

(1981) 02 DEL CK 0029

In the Delhi High Court

Case No : Civil Writ Appeal No. 78 of 1980

Jain Shudh Vanaspau Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-02-1981

Acts Referred:

Citation : (1981) ILR Delhi 371

Hon'ble Judges : Sultan Singh, J;Prakash Narain, J

Bench : Division Bench

Advocate : A.K. Sen, G.L. Rawal, S.L. Watel and Rekha Sharma, for the Appellant;

Judgement

Prakash Narain, J.

(1) By this group of petitions the respective petitioners pray. for a writ of certiorari quashing the rejection of their respective applications for grant of import licenses to import into India Palm Oil, a writ of certiorari quashing certain conditions imposed by the Import Policy contained in a Public Notice dated February 22, 1978 as being vocative of Article 14 of the Constitution of India, and a writ of mandamus directing the respondents to issue import licenses to the said petitioners for import of Palm Oil which they had respectively contracted to import from foreign sellers in pursuance of Import Policy announced by. the Central Government which was suddenly changed by a Public Notice dated January 13, 1978. Since all the petitions raised common questions of law and had more or less similar averments of facts, we .heard them altogether, Unfortunately, return was filed only on Civil Writ No. 78 of 1980. No returns were filed in the other matters as the respondents wanted to rest their case merely on law. Finding some difficulty during the course of hearing in appreciating facts we directed the respondent to produce the relevant record which was seen by us. It would have been desirable if the respondents had put in returns in each of the cases. Be that as it may, we beard the counsel and reserved judgment. Before we would pronounce our judgment, a pronouncement of the Supreme Court

came to our notice which necessitated a re-hearing. We have re-heard the matter and now proceed to judgment.

(2) The petitioners' case is that they carry on business, inter alia, of crushing oil-seeds and refining vegetable oil, both locally purchased and imported. The manufacture and sale of refined oil is regulated by the Vegetable Oil Product Producers (Regulation of Refined Oil Manufacture) Order, 1973, issued u/s 3 of the Essential Commodities Act, 1955. The Import Policy for the period April, 1976 to March, 1977 was announced by the Central Government by a Public Notice bearing No. 6-ITC (PN) dated January 17, 1977. Under this Import Policy import of Palm Oil of all types was declared to be under an Open General license. In consequence the petitioners contacted foreign parties for purchase and import, of Palm Oil into the country. They applied for grant of import licenses. For some time these licenses were issued and the petitioners were permitted to import Palm Oil without levy of any customs or Import duty. It is alleged that the reason why the aforesaid policy statement commitments entered into by Indian parties with overseas suppliers is contended by the petitioners that on the basis of such representations contained in the policy statements issued from time to time they entered into firm commitments for import of refined and unrefined palm Oil, Rapeseed Oil, Soyabean Oil, Copra etc. with Overseas suppliers. The contracts entered into, inter alia, provided the dates when the shipment would be effected and further provided that the payment would be made by Indian buyers by opening an irrevocable letter of credit established in favor of overseas seller. The petitioners entered into such contracts on diverse dates, alleged prior to January 13, 1978. Some of them even opened irrevocable letters of credit in pursuance of the contracts entered into with overseas suppliers. On January 13, 1978 the respondents issued a Public Notice bearing No. 5-ITC (PN) changing with immediate effect the Import Policy regarding import of Palm Oil into India. It will be advantageous to read the relevant parts of this Public Notice which are as under :

"2. On further consideration it has been decided that no licenses for the import of Palm Oil, (of all types excluding, however, palmolein) shall be issued under the above said provisions in future except to the extent mentioned in para 3 herein under

3. In cases where; on or before the date of this notice,

(A) license have been issued and irrevocable letters of credit have been opened against them already, or

(B) licenses have been issued or applied for covering "Afloat" parcels against firm contract, Import will be allowed- within the validity period set down in the corrected contract and to the extent of quantity/value respectively so-covered.

4. It has also been decided that in future import of palm oil (of all types, excluding, however, palm olein) will be allowed only through STC....."

the policy contained in the aforesaid Public Notice dated January 13, 1978" was further amended by a Public Notice bearing No. 20-ITC (PN)178 issued on February 22, 1978. The salient provisions of this Public Notice read as under :

"2.The matter has been reconsidered by Government and it has been decided to allow subject to the provisions of Paras 3 and 4 hereunder the import of palm oil (all types) against the following cases of firm contracts as well :

(I)licenses issued on or before the date of -issue of orders banning the import of such oil but not covered by an irrevocable letter of credit on the said date; and

(II)Applications pending with the licensing authorities on the date of banning, on the basis of firm contracts entered into by the applicants with the foreign suppliers at least one week earlier, i.e. on or before the 6th January, 1978.

3.Every import license issued in terms of this Public Notice and also those covered by para 2 (i) above, shall be (deemed to have been) issued, subject to the condition that the goods covered by such licenses shall, on importation, be sold to the Central Government or to agencies designated or appointed by the Central Government, if so directed by it and at such price (s) as may be fixed by it . Consequently, such of the license holders I applicants as are not prepared to abide by these conditions should forthwith intimate to the concerned licensing authority their inability to do so and have their licenses cancelled or applications withdrawn, as the case may be.-

4.It will be incumbent upon the license holder of every consignment to which this Public Notice relates to intimate its detailed particulars forthwith to the Ministry of Civil Supplies and Co-operation, New Delhi, about the expected)actual arrival of the goods concerned and take their prior written permission before the imported oil is sold, directly, to any other person".

(3) As noticed earlier, the petitioners had applied for issue of import license on dates prior to January 13, 1978. Their applications were however, rejected by cryptic rejection on the grounds that import of Palm Oil has been banned vide Public Notice dated January 13, 1978. The petitioners challenged this communication as being illegal, arbitrary and void. They further contend that they are not covered by the ban said to have been placed on import of Palm Oil. The ban itself is challenged in the circumstances of the case as being vocative of Articles 14 and 19 of the Constitution. The conditions imposed by the Public Notices dated January 13, 1978 and February 22, 1978 are also challenged as being arbitrary, unreasonable and in violation of petitioners" rights under Articles 14 and 19 of the Constitution. It has also been contended that the respondents being governed by the rule of promissory estoppel cannot be allowed to act to the detriment of the petitioners in declining to grant import licenses to them.

(4) In the only return filed by the respondents it has been pleaded that the petitioners have no unfettered right to import any commodity into the country, that the concession given by the announcement of the Import Policy for 1976-77

and 1977-78 was itself subject to change without notice and so, could not be challenged on the basis of the principle of promissory estoppel, that the import policy was changed keeping in view diverse factors which are relevant in framing of import and export policy and that the applications of the petitioners were rightly rejected in view of the declared policy.

(5) In Civil Writ No. 78 of 1980 the position is some what different from the other cases. M/s. Jain Shudh Vanaspati Ltd., the petitioner, entered into a contract for the import of Rbd Palm Oil on September 18, 1977 with a foreign firm. On September 23, 1977 it , for grant of import license in terms of , Public notices .dated January 17, 1977 .and May 23, 1977. The Chief Controller of imports and Exports issued a Public Notice on September 23, 1977 .where by At was provided that no license for the import of Palm Oil refined for direct human consumption would be issued but where firm contracts had been entered into with foreign suppliers for the import of Palm Oil, import licenses would be granted to the extent of firm commitments. Before the petitioner's application dated September 23, 1977 could be processed a Public Notice was issued on October 11, 1977 whereby it was stated that no fresh licenses for the import of R.B.D. Palm Oil would be granted and all licenses issued for Palm Oil refined for direct human consumption, including those, if any, issued under para 3 of the Public Notice against which shipment was not made wholly or partly on or before October 15, 1977, would stand automatically invalidated for further imports. Another Public Notice was issued on December 27, 1977 by the Chief Controller of Imports and Exports stating that where licenses had been issued for the import of R.B.D. Palm Oil and irrevocable Letters of Credit had been opened on or before October 15, 1977 the import of R.B.D. Palm Oil would be allowed against the licenses already issued for the quantity) value covered by the said Letters of Credit and clearance of goods, on importation, would be allowed by the customs authority on the basis of the Public Notice and it would not be necessary for the license holders to approach -the Licensing Authorities for endorsement of any kind on import licenses which were invalidated for import in terms of the Public Notice. Thereafter a Public Notice dated January 13, 1978 was issued banning import of Palm Oil of all types including Palmolien except to the extent mentioned therein and that where licenses had been issued and irrevocable Letters of Credit" had been opened against them already, or licenses have been issued or applied for, covering afloat parcels against firm contracts, import would be allowed within the validity period set down in the said contract- "Future import of Palm Oil, exclude? Palmolien, was canalised through the State Trading Corporation of India. This was followed by the Public Notice dated February 22, 1978, which has already been noticed earlier. On February 27, 1978 the petitioner wrote a letter to the Deputy Chief Controller of Imports and Exports inviting attention to its earlier application dated September 23, 1977 for the import of R.B.D. Palm Oil stating therein that in terms of the Public Notice dated February 22, 1978 the petitioner was willing to give an undertaking as was required under the said letter. The necessary undertaking was, in fact, given, and

it was requested that the import license should be issued, as the delivery period stipulated in the original contract dated August 19, 1977 had already expired and on request of the petitioner the foreign supplier agreed to extend the shipment period till May, 1978 on the condition stipulated by them. These conditions for extension were agreed to by the petitioner and it wrote a letter dated March 30, 1979 (should be 1978) to the Joint Chief Controller of Imports and Exports, enclosing amendment dated September 18, 1977 made to the original contract with the foreign supplier. The period of shipment stood extended in terms of that contract. The petitioner received a license dated March 31, 1978 for the import of 10,000 metric tonnes of R.B.D". Palm Oil, subject to the condition contained in the Public Notice dated February 22, 1978. On receipt of the license the petitioner opened an irrevocable Letter of Credit dated June 3, 1978 of the value of Us \$ 55,00,000 in favor of the foreign seller. The petitioner wrote a letter dated July 15, 1978 to respondent No. 1 stating, inter alia, that a license in terms of the Public Notice dated February 22, 1978 has been issued to the petitioner and the oil was being imported by the petitioner against an established Letter of Credit. The petitioner wanted to know whether the respondent would like to take delivery of the said oil or not and the petitioner should also be informed regarding the price and the place of delivery. No reply was received to the petitioner's said letter, copy of which had also been sent by the petitioner to respondent No. 2 and the State Trading Corporation of India. Another letter dated July 31, 1978 was written by the petitioner drawing the attention of respondent No. 1 to its earlier letter dated July 15, 1978. Once again the petitioner requested that he should be intimated the particulars regarding the price and place of delivery in case the Government was interested in the delivery of the said oil and clearly stating that if the Government was not willing to take delivery of the said oil, the petitioner should be informed regarding the same so that the petitioner could make arrangements for unloading the oil at the Bombay Port. 10 days' time was given to the respondent to give the necessary intimation and it was clarified that if no reply was received within 10 days it would be presumed that the petitioner was free to sell the said oil and would not be liable for any action in case of such sale. The petitioner received a letter dated August 5, 1978 from the third respondent the Chief Director, Directorate of Vanaspati, New Delhi, asking the petitioner to furnish details of the purchase and price of oil along with other documents mentioned in the said letter. This information was required to be furnished after the oil had been released by the Customs Authorities and it was stated that the said information was required to enable the Government to consider the question of purchasing the oil. No mention was made in the said letter that the information was required for the purpose of fixing any price. It is contended that it was thus obvious that the Government did not have any idea of its requirements till that date and was oblivious of the fact that the petitioner was incurring heavy losses by way of bank charges, storage, interest, pilferage, leakage etc. during the period that may be taken by the Government for arriving at a decision whether to purchase the oil or not to purchase the same. The petitioner, however, replied by letter dated August 21,

1978 giving information that Palm Oil of the value of Us \$ 22,76,655 had reached and the ship was standing in the stream at Bombay Port for off-loading the cargo. The other information asked for was also supplied. A request was once again made to the respondents to inform the petitioner whether it was willing to take delivery of the oil and that decision should be taken at the earliest so that demurrage, storing charges could be avoided. No reply was received by the petitioner. A reminder was then issued by the petitioner on September 2, 1978 to the respondents informing the Government that more than a month had elapsed since the goods had been offered to the Government for sale but no decision one way or the other had been taken. The Government was warned that any loss or damage that" may be suffered by the petitioner would thus be payable by the Government. One week"s time was given to the Government to exercise its option to purchase in terms of Public Notice dated February 22, 1978, failing which it was to be presumed that the Government was not interested and that the oil would be sold in the open market. About the same time the imported oil was cleared by the Customs Authorities in Bombay and the same was transported from Bombay to the petitioner"s factory at Ghaziabad. Particulars with regard to this were supplied by letter dated September 22, 1978. Once again the Government was asked to indicate whether it was willing to purchase the oil. No reply was received by the petitioner either from the Government or the State Trading Corporation of India. Some time later the State Trading Corporation informed the petitioner that it was not interested in purchasing the oil. The petitioner thereupon filed Civil Writ Petition No. 1169 of 1978 in this court challenging the validity of the Public Notice dated February 22, 1978. In the said petition a Bench of this court stayed the operation of the Public Notice dated February 22, 1978 provided the petitioner furnished security [bank guarantee to the satisfaction of the Director of Vanaspati to cover the difference between the price at which the petitioner may sell the imported commodity and the price fixed by the Government of India"s letter dated October 24. 1978. In the meanwhile another consignment of 4303-9794 metric tonnes of R.B.D. Palm Oil arrived. The matter then came up before a learned Single Judge of this Court who on November 29, 1978 passed an order to the following effect :

(I)The writ petitioner will furnish today all information in respect of the second consignment of 4303-9794 of R.B.D. Palm Oil as called for in the letter dated 5-8-1978.

(II)The respondents will take a decision within 3 days thereafter, whether they want to purchase R.B.D.palm, oil at a price to be fixed by them towards the cost of R.D.B. palm oil.

(III)In case the price of R.B.D. Palm Oil is fixed over and above Rs. 6059 per M:T. then no additional bank guarantee would be required. In case the price is lower, then the petitioner shall furnish the bank guarantee for the additional difference to the satisfaction of respondent No. 2.

(IV)The bank Guarantee furnished will be considered within 2 days thereafter."

On November 23, 1978 the learned Single Judge passed the following order :

"ON November 7, 1978 the Division Bench stayed the operation of the impugned notice dated February 22, 1978 (Annexure 8) to the writ petition, provided the petitioner furnished the security \\bank guarantee to the satisfaction of respondent No. 2 to cover the difference between the price at which the petitioner may sell the imported commodities and at the price which is now fixed by the Government of India's letter dated October 24, 1978 addressed to the petitioner in this case. At that time the Government of India had passed the orders taking over 325-326 M.T., at a price of Rs. 6050 per M.T. towards the cost of R.B.D. Palm Oil, subject to certain conditions. By letter dated October 19, 1978 the respondents had called upon the petitioner to furnish information with details of expenditure with supporting documents for each item of expenditure incurred on the purchase of 4303-9794 M.T. of oil which was then expected to be received by the petitioner. The petitioner had mentioned in the Writ Petitioner that 4304-5075 M.T. of R.B.D. Palm Oil had reached India and is yet to be off-loaded. The writ petition thus embraced the entire of .436-9784 M.T. plus 325-.326 M-T. The stay granted on 7th of November, 1978 Therefore, .impliedly covered the said two. quantities of R.D.B. palm Oil. The respondents are directed to consider the bank guarantee furnished by the petitioner expeditiously, in any case within one week, to enable the petitioner to deal with the R.D.B Oil."

By this letter dated "December 4, 1978 the Director of Vanaspati informed the petitioner that the Government of India was not interested to take over the second lot of 4304-^075 M.T. of R.B.D. Palm Oil imported by the petitioner and offered to the government. Thereafter, the petitioner informed the Directorate of Vanaspati by a letter dated December 4, 1978 that the petitioner would withdraw the writ petition filed in the Delhi High Court and offer to the National Agricultural Co-operative Marketing Federation of India Ltd. a quantity of 325 M.T. of R.B.D. Palm Oil on terms and conditions to .be determined by the Government. The respondents accepted! this offer and, accordingly, the writ petition was withdrawn. Thereafter the petitioner offered 325 Metric tonnes of R.B.D. Palm Oil to the National Agricultural Co-operative Marketing Federation of India Ltd. That organisation then said that it would .send its representative to sample the oil and test it. Nobody, however, turned up for taking a sample of the oil despite reminders. On March 7, 1979 the petitioner wrote to NAFED that it had not taken the sample for testing till then and if delivery of the oil was not taken within 7 days the oil would be disposed of in open market at the cost and expense for any difference in price of NAFED. Thereafter the Nafed September to the petitioner a message dated April 19, 1979, but still did not depute anybody to take delivery of the oil. A meeting was then held in the office of the Chief Director of Vanspati Ob July 4, 1979. At that meeting the petitioner said that it was willing to still supply oil to Nafed provided a reasonable increase in price and coverage of expenses is allowed. The representative of Nafed did not agree. Even thereafter the petitioner continued to hold the said consignment for a considerable period but no action was taken on behalf of either the Directorate of Vanaspati or

NAFED. On September 2, 1978 the Government of India issued another Public Notice whereby it was decided to allow the import of R.B.D. Palm Oil under the Open General license by all persons under the Import Licensing Policy for 1978-79. On December 22, 1979 a notice was issued to the petitioner to show cause why action be not taken against him for violating the terms and conditions of the license which was granted to the petitioner. It was stated in the said notice that the petitioner had violated the conditions of the license which attracted the provisions of Section 4(l)(a) of the Imports and Exports Control Act, 1947, as amended, and Clause 8(f) of the Import Control Order, 1955, as amended. The petitioner apart from challenging the validity of the banning order dated January 13, 1978, as modified by the order dated February 22, 1978, prays for quashing the show cause notice issued to him. Thus, in this case the petitioner agreed to comply with the requirements of the impugned Public Notice, was issued a license in terms thereof, the oil was imported into the country and now he is sought to be prosecuted for violation of the terms of the contract. The contention of the petitioner is that not only is the show cause notice liable to be quashed in the circumstances of the case as being illegal and arbitrary but that the banning order as well as the modified order "itself being bad, the conditions imposed in terms thereof would be liable to be struck down as arbitrary, illegal and unreasonable.

(6) The propositions which arise for consideration may be summarised as follows :

1.Public Notice dated January 13, 1978 cannot apply to applications made prior to that date for issue of Open General license or to firm contracts entered into prior to that date. Administrative action cannot be retrospective and so, rejection of applications on the ground that import was completely banned

under Public Notice) dated January 13, 1978 is bad. As a corollary it is submitted that if the Public Notice dated January 13, 1978 is made applicable retrospectively, it would carry on trade and has to be struck down as being unreasonable.

2.The Public Notice dated February 22, 1978 entitles the petitioner to get licenses because: (a) applications were moved for grant of license prior to the banning order dated January 13, 1978 and/or (b) firm contracts had been entered into prior to January 6, 1978. Therefore, rejection of the applications quoting a total ban is bad on account of non-application of mind and being arbitrary.

3.Clause 3 of Public Notice dated February 22, 1978 is ultra virus Article 14 and Article 19(1)(f) and (g) of the Constitution. In any case, it cannot act retrospectively so as to affect contracts already entered into.

4.The dates, January 6, 1978 and January 13, 1978 have been fixed without any rationales. The fixation of the dates is thus unreasonable and no material has been placed on the record to justify the fixation of those dates banning the

import of Palm Oil.

5.The Public Notice dated February 22, 1978 is liable to be struck down as it gives no guidelines for fixing of price nor does it indicate by whom the price is to be fixed or the goods are to be sold and on what basis. The notification or, at least, some of its clauses are thus liable to be struck down on the ground of vagueness and giving arbitrary power.

6.The banning of import of Palm Oil vis-a-vis Concluded Contracts is liable to be struck down on the principle of promissory estoppel.

(7) Mr. Watel appearing for- the respondents has raised a preliminary point. He contends that the import policy itself lays. down. that the-" same may be changed" at any time and so, there was sufficient notice to the petitioners that the policy can be changed at any time. The contention is that if by change of policy there are any adverse effects, petitioners cannot be Heard to complain: The genesis Of this submission is that no citizen can claim fundamental right to import any goods into India certiorari to import policy announced from time to time in accordance with the power vested" in trial Central Government by Virtue of the law relating to import and export of commodities into India

(8) In Andhra Industrial Works Vs. Chief Controller of Imports and Others, , it was observed that a person on the basis of an Import" Trade Policy has no absolute right, much less a fundamental right, to the grant of an import license. Similarly, it" was observed" in The Deputy Assistant Iron and Steel Controller and Another Vs. L. Manickchand, Proprietor, Katrella Metal Corporation, Madras, , that-an applicant has no absolute vested to an-import license in terms of the policy in force at the time of his application because- from the- very- nature of things at the time of granting the-license the authority, concerned may often be in a better position to have a-clearer overall picture of the various factors having an impact on the final decision on the allotment of import quota to the; various-applicants. In Ramchand Jagadish Chand Vs. Union of India (UOI) and Others, restrictions-placed on import by proper scrutiny of the valuation of-exported goods under a scheme to give incentive export-was-held to-be reasonable within the ambit of Articles 14 and 19(1)(g) of. the-Constitution. Relying on these decision, lernedcounsel- for- the respondent contends that the impugned change in the import policy cannot be challenged. So far as the question of a vested right is concerned, there can be no doubt that the petitioners cannot claim the same unless they are are to show, as was laid down in the case of M\\s. Andhra Industrial Works, that the impugned Public Notices are ultra virus or they are able to show, as in the case of M\\s. Ram Chand Jagdish Chand, that the policy results in unreasonable restriction or violation of Article 14 of the Constitution or that their case falls within the ambit of the rule of reasonableness postulated by Article 14 of the Constitution. The point for determination,Therefore, is whether the rejection of the applications of the petitioners in the cases, other than the case of M\\s. Jain Shudh Vanaspati Ltd., was arbitrary or unreasonable. or that. the impugned Public Notices lay down" ultra virus conditions- or that the. said

Public Notices could not operate retrospectively.

(9) Before dealing with the. above questions, we may dispose of the point regarding promissory estoppel. The brief facts which are relevant to dispose of this point are that relying on the earlier representation of the Government, the petitioners claim that they entered into contracts with foreign suppliers and if they are not able to fulfill those, contracts on account of the sudden change in policy banning the import of Palm Oil, their interest would be adversely affected. Reliance in this regard has been placed on Jain Shudh Vanaspati Ltd. Vs. Union of India and Another, , and Union of India and others v. M\\s. Indo-Afghan Agencies etc., Air 1968 S.C. 718.

(10) Unfortunately, the only return filed by the respondents in these connected matters does not throw any light on how and why the policy, was suddenly changed by the Public Notice dated January 13, 1978-aad.then"again; somewhat relaxed by the Public Notice, (fated February 22, 1978. There are two views possible. One,- that unless, the petitioners had changed their position to their detriment, the doctrine of promissory estoppel would not be available to them. The other view is that if they have changed their position relying on certain representations of the. Government, then the doctrine of promissory estoppel would be available. In Indo-Afghan Agencies the view taken is the former one. There is hardly any evidence on record to show that the petitioner"s cases fall within the ambit of Indo-Afghan Agencies. We are, Therefore, not inclined to accept the plea of promissory estoppel.

(11) Most of the petitions can really be disposed of on a short point and it may not have been necessary to dilate at any great length on the question of the validity or virus of the impugned Public Notices. The short point on which the petitions can be disposed of is that in most of the matters before us, the rejection of the application for grant of import license has been made without any application of mind. It, however, becomes necessary to deal with the Public Notices dated January 13, 1978 and February 22, 1978 because if the respondents are directed to reconsider the applications of the petitioners and ultimately to issue import licenses to them, the petitioners may be placed in the same embarrassing situation, as has been created for petitioners in Civil Writ No. 78 of 1980. In any case, the two Public Notices have to be read together as laying down the revised policy and the tenability of the revised policy is a matter which calls for judicial review.

(12) Article 14, Article 19(l)(g), Article 19(l)(f), having been deleted by the Constitution (Forty-Fourth Amendment) Act, 1978, and Article 31 have been subject-matter for debate over the years. The law, as laid down by the Supreme Court, in regard to the applicability of these provisions of the Constitution may, Therefore, be first noticed, for it is on these that the petitioners base their case in challenging the virus of the aforesaid two Public Notices. It is hardly necessary to trace the history of entire case law in this regard. We will, Therefore, notice only a few decisions of the Supreme Court.

(13) In *LaLa Hari Chand Sarda Vs. Mizo District Council and Another*, , the Supreme Court was concerned with considering the virus of the Lushai Hills District (Trading by non-Tribals) Regulation and those of some of the rules known at Lushai Hills District (Trading by non-Tribals) Rules, as the contention was that the same were violative of Articles 14 and 19(1)(g) of the Constitution. The High Court had dismissed the petition under Article 226 of the Constitution. On appeal the appellant's contention was that the order refusing him a license was invalid as it was based on an invalid provision of law which infringed Article 19(1)(g) of the Constitution. Article 14 of the Constitution was said to be violated by contending that the discretion given or the restrictions imposed were arbitrary and unreasonable. Quoting with approval the decision of the Supreme Court rendered by Patanjali Sastri, C.J. in *State of Madras Vs. V.G. Row*, , it was held that in considering the reasonableness of laws imposing restrictions on fundamental rights both the substantive and procedural aspects of the impugned law should be examined from the point of view of reasonableness and the test of reasonableness wherever prescribed should be applied to each individual statute impugned and no abstract or general pattern of reasonableness can be laid down as applicable to all cases. It was further observed that, "Though a legislative policy may be expressed in a statute it must provide a suitable machinery for implementing that policy in such a manner that such implementation does not result in undue or excessive hardship and arbitrariness. The question whether a restriction is reasonable or not is clearly a justiciable concept and it is for the court to come to one conclusion or the other having regard to the considerations laid down in *State of Madras Vs. V.G. Row*, . It is also well established that where a provision restricts any one of the fundamental rights it is for the State to establish the reasonableness of such restriction and for the court to decide in the light of the circumstances in each case, the policy and the object of the impugned legislation and the mischief it seeks to prevent." Thus, judicial review of legislation and more so, of administrative action would be available to a citizen if he complains of breach of fundamental rights or violation of a statute.

(14) In *Shree Meenakshi Mills Ltd. Vs. Union of India (UOI)*, , the extent of restrictions was under examination. It was held that the alleged restrictions can be examined and if there is any restriction in excess of what would be necessary in the interest of general public or to ratter the evil, the same can be struck down. Balance between freedom to carry on business and special control under reasonable restriction is required.

(15) In *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, , it was observed by Y. V. Chandrachud, J. (as the learned Chief Justice then was), "It appears to me that even executive authorities when taking administrative action which involves any deprivations of or restrictions on inherent fundamental rights of citizens must take care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness or unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements

of natural justice." In the same case Bhagwati, J inter alia, observed, "The discretion vested in the Passport Authority and particularly in the Central Government, is thus unfettered and unrestricted and this is plainly in violation of Article 14. Now, the law is well-settled that when a statute vests unguided and unrestricted power in an authority to affect the rights of a person without laying down any policy or principle which is to guide the authority in exercise of the power, it would be affected by the vice of discrimination since it would leave it open to the authority to discriminate between persons and things similarly situated."

(16) In *New Manek Chowk Spinning and Weaving Mills Co. Ltd. and Others Vs. Municipal Corporation of The City of Ahmedabad and Others*, , Rule 7 of the Rules framed under the Bombay Provincial Municipal Corporation Act, 1949, was challenged as being violative of Articles 14 and 19 of the Constitution. The rule dealt with how to fix rateable value of any building or land assessable to property tax. It, inter alia. provided that all plant and machinery contained or situate in or upon any building or land and belonging to any of the classes specified from time to time by public notice by the Commissioner, with the approval of the Corporation, shall be deemed to form part of such building or land for the purpose of fixing the rateable value thereof. Commenting upon this rule it was held that apart from the absence of legislative competence the rules suffered from another defect, namely, that it did not lay down any principle on which machinery is to be specified by public notice by the Commissioner to be deemed to form part of such building for the purpose of fixing the rateable value. There was possibility that on the arbitrary, will of the Commissioner as to what machinery he would specify that what he would not, machineries may be specified by Public Notice from time to time. The rule was, accordingly, held to be ultra vires the rule making authority as well as the Act. The flat rate method according to floor area adopted by the Corporation for determining the rent for fixing rateable value was also held to be unreasonable and so, violative of Article 14 of the Constitution. It was also observed that absence of right to appeal or a guideline how the machineries were to be chosen showed unreasonableness of the legislative action and so, violative of both Articles 14 and 19 of the Constitution despite the fact that there was control of the Corporation over the action of the Commissioner as the latter had to take the approval of the Corporation before making it a classification.

(17) The Doctrine of Ultra vires vis-a-vis the test of reasonableness is well accepted. Even in England where there are no fundamental rights as such, as guaranteed by our Constitution, the plea of ultra vires has often been raised and upheld. In *Chertsey Urban District Council v. Minton's Properties Ltd.*, 1965 A.C. 735, Viscount Radcliffe in his speech observed,

"ONE may say, I think, that there is a power and a duty to upset a condition which is shown not to have been imposed in good faith: and, so far as the condition-making power can be seen from the wording of the Act to be subject to

some limitations, despite the very ample words of conferment, it is the duty of the court to enforce those limitations, if a condition is challenged."

In the same case Lord Reid quoted- with approval the following dicta laid down by Lord Denning in *Pyx Granite Co. Ltd. v. Ministry of Housing and Local Government* 1958 (1) Q. B. 554,

"THE principles to be applied are not, I think, in doubt. Although the planning authorities are given very wide powers to impose "such conditions as they think fit," nevertheless the law says that those conditions, to be valid, must fairly and reasonably relate to permitted development. The planning authorities are not at liberty to use their powers for an ulterior object, however desirable that object may seem to them to be in the public interest."

In our country administrative law has been further developed and we may only remind ourselves of what has been laid down in *Maneka Gandhi's* case (supra). It has been held that natural law rights were meant to be converted into our constitutionally recognised fundamental rights so that they are to be found within it and not outside it. A divorce between natural law and our constitutional law would be disastrous. It would defeat one of the basic purposes of our Constitution. The tests of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The tests had to be pragmatic otherwise they would cease to be reasonable. The grant of wide discretionary power to the executive authorities cannot be considered as unreasonable yet there must be procedural safeguards to ensure that the power will not be used for purposes extraneous to the grant of the power. The rule of natural justice is incorporated in all State action which affects fundamental rights or statutory rights. All State actions must be free from the vice of arbitrariness, or unfairness. With respect, we say construing Articles 14, 19 and 21 in this light was far beyond the concept enunciated by Lord Denning in the case of *Pyx Granite Co. Ltd.* (supra).

(18) It is in the above background that we have now to examine the reasonableness of the impugned Public Notices and/or the restrictions or conditions imposed thereby.

(19) As noticed earlier, import of Palm Oil and similar products and the R.B.D. Palm Oil has been subject-matter of various Public Notices issued from time to time. In the Import Policy for the period April 1976 to March, 1977 it was announced by a Public Notice that import of Palm Oil of all types was to fall under an Open General license. The petitioners before us entered into firm commitments with foreign suppliers relying on this policy. On May 27, 1977 a Public Notice was issued by the second respondent notifying for general information that the import licenses under the aforesaid Import Policy would be issued on the basis of firm commitments entered into by Indian parties with overseas suppliers. Then came the total ban imposed by Public Notice dated January 13, 1978, except with regard to those parties who on or before January 13, 1978 had been issued licenses and had opened irrevocable letters of credit

against the orders for supplies or in the cases of those parties where licenses had been issued or applied for covering "Afloat parcels" against firm contracts. Import was also directed to be canalised through the State Trading Corporation of India in future. What prompted the respondents to impose this ban is the question. The total ban, however, was somewhat relaxed by the Public Notice dated February 22, 1978, We have already read the salient clauses of that Public Notice. Surprisingly enough the second Public Notice fixed the date of January 6, 1978 as the date On which firm" commitments had been entered into with foreign suppliers. Further, it was laid down that import licenses even to those whose applications for grant of such licenses were pending on January 13, 1978 would be issued subject to the condition that the goods covered by such licenses shall, Cd importation, be sold to the Central Government or to agencies designated or appointed by the Central Government, if so directed by it, and at such price or prices as may be fixed by the Central Government. Which were the agencies of the Central Government which could be appointed or what would be the basis for fixing the price is not indicated in the Public Notice dated February 22, 1978.

(20) The return filed on behalf of the respondents states that on account of the problem created by large arrivals of refined Palm Oil for direct human consumption and their sale to consumers as vanaspati, it was decided to ban further imports, as resulted in a Public Notice dated September 20, 1977 being issued banning import of refined Palm Oil for direct human consumption except to the extent of firm commitments already made. The. said Public Notice did not affect unrefined Palm Oil. There is "no averment that there was any glut in Indian markets of unrefined Palm Oil. There is noExplanationin the return as to why by the impugned Public Notices restrictions were imposed on import of R.B.D. Palm Oil. Indeed, what is said is that the question of allowing import of raw Palm Oil by private parties came up for consideration in view of the apprehended shortage in supplies and yet if was decided to ban import of all types of Palm Oil, excluding Palmolien. It is suggested in the return that why import of raw Palm Oil was also banned is because it was apprehended that the same was being mixed with refined Palm Oil and Palmolien and so, its ban was necessary. At the same time it is also stated that a ban on import of raw Palm Oil was must to prevent it from being converted into refined" Palm Oil locally .which would affect the implementation of the vanaspati statute. The record shown to us did not give any such reasons. Therefore, a question arose whether a return could add to the actual reasons given on the record. In our opinion, this is not permissible. Where an affidavit filed by way of return is deficient in any respect it can, of course, be supplemented by production of record as in writ jurisdiction the production of record can itself be a valid return. It is not possible, however, to permit an affidavit by way of return to supplement the reasoning given in the record (See Commissioner of Police, Bombay Vs. Gordhandas Bhanji,

(21) Our considered view is that applying the test of reasonableness, justice and fairness as well as reasonable restrictions. within the ambit of the various clauses

of Article 19 of the Constitution, both the Public Notices dated January 13, 1978 and February 22, 1978 have to be struck down as arbitrary and ultra vires. The respondents have failed to show any cogent reason for imposition of the ban by the Public Notice dated January 13, 1978. They have also failed to explain why licenses were permitted under the Public Notice dated January 13, 1978 to only classes of applicants falling within the ambit of Clause 3. With regard to the Public Notice dated February 22, 1978 we are of the view that instead of undoing the mischief it has made the situation worse. There is no reasonable Explanation coming forth as to why the date January 6, 1978 was fixed as the date prior to which firm commitments had to be shown as made. It was not possible for any citizen of India to know between January 6, 1978 and January 12, 1978 that the policy would be changed by the Public Notice dated January 13, 1978. There is also no reasonable criterion as to why the cases of those who had entered into firm contracts and even opened Letters of Credit prior to the banning order dated January 13, 1978 could not be considered. Clause 3 of the Public Notice dated February 22, 1978 has also to be struck down as it imposes a condition which is wholly arbitrary and without any guidelines. Relying on the rules enunciated by the Supreme Court in the cases already noticed, the absence of guidelines qua fixation of price or agencies to be designated by the Government makes the clause wholly unreasonable and arbitrary. Indeed, from the facts of Civil Writ No. 78 of 1980, narrated by us earlier, it is apparent how unjust and unfair this condition of the license is. The absolute ban regarding sale without permission imposed by Clause 4 of the Public Notice dated February 22, 1978, to say the least, is unfair. There is no appeal against the State action, postulated by Clause 4. Justice and fairness in State action "is the cardinal principle on which our Constitution is based". The State can be given powers and should be given powers to deal with various contingencies, but the exercise of that power should be either in accordance with intelligible guidelines laid down by the legislative authority or should at least be in consonance with the rule of justness and fairness where a citizen is going to be adversely affected by such State action. That is the law laid down by the Supreme Court. We, Therefore, strike down the two impugned Public Notices dated January 13, 1978 and February 22, 1978 as well as quash the orders reject the applications of the petitioners, except petitioner in Civil Writ No. 78 of 1980.

(22) Coming now to Civil Writ No. 78 of 1980, on facts as brought out, the show cause notice issued to the petitioner has to be struck down as being ultra virus the powers of the authority issuing the same. No doubt, the petitioner in this case agreed to abide by the conditions imposed by the Public Notice dated February 22, 1978. He has done all he could be comply with the condition. The action of Nafed, the agency nominated by the Government, is understandable. The petitioner could not be made to keep the oil indefinitely, it being a perishable commodity. In any case, since we have struck down the condition as ultra vires, inclusion of such a condition in the import license has also to be struck down on the ratio of the rule enunciated in *Chertsey Urban District Council v. Mixnam's*

Properties Ltd., 1965 A. C. 735. Show cause notice dated December 22, 1979 is, accordingly, quashed.

(23) This brings us to the question as to whether in cases other than Civil Writ No. 78 of 1980 we should issue a direction to the respondents to issue import licenses to the petitioners vis-a-vis the alleged firm "contracts said to have been entered into by them. The economic conditions of our country along with the economic conditions in the world have had considerable upheaval during the course of last three years. It would be inappropriate on our part to give any firm directions in this regard for issue of import licenses. We do not know the position of various types of Palm Oil in the country. We are also not aware of the foreign exchange that is available or going to be made available. In this view of the matter we direct that the applications of the petitioners, as made, be reconsidered as we hold the rejection of those applications was arbitrary and based on non-existent grounds. In reconsidering the applications the respondents or, their appropriate authorities will keep in view our observations in the judgment. It will be open to the petitioners within one month from: today to give supplementary information in order to obtain import licenses. The respondents. should process and decide the applications within four months from today. The writ petitions are allowed and the rule made absolute in terms of our above order. In the circumstances we make no order as to costs.