

(1981) 10 BOM CK 0013

In the Bombay High Court

Case No : Misc. Petition No. 277 of 1978

Ravindra Hindustan Platinum Private Ltd.

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 05-10-1981

Acts Referred:

Constitution of India, 1950 — Article 226, 299

Citation : (1989) 25 ECR 189 : (1981) 8 ELT 870

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

1. The petitioners carry on business as manufacturers of electrical contacts/ Bimetal contacts used in switch gears and control gears industry.

2. The Central Government in exercise of the powers conferred under the Imports and Exports Control Act, 1947 read with the provisions of the Imports (Control) Order, 1995 issued diverse public notices relating to the import policy to be pursued and export promotion. During the financial year ending March 31, 1975 and until May 12, 1975 cash assistance and replenishment licences were available on diverse goods which were exported and in respect of which the necessary formalities were complete. Under the said policy, the exporters of electrical contacts made by silver or silver alloy/copper containing less than 50% of silver were entitled to cash assistance and replenishment import licences. The exporters were eligible to replenishment licences to the extent of 40% of the F.O.B. value of the product exported and cash assistance to the extent of 25% of the F.O.B. value. In order to avail the assistance, it was incumbent upon the intending exporter to register the contract with authorised dealers in foreign exchange within 30 days of the execution thereof.

3. In pursuance of the aforesaid policy, the petitioners entered into a contract dated February 27, 1975 with the United Kingdom concern known as Ayrton Metals Limited for 2,87,000 electrical contacts. The contract was duly registered on March 3, 1975 and the shipment took place on June 13 and July 30, 1975.

The petitioners were entitled to cash assistance of Rs. 2,37,832.59 and Rs. 3,42,514.82 respectively for the said shipments. The petitioners were also entitled to replenishment licences of the value of Rs. 3,80,532.15 and Rs. 5,48,023.71 respectively. The petitioners entered into a second contract dated April 16, 1975 with a German concern, W. C. Heraeus for the export of 60,000 units of electrical contacts. The contract was registered on May 2, 1975 and the shipment was complete on July 16, 1975. In respect of this shipment, the petitioners were entitled to cash assistance of Rs. 2,49,787.70 and the replenishment licence of the value of Rs. 3,99,659.48. The petitioners filed their several claims in respect of these two contracts with the Joint Chief Controller of Imports and Exports between July 1975 and December 1975.

4. On May 12, 1975, the Central Government issued a public notice, a copy of which is annexed as Ex. D to the petition. The notice referred to the import policy for registered customers for the financial year ending March 31, 1976 pertaining to the exports of electrical contacts and provided that for the purpose of calculating R.E.P. benefits, the licensing authority will exclude the value of silver from F.O.B. value of the exported products. The applications made by the petitioners for cash assistance and replenishment licences were turned down by three orders dated August 6, 1976, August 11, 1976 and December 28, 1976 by the Chief Controller of Imports and Exports. These three orders are not the speaking orders but are in the form of letters addressed to the petitioners and wherein it was observed by the Chief Controller that the claim made by the petitioners cannot be granted. No reasons are assigned for refusal of the claims of the petitioners. The petitioners thereupon approached this Court by filing this petition on December 12, 1977 under Article 226 of the Constitution of India and a writ of mandamus is sought for quashing the impugned orders of the Chief Controller of Imports and Exports and for a direction to the respondents to forthwith pay the cash assistance and issue the replenishment licences.

5. In answer to the petition, Shri Gopalan Rajappen Nair, Deputy Chief Controller of Imports and Exports, has filed a return on September 28, 1981. It is claimed by the dependent that it was open for the Government to alter the policy and the petitioners cannot make any grievance because the value of the silver was excluded from the F.O.B. value of the exported product for the purpose of calculating replenishment benefits and cash assistance. It is further claimed that the silver content in the export products were more than 90% of the total F.O.B. value and that meant that the silver was, in fact, being exported out of India in the form of electrical contacts. It is further claimed that in these circumstances, the respondent No. 1 in the reasonable discretion decided that it was in the interest of public in general to extend the benefit of cash assistance and replenishment licences after excluding the silver contents therein. In other words, the respondents claimed that the public notice was issued in the interest of public in general and the petitioners can have no grievance for alteration of the policy in the interest of public.

6. Shri Korade, the learned counsel appearing in support of the petition, very rightly urged that the petitioners entered into contracts for export of goods on the assurance given by the Government. The learned counsel pointed out that the petitioners entered into contract though it was wholly uneconomical only in view of the assurance given by the Government for cash assistance and replenishment licences. Shri Korade did not dispute that it was open for the Government to alter the policy but urged that such alteration cannot be upheld unless it is established by the Government that the alteration was demanded in the public interest. In my judgment, the submission of the learned counsel is correct. It has now been concluded by the decision of the Supreme Court in the case of Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, that the doctrine of promissory estoppel can be applied against the Government and the Government would be held bound by the promise and the promise would be enforceable at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of the formal contract as required by Article 299 of the Constitution of India. The Supreme Court, after considering its earlier decision in the case of Union of India and others vs. M/s. Anglo Afghan Agencies etc. reported in AIR 1968 Supreme Court 718, held that the doctrine being an equitable doctrine, it must yield when the equity so requires. It would be appropriate to quote the celebrated passage from the decision of Shri Justice Bhagwati at page 644 of the judgment :

"But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made it. When the Government is able to show that in view of the facts which have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen to act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it. The Government cannot, as Shah, J., pointed out in the Indo-Afghan Agencies case, claim to be exempt from the liability to carry out the promise "on some indefinite and undisclosed ground of necessity or expediency", nor can the Government claim to be the sole judge of its liability and repudiate it "on an ex parte appraisalment

of the circumstances. If the Government wants to resist the liability, it will have to disinequirable e Court what are the subsequent events on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those events are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from the liability; the Government would have to show that what precisely is the changed policy and also its reasons and justification so the Court can judge for itself which way the public interest lies and what the equity of the case demands. 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 of law. The burden would be upon the 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 promises and the Court would insist on a highly rigorous standard of proof in the discharge of this burden. But even where there is no such overriding public interest, it may still be competent to the Government to resile from the promise "on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position" provided of course if it is possible for the promisee for the promisee to restore status quo ante. If, however, the promisee cannot resume his position, the promise could become final and irrevocable. Vide *Ajayi v. Briscoe* (1964) 3 All ER 556."

The judgment makes it crystal clear that the Government would have to show that precisely is the changed policy and also its reason and justification to enable the Court to judge for itself which way the public interest lies and what the equity of the case demands.

7. Turning to the facts of the present case, the Government has not produced any material on record to sustain its claim that the alteration of the policy, as reflected by the public notice, was in the public interest save and except making a general assertion in the return that the policy was altered as it was decided that it was in the interest of the public in general. As observed by the Supreme Court the indefinite and undisclosed ground is not sufficient to accept the claim of the Government. In my judgment, the alteration of the policy was not proved to be in the public interest and as such the Government cannot fall back upon the contents of the public notice and deny to the petitioners the advantage of cash assistance and replenishment licences.

8. Shri Chinai made a faint attempt to urge that the petitioner have initially stated in paragraph 8 of the petition that the petitioners were granted

replenishment licences to the full extent to which they entitled. Shri Korade points out that the statement initially made was an erroneous one and by an amendment the said error was corrected. Shri Chinai did not dispute that, in fact, no replenishment licences were granted but urged that the correction was made at a late stage and, therefore, the relief should not be granted. I find no merit in this submission.

9. Shri Chinai also relied upon the contents of paragraph 11 of the decision of the Supreme Court in the case of the Deputy Assistant Iron and Steel Controller, Madras and another vs. L. Manickchand Proprietor, Katralla Metal Corporation, Madras reported in The Deputy Assistant Iron and Steel Controller and Another Vs. L. Manickchand, Proprietor, Katrella Metal Corporation, Madras, While considering whether the petitioner has an absolute vested right to an import licence in terms of the policy in force at the time of the application, the Supreme Court observed that in granting licence, the authority has to keep in view factors which may have impact on imports of other items of relatively greater priority in the larger interest of the overall economy of the country which has to be the supreme consideration, and an applicant has no absolute vested right to an import licence. In my judgment, the reliance upon the observations of the Supreme Court is totally misconceived as far as the claim in the present petition is involved. The Supreme Court observed that the change of policy would not entitle the applicant to get an import licence on the basis of a policy which was available at the time of the application. The observations of the Supreme Court were relied upon by Shri Chinai to urge that the Government felt that the export of silver was not in the interest of the economical well-being of the country and, therefore, the policy was altered. The return filed by the respondents does not indicate any such reasons for change of policy and, therefore, it is not permissible for Shri Chinai to go behind the return and claim that the change of policy was for certain other reasons. In my judgment, the petitioners are entitled to the reliefs sought in the petition.

10. Accordingly, the petition succeeds and the rule is made absolute in terms of prayer (b) of the petition. The respondents shall grant the cash assistance and issue the replenishment licences within a period of eight weeks from today. In the circumstances of the case, there will be no order as to costs.