

(1993) 06 KAR CK 0004
In the Karnataka High Court
Case No : Writ Petition No. 7759 of 1993

Mahalakshmi Flour Mills

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 30-06-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 44 ECC 121 : (1993) 68 ELT 328 : (1993) ILR (Kar) 2228 :
(1993) 3 KarLJ 94

Hon'ble Judges : Shivraj V. Patil, J

Bench : Single Bench

Judgement

1. The petitioner in this writ petition has sought for the following reliefs :

(a) To issue a writ, order or direction in the nature of certiorari and quash the order passed by the 2nd respondent dated 12-8-1992 as per Annexure N.

(b) To issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondent No. 2 to exercise his powers under Clause 21 of the Export and Import Policy for the period 1-4- 1992 to 31-3-1997 in accordance with law and pass an order relaxing the ban on export of sandalwood in favour of the petitioner with reference to the seven contracts as per Annexures F and F-1 to F-6.

(c) To issue a writ of mandamus or any other writ, order or direction, directing the respondent 2 to issue necessary Permission / licence in favour of the petitioner to export the sandalwood chips and powder in order to fulfil the seven contracts as per Annexures F and F-1 to F-6.

(d) To issue a writ order or direction in the nature of mandamus directing the respondents to pay and compensate all the losses suffered by the petitioner.

2. The brief facts leading to this writ petition are as follows :

The petitioner has been carrying on business dealing in sandalwood wood and

sandalwood chips for the last over 15 years earning foreign exchange to the country. The main sandalwood growing States in the country are Karnataka and Tamilnadu. There is a great demand for sandalwood in almost all the countries and the same is exported from this country earning foreign exchange. The petitioner has been carrying on the said business after taking necessary permission and licence from the concerned authorities. The petitioner has been participating in the auctions conducted by the Department of Forest from time to time by depositing earnest money deposits, which amounts to lakhs of rupees for purchasing the sandalwood in the said auctions. The petitioner exports the sandalwood chips on the basis of pre-existing order from the countries after obtaining necessary permission from the authorities. The export is done under 'OPEN GENERAL LICENCE III' (O. G. L. III) Scheme under the Import and Export Policy of the Union of India. The petitioner has invested crores of rupees in the said business.

The Union of India with a view to earn foreign exchange has liberalised the Import and Export Policy and has allowed to export sandalwood and sandalwood chips. During the year 1990 a new policy was introduced called 'Import and Export Policy' for the period from April, 1990 to March, 1993, wherein it is allowed to export sandalwood from 1-4-1990 to 31-3-1993. Copy of the said policy is filed at Annexure A. Looking to Annexure A, the petitioner has participated in the auction of sandalwood conducted by the Statute of Karnataka, Tamilnadu, Kerala and Andhra Pradesh and after successful bid the petitioner used to export the same under the pre-existing orders from the foreign countries. The petitioner learnt that after meeting the domestic need of sandalwood there would be accumulated stock of 4,000 Metric Tonnes (M. T.) in the State of Karnataka and about 6,000 M. T. in Tamilnadu. Thus, 10,000 M. T. of sandalwood has to be disposed of by these States.

The Union of India all of a sudden introduced a new Export and Import Policy for the period from 1-4-1992 to 31-3-1997 with effect from 1-4-1992 over-riding the previous policy, which was up to 31-3-1993. Copy of the said policy is produced at Annexure B. Consequent upon the introduction of the new policy the Ministry of Environment and Forests, Government of India, held a meeting on 9-4-1992. A detailed discussion took place in the said meeting particularly on the subject of sandalwood. The State of Tamilnadu and Karnataka requested respondent No. 1 relax the ban imposed on export of sandalwood, as it caused general hardship besides adversely affecting the sandalwood business, has the following consequences :

- (a) It would involve a loss of revenue around Rs. 40 crores to the State Governments;
- (b) Loss of about 18 million of U. S. Dollars towards foreign exchange equal to about Rs. 55 crores;
- (c) Provides incentives and impetus to increase International smuggling of

sandalwood.

On the strength and advice of the export faculty, the respondent No. 1 has introduced a clause wherein a power has been conferred on the authorities to consider the hardship faced by the existing traders individually. Accordingly, the petitioner pursuant to Clause 21 made seven applications requesting the respondents to consider the grievances of the petitioner in the light of the hardship faced. The copies of the said letters are filed at Annexures C and C1.

In the meanwhile, the petitioner has filed W. P. No. 16383/92 in this Court questioning the legality, propriety and validity of the new Export Policy Annexure B. This Court issued Rule and granted an interim order on 28-5-1992, which reads :

"That the operation of the Export and Import Policy (1-4-1992 to 31-3- 1997- Chapter XVI, Part I, Page 65 under the Negative List of Export, No. 158 - prohibited items - Sl. No. 7 (Annexure C2 to the writ petition), issued by the respondent No. 1 in so far as it relates to the petitioner be and the same is hereby stayed."

The respondents failed to implement the said interim order on the ground that there was no specific direction to the respondents to permit the petitioner to export the sandalwood and therefore the petitioner sought clarification. This Court was pleased to clarify the position on 10-7-1992. Thereafter, the petitioner made several requests pleading hardship to permit the export of sandalwood chips and powder, but the respondents instead of complying with in interim order filed an appeal in W. A. No. 1369/92. The Division bench of this Court was pleased to set aside the interim order passed in W. P. No. 16393/92 with a direction to the respondents to consider the case of the petitioner in the light of the provisions contained in Clause 21 Annexure B the new Policy. The said writ petition is still pending consideration.

The petitioner was allowed to export its products under a valid licence called 'O. G. L. III' by virtue of the Policy - Annexure A. The petitioner did secure many contracts from foreign countries in this regard. These contractual obligations are to be fulfilled within the stipulated time. Copies of contracts entered into between the petitioner and foreign buyers are produced at Annexures F and F-1 to F-5. Since the petitioner was allowed to export the sandalwood and its products by virtue of the Policy for the period from April 1990 to March, 1993 he has been carrying on the said business. The petitioner has purchased 259.8 M. T. of sandalwood amounting to Rs. 6.7 crores from Government of Tamilnadu having deposited a sum of Rs. 15 lakhs as earnest money deposit. Further, the petitioner has also taken delivery of 146.5 M. T. of sandalwood from Tirupattur Depot, which alone amounts to Rs. 3.18 crores. Out of the said quantity, the petitioner has already exported about 86 M. T. and the balance of 60.5 M. T. of the value of Rs. 1.5 crores is still lying in the factory premises of the petitioner, which the petitioner is unable to export on account of the new Policy introduced

by the respondents. Immediately after coming to know of the new policy vide Annexure B, the petitioner informed the department of Forest, Tamilnadu, by telegram pleading inability to take delivery of the balance quantity of the sandalwood in view of the introduction of the new policy. The petitioner requested them to return the amount of earnest money deposit. The Forest Officer of Tamilnadu has communicated to the petitioner that earnest money deposit could not be refunded and further stated that the petitioner is liable for all the damages that would be incurred in view of the non-taking delivery of the auctioned sandalwood as can be seen from Annexure G1. The petitioner states that following are the consequences of not taking delivery of the quantity of the auctioned sandalwood :

(a) The petitioner will be liable for payment of interest at the rate of 13% per annum for the value of the sandalwood.

(b) The petitioner is liable to pay of sum of Rs. 35/-per tonne per day as demurrage, if auctioned sandalwood is not taken delivery within 75 days from the date of confirmation of sale.

(c) The petitioner will be black-listed.

It is needless to state that the petitioner is also liable to pay the difference in price and all losses and expenses, if the balance quantity is re-auctioned as per Condition Nos. 9 and 30 of Annexure- GIA. The District Forest Officer, Tirupattur, has issued a letter demanding a sum of Rs. 29,29,779/- from the petitioner being the sales tax, which was exempted on the strength of the pre-existing foreign contracts under the provisions of the Central Sales Tax. Copy of the said communication is filed at Annexure G2. Similar is the position in respect of auctions conducted by the Department of Forests of Karnataka and Kerala. Annexures H, H1, J, J1 and J2 indicate the hardship the petitioner is put to. When the Forest officials of Kerala State did not permit the petitioner to take delivery of the stock of sandalwood on the ground that it has not paid sales tax towards the auctioned sandalwood, the petitioner invoked the jurisdiction of the High Court of Kerala by filing a petition in C. M. P. No. 2759/92 in O. P. No. / 1584/91-92L, wherein the said High Court ordered to deliver the stock purchased in auction on accepting the bank guarantee furnished by the petitioner towards the sales tax. Added to this, the petitioner is in possession of the sandalwood to the extent of 105 M. T. amounting to Rs. 1.6 crores, which it has not been able to export because of the imposition of ban under Annexure B. The petitioner has to take delivery of the sandalwood of 148.5 M. T. from the Forest Department of Tamilnadu amounting to Rs. 2.82 crores apart from the Forest Department of Karnataka State to an extent of 138 M. T. amounting to Rs. 2.8 crores. In case it has not taken delivery of this stock, it will be liable for all the losses as can be seen from Annexure K. The petitioner has borrowed huge amount of loans from the Nationalised Bank and others. It owes to State Bank of India alone to the tune of Rs. 3 crores towards `export packing credit", which it has borrowed only for carrying on export business in the sandalwood chips and powder. The extract

of the bank account in this regard is produced at Annexure K1. The petitioner is now paying a sum of Rs. 5 lakhs per month towards interest alone on the above said amount to the bank. Under the circumstances, the business of the petitioner is in jeopardy. As already stated, the petitioner has entered into contracts with many foreign buyers as evidenced by Annexures F to F-6. In case the petitioner does not discharge the obligation arising under the contract or fulfil the conditions it will be liable for breach of contract entered into with the foreign buyers.

The respondents are receiving a good amount of revenue in the form of foreign exchange by allowing the petitioner to export. Further, the State Governments also would be receiving good amount of revenue by sale of deal and fallen sandalwood, Because of the imposition the foreign exchange and the revenue. The States of Karnataka and Tamilnadu have opposed the imposition of ban on this trade and requested the Union Governments to relax the policy of export particularly for export of sandalwood. This statement of supported by Annexure L. Thus, because of several commitments made by the petitioner in view of the Policy-Annexure A, if it is not allowed to fulfil the contractual obligations, it will have to pay heavy damages besides loosing reputation in the International market.

In spite of the petitioner having brought to the notice of the respondents all the facts and the hardship suffered by it, the respondent No. 2 without application of mind and without considering the same issued the communication dated 12-8-1992 stating that the request made by the petitioner was not found possible to accede. The copy of the said communication is produced at Annexure N. The effects made by the petitioner with other authorities at the highest level in the Union of India were also in vain. Hence, this writ petition.

3. The statement of objections is filed on behalf of the respondents contending that the order dated 12-8-1992 - Annexure N cannot be quashed, as it does not suffer from any illegality or error apparent on the face of the records; the petitioner is not entitled to seek for relaxation of the ban on the export of sandalwood and its products as a matter of right and Chief Controller of Imports and Exports having regard to the facts and circumstances of the case has rejected the request for relaxing the ban and allowing them to export sandalwood products in the light of new policy.

It is stated that no person has an absolute right to seek for export or import licence. Grant of such licence is always regulated by the policy of the Government at the relevant point of point, even the licence or permission granted earlier may be annulled or rendered ineffective with a change of the policy and that there is no estoppel against the statute. In the instant case the petitioner is seeking licence in respect of the prohibited goods and as such the question of issuing direction to the authorities to grant licence does not arise at all. The prayer for mandamus is without any merits and is liable to be rejected.

The respondents further contend that even under the policy. - Annexure A for the period 1990-93 export of sandalwood was not allowed. However, sandalwood only in the form of dust, chips, flakes and powder was allowed to be exported under O. G. L. III subject to the condition that chips shall be rough, irregular in size and shape of different sizes with a weight not exceeding 50 grams each. Thereafter, a condition of certificate of origin was also imposed with effect from 4-6-1991 for export of sandalwood chips only. The respondents have not traversed the averments made in the writ petition in regard to the participation of the petitioner in auction to purchase the sandalwood from Forest Departments of different States and with regard to the loss that the petitioner would be put to. They have only stated that the petitioner may be put to strict proof of the same. It is sated that in writ appeal the interim order granted by the learned single Judge was vacated with a direction that the request of the learned single Judge was vacated with a direction that the request of the petitioner may be considered in the light of the provisions contained in Clause 21 of the new Export Policy - Annexure B. It is stated that since the petitioner did not fulfil the conditions of pre-ban commitment, its request for relaxation under Clause 21 of Annexure B was rejected. It is also stated that the petitioner could not produce the valid letter of credit in support of its claim, which is essential condition to honour the pre-ban commitment. Thus, the respondents prayed for the dismissal of the writ petition.

4. Smt. Nalani Chidambaram, learned Counsel for the petitioner urged that the impugned order - Annexure N dated 12-8-1992 is unsustainable on the face of it for more than one reason They are :

(1) In view of the judgment of the Division Bench of this Court passed on 14-7-1992 in W. A. No. 1349/92 the respondent No. 2 ought to have considered the request of the petitioner for relaxation of ban under Clause 21 of the new Policy - Annexure B.

(2) There is total non-application of mind in passing the impugned order - Annexure N besides it being arbitrary.

(3) Clause 21 of the new policy contained in Annexure B is plainly applicable to the facts of the case pleaded by the petitioner and relaxation ought to have been given to it. Failure to do so, has resulted in great injustice and hardship to the petitioner and loss of foreign exchange and revenue to the Union of India and State Governments.

The learned Counsel further contended that when respondents did not consider the repeated requests and representations of the petitioner seeking permission to export sandalwood chips/ products covered by contracts Annexure-F and F-1 to F-6 it has to file writ petition No. 16383/92 and interim order was passed in the said writ petition. Against that interim order the respondents filed W. A. No. 1349/92. From the judgment of this Court in the said writ appeal it is clear that respondents ought to have considered the request of the petitioner under

Clause-21 of Annexure-B, but in spite of the same the impugned order-Annexure-N is issued stating that the case is not covered under the norms of pre-ban commitment. This amounts to refusal to consider the case of the petitioner under Clause-21 of Annexure- B. Under the circumstances, when the petitioner has placed sufficient material in this writ petition to satisfy all the requirements so as to give relaxation under Clause-21 of Annexure-B, this Court looking to the documents on being satisfied as to be hardship to which the petitioner is put to and and that Clause-21 applies to the facts of this case may quash the impugned order-Annexure-N and issue a writ of mandamus to respondent No. 2 to issue necessary Permission / licence in favour of the petitioner to export the sandalwood chips and powder in order to fulfil the seven contracts as per Annexure-F and F-1 to F-6. Under the circumstances, there is no necessity to send the petitioner back again to respondent No. 2 for consideration of its case under Clause-21 of Annexure-B keeping in view the time factor, the loss and hardship to which the petitioner has already been put to and the fact that respondent No. 2 in effect has refused or avoided to consider the case of the petitioner under clause-21 of the Policy-Annexure-B. In support of these submissions the learned Counsel placed reliance on the following decisions :

(1) Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another,

(2) The order dated 19-4-1989 passed by this Court in W. P. No. 12202 of 1986.

5. Sri Shylendra Kumar, learned Senior Central Government Standing Counsel for the respondents, argued in support and justification of the impugned order-Annexure-N. According to the learned Counsel the impugned order-Annexure-N passed by respondent No. 2 is perfectly legal and valid; having considered all aspects the said order is passed and the petitioner cannot claim a writ of mandamus as sought for in this writ petition. In regard to issue of a licence/ permission for export the petitioner has neither any such right nor he can claim it as matter of right. He found it difficult to support the impugned order- Annexure-N, as it does not show consideration or application of mind of respondent No. 2 to the facts of the case, in that view he submitted that at best, respondent No. 2 may be directed again to consider the case/representation of the petitioner and pass appropriate orders on merits.

6. I have considered the submissions made by the learned Counsel for the parties.

7. I do not find any serious dispute on the facts of this case.

8. The question centres round is :

Whether the petitioner has made out a case for relaxation under Clause-21 of the Policy-Annexure-B and if so whether its case should be considered and appropriate orders be passed by this Court itself or respondent No. 2 be directed again to consider its case when the impugned order-Annexure-N does not show

the consideration of the case of the petitioner or application of mind of respondent No. 2 in passing the said order-Annexure-N ?

9. I think it is appropriate to extract the relevant portions from the judgment of the Division Bench of this Court dated 14-7- 1992, passed in W. A. No. 1349/92 in order to appreciate the rival contentions.

Paras 8 and 10 of the said judgments read thus :

" On hearing both sides, it appears, to us that it is not a case which neither the interim order of the type granted on 28-5-1992 could have been granted nor a clarification of the nature made on 10th July, 1992 could have been issued when new Import and Export Policy is promulgated with effect from 1-4-1992 for the period from 1-4-1992 till 31st March, 1997, the old policy which was in existence comes to an end. Whatever the provision is made under the new Policy in respect of the commitments made by the export and import traders prior to coming into force of the new policy will govern such commitments and the same shall have to be carried on in the manner provided in the new policy. The new policy does not take into account the commitments made prior to the coming into force of the policy and also the hardship, if any caused to the import and exports traders and provides the mode and manner in which such a problem should be solved.

In fact the Export and Import Policy for the year 1st April, 1992 to 31st March, 1977 makes a provisions in terms of the aforesaid decision.

In Chapter I, the Policy specifically provides thus :

5. Exports and Imports which were on Open General Licence (OGL) or where no licences / permits were required under the previous policies, but are subject to regulation or licence under this Policy, will also be permitted, provided they are supported by letters of credit established on or before the 1st March, 1992.

In addition to this, in respect of other cases which do not fall under para 5 of Chapter I para 21 of Chapter IV the new policy further provides thus :

21. Any request for relaxation of the provisions of this Policy or of any procedure, on the ground that there is genuine hardship to the applicant or that a strict application of the Policy or the procedure is likely to affect trade adversely, may be made to the Chief Controller of Imports and Exports for such relief as may be necessary. The Chief Controller of Imports and Exports for such relief as may be pass such or grant such relaxation or relief as he may deem fit.

Thus it is clear that the new policy contains the provisions to meet the contingencies that would arise as a result of coming into force of the New Policy and also to relieve the Import and Export traders from the hardship that would be caused to them by enforcing the new policy.

Sri Shylendra Kumar, learned Central Government Standing Counsel for the appellants also placed reliance on a decision of the Supreme Court in Collector of Customs, Kolkata Vs. M/s. M. Shashikant and Co., . That decision relates to the

Import Policy of 1978- 79 and 1985-88. The decision has been correctly summed up in the Head Note thus :

"Where the earlier Supreme Court order made it clear that additional licence holders under Export House, would be entitled to import items which were only permitted under Import Policy of 1978-79 and also policy at time of import i.e. Import Policy of 1985-88, such import would be unauthorised and order of confiscation of such goods would be justified. In such a case, the licence holder would not also be entitled to advantage of subsequent Supreme Court order which provided that exporters who pursuant to issue of Additional Licences under Import Policy of 1978-79 have opened and established irrevocable Letters of Credit before Oct., 18, 1985 would be permitted to clear goods to be imported, when in the instant case, the licence holders entered into contract with Foreign Exporter on May 5, 1986 much after Oct. 18, 1985 as provided by Supreme Court as said above. In such a case, the opinions expressed by the officers in inter- departmental communications would also be of no consequence. In the face of clear and unambiguous judgments of Supreme Court it was not open for the departmental authorities to entertain a contrary opinion."

Therefore, we are of the view that on the coming into force of the new policy, the export trade cannot be allowed to be carried on under the old policy except to the extent it is permissible under the new policy. Hence, we are of the view that the interim order passed on 28- 5-1992 and the subsequent clarification of the said order made on 10- 7-1992 are liable to be set aside.

For the reasons stated above, the appeal is allowed. The interim order dated 28-5-1992 and the subsequent clarification made to it by the order passed on 10-7-1992 in W. P. 16383 of 1992 are set aside.

It is submitted by Sri S. Vijayshankar, learned Senior Counsel appearing for the respondent, that there is already an application dated 21-5-1992 filed by the respondent (writ petitioner) before the Chief Controller of Imports and Exports, New Delhi, seeking relief from him under Clause 21 of Chapter IV of the Export and Import Policy for the year 1st April, 1992 to 31st March, 1977.

Of course, in para 5 of the statement of objections the respondents who are appellants in this appeal have also referred to an application made by the petitioner seeking relief regarding export under the new policy. Therefore, there is no dispute that an application is filed by the respondent (writ petitioner) seeking relief under new Policy. If that be so, we are of the view that the same has to be considered expeditiously, as otherwise, it is likely to cause irreparable loss and injury to the respondent/petitioner. Learned Senior Standing Counsel for the Central Government also submits that the application will be consider and decided within 4 weeks from today on the basis of the records or documents that may be produced by the respondent/petitioner.

We accordingly direct the appellants to consider and decide that application on or before 20th of August 1992. It is open to the petitioner to produce such of the

records which are necessary for disposal of that application within two weeks from today. "

10. It is clear from what is extracted above that respondents 1 to 4 herein who were the appellants in the said writ appeal were directed to consider and decide the application filed by the petitioner on 21- 5-1992 seeking relief under Clause 21 of Chapter IV of the Export and Import Policy for the year 1st April, 1992 to 31st March, 1997 on or before 20th of August, 1992. Further, it is to be noticed that the learned Senior Standing Counsel for the Central Government for the respondents herein submitted that the said application dated 21-5- 1992. will be considered and decided within four weeks on the basis of the records or documents that may be produced by the petitioner. In view of the aforesaid specific direction and the submission of the learned Senior Central Government Standing Counsel made in the writ appeal I do not think there was any scope or choice to respondent No. 2 in not considering the application of the petitioner dated 21-5-1992 under the said Clause 21 of the new Policy-Annexure B when in the writ appeal it was not the case of the respondents that Clause 21 of Annexure B did not apply to the case of the petitioner.

11. The impugned order Annexure N reads thus :

"Subject; Export of 644 M. T. of Sandalwood Chips/Flakes/posf. or a value of Us under pre-ban commitments.

Gentlemen,

Please refer to your letter dated 20/27-7-1992 on the above mentioned subject.

Your above request has been considered carefully but it is regretted that it has not been found possible to accede to the same as your request is not covered under the norms of pre-ban commitment".

12. Strangely, the respondent No. 2 has stated in the impugned order that the request of the petitioner is not covered under the norms of pre-ban commitment that too without considering the material placed on record. As rightly contended by the learned Counsel for the petitioner the impugned order Annexure N is unsustainable on the force of it. When the Division Bench of this Court as aforesaid specifically directed to consider the request of the petitioner under Clause 21 and the learned Senior Standing Counsel for the Central Government did state that such request would be considered, I fail to understand how respondent No. 2 could pass the impugned order Annexure N stating that the case of the petitioner is not covered under the norms of pre-ban commitment. At any rate, the impugned order does not show any application of mind. It also does not indicate the there has been consideration of the material placed before him. Under the circumstances, I am of the considered opinion that the impugned order Annexure N cannot be allowed to stand.

13. What remains to be considered is :

Whether respondent No. 2 be again directed to consider the case of the petitioner for relief Clauses 2 of Annexure B ?

14. From the aforementioned Division Bench judgment it is clear that respondent No. 2 was directed to consider the case of the petitioner under Clause 21 of the Policy - Annexure B, which respondent No. 2 in effect has refused to do under Annexure N. The material placed on record clearly establishes pre-existing contracts and the hardship to which the petitioner will be put to in case relief is not given to it under Clause 21 of the new Policy. Annexure F and Annexures F2 to F6 are the purchase orders of November, 1991 placed by the agencies of the Foreign Countries with the petitioner and Annexure F1 is again one such purchase order of July, 1991 in regard to the purchases of sandalwood chips. These are the orders secured when the old Policy - Annexure A was in force, Thus, it is clear that they were the orders received by the petitioner prior to 1-4-1992 from which date the new Policy Annexure B was made effective.

15. Annexure G1 is the letter dated 6-4-1992 of the District Forest Officer addressed to the petitioner to take delivery of the sandalwood within 15 days, failing which action would be taken. It is stated that since the balance of the sale amount is not paid on the due dates, earnest money deposit paid by the petitioner was liable to be forfeited to the Government and that the sandalwood would be sold in auction at the risk of the petitioner. Annexure G2 is another letter of District Forest Officer, Tirupattur Division, demanding sales tax from the petitioner for having not produced the records to export the sandalwood purchased with a view to export. Annexure H is the letter dated 1-4-1992 addressed by the petitioner to the Principal Chief Conservator of Forests II, Government of Karnataka, Bangalore, seeking refund of the earnest money deposit and to withdraw the offers in view of the new Government Policy. Annexure H1 is the reply to the said letter stating that sale has already been confirmed, as such the petitioner was directed to arrange for payment and take delivery of the material, failing which penal clauses of the sale notification would be enforced. This was in respect of purchase of the material by the petitioner in the action held in February, 1992. Annexure J is the letter dated 21-12-1991 of the Forest Range Officer, Marayoor, addressed to the petitioner showing the confirmation of sale of the sandalwood. Annexure J1 is the copy of the order of High Court of Kerala passed on 6-2-1992 in favour of the petitioner directing the authorities to deliver the stock purchased in auction on certain conditions. Annexure K1 is the letter dated 26-11-1992 of the State Bank of India addressed to the petitioner informing that the outstanding debit balance in the 'Export Packing Credit A/c No. 5' as on 31-3-1992 was Rs. 2,31,55,520.60/- There is yet another letter of a State Bank of India dated 10-2-1992 asking the petitioner to clear the outstandings. At the time of hearing, the learned Counsel for the petitioner placed before me the letter dated 9-6-1993 of the State Bank of India to show the liability of the petitioner as on 1-4-1992. The said letter also indicates that the petitioner has to pay a sum of Rs. 5,40,000/- per month towards interest.

16. Having regard to the above documents I am satisfied that the contracts - Annexures F and F-1 to F-6 pertain to the period prior to 1-4-1992 and the commitments of the petitioner in regard to the purchase of sandalwood in auction from various Forest Departments of different States relate to the period prior to 1- 4-1992. The commitments made by the petitioner prior to 1-4-1992 in view of the old Policy - Annexure A has put him to great hardship. Under the circumstances, when the petitioner is put to genuine hardship it is entitled for relaxation under Clause 21 of Annexure B. As such, respondent No. 2 should grant relaxation and permit the petitioner to export the material so as to fulfil the purchase orders under Annexures F and F-1 to F-6 subject to satisfying all the conditions under Policy - Annexure A. In view of what is stated above, it is unnecessary to direct respondent No. 2 to again consider the case of the petitioner looking to the time factor and facts and circumstances of this case. Further delay would add to the hardship of the petitioner and may defeat the very purpose of Clause 21 of Annexure B for which it is made.

17. The Supreme Court in Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, having discussed in paras 18 and 19 of the said judgment in regard to the power of High Court to issue writ to mandamus, in para 20 has stated thus :

"There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy from implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

18. This Court in W. P. No. 12202 of 1986, disposed of on 19th April, 1989 in some what similar circumstances issued writ of mandamus stating that :

"Normally, this Court would have remitted the matter for fresh consideration after quashing the impugned order In the instant case, as already noticed, the petitioner is approaching this Court for the second time for the same relief and repeated remittent for fresh consideration serves no purpose.

For the reasons stated above, this writ petition is allowed. Impugned orders marked as Annexure A dated 20 the February, 1986 and Annexure F dated 16th August, 1985 are hereby quashed. A writ in the nature of mandamus shall be issued directing respondent to issue export permit as prayed for within six weeks from the date of receipt of this order. To pay costs of petitioner fixed at Rs. 500/- Rule made absolute."

19. In this view of the matter when respondent No. 2 a public authority has failed to exercise discretion conferred on him by ignoring relevant considerations and materials in such a manner as to frustrate or defeat the very object of implementing the policy, statute or rule, for which purpose discretion has been conferred and that too in spite of the direction give by this Court in the aforementioned judgment in W. A. No. 134/92 and the statement made on behalf of the learned Senior Central Government Standing Counsel for the respondents that the case of the petitioner would be considered under Clause 21 of the new Policy, this Court exercising jurisdiction under Article 226 has the power to issue a writ of mandamus as sought for by the petitioner in this case.

20. The following decisions were cited by the learned Senior Central Government Standing Counsel for the respondents :

(1) AIR 1967 S. C. 993 (K. V. Rajalakshmiah Setty and Another v. State of Mysore and Another).

(2) Collector of Customs, Kolkata Vs. M/s. M. Shashikant and Co.,

The first of the decision states that concession cannot be claimed as a matter of right and a writ of mandamus cannot be issued in such a case. The facts of the said case are entirely different. In the case on hand the petitioner was entitled for consideration of his case for relief under Clause 21 of the new Policy - Annexure B and respondent No. 2 failed to exercise discretion conferred on him in spite of the direction.

The second case deals with the unauthorised import of goods and confiscation of such goods.

The above said decisions do not help the case of the respondents.

21. Thus, in the result, for the reasons stated above, I pass the following order :

(1) Thus, in the result, for the reasons stated above, I pass the following order :

(1) The Writ Petitioner is allowed.

(2) The impugned order Annexure N dated 12-8-1992, passed by respondent No., 2 is quashed.

(3) Issue a writ in the nature of mandamus directing respondent No. 2 to issue necessary permission/ licence in favour of the petitioner to export sandalwood chips and powder in order to fulfil the seven contracts as per Annexures F and F-1 to F-6 giving relaxation under Clause 21 of new Policy Annexure B confining

it to the extent of material purchased from the Forest Departments of various States prior to 1-4-1992 and subject to satisfying all other conditions and requirements under the old Policy Annexure A.

(4) No Costs.