

(1987) 11 BOM CK 0025

In the Bombay High Court

Case No : Writ Petition No. 3411 of 1986

Maharashtra Small Scale Electrical Manufacturers Association
and Another

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 19-11-1987

Acts Referred:

Constitution of India, 1950 — Article 14
General Clauses Act, 1897 — Section 21
Industries (Development and Regulation) Act, 1951 — Section 29B

Citation : (1988) 1 BomCR 458

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Advocate : M.R. Sathe and R.A. Dada, instructed by K.R. Dhanuka, for the Appellant; R.L. Dalal and M.N. Morje, instructed by S. Sankaramkrishnan, for the Respondent

Judgement

S.M. Daud, J.—This petition under Article 226 of the Constitution takes exception to a notification dated May 30, 1986 bearing S.O. No. 309(E) purporting to have been issued u/s 29(B) of the industries (Development and Regulation) Act, 1951 (I.D.R. Act/or the Act).

2. Petitioners are an Associations registered under the Societies Registration Act, purporting to represent the Small Scale Electrical Manufacturers of this State. The I.D.R. Act has been enacted to provide for the development and regulations of certain industries as proclaimed by the Central Government in their policy Resolution, of 1948 as amended from time to time. Section 29-B of the Act which figures in this case, empowers the Central Government to exempt certain undertakings from the rigour of the Act. Sub-section (2-A) thereof permits the Central Government to reserve for exclusive production by the small units any article or class of articles specified in the I Schedule upon its satisfaction to be reached after considering the recommendations of the Advisory Committee constituted under sub-section (2-B). Sub-section (2-B) requires the Central

Government to constitute an Advisory Committee consisting of such person as in its opinion have the necessary expertise to give advise on matters such as desirability or otherwise of reserving any article or class of articles for production by the small scale units. Sub-section (2-C) enumerates the matters to be taken into consideration by advisory committee for formulating the recommendation which it has to communicate to the central government. Purporting to act u/s 29-b(2-A) the Central Government on 16 February, 1973 issued a notification reserving for production by the small sector an item described thus :

"Electrical wiring accessories."

By virtue of power flowing from the Essential Commodities Act, 1955, the central Government promulgated Statutory Order No. 797(E) dated 12 November, 1981 titled as "Household electrical appliances (Quality Control) Order of 1981". Under this order, various specifications were laid down to ensure quality control for household electrical appliances. Item No. 3 of the Schedule forming part of the order specified switches for domestic and similar purposes as being required to comply with standard laid down in IS 3854-1966. This was a reference to the required standard specified in the standards published by the Indian standard Institute. The Adversary Committee u/s 29-B in its meeting held on 12 June, 1985 pondered over the subject of continued reservation for electrical wiring accessories. Its decision was formulated thus :

"Switches, plugs and sockets manufactured indigenously are of inferior quality and also they are not of standard sizes. This can cause damage to the human life. In the advanced countries many new designs of switches plug and sockets have been introduced which has not only longer life but have better safety, Investment in plant and machinery is about Rs. 100 lakhs."

In the initial stage when the small scale sector was conferred protection, the upper limit to investment was Rs. 20 lakhs. Later it was enhanced to Rs. 35 lakhs. The Government accepted the view of the Adversary committee and issued the impugned notification on May 30, 1986. As a result of the said notification switches, plugs and sockets became excluded from the reservations given to electrical wiring accessories.

3. Petitioners contends that the decision to de-reserve plugs switches and sockets is vitiated by bad faith, arbitrariness and violation of the statutory requirements. No reasons were made known for depriving a deserving section of the protection conferred upon it which it had done everything to preserve. If there was any deterioration in the quality of goods manufactured by some units amongst small scale sector, Government had ample powers under the 1981. Order to take remedial and punitive measures. For the short comings of a few, the majority of the producers in the small scale sector, who had been endeavouring to maintain the required standard should not be penalised. Another quality Control Order had been passed in 1987 bearing G.S.R. No. 375(E) dated 8 April, 1987. This order prohibited the manufacture storage for sale, or

distribution of any electrical appliances which did not confirm to the specified standard as set out in the Schedule. The Schedule included switches, as also pin plugs and sockets. Armed with this statutory power, the Government instead of taking measures against errant producers had de-reserved the goods which constituted an overwhelming percentage of the originally reserved item meant for the exclusive exploitation of the small scale sector units. This was done for no purpose sanctioned by the statute. On the Contrary it would not carry out the statutory purposes and the de-reservations was to favour the larger industrial houses. The 2nd respondent under whose signature the impugned notifications had been issued, had not acted in the name and on behalf of the President of India. He had no power to act on behalf of Central Government. For all these reasons, the notifications was bad in law and deserved to be quashed.

4. The respondents return dated 6 February, 1987 refutes the averments summarised above. It is contended that the de-reservation was based upon the advice tendered by the Advisory Committee. This advise was based upon the material collected, collated and analysed in depth by the said Committee. The issue raised by the petitioners was not justifiable. It cannot be said that the notification was vitiated by bad faith or that it suffered from arbitrariness.

5. The challenge taken to the competence of respondent 2 to act for and on behalf of the Central Government is devoid of any merit. The fact that the notification is not expressed to be in the name and on behalf of the President of India, does not mean that it is unauthorised or incompetent in the eyes of the law. The best proof of the notification having the sanction of the law is its acceptance and espousal by the Union of India. It is not a requirement of the Constitution that the powers exercised under the subordinate or delegated legislation should be exercised in any particular form or clothed in any particular language. Therefore, seeing no reason to hold that the notification does not reflect the mind of the Government vis-a-vis the power conferred on it u/s 29-B, I negative the challenge to the competence of respondent 2.

6. The next submission of the petitioners which has to be negated, is the absence of a power of de-reservation. Here, the petition itself concedes that though this power is not specifically set out in the Act, its existence can be inferred by recourse to section 21 of the General Clauses Act. More need not be said on the subject, for what the petitioners believe to be implied is obviously correct.

7. The third challenge is that the de-reservation is for the benefit of larger business houses and that this is in conflict with the proclaimed purposes of the statute. One of the factors which is to be taken into consideration by the Advisory Committee before it makes a recommendation u/s 29-B, is the prevention of concentration of economic power to the common detriment. But this is not the only factor to be taken into consideration. Monopolisation and cartelisation bad as they are, cannot be the only factor which the Advisory Committee has to take into consideration. When the said Committee has before

it problem of recommending a reservation or de-reservation there are a variety of factors which go into the reckoning. These include in specific terms---

- "(a) the nature of any article or class of articles,
- (b) level of employment likely to be generated by the production of such article or class of articles by the ancillary or small scale unit,
- (c) possibility of encouraging and diffusing entrepreneurship in the industry,
- (d)
- (e) such other matters as the Advisory Committee may think fit".

Now in the instant case, and this can be deduced from the report of the Advisory Committee-the said Committee had to consider whether small scale units engaged in production of switches, plugs and sockets deserve a continuation of protection against competition from the larger units. The Advisory Committee felt that indigenously manufactured material was of inferior quality and not of standard sizes. This endangered human life, and, in any case the improvements that had been brought about in the recent years and which contributed to human safety and larger life of the material, required investment in plan and machinery far beyond the outer limit for the small scale sector. For these reasons, the recommendation was that switches, plugs and sockets be de-reserved. Mr. Sathe argues that his clients themselves had been complaining of lapses on the part of few blacklisted units amongst the small scale lists. They had offered all co-operation. As late as 1981 the Government had armed itself with statutory powers to control the quality of household electrical appliances. Instead of enforcing those powers, the Government de-reserved what constituted 90% of the product encompassed by the expression "electrical wiring accessories". Now the fact that the Government armed itself with statutory powers in 1981 supplemented as it was by the 1987 orders, does not mean that the Government had held out any promise of continued protection to the manufacturers of the items in the small scale sector. A fair inference to draw from the sequence of events, would be that despite the enlarging statutory powers it had not been possible to control shoddy production by the small scale units and that drastic situations called for drastic remedies. A different solution could have been found and a person placed in the position of the Government could have taken a different view of the situation. But the choice had to be made by the Government and as long as the said choice can be said to be a possible choice made on the data available, the Government's choice cannot be said to be suffered from vice of arbitrariness or violative of the equality clause. In fact all possible contentions on this aspect of the case have been negated by me in Writ Petition No. 1987 of 1986 decided today which was a petition instituted by the petitioners counterparts in the zip fastener's industry. For the reasons given therein no facer of Article 14 of the Constitution can said to be violated by the notification impugned in this petition.

8. It is contended that the Advisory Committee's decision is a mere ipse dixit unsupported by any data. As against that the petitioners flourish many testimonials received by them or their members for the high quality of the goods produced. However, a few shining examples amongst the many incompetent once could not justify the continuance of what after all was a concession. The basic idea behind the I.D.R. Act is not only the protection of the domestic producers, the interests of the consumers have also to be looked at. They should be protected against the shoddy quality of goods, high prices and a continued monopolisation of the market by inefficient producers. The Advisory Committee which there is no reason to believe lack the necessary expertise to render advice in the matter, found the small scale unit to be deficient in practically in all important ways. The switches, plugs and sockets manufactured by them were inferior in quality and did not conform to the standard sizes. This endangered human life. The electrical and electronic industries in advanced countries had made great strides. New designs of products had come up and these ensured greater safety and were of greater durability. The investment required to go ahead for this advanced designs was in the vicinity of Rs.100 lakhs. It is not possible to say that these reasons are outside the factors to be taken into consideration by the Advisory Committee vis-a-vis section 29-B(2-C) of the I.D.R. Act. Thereunder, the petition fails. Hence the order :

Rule discharged with parties being left to bear their own costs.