

(1992) 05 MAD CK 0003

In the Madras High Court

Case No : Writ Petition No's. 15560 of 1991 and 1312 of 1992

Leather India and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-05-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226
Customs Act, 1962 — Section 25

Citation : (1992) 40 ECC 117

Hon'ble Judges : Bakthavatsalam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bakthavatsalam, J.—Both the writ petitions raise a common question with regard to the validity of Export Trade Control Order No.

E(C)/0.88/AM(91) dated 5-8-1991.

2. W.P. No. 15560 of 1991 is filed by the manufacturers of leather who manufacture the same for the purpose of export to foreign countries.

W.P. No. 1312 of 1992 is filed by an Association comprising of members in the business of leather as leather tanners, manufacturers and

exporters. Insofar as the facts are common in both these writ petitions and the question raised in both the writ petitions is also based purely on the

point of law, I think suffice it to refer to the pleadings in the writ petition No. 15560 of 1991.

3. The petitioners are the manufacturers of leather for the purpose of export to foreign countries and they are manufacturers of leather in small scale

and are also tanners. They export finished leather to foreign countries, particularly to United States of America, United Kingdom, and certain other

European countries. It is stated in the affidavit that guidelines have been laid down from time to time for the purpose of helping the customs

authorities and that the first of such guidelines for identification of finished leather were made in the year 1960. It is also stated that subsequently

guidelines were streamlined based on report of a committee headed by one Dr. Seetharamiah in the year 1972, and that it was necessitated

because of a great demand for leather in foreign countries resulting [in] great demand for exports from India of finished leather. It seems the

Government of India constituted Leather Sectional Committee, Indian Standards Institution (hereinafter referred to as "I.S.I.") consisting of experts

in the field of leather industry, particularly scientists from the Central Leather Research Institute (hereinafter referred to [as] "C.L.R.I.n) Customs

representatives under the I.S.I. which was fixing the guidelines for the purpose of determining the finished leather for export. The I.S.I. Leather

Sectional Committee, appointed by the Government of India in the year 1976 evolved certain guidelines for determination and identification of

finished leather. The Government of India, thereafter circulated the recommendations widely to all concerned for over a period of three months and

received comments, objections and suggestions and that after the receipt of objections and suggestions from interested parties including the

industry and with the help of the Indian Standard Institution, the guidelines were approved in the year 1976. Consequent on the reformulation of

guidelines, the guidelines for identification of finished leather were published in the year 1976 by the Indian Standard Institution for the first time

bringing within its fold large varieties of finished leather which are entitled to be classified as finished leather and that in the year 1977, the

Government of India received various representations, the Indian Standards Institution reconsidered and revised and made its first revision of

guidelines for identification of finished leather, for the purpose of export. It is alleged in the affidavit that consequent upon the first revision made by

the Indian Standards Institution in the year 1979, when few monopolistic forces which are mainly manufacturing leather on finished goods made

representations to the Government of India, considering the fact that small scale sector also grew well to which class the petitions belong. It is also

alleged in the writ petition that this resulted in the second revision which was made without publicity and in a totally unscientific manner.

Representations were made and on that basis, a third revision was issued with reference to definition of dyeing, finishing operations for suede

leather, maximum permissible thickness for cow lining leather and minimum run for dress glove leathers. It is stated in the affidavit that the said third

revision was undertaken after consultation with the trade and industry and also with experts including scientists from Central Leather Research

Institute. It was widely welcomed by the Industry and it was represented by the I.S.I. that the said revision will be in force upto 1989. A revenue

Notification No. 197 of 1981--customs was issued under which exemption was granted in terms of Section 25 of the Customs Act determined

under the third revision. It is also alleged that the third revision resulted in more profit to the small scale sector and considerable increase in the

Cow of foreign exchange into the country. However, in the year 1985, a communication from the Under Secretary, Government of India, Ministry

of Commerce was issued on 30.7.1985 which was affirmed by means of an Executive Order No. 14/002/085 dt. 2.8.1985 setting at naught the

third revision made in the year 1981. On the basis of deliberation and inoperative with effect from 1.9.1985, the second revision which was made

in the year 1979 has been brought back. It is also alleged in the affidavit that in effect, in the year 1985, the Government of India wanted to

resurrect the 1979 guidelines which had inherent defects against the interests of the public and against the interests of the country.

4. Writ Petition Nos. 11322 and 12093 of 1985 were filed before this Court for quashing the order dated 30-7-1985 resurrecting the 1979

second revision for the definition of "finished leather" and the subsequent order issued by the Government of India. It seems that in W.M. P.No.

17027 of 1985 in W.P. No. 11322 of 1985 this Court granted the stay of the operation of the order dated 30.7.1985 of the Government of India,

insofar as the members of the petitioner Association. That order is dated 14.11.1985. Subsequently by order dated 22.11.1985, the stay was

made absolute. It is also alleged, in the affidavit that the said orders of this Court, mentioned hereinabove, are still in force and still adopted by the

Customs authorities while allowing exports by determining the finished leather in accordance with the third revision which was accepted by the

Government of India in the year 1981. It seems that a Civil Suit in C.S. No. 396 of 1985 had been filed before this Court and is pending, and that

in Application No. 2991 of 1985 in the said suit, by an interim order dated 5.8.1985 the I.S.I. had been directed not to pass any orders for reviewing the standard for identification of finished leather for export without further orders of this Court. It is also stated that in view of the revisions and also on the basis of orders of this Court, the finished leather was being exported in view of the revision made in the year 1985.

However, the Government of India issued a public notice dated 31.8.1990 under which the Government introduced for the first time a quota system for the purpose of exporting finished leather and such quota system is subject to allocation and administration of quotas by the Council for Leather Exports, Madras. As per the said public notice, export was to be allowed based on past export performance with effect from 1.4.1991 and was to be allowed for export under OGL No. 3 of Import and Export Policy Volume II subject to allocation and administration of quotas by the Council of Leather Exports, Madras. Representations had been made to the Government not to introduce such measures. In spite of it, the Government, in order to benefit the large scale leather manufacturers and in order to completely eliminate the small scale sector manufacturers from the export industry, promulgated a Trade notice. It is also stated that the Trade Notice was promulgated completely ignoring the litigation pending before this Court. It is also stated in the affidavit that in spite of the interim orders of stay granted by this Court which are still in force and as per which export of leather is permitted on the basis of third revision formulated by I.S.I. the impugned order has been passed virtually resurrecting the obsolete guidelines of second revision of the year 1979. It is also stated that as result of the impugned order, the small scale sector will virtually become subservient to the monopoly large scale sector exporting finished leather and that the impugned order has made provision of dyeing dark shade which is compulsory for export of finished leather and that the action of the respondents in unilaterally removing processing and export of light shade-leather and its production is only to help large scale manufacturers exporting leather and not small scale manufacturers like the petitioners. It is also stated that the impugned order has been passed with total non-application of mind in an arbitrary and unreasonable manner to resurrect the obsolete 1979 second revision.

5. It is alleged in the affidavit that the impugned order is ex facie arbitrary, unreasonable and violative of Articles 14 and 19(1)(g) of the Constitution of India and that the impugned order is liable to be set aside on the ground of it being unreasonable making certain orders of this Court nugatory. It is also alleged in the affidavit that the impugned order has been passed in order to circumvent the earlier orders passed by this Court, that as per the orders of this Court in writ petitions referred to above, export of finished leather is still permitted under the third revision made in the year 1981 by the I.S.I, which defined "finished leather" and that the impugned order sets at naught the orders of this Court and that the order of the respondents virtually interferes with judicial orders of this Court passed under Article 226 of the Constitution of India. It is also contended that the Government of India is only a delegated authority under the Import and Export Control Act, that it has no authority in the eyes of law to pass orders modifying the interim orders of this Court in certain writ petitions. It is also stated that the impugned order is liable to be struck down on the ground of being unreasonable and violative of Article 14 of the Constitution. It is also stated that the impugned order virtually seeks to redefine and reevaluate as to what are the finished leather, that any definition of finished leather should be a realistic definition which is in accordance with the prevailing trade practices and norms, that a subordinate Legislative authority cannot seek to define or identify leather as finished leather by excluding products which are finished leather, that dyeing dark shades of leather has virtually been made compulsory, that latest fashion and trend in the world over is that there has been greater demand for lighter shades of leather as opposed to dark shades of leather and that there is no rationale to make such discrimination in every category of leather and that imposing such a condition would obviously exclude exporting lighter shades leather is totally unreasonable and arbitrary. It is further alleged in the affidavit that the first respondent should not impose unreasonable conditions for identifying finished leather which only benefit certain big industries which are instrumental for polluting environment, that the impugned order is clearly one which has been passed to prejudice and affect the interests of the small scale manufacturers by excluding export of large varieties of lighter shade leathers. It is also stated that even the I.S.I. had stated that the finished leather which was identified under the third revision

could only be considered as final revision and that if at all there was any need for revision, it should be only by way of addition of new items but not subtraction of any leather from the third revision. It is also stated in the affidavit that the impugned order has been passed without giving the affected parties reasonable opportunity to the parties and that no prior publicity was also given to the industry. It is also alleged in the affidavit that there is no rational basis for classification of finished leather under the impugned order, that all those manufactured finished leather would now be only exported by carrying out certain operations in spite of the fact that they are finished leather for purposes of export and that such a classification is not permissible if the leather produced is finished leather, all types of finished leather should only be treated as belonging to the same class. It is also stated that the impugned order does not also lay down any guidelines as to what is the difference between dark shade, or medium shade or lighter shade and that it would lead to further confusion in the industry. It is also stated that there is no yardstick laid down as between dark shade, medium shade and lighter shade and that laying down vague guidelines without any rationale is liable to be set aside as being arbitrary and unreasonable. It is also stated in the affidavit that the respondents set up the Council for Leather Exports for the purpose of supporting, protecting, maintaining, increasing and promoting the exports of leather and that the said object is defeated if the present policy is followed by the Government.

6. A counter affidavit has been filed on behalf of respondents 1 to 3. It is stated in the counter affidavit that the Export Trade Control Order dated 5th August, 1991 has been made by the Central Government in exercise of the powers conferred by Section 3 of the Imports and Exports (Control) Act, 1947. It is also claimed in the counter-affidavit that having regard to the provisions of Section 3 of the Imports and Exports (Control) Act, 1947, (hereinafter referred to as the "Act") the Government had introduced conditions/norms regulating export of finished leather, that the contention of the petitioners to the effect that when writ petitions were pending before this Court and those writ petitions were pertaining to the executive order of the Ministry of Commerce and the notification issued under the Customs Act the impugned order has been passed in

contravention of the orders of this Court, it is not correct. It is also claimed in the counter-affidavit that steps were taken to regular, by specifying the conditions/norms for finished leather goods to secure the broad objective as above and also to augment the availability of raw-material for the domestic finishing, and export production of value added products that the Government felt that the impugned order was necessary in the public interest in order to plug the loopholes in the earlier guidelines under which semi-finished leather was being exported in the guise of finished leather, that the order has been made on the recommendations of competent technical authorities, viz., Directorate General of Technical Development and Central Leather Research Institute and that the impugned order has been issued in public interest. It is claimed in the counter-affidavit that there is no arbitrariness, as contended by the petitioners. It is further claimed in the counter-affidavit that the petitioners have been the major contributors (sic) for export of finished leather as their total exports during 1990-91 is only Rs. 101 crores as against the total export of finished leather from the country amounting to Rs. 765.62 crores and leather products amounting to Rs. 1789 crores only. It is further claimed in the counter-affidavit that only 34 petitioners are registered small scale units. It is further claimed in the counter-affidavit that the Government over the years, has been reviewing the export policy on various aspects, including guidelines for identification of finished leather, in consultation with technical experts, trade and industry. It is also claimed in the counter-affidavit that the basic objectives of such guidelines were to take into developments achieved by the industry and to secure the maximum possible foreign exchange earnings for the country through progressively changing the composition of our export items to more value-added ones, of higher levels of products and that it is not correct to state that 1979 guidelines had inherent defects. It is further claimed in the counter-affidavit that the Government, in fact, gave time to the petitioners to adjust to the realistic norms of the year 1979 by bringing out the 1981 revision, which was a diluted revision of 1979 guidelines. It is also claimed that upon the complaints of the petitioners that semi-processed leather was being exported under the 1981 norms as finished leather and on the recommendations of the Pandey Committee in the year 1984, the Government reintroduced the 1979 guidelines, five years after the original introduction. It is also claimed in the counter-affidavit that

no assurance was given by the Government that guidelines of the year 1981 will be valid till 1989. It is also claimed in the counter-affidavit that

Section 25(1) of the Customs Act 1962, delegates power to the Central Government to grant exemption generally from duty whenever it finds it

necessary to do so in the public interest. It is also claimed in the counter-affidavit that there was no intention of discriminating between small scale

sector and the other sectors as alleged by the petitioners. It is also pointed out in the counter-affidavit that the Executive Order dated 2-8-1985

was not issued by Ministry of Commerce and that it was only a letter issued by the Council for Leather Exports, Madras drawing the attention of

all the members of the Ministry (sic). It is also claimed in the counter-affidavit that the Government's right to change the export policies in public

interest cannot be challenged in view of the statutory provisions, that for the purpose of going into the question of phasing out of the export of

finished leather so as to promote and increase higher value-added exports of leather goods the Government had constituted a group and that group

included the President of Small Scale Leather Industries Federation, Bombay, President, All India Small Scale Tanners and Exporters Association,

Madras, President, Tanners Federation of India, Kanpur, President, Indian Leather Technologists Association, President, Indian Finished Leather

Manufacturers and Exporters Association, Madras, President, Indian Leather Products Association and other connected parties. It is also stated in

the counter-affidavit that the public notice dated 31-8-1990 was issued on the basis of recommendation of the above said group, and that since the

representatives of small scale industries sector were in the group, the Government had very much taken the interest of the small scale sector in

issuing the public notice. It is further claimed in the counter-affidavit that the Government had designated the Council for Leather Export for the

purpose of allocation and administration of the quotas in accordance with guidelines/instructions from the Ministry of Commerce. It is further

claimed in the counter-affidavit that finished leather is being exported both by small scale units as well as large scale units, and that semi-finished

leather could easily be given temporary finish in light shade and exported in the garb of finished leather for further finishing in the importing country.

It is further claimed in the counter-affidavit that to cut at the very root of exporting semi-processed leather in the garb of finished leather, which had

been detrimental to the Government Policy of promoting exports of value-added products, the impugned order has been issued in consultation with the concerned technical authorities including C.L.R.I. and as such it is not correct to state that it is unreasonable and arbitrary. It is further claimed in the counter-affidavit that there is no violation of Articles 14 and 19(1)(g) of the Constitution of India. It is further claimed in the counter-affidavit that the definition of finished leather for export purposes is a matter well within the purview of the Government in consultation with the technical institutions such as C.L.R.I. and that the international demand for leather is more in the shades such as black, brown, green, blue, red and darker shades and as such to avoid the semi-finished leather gets [getting ?] exported in the guise of lighter shades of finished leather, the present order has been passed. It is also claimed in the counter-affidavit that the contention of the petitioners that the definition of finished leather is unrealistic is not correct, in view of the fact that the order has been passed in consultation with the technical authorities including the C.L.R.I., Madras and the representatives of the trade.

7. A rejoinder has been filed by the petitioners. A reference to the earliest writ petitions and a civil suit which have been filed in the year 1985 is made in the counter-affidavit. It is also stated in the reply-affidavit that as on date the objective of the Government is only to allow export of all kinds of finished leather, that when export of all kinds of finished leather is allowed, the Government cannot prohibit indirectly export of certain types of finished leather on vague and unreasonable grounds, viz., on the ground of colour shades, and that such a restriction would obviously be discriminatory. It is further stated in the reply-affidavit that the ban which has now been indirectly sought to be imposed on export of lighter shade of finished leather does not have any nexus or rationale to the policy of the Government which allows export of leather products as opposed to finished leather ultimately. It is also stated in the reply-affidavit that while the industry nationally and internationally does not know as to what is meant by lighter shade, what is meant by medium shade and what is meant by darker shade, that no precise definition can be given because the question as to whether the leather is of light shade or medium shade or dark shade is only subjective, that at no point of time, prior to the coming

into force of the impugned order, semi-finished leather was capable of being exported as finished leather, that there were sufficient guidelines to enable the authorities to distinguish between semi-finished leather and finished leather and that the Government, under the impugned policy, is only trying to create & fiction and discriminate inter se between different colours of finished leather which the petitioners are objecting to from the inception. It is also alleged in the reply-affidavit that whatever types of leather which have been identified as finished leather in the year 1981 cannot suddenly become semi-finished at any subsequent point of time, that to assume that lighter shades of leather are not finished leather is wholly misconceived and such a policy has resulted in the fundamental fallacies and cannot be countenanced and is liable to be struck down as being violative of Article 14 of the Constitution of India. It is further pointed out in the reply-affidavit that there had been more than six revisions so far pertaining to identification of finished leather and every time the Government had gone wrong in determining as to what is "finished leather", that they are always against the export of semi-finished leather and that the impugned order has been passed only to prevent the export of semi-finished leather and is only to prejudice the minds of this Court. It is further stated in the reply-affidavit that the revision made in the year 1981 was a scientific revision and that the I.S.I. has also accepted the same. The contention of the Government that there was a fall in the foreign export consequent upon 1981 revision is denied in the reply-affidavit. It is also denied in the reply-affidavit that semi-finished leather could be exported under the garb of finished leather by giving temporary finishing in light shade such a thing is impossible. It is also stated that semi-finished leather is always a semi-finished leather whatever shade is given to it. It is also stated that the impugned order is ex facie arbitrary and unreasonable and that the contention that the international demand is more for darker shade is not tenable. The petitioner also reiterated that in view of the vagueness under the policy in respect of export of finished leather, they are not able to do so only in view of the conditions pertaining to shades and colour and therefore the impugned order is liable to be struck down on the ground of vagueness and lack of guidance. It is also clearly stated in the reply affidavit that export of finished leather is permitted and that the export of finished leather does not in

any manner affect the local market and industry and that it is also in public interest. It is also stated in the reply- affidavit that the difference in the shades of the leather to be exported cannot relate and that it has no nexus to any public interest, that there is no definite connotation of light, shades in the trade, that when dealing with the goods, the court has to go by the trade practice and that in any event that before coming into force of the impugned export policy such finished leather was permitted to be exported. It is also stated in the reply- affidavit that the trade was entitled to carry on its activities in the full belief that so long as finished leather is permitted to be exported they will not be prevented from exporting leather merely on considerations based on the colour of the finished leather, viz., light, medium and dark, that the arbitrary decision under the provisions of the Import and Export (Control) Act, preventing export of light colour directly conflicts with such legitimate expectation is violative of Article 14 of the Constitution. It is also pointed out in the reply-affidavit that the state cannot perpetrate discrimination and legitimize it in the garb of a policy decision, that the concept of light, medium and dark colour is itself so vague that on the ground alone it would be violative of Article 14 of the Constitution. It is also stated that the respondents have to permit export of all finished leather irrespective of the colour to be permitted to be exported. It is also pointed out in the reply affidavit that the delegated authority has lettered its power in favour of the C.L.R.I. in determining as to what are finished leather and for that purpose empowering CLRI to give ... [Illegible] in regard to export of finished leather. It is also stated that there are no guidelines laid down by the delegated authority as to how the C.L.R.L is going to determine the finished leather. It is also stated in the reply-affidavit that the Export Control Act does not envisage abdication or further delegation by the Government in favour of C.L.R.I. to determine what are the products which could be exported based on the certificates issued by authorities like C.L.R.I. and that would tantamount to delegated authority further delegating the powers which is not tenable in the eyes of law.

8. W.M.P. No. 3319 of 1992 is filed by the petitioner therein to implead themselves as party in the writ petition. It is pointed out in the affidavit that they are members of the council who are questioning the impugned order and that the council has no jurisdiction or authority to express a view

which is inconsistent and opposed to the views of its members besides being opposed to the objects of the very council.

9. W.M.P. No. 2181 of 1992 is filed by the petitioners therein to implead the council as party in the writ petition and it has also been ordered.

10. After issuing notice of motion and after both the parties have filed counter-affidavit and reply-affidavit, by consent of both parties, the main writ petitions are taken up for disposal.

11. Mr. K. Parasaran, the learned. Senior Counsel appearing for the petitioners, contends that when the policy decision is, with effect from

1.4.1991, to allow all kinds of finished leather for export under OGL No. 3 subject to allocation and administration of quotas by the Council for

Leather Exports, Madras, the passing of the impugned order is; bad in law. The learned Senior Counsel farther contends that the impugned order

which prescribes that the finished leather is to be exported must be imparted with a medium/darker shade is erroneous in law. He also contends

that once a policy decision is taken, all finished leather can be exported and that the restrictions to the effect that it should be so dyed as to impart a

medium/dark shade is arbitrary and irrational. According to the learned Senior Counsel, the reasoning given in the counter affidavit that semi-

finished leather could easily be given temporary finish in light shades and exported in the garb of finished leather for farther finishing is not at all a

reason for imposing the present conditions with regard to shades. According to the learned Senior Counsel, it is an irrelevant consideration for

imposing a condition that finished leather should be imparted a medium/dark shade. The learned Senior Counsel further contends that shade cannot

determine its nature as to whether it is semi-finished or finished leather because finished leather can be dipped in light shade and semi-finished

leather can be dipped in dark shade. The learned Senior Counsel further raises an interesting point of law in this case, viz. when finished leather has

been permitted to be exported even before 1960 and in 1960 certain norms have been prescribed and light shades were being exported, it creates

a legitimate expectation from the consistent past practices and the doctrine of legitimate expectation goes beyond the right to be heard. According

to the learned Senior Counsel, the doctrine of legitimate expectation is a concept which plays a substantial role now-a-days in such matters. He

also contends that policy decisions have been subjected to the principles of legitimate expectation and therefore the principle of fairness, both regarding procedure and also substantive rights, apply. He also contends that the doctrine of legitimate expectation gives a right to question the legality of the policy and that C.L.R.L is given a power to issue a certificate, that power is given to an authority without guidelines with no correctional remedy if that authority should make mistake and that it vitiates the very policy. It is also contended by the learned senior counsel that no guidelines have been framed as to how to determine medium/dark shades, that certification with regard to all types of suede leather (finished leather) has to be done by C.L.R.L and as such the policy has to be struck down as it is bad for abdication of power and delegation being without guidelines. It is also contended by the learned senior counsel that the restriction on export based on colour is arbitrary and irrational, that it is not related either to commercial considerations or earning of foreign exchange, and that it is not related to any of the considerations which should be relevant in the context of export under the Import and Export Control Act. The learned Senior Counsel further contends that there is no nexus to the object sought to be achieved by the Import and Export Control Act and therefore violative of Article 14 of the Constitution. The sum and substance of the argument of the learned Senior Counsel is that the impugned order is violative of Article 14 of the Constitution of India, that it is highly arbitrary and irrational and that it has to be struck down.

12. Mr. Habibullah Badsha, the learned Senior Counsel appearing for the 8th respondent, in the usual way, fairly concedes that if the policy is patently arbitrary, this Court can interfere with it. However, the learned Senior Counsel states that the contention of Mr. K. Parasaran, the learned Senior Counsel that the policy is vague and arbitrary is not correct. He argues that it is for the Government to decide a policy. He also contends that whether it is coloured or not, it is finished leather. According to the learned senior counsel the question of shades in "colour" started even in the year 1976, that in the second revision that third item is "dyeing", that the dark and the medium shade is known to the trade right from the year 1979 and that it is not a new innovation in the year 1990. The learned Senior Counsel refers to me the revisions made in the years 1976, 1979 and

1981. The learned Senior Counsel also refers paragraphs 0.12 and 0.13 in the second revision of the year 1979 and paragraphs 0.3 and 0.4 of the revision of the year 1981. According to the learned Senior Counsel that till now it was only by an administrative order u/s 25 of the Customs Act and that only in the year 1991 the impugned order came to be passed as a statutory order under Act 18 of 1947. It is also pointed out by the learned Senior Counsel that a Committee was constituted under the Chairmanship of one Shri. Vijayaraghavan and all parties of trade in leather represented. He also pointed out that dyeing is one of the operations and not the sole operation in getting the finished leather. According to the learned Senior Counsel, the guidelines given in the year 1979 are known to the trade, the trade understood it and the Government understood it and as such there is no question of arbitrariness as contended by the learned Senior Counsel for the petitioners. The learned Senior Counsel contends that there is no arbitrariness in this case. According to him the CLRI is a legal body, and they have been given to decide the shade, etc., and if that decision is arbitrary, it is open to the petitioners to challenge that decision. The learned senior counsel also that decision. The learned senior counsel also refers to the decision in *Glass Chatons Importers and Users" Association Vs. Union of India (UOI)*, , in (1972 (2) SCC 324) and in (44 ELT (1989) 18) : (printed infra) in support of his contentions.

13. Mr. P. Narasimhan, the learned Central Government Standing Counsel appearing for respondents 1 to 6 submits that trade itself wanted changes in the norms of export, that it was represented that a Review Committee has to be appointed in the year 1985, that a Review Committee has been constituted in the year 1985 and as such the decision of the Government is not unilateral. According to the learned Counsel it is seen from the Report that groups were represented by all and that a report was made. According to the learned Counsel, there is question of arbitrariness since it relates to the economic aspect of the country (sic). The learned Senior Counsel for Central Government points out that policy cannot be allowed to stagnate and that dyeing is not a new thing now brought in. According to him it is only to stop the semi-finished leather to get exported as semi-finished leather. He further contends that the work of distinguishing the

finished leather and the semi-finished leather is for Customs

Authorities, that they felt practical difficulties and as such it is not correct to say that C.L.R.I is delegated with any power and that they have to say

that it is a finished leather or not. He also contends that only assistance is sought for from the C.L.R.I. and that it is not an abdication of power as

contended by the learned Senior Counsel for the petitioners. The learned Senior Central Government Standing Counsel further states that the

question arises before this Court is whether the decision is palpably arbitrary and whether this Court can go into technical matters and the process

of manufacture. According to the learned Senior Counsel, the jurisdiction of this Court is very limited. He also states that the decisions relied on by

Mr. Habibullah Badsha, the learned Senior Counsel appearing for the 8th respondent have to be applied to the facts of the cases.

14. Mr. R. Krishnamurthy, the learned Senior Counsel, who appears for certain members (who have since been impleaded) states that there are

4000 members and that voting right is vested with only 800 members. According to the learned Senior Counsel, the industry has not been

consulted, that the policy of the year 1981 would satisfy all the parties and that when it was reversed in the year 1989, writ petition was filed

regarding the question of finished leather and that it is pending. According to the learned Senior Counsel, when the very same question is pending

before this Court, it is not possible for the Union Government to pass orders under the provisions of the Imports and Exports (Control) Act, 1947.

According to the learned Senior Counsel the policy is totally arbitrary. The sum and substance of the argument of the learned Senior Counsel is

that when the same question is pending before this Court without getting the orders vacated, it is not open to the executive authorities to issue

another order on the very same issue. The learned senior counsel refers to the decision in K.M. Nanavati Vs. The State of Bombay, for the

proposition that when the matter is pending before a Court, the executive authorities cannot act. According to the learned Senior Counsel, the

policy that to export the finished leather and at the same time to prevent the lighter shade to export, has no meaning. He also contends that there is

no rationale behind the policy and when a particular variety is excluded, it does not stand to any reason.

15. Mr. Sampathkumar, the learned Counsel appearing for the Indian Standards Institution, the seventh respondent herein refers to paragraphs 9

and 10 of the counter affidavit and states that there is no arbitrariness in the impugned order.

16. I have considered the arguments of Mr. K. Parasaran, the learned Senior Counsel appearing for the petitioners, Mr. Habibullah Badsha, the

learned Senior Counsel appearing for the 8th respondent, Mr. P. Narasimhan, the learned Senior Central Government Standing Counsel appearing

for the respondents 1 to 6 and of Mr. Sampathkumar, appearing for the Indian Standards Institution, the 7th respondent herein.

17. The short point that arises for consideration in this case is with regard to a policy decision of the Government of India with regard to the export

of finished leather. With effect from 1/4/91, all kinds of finished leather shall be allowed for export under OGL No. 3 subject to allocation and

administration of quotas by the Council for Leather Exports, Madras, the eighth respondent herein in W.P. No. 15560 of 1991. A public notice

No. 47/ETC(PN)/90 has been issued on 31.8.1990 regarding the export of all kinds of finished leather. The said notice, insofar as it is relevant to

the purpose of deciding this writ petition is as follows:-

... Ministry of Commerce

Export Trade Control Public Notice No. 47/ETC(PN)/90

New Delhi, the 31st August, 1990

Subject : Export of all kinds of finished leather.

File No. 1/27/90-E.1.--In order to encourage production of value-added leather products, it has been decided that with effect from 1st April,

1991, all kinds of finished leather (underlining is mine Here italicized.) shall only be allowed for exports under OGL No. 3 of Import & Export

Policy, Volume II, subject to allocation and administration of quotas by the Council for Leather Exports, Madras.

2. Registered exporters shall furnish details of different categories of finished leather exported by them earlier in the form and manner as required

by the Council for Leather Exports, Madras. This information should be furnished to the Council before 30th November, 1990. Failure to comply

will disentitle the registered exporters from allocation of export quotas .iċ½

In view of the aforesaid notification, the Exports (Control) (Eleventh Amendment) Order, 1991 has been published on 5.8.1991, in exercise of the powers conferred by Section 3 of the Imports and Exports (Control) Act, 1947 making certain amendments. In view of that, Part "A" of item No.

(iii) of serial No. 28 has been amended and a fresh entry has been inserted. That apart, in part "B", List 3, after serial No. 53 certain entries were

inserted and that entry starts saying "Leathers, namely"....Item 57 is with regard to leathers. Various kinds of leathers are stated saying "leathers,

namely" In certain items, for example, Grain clothing/Nappa Clothing/Jerkin/Jacket leathers it is stated that dyeing; leather treated with synthetic

(Coal tar) dyes thus imparting a medium/dark shade. This item is expressed to show that Export and Import Control order gives an importance to

the shade, i.e., especially for medium and dark shade. In various kinds of leathers, the yardstick of medium/dark shade is adopted. I do not think it

is necessary to extract in its entirety since the fact remains that a medium and dark shade is rather given preference. Entry 57 is with regard to

leathers. So the question that arises for consideration is that once a policy decision is taken with regard to a finished leather, whether the

restriction to the effect that the finished leather should be dyed so as to impart a medium/darker shade is arbitrary and irrational. It is also seen that

finished leather has been permitted to be exported even before the year 1960 and in the year 1960 certain norms have been prescribed. It is not as

if light shades are not being exported. So when there is a practice of trade to export the light shade also, an argument is built upon by Mr. K.

Parasaran, the learned Senior Counsel appearing for the petitioners on the principle of legitimate expectation stating that the impugned order cannot

restrict the export only to medium and dark shade. In my view whether this principle of legitimate expectation can be applied to a policy decision is

worth considering. As contended by Mr. K. Parasaran, the learned Senior Counsel appearing for the petitioners, a policy decision has been the

concept of legitimate expectation and therefore the principle of fairness both in regard to procedure and also substantive rights applies. Re

Liverpool Taxi Owners' Association (1972-2-The All England Law Reports-page 589) the Council as licensing authority resolving to increase

total number of licences for taxi cabs within area and a resolution was made without giving taxi cab owners' association an opportunity to be heard

and the Association previously assured that they would be given opportunity to make representations and in such circumstances it has been held

that the council is not at liberty to disregard undertaking. The principle laid down in that decision is that the duty to act fairly meant that the

corporation should be ready to hear persons or bodies whose interests were affected which included the association. in *R. v. Secretary of State for*

the Home Department, Ex Parte Khan 1985 1 All E.R.40 the principle of legitimate expectation has been considered by the Court of Appeals

and it has been observed as follows (at p.41):

... Where a member of the public affected by a decision of a public authority that it would apply certain criteria or follow certain procedures in

making its decision, the authority was under a duty to follow those criteria or procedures in reaching its decision, provided that the statement, or

undertaking in question did not conflict with the authority's statutory duty.

This principle gives a right to the question of legality of the policy. A passage in Halsbury's Laws of England - Fourth Edition Reissue - volume I(1)

para 76 can be usefully referred to:

... In practice the scope of judicial review will vary according to the context. If a very wide range of considerations needs to be taken into account

by a minister determining whether to take certain discretionary action on grounds of national policy, the courts will seldom interfere at the instance

of a person claiming to be aggrieved by the action taken unless the act has been vitiated by excess of power in the narrow sense, or non-

compliance with procedural requirements, bad faith, or the bona fide pursuit of an unauthorised purpose where the ambit of the power is

adequately defined with reference to purpose. Abstention from judicial intervention is all the more likely where a power conferred on a minister or

other public authority is expressed to be exercisable when that authority is satisfied that it is requisite, or satisfied that it is expedient in the national

or public interest, that a particular course of action be adopted. Due regard, moreover, will be paid to the undesirability of setting narrow limits to

the exercise of wide discretionary powers vested in local authorities.

On the other hand, in many [many?] contexts, including those involving a wide discretionary element, the courts will identify the relevant

considerations germane to the exercise of a statutory power, and will quash such

exercise if those considerations are ignored or if irrelevant

considerations are taken into account. Thus a magistrate or tribunal taking irrelevant factors into account or failing to have regard to relevant factors

will be held to have failed to hear and determine the matter according to law, or to have declined jurisdiction or to have exceeded jurisdiction. A

licensing body, empowered to attach such conditions as it thinks fit to the grant of a licence or permit, can lawfully attach only conditions that fairly

and reasonably relate to the grant. Similarly, the immigration authorities must have regard to relevant factors and ignore irrelevant factors in the

exercise of their statutory powers, as must a police constable exercising a power of arrest.

What is or is not relevant consideration in any case will depend on the statutory context. The cost of exercising a discretion will often be relevant,

particularly in cases involving expenditure by local authorities where the courts require them to have regard to an implied fiduciary duty owed to

ratepayers in respect of the funds at the authorities' disposal. Fairness to persons affected by administrative action or personal hardship which may

be caused thereby will also often be relevant considerations to be taken into account. In some contexts a decision-maker should have regard to the

general public interest, while in others it may be inappropriate to do so. Where policy guidelines have been promulgated regarding the exercise of a

discretion such guidelines will be a relevant factor which should be taken into account by the decision-maker. A decision-maker will generally not

be required to have a regard to treaty obligations which are not part of domestic law when exercising a statutory power....

In *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, the Supreme Court has observed as follows: (at p. 550)

In *Wade's Administrative Law* 6th Edition, after indicating that "the powers of Public authorities are essentially different from those of private

persons", it has been succinctly stated at pp. 400--401 as under:

"... The whole conception of unfettered discretion is inappropriate to a public authority, which possesses powers solely in order that it may use

them for the public good.

There is nothing paradoxical in the imposition of such legal limits. It would indeed be paradoxical if they were not imposed. Nor is this principle an

oddity of British or American law; it is equally prominent in French law. Nor is it a special restriction which fetters only local authorities; it applies

no less to ministers of the crown. Nor is it confined to the sphere of Administration; it operates wherever discretion is given for some public

purpose, for example, where a judge has a discretion to order jury trial. It is only where powers are given for the personal benefit of the person

empowered that the discretion is absolute. Plainly this can have no application in public law.

For the same reasons there would in principle be no such thing as unreviewable administrative discretion, which should be just as much a

contradiction in terms as unfettered discretion. The question which has to be asked is what is the scope of judicial review, and in a few special

cases the scope for the review of discretionary decisions may be minimal. It remains axiomatic that all discretion is capable of abuse, and that legal

limits to every power are to be found somewhere."

The view, we are taking, is, therefore, in consonance with the current thought in this field. We have no doubt that the scope of judicial review may

vary with reference to the type of matter involved, but the fact that the action is reviewable, irrespective of the sphere in which it is exercised,

cannot be doubted.

A useful treatment of the subject is to be found in (1990) 106 LQR at pages 277 to 292 in an article "Judicial Review and Contractual Powers of

Public Authorities"...The conclusion drawn in the article on the basis of recent English decisions is that "Public law principles designed to protect

the citizens should apply because of the public nature of the body, and they may have some role in protecting the public interest". The trend now is

towards judicial review of contractual powers and the other activities of the Government. Reference is made also to the recent decision of the

Court of Appeal in *Jones v. Swansea City Council* (1990) 1 WLR 54 where the Court's clear inclination to the view that contractual powers

should generally be reviewable is indicated, even though the Court of Appeal faltered at the last step and refrained from saying so. It is significant

to note that emphasis now is on reviewability of every State action because it stems not from the nature of function, but from the public nature of

the body exercising that function; and all powers possessed by a public authority,

howsoever conferred, are possessed "solely in order that it may use them for the public good". The only exception limiting the same is to be found in specific cases where such exclusion may be desirable for strong reasons of public policy. This, however, does not justify exclusion of reviewability in the contractual field involving the State since it is no longer a mere private activity to be excluded from public view or scrutiny.^{1/2}. However, the Supreme Court in that case considered the scope of "judicial review" also and observed at p.553 as follows.

^{1/2}The scope of Judicial review is limited as indicated in *Dwarkanadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*, to oversee the State action for the purpose of satisfying that it is not vitiated by the vice of arbitrariness and no more. The wisdom of the policy or the lack of it or the desirability of a better alternative is not within the permissible scope of judicial review in such cases. It is not for the Courts to recast the policy or to substitute it with another which is considered to be more appropriate, once the attack on the ground of arbitrariness is successfully repelled by showing that the act which was done, was fair and reasonable in the facts and circumstances of the case. As indicated by Diplock, J, in *Council of Civil Service Unions v. Minister for the Civil Service* (1984) 3 All ER 395, the power of judicial review is limited to the grounds of illegality, irrationality and procedural impropriety. In the case of arbitrariness, the defect of irrationality is obvious....

So the short point that arises for consideration is whether the test of colour shade is arbitrary and irrational. The stand taken by the respondents 1 to 3 is that semi-finished leather could easily be given temporary finish in light shade and exported in the garb of finished leather for further finishing in the importing country and that only to prevent the semi-finished leather being exported in the garb of finished leather, the conditions are imposed. In my view, it cannot be said to be arbitrary or violative of Article 14 of the Constitution of India. It is true that policy decisions are subject to concept of legitimate expectation and the principle of fairness has to be applied both in regard to the procedure and the subjective rights. The line of thinking with regard to the theory of legitimate expectation has been considered by the Supreme Court in *Dwarkanadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*, and it has been observed as follows,

(atp. 1649)

... We are inclined to accept the submission that every activity of a public authority especially in the background of the assumption on which such

authority enjoys immunity from the rigours of the Rent Act, must be informed by reason and guided by the public interest. All exercise of discretion

or power by public authorities as the respondent, in respect of dealing with tenants in respect of which they have been treated separately and

distinctly from other landlords on the assumption that they would not act as private landlords must be judged by that standard. If a governmental

policy or action even in contractual matters fails to satisfy the test of reasonableness, it would be unconstitutional. See the observations of this

Court in *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and*

Another, and Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, .

In the very same decision the Supreme Court has observed as follows: (at p. 160)(sic)

“½ Reliance was placed on the observations of Lord Justice Diplock in *Council of Civil Service Unions v. Minister for the Civil Service* (1984) 3

All ER 935) where the learned Lord Justice classified 3 grounds subject to control of judicial review, namely, illegality, irrationality and procedural

impropriety. Learned Additional Solicitor General is right, in our opinion, in that we cannot really substitute a decision reached by a fair procedure

keeping the policy of the respondent in mind by a different decision only on the ground that the decision which appeals to the Court, is a better one

...

So in my view, considering the facts of the case on hand, it cannot be said that the classification of leather based on shades, leaving out the light

shades, is arbitrary or irrational. Insofar as the shade is concerned, it has been in vogue since 1976 onwards as seen from records and as

contended by Mr. Habibullah Basha, the learned Senior Counsel appearing for the 8th respondent. So the leather trade knows what is light shade,

medium shade and dark shade. So I am not inclined to accept the contention of Mr. K. Parasaran, the learned senior counsel appearing for the

petitioners that the exclusion of light shade is something peculiar, now brought in

by the amendment which is impugned before me. At least from the second revision made in the year 1979, the dark and medium shades are in existence as demonstrated by Mr. Habibullah Basha, the learned Senior Counsel appearing for the 8th respondent. I am of the view that what has been issued is not an administrative instruction and it is a statutory order under Act 18 of 1947. It is not as if the decision has been taken overnight. A committee has been constituted under the Chairmanship of Shri Vijayaraghavan and all persons with regard to leather trade have been represented and only after hearing the representations the amendment has come into force. I am not able to accept the arguments of Mr, K. Parasaran, the learned Senior Counsel appearing for the petitioners, that the petitioners were not able to understand in 1990 what they understood in the years 1979 and 1988 with regard to shade in leather. I do not see any semblance of arbitrariness on the facts of the case since all exporters are treated equally. Only a classification has been made with regard to the entry in leather. I am of the view that it is purely a policy decision of the Government of India and it is not for this Court to substitute its own decision as held by the Supreme Court in *Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*, . Similar issue has been decided by me with regard to policy decision in Writ Petition Nos. 2601 of 1991 *Micapad by Managing Partner C. Suresh Kumar v. Union of India by Secretary, Ministry of Commerce, New Delhi and Ors.* (Writ Petition Nos. 2601 of 1991 dated 12-2-1992). The ratio of that judgment also applies to the facts of the case on hand.

18. The power of this Court to interfere with the policy decisions has been decided in *Glass C.L & U. Association v. Union of India* AIR 1962 SC 1514. That was with regard to the power of canalization. In that case, the Supreme Court has observed as follows: (at P. 1516)

... A policy as regards imports forms an integral part of the general economic policy of a country which is to have due regard not only to its impact on the internal or international trade of the country but also on monetary policy, the development of agriculture and industries and even on the political policies of the country involving questions of friendship, neutrality or hostility with other countries. It may be difficult for any court to have adequate materials to come to a proper decision whether a particular policy as

regards imports is, on a consideration of all the various factors involved, in the general interests of the public. Even if the necessary materials were available it is possible that in many cases more than one view can be taken whether a particular policy as regards imports--whether one of heavy customs barrier or of total prohibition or of entrustment of imports to selected agencies or channels--is in the general interests of the public. In this state of things the burden on the person challenging that the Government of the country is not right in its estimate of the effects of a policy as regards imports in the general interests of the public will be very heavy indeed and when the Government decides in respect of any particular commodity that its import should be by a selected channel or through selected agencies the Court would proceed on the assumption that the decision is in the interests of the general public unless the contrary is clearly shown. Consequently, we are unable to accept the argument that a decision that imports shall be canalised, is per se not a reasonable restriction in the interests of the general public. We wish to make it clear that while the decision that import of a particular commodity will be canalised may be difficult to challenge the selection of the particular channel or agency decided upon in implementing the decision of canalisation may well be challenge on the ground that it infringes Article 14 of the Constitution or some other fundamental rights. No such question has however been raised in the present case. The attack on the validity of paragraph 6 (h) of the Imports Control Order, 1955 therefore, fails. The contention that Section 3 of the Imports and Exports (Control) Act, 1947 is bad to the extent that it permits the Government to make an order as in paragraph 6 (h) of the Imports Control Order, 1955 consequently also fails.

In *The Deputy Assistant Iron and Steel Controller and Another Vs. L. Manickchand, Proprietor, Katrella Metal Corporation, Madras*, observed as follows:

... Now, it has to be borne in mind that in the present stage of our industrial development imports requiring foreign exchange have necessarily to be appropriately controlled and regulated. Possible abuses of import quota have also to be effectively checked and this inevitably requires proper scrutiny of the various applications for import licence. In granting licences for imports, the authority concerned has to keep in view various factors

which may have impact on imports of other items of relatively greater priority in the larger interest of the overall economy of the country which has

to be the Supreme consideration^{1/2}.

A single Judge of the Andhra Pradesh High Court in *Zipper Association of India Vs. Government of India*, has considered the question with regard

to the scope of the jurisdiction of this [Court] to interfere with the Import and Export policy decisions. In *Union of India (UOI) and Others Vs. C.*

Damani and Co. and Others, the Supreme Court has observed as follows:-

... Prima facie, national policy in this area should not be interfered with by courts unless compelled by glaring unconstitutionality....

In *Life Insurance Corporation of India Vs. Escorts Ltd. and Others*, the Supreme Court observed as follows:

... that problems of high finances do not fall within the purview of the court for the reason that the court lacks the expertise to deal with such

problems ...

The learned Single Judge of the Andhra Pradesh High Court in the abovementioned case, considering the judgments of the apex Court of the land,

cited *supra*, observed as follows:

... The ratio to be drawn from a study of the above cases is that the courts will not hesitate to interfere in the policy decision taken in the economic

field if they are patently illegal or arbitrary or have been taken in a male fide manner but a certain amount of judicial restraint is called for in dealing

with these matters of a technical nature which are finalised only after taking the best available professional and technical advice on the matter^{1/2}.

With respect I entirely agree with the views expressed by the learned Single Judge of the Andhra Pradesh High Court, in the abovementioned

decision. In *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, the Supreme Court has considered the power of this Court under Article

226 of the Constitution with regard to the interference of this Court in economic matters. It was a case of the policy of the State Government there

in to grant licence for construction of distilleries for manufacture and supply of country liquor and in that case, the Supreme Court observed as

follows: (at p. 605)

... Moreover, the grant of licences for manufacture and sale of liquor would essentially be a matter of economic policy where the Court would

hesitate to intervene and strike down what the State Government has done, unless it appears to be plainly arbitrary, irrational or male fide. We had

occasion to consider the scope of interference by the Court under Article 14 while dealing with laws relating to economic activities in R.K. Garg v.

Union of India (1982) 1 SCR 947 - AIR 1981 SC 2138. We pointed out in that case that laws touching civil rights such as freedom of speech,

religion, etc. We observed that the legislature should be allowed some play in the joints because it has to deal with complex problems which do not

admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters,

where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. We

quoted with approval the following admonition given by Frankfurter, J. in Morey v. Dond 354 US 457:

In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment.

The legislature after all has the affirmative responsibility. The Courts have only the power to destroy not to reconstruct. When these are added to

the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the

judges have been overruled by events--self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.. What

we said in that case in regard to legislation relating to economic matters must apply equally in regard to executive action in the field of economic

activities, though the executive decision may not be placed on as high a pedestal as legislative judgment insofar as judicial deference is concerned.

We must not forget that in complex economic matters every decision is necessarily empiric and it is based on experimentation or what one may call

trial and error method"" and, therefore, its validity cannot be tested on any rigid ""a priori"" considerations or on the application of any strait-jacket

formula. The court must while adjudging the constitutional validity of an executive decision relating to economic matters grant a certain measure of

freedom or ""play in the joints"" to the executive. ""The problem of government"" as pointed out by the Supreme Court of the United States in

Metropolis Theatre Co. v. State of Chicago 57 L. Ed. 730 "are practical ones and may justify, if they do not require, rough accommodations,

illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not discernible, the wisdom of any choice may be disputed or condemned. More errors of government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void.

The Government, as was said in *Permian Basin Area Rate Cases* 20 L Ed. (2d) 312 is entitled to make pragmatic adjustments which may be called for by particular circumstances. The Court cannot strike down a policy decision taken by the State Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The Court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide....

In view of the position in law, I do not think that the contention raised by Mr. K. Prasaran, the learned Senior Counsel appearing for the petitioners can be accepted, based on the principle of legitimate expectation, on the facts of this case. I am of the view that when the trade itself wanted a change in the norms and practices in export, and a review committee has been appointed and a report has been submitted, it cannot be said that the Government's revision is unilateral. As contended by Mr. P. Narasimhan, the learned Senior Central Government Standing Counsel, it was concerned with the trade industry and a decision has been taken after considering the report, on the economic aspects of the matter. It is rightly pointed out by the learned Senior Counsel that a policy cannot stagnate. It has to move with times.

19. With regard to the other contention raised by Mr. K. Parasaran, the learned Senior Counsel appearing for the petitioners regarding the abdication of power, I am of the view that no sub-delegation has been made to the C.L.R.I. C.L.R.I. is a body from whom assistance is taken for enforcing the policy. So it cannot be said that there is abdication of power or a sub- delegation. In *Attorney-General v. Crayford Urban District Council* (1962) 1 CD575) where an authority who has acted as an agent with regard to collection of insurance amounts is held to be "an authority where the power is vested with the local authority under the Housing Act, 1957. In that case, a local authority had entered into an arrangement with the insurance company for the collective insurance of its tenants' household

goods and certain personal effects and fixtures and fittings of the tenants. In that case, a question was raised as to whether the authority was not empowered to effect the insurance or to collect the premiums and that those acts were ultra vires it was held that it was fairly incidental to or consequential on the general management of the houses provided by the housing authority. In my view, this case is relied upon by Mr. P. Narasimhan, the learned Senior Central Government Standing Counsel for the purpose that the assistance is taken for the purpose of taxation from C.L.R.I. I am fully in agreement with the contention of Mr. P.S. Narasimhan, the learned Senior Central Government Standing Counsel on this aspect and I do not think they any power has been sub-delegated to the C.L.R.I.

C.L.R.I. has been asked only to certify whether it is finished leather or not.

20. The other contention put forth by Mr. K. Parasaran, the learned Senior Counsel appearing for the petitioners is that the only reason given by the respondents is that they are not able to identify the semi-finished leather, that it is being exported in the garb of finished leather and that this cannot be a reason for taking out the lighter shade from OGL No. 3. Even assuming for a minute that it is one of the reasons for the respondents to take out the lighter shade from Entry 57, I do not think that it can be said to be arbitrary. As I have already stated that it is for the experts in that field to decide as to what is to be exported and how it should be exported. I do not think that this Court can substitute its own views, unless the decision is arbitrary or patently illegal.

21. Mr. R. Krishnamurthy, the learned Senior Counsel appearing for the impleading parties contends that when writ petition Nos. 11322 of 1985 and 12093 of 1985 with regard to policy decisions, are pending before this Court, it is not open to the respondents to issue the impugned order and that it is highly arbitrary since no guidelines are given as to how to find out the lighter shade. In my view, it cannot be said that there is any irrational decision has been taken by the Government of India when they thought it fit to stop the leather with lighter shade to be exported. I have already stated that it is not for this Court to direct that a particular shade can also be included in the impugned order. It is true that the policy is to export the finished leather. But, what sort of finished leather is to be exported is for the Government to consider and they have considered and

passed orders on the basis of the report of a Committee. So it cannot be said that it has been passed arbitrarily. Simply because earlier writ

petitions are pending and earlier notification has been stayed by this Court, I do not think that the present impugned order can be attacked on that

grounds. What was considered by this Court earlier was a Customs notification. As I have already stated the Export Trade (Control) Order, 1988

has been amended. So I do not think that this can be taken as an inclusion [intrusion?] into the judicial orders of this Court. In fact, in a democratic

country, in my view, the executive and the judiciary have to act within their spheres and in this case rightly an amendment has been passed by the

Government of India under the Export Trade (Control) Order, 1988 for which nobody can contend that there is no power with the Government.

So in my view, the pendency of the earlier writ petitions has nothing to do with the order, which is impugned before me. I do not think the principle

relied on by K.M. Nanavati Vs. The State of Bombay, will apply to the facts of the case. The facts of the case on hand are clearly distinguishable

from the facts of the case mentioned hereinabove. A reading of the above mentioned decision will clearly show that there is a distinction.

22. The view I take that the decision of the Government of India is not arbitrary of illegal or irrational, I do not think that it is necessary for me to

refer to all other decisions cited by Mr. K. Parasaran, the learned Senior Counsel appearing for the petitioners, with regard to the theory of

legitimate expectation.

23. In the result, for the foregoing reasons, I see that there are no merits in both the writ petitions and accordingly they are dismissed. However,

there will be no order as to costs.