses in terms of the policy between March 7, 1977, and September 7, 1977, pursuant to which the company was issued various licenses the details of which are set out in the statement (Annexure 8) to the petition. It is further contended that on the basis of these licenses the company approached their bankers and opened irrevocable letters of credit from time to time .to ensure payment of the purchase price According to the petitioners, the total quantity of palm oil, both refined and unrefined, which had been contracted to be purchased by the company was about 43,000 tons out of which approximately 7,850 tons Worth Rs. 5,50,00,000 had been received by the company at its factory in Gaziabad by October 15, 1977, and 3,550 tons was received at the factory between October 15, 1977, and October 26, 1977, and that approximately 13,500 tons was in the pipelines, having been exported from abroad already, but had not reached the factory. It was further alleged that out of the total quantity received at the factory up to October 26, 1977, 2,370 tons of unrefined palm oil remained to be refined and sold in the market and that its value Would roughly work out to Rs. 1,50,00,000. It. however, appears that by public notice of September 23,1977 (Annexure 10), the Chief Controller of Imports and Exports, Government of India notified that on a review of the position "it has been decided that no license for import of palm oil refined for direct human consumption shall be issue" in future, but that "in case where firm commitments have been entered into with foreign suppliers for import of palm oil refined for direct human consumption, prior, to the date of the Public Notice, import license will be granted by the Licensing Authority concerned to the extent of quantity/value of commitments entered into by the applicants". According to the petitioners, the application of the aforesaid Public Notice was confined to refined Palm Oil and, therefore. the company continued to enter into firm commitments with foreign suppliers for the import of unrefined Palm Oil even after the date of the aforesaid Public Notice and made applications for the

grant of open general license on the basis of such commitments in terms of the existing policy. By a subsequent Public Notice of October 11, 1977 (Annexure 11) it was notified that all licenses issued for Palm Oil refined for direct human consumption" against which shipment is not made (wholly or partly) on or before 15-10-1977, shall stand automatically invalidated for (further) imported oil". It was further notified that no fresh license for the import of Palm Oil refined for direct human consumption shall be granted in any other case. According to the petitioners, the company had entered into firm commitments for the import of 3,000 tons of Palm Oil and license on that basis had already been issued to the company before October 15, 1977, but the goods had not till then been received by the company. It is further alleged that in addition the company had entered into a contract for the purchase of 13,000 tons of Palm Oil for the" importation of which application for open general license had already been made, but the licenses had not till then been issued. Subsequently, by an order of October 15, 1977 (Annexure 12), a copy of which was allegedly received by the company on October 26, 1977, Clause 3 of the Order of 1973 was further amended so as to impose a total ban on the manufacture for sale by any producer of "any refined imported Palm Oil".

(3) The petitioners filed the present petition on or about October 27, 1977, challenging the Public Notice of October 11, 1977 (Annexure 11) and the order of October 15, 1977 (Annexure 12) as being illegal, arbitrary, ultra vires, void and bad in law. According to the petitioners, the company had entered into firm commitments for the import of unrefined Palm Oil on the basis of the then subsisting. Government policy and had received large quantity of such oil at its factory of the value of about Rs. 1,50,00,000 which was yet to be refined. It is alleged that the unrefined Palm Oil has no market in India and the company would not be able to dispose it of and if the company was not allowed to refine such oil even though it had been imported for the purpose, irreparable injury and hardship would be caused to the company. It was further contended that but for the policy of the Government in permitting the import of unrefined Palm Oil, the company would not have imported it in such huge quantities which had cost the company over Rs. 14 crores which had been paid in foreign exchange on the basis of Bank borrowings, and that unrefined oil of the value of over Rs. 2 crores was lying now at the factory of the company and if the company was not allowed to refine and market the same by virtue of the order of October 15, 1977, even though the company had been allowed to import it on the assurance that it would be allowed to refine and sell it, irreparable loss and injury would be caused to the interest of the company. It was further alleged that as a result of the impugned order, the company was neither able to sell the unrefined oil or to refine it for sale, and that the action of the respondents was not only arbitrary, but violative of the fundamental rights of the petitioners under Articles 14, 19, and 31 of the Constitution of India and the restrictions imposed by the impugned Public Notice and the order were wholly unreasonable.

(4) On the notice being issued to the Union requiring it to show cause why Rule

Nisi be not issued, this Court directed on November 1, 1977, after hearing counsel for the parties, that Palm Oil which had been imported and has moved out of the country of import be allowed to be landed at the port of call in India and Palm Oil for which the petitioner had entered into firm contracts would not be shipped till further orders and that the oil which had already arrived in the factory may be processed by the petitioner at its risk and subject to further orders. After Rule Nisi was issued, this court made a further direction on December 15, 1977, that Palm Oil, which had already been shipped prior to October 15, 1977, and had already arrived at the factory of the company, may also be processed by the company at its risk until further orders. It thus appears that the entire quantity of imported Palm Oil has since been refined and sold subject to such directions as may be made by this Court.

(5) "THE petition is opposed on behalf of the Union. In the course of the affidavit of Director, Vanaspati, Directorate of Oils and Fats, of November 21, 1977, which was filed on behalf of the Union in reply to the show cause notice issued by this Court, it was pointed out that the licenses for the import of palm oil were issued to the State Trading Corporation, as well as to private traders, and that the ban on the import of refined palm oil was imposed by Public Notice on September 23, 1977, because several complaints were received that "unscrupulous traders" were, owing to its similarity in appearance to vanaspati, selling refined palm oil as vanaspati by "mixing it with vanaspati or ghee" and that on account of this malpractice there was "a decline in the production of vanaspati which in turn resulted in fall in the lifting of stocks by the industry from the State Trading Corporation". It was further pointed out that "while the unscrupulous traders were making huge profits the consumers were getting Red palm oil" which was found to contain fats "with higher melting point" which could not be easily absorbed in the human system. It was further stated that where firm commitments had already been entered into with foreign suppliers for the import of palm oil for direct human consumption prior to the date of Public Notice import licenses could be granted to the extent of the quantity/value of such commitments. It was alleged that with a view to take advantage of this exception, traders started obtaining licenses by predating their contracts which necessitated the issue of the Public Notice on October 11, 1977, by which a total ban was placed on the import of palm oil refined for direct human consumption with a proviso that such of on the strength of which goods were not shipped on or before October 15, 1977, should stand invalidated- According to the deponent, even after this ban it was reported that raw palm oil was being hydro-bleached by vanaspati units and sold as vanaspati and as such hydro-bleaching was possible only in units with hydrogenation facilities and to make the ban on refined palm oil effective, the vanaspati units were prohibited from refining palm oil. The affidavit sought to justify the restrictions on the ground that the object of the Public Notice was to prevent prices of edible oils from rising and also to make such oils readily available to the consumer for direct consumption. It was denied that the company had entered into firm contracts and it was alleged that no

import licenses had been issued to the company after September 23, 1977. It was, however, admitted that the object of the order of October 11, 1977, was only to prevent vanaspati manufacturers from refining palm oil, and that no ban had been placed on refining of palm oil by independent refineries or even on the sale of refined palm oil. It was pointed out that the import of palm oil had been allowed to make cheap edible oils available to the public but when "private traders misrepresented to the public and passed off hydrogenated palm oil as vanaspati and made huge profits at the expense of the public, the Government had to take action to prevent such anti-social acts". The impugned order and the Public Notice were, Therefore, sought to be defended on the ground that they had been made in order to prevent "nefarious practices by the trade and industry and were necessitated in public interest". According to the deponent, it was still open to the company "to get the quantities of crude palm oil which they have already imported refined in independent refineries not attached to vanaspati units" and that it was open to the Government to review its policy from time to time and to make necessary changes in public interest. In a further affidavit of the Director, Vanaspati, of January 11, 1978, filed on behalf of the Union, after Rule Nisi was issued by this Court, the various contentions raised in the earlier affidavit were, by and large, reiterated. The deponent, however, elucidated the expression "private traders" used in the earlier affidavit as including "persons in private trade and includes Vanaspati manufacturers as without their participation, hydrogenation of Red palm oil would not be possible". It was further pointed out that there was no ban on the vanaspati manufacturers refining raw oil received by them from the State Trading Corporation for purposes of manufacture of vanaspati, and that it was refining of palm oil imported under the free licensing system for direct consumption which alone had been banned by vanaspati units, and that the vanaspati units were free to acquire stocks of palm oil from State Trading Corporation to meet the requirements of the vanaspati industry in the manufacture of vanaspati. It was, however, denied that the impugned action had been taken to give protection to the State Trading Corporation. It was claimed that the import of refined palm oil had been banned as also the manufacture for sale of such refined oil by the vanaspati units, and that there was no ban on the import of crude palm oil. The contention urged on behalf of the petitioners in their rejoinder to the first affidavit that the vanaspati units had not indulged in the malpractice attributed to them was denied. The deponent claimed that in view of the order of October 11, 1977, it was not open to any vanaspati manufacturer to "manufacture for sale refined palm oil. The suggestion contained in the petitioners' counter affidavit, to the earlier affidavit of the deponent, that the vanaspati units could not get oil imported by them refined from any other refinery was denied and it was alleged that such a course was possible.

(6) In a supplementary counter-affidavit of March 6, 1978, filed on behalf of the Union, attention was invited to the Public Notice of January 13, 1978, by which it was notified that after the aforesaid date, no licenses for the import of palm oil of

any type excluding, however, palm olein, shall be issued to the private traders with the proviso that in cases where licenses had been issued and irrevocable letters of credit had already been opened or where licenses had been issued or applied for covering "Afloat parcels" against firm contracts import would be allowed within, the validity period. It was further notified that in future import of palm oil of all types will be made through the State Trading Corporation. It was pointed out that with the issue of Public Notice of October 11, 1977, import of palm oil refined had been banned and with the latest Public Notice, the ban was extended to raw palm oil as well. A copy of the latest order was enclosed with the affidavit. In a rejoinder affidavit to the supplementary counter affidavit filed on behalf of the petitioners, it was contended that the Public Notice of January 13, 1978, did not in any way invalidate the licenses which had already been issued. In the alternative, it was submitted that in case the aforesaid Public Notice was to be construed as invalidating licenses already issued, the Public Notice would be illegal on the principle of promissory estoppel as the Government could not unilaterally and without any notice ban the "import of goods for which commitments ha"d already been entered into or licenses had already been issued. The validity of the Public Notice of January 13, 1978, was also assailed on other grounds. Reference was also invited to a further Public Notice of February 22, 1978, which obliged the company, as indeed similarly situated importers, to sell the imported goods to the Central Government at the prices fixed by it in view of the disability of the vegetable manufacturers to manufacture for sale refined oil- The compulsion was described as being wholly illegal and being vocative of Articles 14, 19 and 31 of the Constitution of India. A further affidavit of April 27, 1978, was filed on behalf of the petitioners in which it was pointed out that as on January 13, 1978, a license of the value of Rs. 82,30,000 was unutilized but was still valid on the date when Public Notice of January 13, 1978, had been issued. It was admitted that no running letter of credit had been opened in respect of the said license, but the license had been issued on the basis of a firm contract, dated September 13, 1977, between the company and a Singapore exporter and the goods in respect of the license were to be paid for on receipt of documents and the goods had arrived in Bombay after January 13, 1978. It was further pointed out that the condition imposed in the Public Notice of February 22, 1978, with regard to compulsory sale to State Trading Corporation at a unilaterally determined price had not been incorporated in the license in question.

(7) An application, being C.M. 910 of 1978, seeking permission to assail the Public Notices of January 13, 1978 and February 22, 1978. issued after the filing of the petition, and to raise additional grounds in support thereof was also filed. On the conclusion of the hearing, however, learned counsel for the petitioners did not press this application as also the challenge to the said Public Notices and confined the prayer to the relief sought in the petition, as indeed the grounds, raised in it.

(8) Rival contentions urged at the hearing pose two questions for consideration:-

1. Whether the subsequent policy changes could adversely affect the rights and interests of the petitioners flowing from the licenses already issued or imports already made or which were in the process of being made.

2.If so, whether the impugned restrictions do not pass the test of reasonableness and, Therefore, impinge on the fundamental rights of the petitioners under Article 19(l)(g) of the Constitution of India.

(9) Question No. 1 : It is not in dispute that when, by an order of March 2, 1977 (Annexure 2) clause 3 of the order of 1973 was amended which excepted, inter alia, the manufacture of refined imported palm oil from the operation of the aforesaid clause and the import of palm oil was freely allowed, any person, including the vegetable oil manufacturers like the company, could freely import palm oil, inter alia, for the manufacture of refined palm oil. Since the company was carrying on the business of the manufacture and sale of refined and hydrogenated oil, by the issue of various licenses in favor of the company for the import of palm oil for refining and blending for direct human consumption, it was clearly understood that the company would be entitled on import to manufacture refined palm oil and to market the same in accordance with law. In view of the later Public Notice of May 27, 1977 (Annexure 4), it was further clearly understood that the licenses had been issued against firm import commitments entered into by the company with the overseas suppliers. It was also not disputed that in view of this policy, large quantities of palm oil were, in fact, imported by the company, which had either been received at the factory or was in the process of importation, and that the imports not only involved large foreign exchange, but also bank borrowings involving considerable debt servicing commitments. It was not disputed before us that the Public Notice of September 23, 1977, related to the import of refined palm oil and did not bring about any change with regard to the importation of unrefined palm oil and the company was Therefore, within its rights to continue to make commitments for the import of such oil on the basis of the licenses which had already been issued. When the Public Notice of October 11, 1977 (Annexure 11) was issued invalidating licenses issued for refined palm oil against which shipment had not been made, the company had obviously made commitments in terms of the pre-existing policy. This unilateral change in the policy could not possibly have retrospective operation so as to affect the interest of the licenses like the petitioners who had, acting on the earlier policy and on the basis of the licenses issued, made large commitments, invested funds, and entered into contractual obligations. What is worse, by an order of October 15, 1977 (Annexure 12), a total ban was imposed on the manufacture for sale by the purchasers of vegetable oil of any refined imported palm oil even though it is undisputed that a large number of licensees like the company had imported palm oil, refined or unrefined, for the purpose of manufacture of refined palm oil in their refining units. Such a change of policy could also not be given retrospective effect so as to deprive the importers, who had already imported palm oil specifically for the purpose of refining in their refineries, of their right to carry on the trade of manufacture and refining of

imported palm oil and to market the same in accordance with law. The imports having been made at huge cost on a clear representation by Government that the imported oil could be used for the manufacture of refined palm oil. Government would be estopped from bringing the case of such importers within the revised policy on, the basis of the doctrine of promissory estoppel. It is true that the doctrine, applied, by the Supreme Court in the case of *Anglo-Afghan Agencies*, (1) has since been considerably watered down in the country of its origin on account of the judicial controversy following the decision in the case of *Robertson*(2) and it has been recognised in England that the doctrine was available "as a sword" of attack though it may still be "used as a shield"(3) of defense and there is a considerable judicial thinking which concedes to the sovereign authority the power to change the policy or modify the administrative action even if on the basis of any representation made earlier a citizen may have acted to his prejudice, a view which is shared by juristic opinion in India. The doctrine would nevertheless be still available in India because in spite of the controversy, the decision of the Supreme Court in the case of *Anglo-Afghan Agencies* still holds the field.

(10) Question No. 2: In view of the way we have looked at the first question, the second question would perhaps not arise, but for the fact that in view of the rather nebulous legal position with regard to the doctrine of promissory estoppel, it may perhaps be too fragile a thread on which to base the right of the petitioners. The impugned restrictions are, however open to a more fundamental objection in that they constitute an infraction of the petitioners fundamental right to carry on trade without being able to pass the test of reasonableness. That brings us to the consideration of the second question.

(11) It is well settled that there is no abstract standard or general pattern to determine if a restriction is reasonable within the meaning of Article 19(1)(g) of the Constitution of India. (4) What is required is that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature beyond what is required in the interest of the public. The expression "reasonable" implies intelligent care and deliberation i.e. choice of a course which reason dictates. What is necessary is that the restriction should strike a proper balance between the freedom guaranteed and the social control permitted by the Constitution. The reasonableness of the restriction has to be judged with reference to the totality of the circumstances such as the nature of the right alleged to have been infringed, the underlying purpose of the infringement, the extent and urgency of the evils sought to be remedied thereby, the disproportion of the imposition and the prevailing conditions at the time. Thus, the test to be applied is not whether the Court considers particular restrictions to be unreasonable, but whether a reasonable man would necessarily consider them to be unreasonable.

(12) If this be the true test to determine the reasonableness of the restrictions, it is difficult to justify the impugned restrictions as being reasonable. On

Government's own showing, the manufacture of refined imported palm oil was excepted from the operation of the clause 3 of the Order of 1973 and palm oil was allowed to be freely imported with a view to overcome the shortage of edible oils for direct human consumption or for refining or blending for direct human consumption. It has also been a common case of the parties that the refined imported palm oil was considered comparatively cheaper edible oil and its import and manufacture had a beneficial effect on the availability and price of vegetable oils in the country- The impugned restrictions, on the import and manufacture of refined palm oil, have not been justified on behalf of the Union either on the ground that the further importation or manufacture of it was unnecessary or that it was uneconomic. The restriction on the import of refined palm oil and the manufacture of refined oil by the vegetable manufacturers was, however, sought to be justified on the ground that on account of its similarity and appearance to vanaspati "unscrupulous traders", a term which was later explained to include even the manufacturers of vanaspati, were a party to the malpractice of sale of refined palm oil as vanaspati "by mixing it with vanaspati or ghee" and that on account of this malpractice, there was a decline in the production of vanaspati which in turn resulted in fall in the lifting of stocks in the industry from the State Trading Corporation. It was further alleged that by this device, the unscrupulous traders were making huge profits and the consumers were getting edible oil "with higher melting point" which could not be easily absorbed in the human system. Interestingly enough, it was not disputed before us that refined imported palm oil was otherwise fit for human consumption and that even after these restrictions, the refineries other than those engaged in the manufacture of vanaspati were still free to manufacture refined palm oil and that even the vanaspati manufacturers were free to market refined palm oil. While it would be interesting to investigate if the restrictions were merely intended to help the State Trading Corporation dispose of its accumulated stocks of palm oil, a reason which was advanced on behalf of the petitioners to be the "real basis of the restriction", as also to find out if these restrictions had their genesis in the demand by a section of the industry, in respect of which a veiled suggestion was made in the course of arguments, it is neither possible nor necessary for this Court to go into these aspects because the restrictions appear to us to be *ex facie* unreasonable in that they have their genesis in the admitted Government inability to prevent the adulteration of vegetable oil by the addition of refined palm oil or the passing off by the trade of refined palm oil as vanaspati or ghee. The inability of the Government to take effective steps to prevent these malpractices in the course of trade or otherwise or the failure of enforcement agencies of Government could not possibly justify a restriction on the import of a raw material or the ban on the manufacture or refining of palm oil by the vanaspati manufacturers, who obviously had the facility to refine such oil- It is interesting to notice in this context that refined palm oil is an excisable commodity and proper check is possible at the point of removal from any factory of refined palm oil after manufacture and on a proper check, it should be possible to know if the palm oil that had been allowed to be imported has been

manufactured, removed from the factory and marketed as such palm oil, and that there was no misuse of it at the point of manufacture. Such restrictions are clearly disproportionate to the requirement to prevent adulteration at the trade level or to the malpractice of passing off refined palm oil as vanaspati or ghee. The restrictions, Therefore, could not be said to pass the test of reasonableness and consequently clearly impinge on the fundamental right of the petitioners to carry on their trade.

(13) In view of our conclusion on the second question, we would be justified in quashing the impugned Public Notice of- October 11, 1977, and the order of October 15, 1978, but we refrain from doing so, because we had examined their constitutionality in the context of the allegation that because of the Government policy obtaining at the material time, the petitioners had imported large quantities of palm oil and the petitioner having been allowed during the pendency of the petition to manufacture refined palm oil and to dispose it of in the market, the context has since changed. It would, Therefore, be sufficient to declare that for the aforesaid reasons, the rights of the petitioners flowing from the importation of palm oil on the basis of the licenses granted to the company would not in any way be affected by the impugned Public Notice and the impugned order, and the company having dealt with the goods in accordance with law, would not in any way be liable to any adverse action by virtue of the aforesaid notice and the order. The petitioners would also have their costs. Counsels fee is assessed at Rs. 500.