

(1995) 04 DEL CK 0012

In the Delhi High Court

Case No : C.W.P. No. 2093 of 1992

M/s. Nath Bros. Exim International Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 05-04-1995

Acts Referred:

Citation : AIR 1995 Delhi 280

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : Mr. S.K. Kaul and Miss Moushimi Chopra, for the Appellant; Mr. V.K. Shali and Mr. Ajay K. Datta, for the Respondent

Judgement

1. The present writ petition has been filed for issuance of appropriate writ, order or direction to the respondents to issue Export House Certificate (for short EHC) valid till March 31, 1993 and for quashing the orders of respondent No. 2, dated April 14, 1992 rejecting the appeal of the petitioner against the order dated June 15, 1991 of the Controller acting on behalf of Chief Controller of Imports and Exports, respondent No. 3 herein.

2. The petitioner is a Small Scale Industry (SSI) registered Exporter and had held Export House Certificate dated April 15, 1987, which was valid till March 31, 1990, under the Long Term Import-Export Policy 1985-88. On the expiry of the said EHC, the petitioner was entitled to have the said certificate renewed in accordance with the eligibility for issuance of such a certificate, as laid down in the Long Term Policy for 1988-91, Volume I, Para 217. The petitioner applied to respondent No. 3 on April 11, 1990 and on April 16, 1990 for renewal of the said certificate till March 31, 1993, as laid down in the policy. Para 217 which is relevant in this regard reads as follows:

"217. Export/Trading House Certificates issued prior to 1-4-1988 would continue to be valid till the date of their expiry but it will be open to the concerned Export House/Trading House to apply for fresh certificate, if they fulfil the eligibility

conditions laid down in this policy. However, requests for further recognition may still be considered in cases where these certificates are expiring on 31st March, 1988, and the applicants do not fulfill the eligibility conditions for recognition laid down in this policy, provided they fulfilled the conditions for renewal of these certificates, as laid down in the Import Policy, 1985-86; but in such cases, recognition will be granted for a period of one year only. Requests for further recognition would be considered only if the applicants fulfilled the conditions laid down in this policy."

3. There was subsequent change in the Policy as would be indicated from the Performance Budget of the Ministry of Commerce for 1992-93, as presented to Parliament in April, 1992, which states as follows:

"The Import and Export Policy announced on 30-3-1988 was valid till 31-3-1991. However, in January, 1990, Government of India decided to terminate the Import Policy for the period April 1988--March 1991 on the 31st March, 1990 and a new Import and Export Policy, effective from 1st April, 1990, was announced on 30th March, 1990."

Therefore, another new Long Term Import and Export Policy for the years 1990-93 was put into effect which also contained a provision for enhancement during previous three years of annual average of Net Foreign Exchange to Rs. 2.5 crores for SSI units, such as, that of the petitioner. This amount was later on brought down to Rs. 2 crores by an amendment of the Policy issued in the Official Gazette dated May 25, 1990 for Export House Certificate (EHC) to be issued for three years i.e. till March 31, 1993. It was further provided that the eligibility criteria of Rs. 1 crore for grant of Certificate for 1990-91 will apply to SSI units like the petitioner, and in case, the Net Foreign Exchange was achieved at Rs. 2 crores in that year, i.e. 1990-91, the Export House Certificate would be renewed for 1991-92 and similarly for 1992-93. Respondent No. 3 applying the said Policy, renewed the EHC of the petitioner for 1990-91 vide their letter dated June 15, 1990, which is filed as Annexure-A to this writ petition. The said Communication reads as follows:

"To

M/s. Nath Bros. Exim International
Limited, 50/2-3, Hanuman Road,
New Delhi-110001

Subject: Grant of Export House Certificate

Gentlemen,

With reference to your letter/application dated 11-4-90 on the above subject, I am hereby forwarding Export House Certificate No. 1526 dated 13-6-90 valid for a period of one year from 1-4-90 to 31-3-1991 as SSI unit.

2. The Export House Certificate shall be subject to the conditions as contained in the Import Policy for registered Exporters for the period 1990-93 and subject to such changes as may be made from time to time.

3. Further renewal of your Export House Certificate will be made, after your achieving minimum prescribed Net Foreign Exchange during 1990-91 as per criteria laid down in para 221(A)(i)(ii) Import Policy for the period 1990-93 incorporated vide Public Notice No. 15/90-93, dt. 21-5-1990.

4. The concerned department/authorities are being informed separately.

Yours faithfully,

Sd/-

(C.V.L.N. Prasad)

, Controller of Imports and Exports for Chief Controller of Imports and Exports"

4. The petitioner has impugned this Communication to the extent that it only extended the Certificate on the basis of the revised Import and Export Policy for a period of one year instead of three years w.e.f. April 1, 1990 as it is contended that on the basis of the earlier policy for 1988-91, the petitioner was entitled to the issuance of EHC for a period of three years. The action, accordingly, has been challenged as illegal and invalid as the respondents could not change the policy in the midstream and to make it operative retrospectively. The respondents are estopped from denying the Certificate to the petitioner for a further period of three years as acting on the assurance of the respondents for the continuance of this Policy, the petitioner had changed its position in respect of quality, manufacturing activity, better FOB value/profits. The counsel for the petitioner has further contended that in the Preface dated May 15, 1989, to the revised edition of 1988-91 Policy, it was stated by respondent No. 3 that the Long Term Policy was announced with a view to provide stability and continuity to the import regime. The stress was laid down further on Long Term stability in the Economic Survey for 1988-89 presented by the Government to the Parliament with regard to the suitable Import-Export Policy framework for the period April 1988 to March 1991. The petitioner has then reiterated in paragraph 20 of his petition that on the basis of the promise held out by the respondents, the petitioner altered its position and, towards these objects, entered into transactions and carried out its activities, R and D work, both in respect of quality of goods and manufacturing activities with the object of achieving better FOB prices and to increase the quantum and directions of export sales etc.

5. The petitioner felt aggrieved by non-issue of the certificate for a full period of three years and filed an appeal which was disposed of by order dated April 4, 1992 (Annexure-B) wherein the plea was also taken that the Government was estopped from backing out of its promise under the principles of Promissory Estoppel. The operative part of the Order reads as follows:

"The Committee carefully considered the arguments at (i) and (ii) above. It noted that the principles of Promissory Estoppel, as per decisions in some Court cases, is subject to certain conditions. The Supreme Court in *D. Navinchandra and Co. and Others Vs. Union of India (UOI) and Others*, and in the *Delhi Cloth and General Mills Ltd. Vs. Union of India (UOI)*, has held that no estoppel arises in favor of the appellant against the Government on the facts of the cases. In the Committee's view the Courts have also generally upheld the power of the Government to formulate policies of imports or exports depending on the economic policy and general public interest (see *Daruka and Co. Vs. The Union of India (UOI) and Others*, and to change, rescind or alter at anytime, such policies on consideration of various factors including industrial development, import requirements, foreign exchange--(see observations of the Supreme Court in *The Deputy Assistant Iron and Steel Controller and Another Vs. L. Manickchand, Proprietor, Katrella Metal Corporation, Madras*, ; followed in *Andhra Industrial Works Vs. Chief Controller of Imports and Others*, ; and *Bansal Export (P) Ltd. and another Vs. Union of India and others*, . It was clear to the Committee that the Central Government has the power to change the Import-Export Policy from time to time. The Import-Export Policy for 1990- 93 made by the Central Government with the approval of the Commerce Minister after relevant detailed Inter-Ministerial consultations was in the interest of promotion of exports and general public interest, taking into account the needs of industrial development, import requirement, foreign exchange management, and was made in exercise of the Central Government's power to formulate policies for the purpose, in public interest. Accordingly, the Committee held that the facts of the case under consideration, examined in the light of the Supreme Court's view mentioned above, do not attract the principles of Promissory Estoppel.

The Committee also noted that para 1(2) of the Import and Export Policy for 1988-91 states:

"This Import and Export Policy will remain in force for period of three years from the 1st April, 1988 till 31st March, 1991. The introduction of three year policy has brought in stability and continuity to the trade regime and export promotion measures and, Therefore, it has been considered appropriate to continue the same pattern in this policy. However, the Government reserves the right to make amendments/changes in this policy which may become necessary in public interest from time to time during the above period. Amendments, etc., if any will be notified, as usual, by means of public notice/amendment orders etc., issued by the Chief Controller of Imports and Exports from time to time. The provisions of this policy book are subject to such amendments or changes as and when notified."

The contention of the appellant that the Government of India had made a clear and unequivocal promise is not borne out by the clear provisions mentioned in the above para 1(2) of the policy for 1988-91 that amendments/changes in that policy would be made by the Central Government as may become necessary in

public interest during this period. This fact of the case also makes it clear that the principle of promissory estoppel will not apply in favor of the appellant against the Government.

The Committee, Therefore, held that the arguments of the appellant relating to the Principles of Promissory Estoppel had no merit."

6. The main argument of learned Counsel for the petitioner is that the Export House Certificate issued to the petitioner on April 15, 1987 was valid up to March 31, 1990 in terms of Long Term Policy laid down for 1988-91. The petitioner was entitled to the renewal of the said certificate for 3 years. However, the policy was changed in midstream on March 30, 1990. The petitioner became entitled to the renewal under the Policy 1988-91 as the certificate in respect of the petitioner expired on March 31, 1990 and the new policy came into effect only on April 1, 1990. Therefore, the petitioner was entitled to renewal for a period of three years up to March 31, 1993. The respondents failed to honour their admissions and commitments and the Doctrine of Promissory Estoppel is, accordingly, attracted in the present case. The respondents further failed to appreciate that the principles of introduction of Long Term Import and Export Policy for the year 1988-91 was to provide stability and continuity in the Import and Export Field and changing the same in midstream is against the very principles for which the Policy was framed. The respondents are, accordingly, estopped from backing out of the policy in the facts and circumstances of the present case.

7. The only plea taken by the Appellate Authority for rejecting the claim of the petitioner is that the Government reserved the right to make amendments/changes in the Policy which may become necessary in public interest from time to time during the above period of 1988-91.

8. The learned Counsel for the petitioner has invoked the rule of Promissory Estoppel as well as relied upon the rule of legitimate expectation which the petitioner entertained in view of the Policy for 1988-91 on the basis of which the petitioner was entitled to Export House Certificate valid till March 31, 1993.

9. The learned Counsel for the respondents, on the other hand, has argued that during the subsistence of a particular policy, the Government has a right to modify/alter/ rescind the Policy and in case the Policy is changed the Doctrine of Promissory Estoppel is not applicable. The petitioner in the present case has notice of change. The representations made by the Government must be clear, unambiguous and not tentative or uncertain and, Therefore, the Doctrine of Promissory Estoppel will not apply if no such representation was made by the Government. He has placed reliance on the judgment of this Court as reported in Bansal Export (P) Ltd. and another Vs. Union of India and others, and the judgments of the Supreme Court as reported in D. Navinchandra and Co. and Others Vs. Union of India (UOI) and Others, and Delhi Cloth and General Mills Ltd. Vs. Union of India (UOI), .

10. The judgment of the Supreme Court in the Union of India (UOI) and Others

Vs. Indo-Afghan Agencies Ltd., , may be noticed. This judgment is one of the first important cases to reiterate and uphold the Doctrine of Promissory Estoppel. The facts briefly stated are that the Export Promotion Scheme was published by the Textile Commissioner on October 10, 1962, providing incentives to exporters of woollen goods. By the scheme, as extended to exports to Afghanistan the exporters were invited to get themselves registered with the Textile Commissioner for exporting woollen goods, and it was represented that the exporters will be entitled to import raw materials of the total amount equal to 100 per cent, of the F.O.B. value of the exports. Under Clause 10 of the Scheme the Textile Commissioner had authority, if it was found that a fraudulent attempt was made to secure an import certificate in excess of the true value of the goods exported to reduce the import certificate. The respondents exported goods of certain value and the Textile Commissioner did not grant the Export Certificate for the full amount of the goods exported. It was held that the scheme provided for grant of import entitlement of the value and the Textile Commissioner in the ordinary course was required to grant Import Certificate for the full value of the goods exported and he could only reduce that amount after enquiry as contemplated. The Court went on to hold that it is open to a party who has acted on a representation made by the Government to claim that the Government shall be bound to carry out the promise made by it, even though the promise is not recorded in the form of a formal contract as required by the Constitution. The Doctrine has been further elaborated in the other judgment of the Supreme Court as reported in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, . The relevant passage which deals with the same on the basis of settled law in England is paragraph 33 of the judgment, which may be reproduced as follows:

"The State, however, contended that the doctrine of promissory estoppel had no application in the present case because the appellant did not suffer any detriment by acting on the representation made by the Government; the Vanaspati factory set up by the appellant was quite a profitable concern and there was no prejudice caused to the appellant. This contention of the State is clearly unsustainable and must be rejected. We do not think it is necessary, in order to attract the applicability of the doctrine of promissory estoppel, that the promisee, acting in reliance on the promise, should suffer any detriment. What is necessary is only that the promise should have altered his position in reliance on the promise. This position was impliedly accepted by Denning, J. in the High Trees Case when the learned Judge pointed out that the promise must be one

"which was intended to create, legal relations and which, to the knowledge of the person making the promise, was going to be acted on by the person to whom it was made and which was in fact acted on."

If a promise is "acted on", "such action, in law as in physics, must necessarily result in an alteration of position". This was again reiterated by Lord Denning in W.O. Alan & Co. Ltd. v. El Nasr Export and Import Co., (1972) 2 All ER 127 at p.

140, where the learned Law Lord made it clear that alteration of position

"only means that he (the promisee) must have been led to act differently from what he would otherwise have done. And, if you study the cases in which the doctrine has been applied, you will see that all that is required is that the one should have acted on the belief inducted by the other party."

Viscount Simonds also observed in *Tool Metal Mfg. Co. Limited v. Tungsten Electric Co. Ltd.* (1955) 2 All LR 657 that "..... the gist of the equity lies in the fact that one party has by his conduct led the other to alter his position". The judgment of Lord Tucker in the same case would be found to depend likewise on a fundamental finding of alteration of position, and the same may be said of that of Lord Cohen. Then again in *Ajayi v. Briscoe* (1964) 3 All ER 556 . Lord Hodson said: "This equity is, however, subject to the qualifications (a) that the other party has altered his position". The same requirement was also emphasised by Lord Diplock in *Kammin's Ballrooms Ltd. v. Zenith Investments (Torquay) Ltd.* (1970) 2 All ER 871. What is necessary, Therefore, is no more than that there should be alteration of position on the part of the promisee. The alteration of position need not involve any detriment to the promisee. If detriment were a necessary element, there would be no need for the doctrine of promissory estoppel because, in that event, in quite a few cases, "the detriment would form the consideration and the promise would be binding as a contract. There is in fact not a single case in England where detriment is insisted upon as a necessary ingredient of promissory estoppel. In fact, in *W.J. Alan & Co. Ltd. v. El Nasr Export and Import Co.* (1972) 2 All ER 127 , Lord Denning expressly rejected detriment as an essential ingredient of promissory estoppel, saying:

"A seller may accept a less sum for his goods than the contracted price, thus inducing (his buyer) to believe that he will not enforce payment of the balance : see *Central London Property Trust Ltd. v. High Trees House Ltd.* (1956) 1 All ER 256 and *D & C Builders Ltd. v. Rees* (1965) 3 All ER 837. In none of these cases does the party who acts on the belief suffer any detriment. It is not a detriment, but a benefit to him to have an extension of time or to pay less, or as the case may be. Nevertheless, he has conducted his affairs on the basis that he has had that benefit and it would not be equitable now to deprive him of it."

We do not think that in order to invoke the doctrine of promissory estoppel it is necessary for the promisee to show that he suffered detriment as a result of acting in reliance on the promise. But we may make it clear that if by detriment we mean injustice to the promisee which would result if the promisor were to recede from his promise, then detriment would certainly come in as a necessary ingredient. The detriment in such a case is not some prejudice suffered by the promisee by acting on the promise, but the prejudice which would be caused to the promisee, if the promisor were allowed to go back on the promise....."

11. The doctrine of Promissory Estoppel has come to stay and it is applicable against the Government in exercise of its Governmental, public or executive

functions and the doctrine of executive necessity or equipment or future executive action cannot be invoked to defeat the applicability of the doctrine of Promissory Estoppel. These observations were made by the Supreme Court in D. Navinchandra and Co. and Others Vs. Union of India (UOI) and Others, .

12. The Division Bench of this Court in Kaptan's Enterprises and Another Vs. Union of India, , has also clearly upheld the same. The facts as will be evident seem to have some semblance with the facts of the present case. It is highlighted that any change in Policy in public interest should have prospective effect and without effecting any previously acquired right. Paragraph 14 of this judgment may be reproduced as follows:

"14. The second question that arises is regarding the effect of the public notice dated 11-11-1983. On behalf of the petitioners, two points are made. One, relying on the decision " of the Supreme Court in East India Commercial Co. Ltd., Calcutta and Another Vs. The Collector of Customs, Calcutta, and of this Court in Bansal Export (P) Ltd. and another Vs. Union of India and others, , is that the public notice of 11-11-1983 being only an administrative circular or instruction has no statutory force (vide, paragraphs 31 to 33 of the above Supreme Court judgment) and cannot override or obliterate the right of import available to traders under OGL 1/83. The second is that, even if it has the same effect as a law or statutory notification it will be applicable only in respect of imports made into India after 11-11-1983 otherwise than in pursuance of a firm commitment or contract entered into by the importer before that date. It is urged that the announcement of the import policy coupled with OGL No. 1/1983 in respect of the financial year 1983-84 amounts to a promise or representation to the public in general that imports will be permitted subject only to the terms, restrictions and conditions thus announced; and, though these terms, restrictions and conditions could be changed by the Government, that could be done only with prospective effect and without affecting any previously acquired right. It cannot deprive an importer of the valuable right of importing certain goods under OGL that was available to him till then and in exercise of which he has, before the date of the change of policy, entered into contracts or other commitments which he can avoid only at great peril, risk or loss. In other words, the petitioners seek to invoke the doctrine of promissory estoppel enunciated by the Supreme Court in the Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., and elaborated in the Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, . Our attention is also invited to the recent decision of a Full Bench of this Court in Bansal Export (P) Ltd. and another Vs. Union of India and others, , explaining the scope of the application of this doctrine in matters of import-export policy and law."

13. With this background on the settled position of law, reference may now be made once again to the facts of the present case. The petitioner is claiming Export House Certificate on the basis of Import and Export Policy for 1988-91. The learned counsel for the respondents does not deny that he was entitled to

the same as a result of the policy. He only contends that the Government in the Policy itself reserved the right to make amendment/changes which may become necessary in public interest from time to time. Therefore, the period of three years to which the petitioner was entitled was curtailed to one year as the Government had laid down new conditions for the grant of the Certificate. The Annual Average Net Foreign Exchange which was earlier fixed at Rs. one crore for Small Scale Industrial Unit was revised to Rs. two crores in public interest and the petitioner could not be issued the certificate for the entire period as a result of the change of policy. The petitioner, on the other hand, has contended that he acted on the promise made by the respondents, as contained in the Import and Export Policy for 1988-91 and altered its position and entered into transactions and carried out its extra activities with the object of achieving better F.O.B. prices and to increase the quantum of export sales. The respondents had further highlighted the fact that they were interested to formulate a Long Term Policy and in this context, the petitioner was entitled to the issue of certificate for a renewal period of three years in accordance with that policy. The assurance held out to the petitioner had to be honoured and the policy could not be changed retrospectively to the detriment of the rights of petitioner.

14. The only plea which has been canvassed before me by the learned counsel for the respondents is that there has been a change and the Export House Certificate for the extended period till March 31, 1993 could not be issued to the petitioner as the amendments were carried out in public interest. The settled position of law is that natural justice as well as the doctrine of fairness and reasonableness require that the terms of the policy could not be changed in midstream and in any case the changes would only be operative prospectively in the facts and circumstances of the present case.

15. The concept of public interest has been elaborately dealt with by the Full Bench of this Court in *Bansal Export (P) Ltd. and another Vs. Union of India and others*, which also deals with the principles governing the Doctrine of Promissory Estoppel. There is no doubt that where public interest is pleaded as defense by the Government, it is a good defense to the petitioner's plea of Promissory Estoppel. Paragraphs 61, 62 and 63 of this judgment deal with the question of public interest and read as follows:

"61 In a word promissory estoppel will always be subservient to public-interest. If its application is detrimental to public interest and produces results deleterious to the public good, the Court would refuse to give effect to a plea based on it. Protection to the individual litigant cannot be given at the expense of the public interest. Contractual fetters -- this is what promissory estoppel amounts to -- have no place where public interest is the dominant consideration. The rights of the individual should be protected -- but it is the individual right to be favored against all public interest the answer to the question is clearly No. The question comes into prominence when the dispute is between the individual and the State.

62. As Bhagwati J. pointed out in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State*

of Uttar Pradesh and Others, , the burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden. It is only "if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. The Court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government, whether the Government should be held exempt from liability. This is the essence of the rule for law."

63. In the hands of Shah J., as also Bhagwati, J., promissory estoppel became a strong ally of rule of law. Rule of law is not a mere catchword or incantation. It is perhaps the most powerful, and flexible instrument to control the exercise of discretionary power. When power is exercised "on some undefined and undisclosed ground of necessity or expediency", in the words of Shah J., it is naked arbitrary power. This was the dominant theme of Indo-Afghan. If the method of exercise of power is mere whim and not legality the Government cannot repudiate the promissory liability. As Bhagwati, J. said:

"Mere claim of change of policy would not be sufficient to exonerate the Government from the liability; the Government would have to show what precisely is the changed policy and also its reason and justification so that the Court can judge for itself which way the public interest lies and what the equity of the case demands."

The conclusions and principles relating to doctrine of Promissory Estoppel are referred to in paragraph 78 and the same may be reproduced below:

"1. The doctrine of promissory estoppel is not attracted where the Government exercises its legislative or statutory power. The doctrine may be attracted where the Government has acted in exercise of its administrative or executive power.

2. The Government and its officers are not entitled at their mere whim to ignore the promises made by the Government and the Government is bound to honour its solemn promises and assurances, if on the basis of representations a person has acted to his detriment or, as said in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , even altered his position. The Government would be bound even though the promise made is not recorded in the form of a formal contract as required by the Constitution.

3. The doctrine of promissory estoppel is evolved by equity in order to do justice or, to put it in other words, to prevent injustice, where a promise is made by a person knowing that it would be acted upon by the person to whom it is made, and in fact it is as acted upon, and where it will be inequitable to allow the party making the promise to go back upon it. This doctrine would be applicable

notwithstanding that there is no consideration for the promise which is made by the Government.

4. The detriment which is to be suffered is not some prejudice suffered by the promisee by acting on the promise, but the prejudice which would be caused to the promisee if the promisor were allowed to go back on the promise.

5. The guidelines and the Handbook of Import-Export Procedures as well as Import and Export Policy, referred to by learned counsel in this case, cannot be regarded as statutory though the Import and Export (Control) Orders issued under the Import and Export (Control) Act are statutory. Policies are framed by the Government in exercise of power other than statutory or legislative power. Likewise, procedures and guidelines for the benefit of importers and exporters as also the administrative departments are issued in administrative capacity, which cannot be regarded as exercise of any statutory or legislative power."

16. Reference may be made to the judgment of the Karnataka High Court as reported in *Garments International Pvt. Ltd. and Others Vs. Union of India and Another*, to reiterate the proposition that the Government cannot take a unilateral action by issuing the impugned circular denying the benefits which had already accrued to the petitioner in an Export Policy retrospectively. The application of promissory estoppel was, Therefore, held applicable in that case. To similar effect is the law laid down by this Court in Civil Writ Petition No. 666 on 1982 entitled *Cosmique International and others v. Union of India and others* decided on April 30, 1993. This decision was upheld by the Division Bench in L.P.A. No. 85 of 1993 entitled *Union of India and others v. Old Village Industries Ltd. and others* decided on February 9, 1994.

17. Notice was issued in this writ petition and despite opportunity no reply to show cause was filed. Rule was issued on February 1, 1993 and no reply was filed even after that date. Therefore, this is a case of no return. There is no doubt that request was made by learned counsel for the respondents for further time to file counter-affidavit when the matter was being argued finally which was declined under the circumstances. The record was also not produced by the respondents. The burden was on the Government to show that the public interest demanded in its acting otherwise than in accordance with the promise which was held out to the petitioner. In these circumstances, it would be inequitable to hold that the Government was not bound by its Policy as framed for 1988-91 which would entitle the petitioner for Export House Certificate for a further period of two years. The respondents have not discharged the burden of showing that the subsequent change in the Policy retrospectively was actuated by public interest and by nothing else.

18. In view of the above reasons, the present petition is allowed and the impugned Policy for 1990-93 which tended to operate retrospectively, in so far as the petitioner is concerned, is quashed. The respondents are directed to issue Export House Certificate (EHC) with its validity till March 31, 1993, in accordance

with the entitlement of the petitioner for the relevant period. There will be no order as to costs.

19. Petition allowed.