

(1997) 05 DEL CK 0033

In the Delhi High Court

Case No : Civil Writ Petition No"s. 2220 and 3271 of 1996

Murugappa Trading Company

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 13-05-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 4 AD 165 : (1997) 42 DRJ 100

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : S.K. Kaul, Meera Bhatia, M.C. Sekharan and S. Bhartari, for the Appellant;

Judgement

C.M. Nayar, J.

(1) The present judgment will dispose of C.W.P.Nos.2220/96 (Murugappa Trading Company and others v. Union of India and others) and 3271/96 (Arif M. Hussain and others v. Union of India and others).

(2) The facts as alleged in the writ petitions are that the petitioners are the registered exporters of Textiles under the Powerloom Sector. Respondent No. 1 is the Ministry of Textiles which is in charge of the distribution of quota for export of textile to quota and non-quota countries. The Import-Export Policy under the Foreign Trade (Development and Regulation) Act is laid down by respondent No. 2. The Textile Commissioner, respondent No. 3 is the functionary of respondent No. 1 and is responsible for the overall textile quota administered by respondent No. 4. The distribution of quota is delegated to respondent No. 4. The petitioners in both the petitions are aggrieved by the action of the respondent whereby the quota entitlement for the year 1996 in the Powerloom Exporters Entitlement (PEE) has been reduced from 10 per cent to 5 per cent. The quota of 10% was fixed vide notification issued on September 16, 1995, the operative portion of which may be reproduced as follows:

"NOTIFICATION

NO.1/65/95-EP(T&J)I Dated 16-9-1995

SUBJECT: Conditions applicable for the period 1994-96 for exports in respect of certain yarn, Fabrics and Made-up items to countries where such exports are covered by restraints under the provisions of the Agreement on Textiles and Clothing.

ATTENTION is invited to Notification No. 1/4/94-EP(T&J)I dated the 4th September, 1993 which was amended subsequently by Notification number 1/4/95-EP(T&J)I dated the 24th June, 1994, No.1/65/94-EP(T&J)I dated the 21st October, 1994, 2nd December, 1994, 20th December, 1994, 11th and 12th January, 1995 on the above mentioned subject.

2.Sub-para 4 (i) and (ii) of the Notification shall be substituted by the following:

"I)Quantities for export in the allotment year 1996 shall be allocated according to the following systems at rates indicated against each of them.

System Percentage of Annual level a. Past Performance Entitlement (PPE) 55 (of which High Value entitlement) (15) b. Manufacturer-Exporters" Entitlement (MEE) 10 c. Ready Goods Exporters Entitlement (RGE) 15 d. Non-Quota Exporters Entitlement (NQE) 10 (of which Nqe for handloom textiles) (3) e. Powerloom Exporters Entitlement (PEE) 10 Total 100

II....." The petitioners contend that subsequently the quota was arbitrarily reduced to five per cent vide notification issued on November 27, 1995 whose operative portion reads as under:

"NOTIFICATION

NO.1/65/95-EP(T&J)I

NO.1/65/95-EP(T&J) I November 27, 1995

SUB: Conditions applicable for the period 1994-96 for exports in respect of certain Yarn, Fabrics and Made-up items to countries where such exports are covered by restraints under the provision of the Agreement on Textiles and Clothing.

ATTENTION is invited to Notification No.1/4/93-EP(T&J)I dated the 4th September 1993 which was amended subsequently by Notification number 1/4/93-EP(T&J)I dated the 24th June, 1994, No.1/65/94-EP(T&J)I dated the 21st October, 1994, 2nd December, 1994, 20th December, 1994, 11th, 12th January, 1995, No.1/65/95/EP(T&J)-I dated 16th September 1995 and 9th October, 1995 on the abovementioned subject. It has been decided to further amend the Notification as follows:

2.Sub-para 4(1) of the Notification shall be substituted by the following:

"I)Quantities for export in the allotment year 1996 shall be allocated according to the following systems at rates indicated against each of them.

System Percentage of Annual level a. Past performance Entitlement (PPE) 55 (of which High Value entitlement) (15) b. Manufacturer-Exporters" Entitlement (MEE) 15 c. Ready Goods Exporters Entitlement (RGE) 15 d. Non-Quota Exporters Entitlement (NQE) 10 (of which Nqe for handloom textiles) (3) e. Powerloom Exporters Entitlement (PEE) 5 Total 100

II....."

The learned counsel for the petitioners states that pursuant to this illegal reduction the representatives of the trade met the Hon"ble Minister and assurances were held out that the reduction was a mistake and the original quota of 10 per cent would be restored. However, since nothing happened and the reduction continued to operate at 5 per cent, the petitioners felt aggrieved by the same and continuously represented to the Government for redressal of their grievances. The assurances in this regard have been held out to the petitioners and it is contended that the quota for the year 1996 to Powerlooms under the Pee system will be renotified to 10 per cent and the same will be increased accordingly. One such representation to the Union Minister for Textiles dated February 13, 1996 may be referred to as below:

"HON"BLE Shri Kamalnathji, Feb.13,1996 Union Minister for Textiles,

Udyog Bhavan, New Delhi 110 001

Honoured Sir,

Please refer your categorical statement/assurance given in the meeting held at Bombay on 25.1.1996, at the Textile Commissioner's Office with the Administrative Committee Members, held in the presence of your Jt. Secretary Shri Vinod Malhotra, Shri K. Rajendra Nair, Textile Commissioner and with Shri Mahendra Kumar Singh M.P., that the quota for the year 1996 to Powerlooms under the Pee system will be re-notified to 10% as per your notification dt.16.9.95 and the same will be increased from 5% to 10% irrespective of the adjustments to be made in any other systems of Mee etc. Again your goodself had emphatically confirmed the same at Delhi on 31.1.96 with the Powerloom delegation, met you with Shri Mahendera Kumar Singh M.P., that the Pee quota increase and the continuation of Clubbing. (National level) would be announced simultaneously. Sir, the Tex procil had already started the issue of sending despatching the Pee quota certificates on 5% basis without any mention about clubbing.

We beg to request you to notify the Pee quota increase to 10% without any ambiguity as also the clubbing since the matter is delayed heavily.

Thanking you, Sir, we beg to remain, sd/- M.K.N.NAGAMANICKAM- Vice-Chairman IPF"

Further reference is made to the Minutes of the 4th meeting of the committee of Administration of the Powerlooms Development and Export Promotion Council held on April 18, 1996 under the Chairmanship of Shri K. Rajendran Nair, Textile Commissioner which also considered the pleas of the petitioners and the following Minutes were recorded in that meeting:

"Agenda Item No.3

To consider and decide about the action to be taken for the release of additional 5% quota in the Pee system along with the clubbing facility on all India basis for six months.

The Committee discussed the matter at length & expressed its surprise that although the then Hon"ble Minister of Textiles, Shri Kamal Nath in a meeting at Mumbai in the presence of Shri Vinod Malhotra, J.S., Shri Jayant Das Gupta, Director (Exports) and Shri K. Rajendran Nair, Textile Commissioner with Pedicel's Members on 25th January, 1996 agreed to restore the increase in Pee quota from 5% to 10% no order had been issued thereafter. The members felt that Pedicel should take up the issue with the Ministry to release the additional quota without any further delay. The Chairman agreed to take up the matter with the Government.

In the matter of clubbing of the quota under Pee System the members were aggrieved that the permission to club the quotas have been given only up to May, 96. The period was considered very short. The members requested the Chairman to take up the matter with the Government and get the clubbing facility possibly till the end of December, 1996." The learned counsel for the respondents, on the other hand, have contended that the matter is concluded by the judgment of this Court in All India Garments Non-Quota Manufacturers Exporters Association and others v. Union of India and others C.W.P.No.4713/95 decided on May 13, 1996. The SLP against this judgment was dismissed in limine by the Supreme Court on October 28, 1996. Mr. M. Chandrasekharan, the learned Senior counsel for respondent No. 4 has next referred to the judgment of the Supreme Court in P.T.R. Exports (Madras) Pvt. Ltd. and others Vs. Union of India and others, where it was held that the Government can change the policy in the interest of the economy of the country and the Court would not bind the Government with a policy which was existing on the date of application as per the previous policy. The operative portion of this judgment as contained in paragraphs 3, 4 and 5 may be reproduced as follows:

"3. In the light of the above policy question emerges whether the Government is bound by the previous policy or whether it can revise its policy in view of the changed potential foreign market and the need for earning foreign exchange? It is true that in a given set of facts, the Government may in the appropriate case be bound by the doctrine of promissory estoppel evolved in Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., . But the question revolves upon the validity of the withdrawal of the previous policy and introduction of the new policy.

The doctrine of legitimate expectations again requires to be angulated thus: whether it was revised by a policy in the public interest or the decision is based upon any abuse of the power? The power to lay policy by executive decision or by legislation includes power to withdraw the same unless in the former case, it is by mala fide exercise of power or the decision or action taken is in abuse of power. The doctrine of legitimate expectation plays no role when the appropriate authority is empowered to take a decision by an executive policy or under law. The Court leaves the authority to decide its full range of choice within the executive or legislative power. In matters of economic policy, it is a settled law that the Court gives the large leeway to the executive and the legislature. Granting licences for import or export is by executive or legislative policy. The Government would take diverse factors for formulating the policy for import or export of the goods granting relatively greater priorities to various items in the overall larger interest of the economy of the country. It is, Therefore, by exercise of the power given to the executive or as the case may be, the legislature is at liberty to evolve such policies.

4. An applicant has no vested right to have export or import licences in terms of the policies in force at the date of his making application. For obvious reasons, granting of licences depends upon the policy prevailing on the date of the grant of the license or permit. The authority concerned may be in a better position to have the overall picture of diverse factors to grant permit or refuse to grant permission to import or export goods. The decision, Therefore, would be taken from diverse economic perspectives which the executive is in a better informed position unless, as we have stated earlier, the refusal is mala fide or is an abuse of the power in which event it is for the applicant to plead and prove to the satisfaction of the Court that the refusal was vitiated by the above factors.

5. It would, Therefore, be clear that grant of license depends upon the policy prevailing as on the date of the grant of the licence. The Court, Therefore, would not bind the Government with a policy which was existing on the date of application as per previous policy. A prior decision would not bind the Government for all times to come. When the Government are satisfied that change in the policy was necessary in the public interest, it would be entitled to revise the policy and lay down new policy. The Court, Therefore, would prefer to allow free play to the Government to evolve fiscal policy in the public interest and to act upon the same. Equally, the Government is left free to determine priorities in the matters of allocations or allotments or utilisation of its finances in the public interest. It is equally entitled, Therefore, to issue or withdraw or modify the export or import policy in accordance with the scheme evolved. We, Therefore hold that the petitioners have no vested or accrued right for the issuance of permits on the Mee or Nge nor the Government bound is by its previous policy. It would be open to the Government to evolve the new schemes and the petitioners would get their legitimate expectations accomplished in accordance with either of the two schemes subject to their satisfying the conditions required in the scheme. The High Court, Therefore, was right in its

conclusion that the Government are not barred by the promises or legitimate expectations from evolving new policy in the impugned notification."

The learned counsel next refers to the judgment of the Supreme Court as reported in *Star Diamond Co., India Vs. Union of India (UOI) and Others*, that merely because the recommendation was in the picture to restore the quota to 10% it would not create any estoppel. Paragraph 5 of this judgment reads as under:

"5.The position has been clarified by the letter dated 18th June, 1986 written by the respondent which appears at page 132 of the Paper Book. It has been mentioned that the holders of additional license issued for 1978-79 would be entitled to import only those goods which are included in Appendix 6 Part II of Am 85-88. The fact that the Additional Secretary to the Government of India, Ministry of Finance (Department of Revenue) on 23rd April, 1986 wrote a letter which is not in consonance with the subsequent direction would not in any way affect the position or create any estoppel. Nor can such a letter be used as an argument that was the Government's understanding of the matter. That is irrelevant."

(3) The learned counsel for the petitioners has argued that it was imperative on the part of the Textile Commissioner to file affidavit in this Court as he had earlier assured the petitioners that the quota will be restored to 10%. This cannot be accepted as a relevant consideration to decide the controversy raised in these petitions between the parties. The Government acted in its own wisdom and in public interest to continue the quota of 5% instead of 10% and an appropriate affidavit has been filed on behalf of the Union of India wherein specific plea is taken that such a change was not contemplated. Separate affidavit has also been filed on behalf of Cotton Textile Export Promotion Council (respondent No. 4 herein) where also specific pleas have been taken to reiterate the action of the Government that the decrease of PEE quota from 10% to 5% was a matter of policy and had been done in public interest. The said respondent have, Therefore, reiterated that the decision of the Government of India to continue the quota under the Powerloom Exporter Entitlement (PEE) system to 5 per cent is based on cogent reasons and is not arbitrary or unreasonable. In this background it was not necessary for the Textile Commissioner to file a separate affidavit. The matter is squarely covered by the judgments of this Court as well as of the Supreme Court, as referred to above. In view of the above the present petitions are devoid of merit and are dismissed. There will be no order as to costs.