

(1984) 09 DEL CK 0007
In the Delhi High Court
Case No : C.W.P. 1779 of 1983

Janardhan Srivastava

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-09-1984

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1985) 22 ELT 697

Hon'ble Judges : S.S. Chadha, J

Bench : Single Bench

Advocate : Vijay Kishan, for the Appellant; R.K. Anand, for the Respondent

Final Decision : Allowed

Judgement

S.S. Chadha, J.—This petition under Article 226 of the Constitution of India seeks the quashing of the orders dated November 4, 1982 and July 7, 1983 passed by respondent No. 3 and further a writ of mandamus directing respondents 1 to 3 to issue import license to the petitioner for import of sub-assemblies of the value of Rs. 26,400 and for import of loud-speakers (cone type) of the value of Rs. 6,600.

2. The petitioner is a citizen of India and is carrying on small scale industry of manufacturing tape recorders, two-in-one tape recorders plus radio and tape recorders/car cassette player, combination thereof with the radio under the name and style of M/s. Jugglie Electronics. In order to manufacture the aforesaid items, it sometimes becomes necessary for the petitioner to import certain items/parts from abroad. The import policy for the period April, 1981 to March, 1982 (for short called AM 82) was declared and issued by the Government of India. The Government released a Hand Book of Import-Export Procedures, 1981-82 also and laid down a procedure for obtaining supplementary licenses.

3. The sponsoring authority in case of grant of license to the petitioner is the Director of Industries, Delhi. The petitioner applied for supplementary import licenses for raw materials, components and sub-assemblies and spares to the

extent of Rs. 7 lacs on January 27, 1982. The application was made after obtaining the automatic license for AM 82. The Director of Industries, Delhi after considering the application of the petitioner for grant of supplementary license recommended for the grant of supplementary license of the value of Rs. 3,31,000. The particulars of goods recommended included items in Appendix V and Appendix 3 for AM-1982 and a list was enclosed. It included at Serial No. 17 sub-assemblies of the value of Rs. 26,400 and at Serial No. 18 loud-speakers (cone type) of Appendix 3 of the value of Rs. 6,600. The Joint Chief Controller of Imports & Exports granted a license dated June 3, 1982 for Rs. 1,99,634. CCI & E, also called for the furnishing of the break-up value of items 6 to 16 in the list.

4. The Director of Industries, Delhi gave the bifurcation of items 6 to 16 in the letter dated June 24, 1982. It was again mentioned that as regards the value for the items in Appendix 3 of the ITC Policy of AM 1982 the recommendations were being reproduced as recommended earlier vide letter dated March 31, 1982. It mentioned :-

"1. Sub-assemblies (App-3) Rs. 26,400 2. Loud-speakers (cone type) Rs. 6,600
----- Rs. 33,000" -----

The petitioner was informed that his case for inclusion of Appendix 3 items in the license was rejected "on account of indigenous angle by the supplementary licensing committee". This decision was communicated in the first impugned order dated November 4, 1982. The Director of Industries again took up the matter with the CCI & E that they had recommended the banned items to the extent of 10% of the import license and it was requested that these items be endorsed on the license along with 10% of the banned items. The petitioner was informed by the second impugned order dated July 7, 1983 that the decision already communicated could not be changed and was final. It is thereafter that the petitioner filed the present writ petition on July 29, 1983. This Court issued on August 16, 1983 a notice to show cause to the respondents as to why Rule Nisi be not issued. The respondents filed answer to the show cause notice in the affidavit dated November 3, 1983. After hearing the counsel for the parties, Rule was issued on December 8, 1983 and the hearing of the writ petition was expedited.

5. The first submission of Shri Vijay Kishan, the learned counsel for the petitioner is that there is a violation of Article 14 of the Constitution of India inasmuch as the respondents have refused to grant import license to the petitioner for importing items, namely, sub-assemblies and loud-speakers (cone type) for the value of Rs. 26,400 and Rs. 6,600 respectively when import license for the said banned items has been granted by the respondents to firms/individuals mentioned in para 10 of the writ petition. I was taken through the contents of paras 9 and 10 of the writ petition as well as to the contents of the corresponding paragraphs 9 and 10 of the counter-affidavit as also Annexure "C" to the counter-affidavit. Annexure "C" contains a detailed statement of cases quoted by the petitioner showing Appendix "B" items allowed and dates on which

the Committee took decision to allow the items. The case is that the Committee allowed the items in cases where it felt that it was necessary for the products and the models of the products the unit was manufacturing, and keeping in view all the other relevant factors. Another point made out in the counter-affidavit is that the cases of sub-assemblies and loudspeakers allowed or are earlier to the date of rejection of these items in the petitioner's cases as the Supplementary Licensing Committee rejected these items in the case of the petitioner only in the meeting held on October 13, 1982.

6. There was some confusion as to the items of Appendix 3 mentioned in the recommendations of the Director of Industries, dated March 31, 1982. I have seen the import policy for AM-1982. Serial No. 693 of Appendix III is mentioned in the recommendations as Under :

"Items	Entry	No.	Value	ITC	Policy	for	M-82	App-3.
								17. Sub-assemblies
Sr. No. 693	Rs. 26,400	App-3	18. Loud-speakers	Sr. No. 693	Rs. 66,00	(cone type)		
----- Total Rs. 33,000" -----								

In the subsequent correspondence, the counter-affidavit, Annexure "C", the rejoinder-affidavit and Annexures "X" and "Y", the reference is made to the Serial number of Appendix 3 of AM-1983. Item No. 509 of Appendix 3 of A.M.-1983 is in identical words as Serial No. 693 of A.M.-1982. Under para 41 of the Hand Book of Import-Export Procedure, the supplementary licenses could be granted to actual users whose import requirements could not be met through automatic licenses. The sponsoring authority while recommending applications for supplementary licenses had to indicate the reasons for their recommendations for which the import of the items recommended by them is essential and the requirements of the actual users cannot be made from indigenous sources or other authorised channels of import. It is permissible under para 33 to make recommendations up to 10% of the banned items. The Director of Industries recommended the issue of the supplementary licenses for Appendix 3 items mentioned at Serial Nos. 17 and 18 of the recommendations to the value of Rs. 33,000 out of the total value recommended of Rs. 3,31,000. The recommendations were repeated by the Director of Industries in the letter dated June 24, 1982.

7. It is clear from the record that the application of the petitioner was considered by the Supplementary Licensing Committee some time between April 1, 1982 to June 2, 1982 as the import license to the petitioner was granted on June 3, 1982 for Rs. 1,09,634. The reasons for non-inclusion of Appendix 3 items in the license is not given on June 3, 1982 but it is obvious from the record that the case was rejected on account of indigenous angle by the Supplementary Licensing Committee. Annexure "C" to the counter-affidavit of the respondents shows the date of Supplementary Licensing Committee meetings. In case of M/s. Haward Radio Company, Delhi Appendix 3 items were cleared in the meeting of S.L.C. dated April 23, 1982. The license for import of sub-assemblies 509/3 for Rs.

25,000 and loud-speakers below 12" 505 (8/3) for Rs. 5,000/- was granted. In case of M/s Pine Enterprises Delhi it was cleared by local S.L.C. on May 29, 1982. Sub-assemblies under item 509/3 of the value of Rs. 10,000/- and loud-speaker (cone type) for Rs. 5,000/-were cleared for grant of licenses of Appendix 3 items. In seven "other cases similarly on April 23, 1982 or May 1, 1982 or May 29, 1982 or April 7, 1982 or June 17, 1982 Appendix 3 items have been cleared by the Supplementary Licensing Committee. No particulars have been given in the counter-affidavit as to the dissimilarity of the petitioner with the ten firms who have been granted clearance by the Supplementary Licensing Committee of Appendix 3 items. The items are the same and identical. If the license was refused to the petitioner on account of indigenous angle by the Supplementary Licensing Committee, then it has not been shown on the record why the indigenous angle was not taken into consideration for banning the import of items in Appendix 3 in case of those ten firms. The discrimination is writ large on the record. It was for the respondents to establish on the record why the petitioner was being treated differently from other ten firms similarly placed as the petitioner. The non-grant of license to the petitioner is clearly discriminatory and has to be struck down. The respondents cannot pick and choose out of various firms similarly situated even in their executive actions in the grant of import licenses or supplementary licenses. The impugned orders have, Therefore, to be struck down.

8. In the passing, I may note a preliminary objection raised in the counter-affidavit that the petitioner has approached this Court without exhausting the departmental remedy of appeal which is available under the procedure. The petitioner in this writ petition claims the infringement of a fundamental right guaranteed to him under Article 14 of the Constitution of India. A show cause notice was issued before issuing Rule. After considering, this Court issued Rule Nisi. A Division Bench of this Court had laid down the exceptions to the ordinary rule of procedure of not entertaining the writ petitions when alternative remedy is available. Alternative remedy is no bar to the jurisdiction of this Court but is self-imposed restriction. When there is an infringement of a fundamental right and that is alleged in the writ petition, the view has been taken that alternative remedy is no bar (see I.T.C. Ltd. and Anr. v. Union of India and Ors., 1983 E.L.T.).

9. For the above reasons, the writ petition is allowed. The impugned orders are quashed. I issue a writ of mandamus directing respondents 1 to 3 to issue import license to the petitioner as recommended by the Director of Industries, Delhi for import of sub-assemblies for the value of Rs. 26,400/-and for import of loud-speakers (cone type) of the value of Rs. 6,600/- within two months from today. On the facts and circumstances, I make no order as to costs.