

(1991) 04 AP CK 0016

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13145 of 1990

Sanjaya Sales Corporation

APPELLANT

Vs

Dy. CCI and E

RESPONDENT

Date of Decision : 22-04-1991

Acts Referred:

Citation : (1991) 2 ALT 255 : (1994) 48 ECC 130 : (1994) ECR 302 : (1992) 57 ELT 579

Hon'ble Judges : S. Parvatha Rao, J

Bench : Single Bench

Advocate : C.V. Nagarjuna Reddy, for the Appellant; A.G. and I. Koti Reddy, S.C. for Central Govt., for the Respondent

Judgement

1. In this Writ Petition the petitioner-firm questions the action sought to be taken by respondents 2 and 3 in respect of two additional import licences bearing Nos. 3234621 and 3234622 of the approximate value c.i.f. Rs. 21,45,90,506/- and Rs. 27,06,24,648/- respectively, both dated 19-7-1990, issued to the 1st respondent for import of goods allowed in Para 220(2), (4) and (7) of Import & Export Policy, (Vol. I) 1990-93 subject to the conditions laid down therein, and seeks a Writ of Certiorari for quashing notices of the 2nd respondent issued in F. No. Engg/9/ Add. Lic/TH/AM 91/REP. II/Hyd., dated 27-8-1990, F. No. Engg/8. Add. Lic/TH/AM. 90/REP. II/Hyd., dated 27-8-1990 and No. Engg/89/ADDL. Lic/TH/AM. 90/REP. II/Hyd., dated 4-9-1990 and consequential direction to the 2nd respondent, his agents, officers and subordinates to forbear from cancelling or in any way rendering ineffective the said two additional import licences. Before going into the questions raised in this Writ Petition, and to appreciate the contentions raised therein, it is necessary to narrate the facts and circumstances leading to the present Writ Petition.

2. The 1st respondent is a Government of India undertaking established on 15-11-1958 and is a large scale manufacturer-exporter. During the licensing years 1986-87, 1987-88 and 1988-89 it exported processed iron ore and gained

eligibility for grant of Trading House Certificate under Para 212(1) of the Import and Export Policy for the period April, 1988 to March, 1991. The 1st respondent made application dated 12-9-1989 for the grant of the said certificate and was granted Trading House Certificate dated 22-5-1990 and Certificate of recognition No. 165 dated 18-5-1990 valid for 3 years from 1-4-1989 to 31-3-1992. Thereafter the 1st respondent applied to the 2nd respondent herein for grant of additional licences for the licensing years 1989-90 and 1990-91 and were granted the said 2 licences bearing No. P/W/3234621 and No. P/W/3234622 both dated 19-7-1990 for the export periods April, 1988 to March, 1989 (A.M. 89) and April, 1989 to March, 1990 (A.M. 90) respectively both for the licensing periods April, 1990 to March, 1991 (A.M. 91) under Import & Export Policy April, 1990 - March, 1993, Volume-I. It is not in dispute that the said additional licences are transferable in full or in part in favour of any other person. The 1st respondent issued an advertisement on 5-8-1990 inviting offers for sale of the said two additional licences. The said offers were to be submitted by 3 P.M., 16-8-1990 to the Commercial Manager of the 1st respondent-corporation at its registered together with earnest money deposit of Rs. 15/- lakhs against each licence. The offers were to be opened at 3-30 P.M. on 16-8-1990 and the successful tenderers were required to take delivery of the licences after payment of the purchase money in full within ten days of the acceptance of the tender. The petitioner-firm submitted its offer dated 11-8-1990 for the purchase of the said two additional import licences complying with all the requirements and within the due time. The petitioner offered a premium of 20% of the value of each of the said two additional import licences. The petitioner also duly paid the earnest money deposit amount of Rs. 30,00,000/- payable in respect of the offers for the said two additional import licences. The petitioner's offers in respect of both the said additional import licences were found to be the highest and they were accepted by the 1st respondent herein.

3. One of the unsuccessful offerers i.e., M/s. Nagolice Limited filed Writ Petition No. 2659 of 1990 before the High Court of Delhi challenging the acceptance of the petitioner's offer by the 1st respondent. The said Writ Petition was dismissed by a Division Bench of the High Court of Delhi on 27-8-1990. Meanwhile, the petitioner paid the entire balance consideration of Rs. 9,40,43,030/- by demand drafts to the 1st respondent along with its covering letter dated 25-8-1990, but the said two additional import licences were not handed over to the petitioner even after the said Writ Petition was dismissed, on the ground that the 1st respondent received notices dated 27-8-1990 in respect of the said two licences from the 2nd respondent herein as follows :-

"With reference to the above, you are requested to forward the above Additional Licence in both Customs & Exchange Control purposes copies immediately to this office without making any commitments."

The SLP preferred by M/s. Nagolice Limited before the Supreme Court of India against the said order of the High Court of Delhi dismissing Writ Petition No.

2659 of 1990 dated 27-8-1990 was dismissed by the Supreme Court on 4-9-1990. On the same day, the Office of the 2nd respondent herein issued through special messenger letter dated 4-9-1990 to the 1st respondent herein with reference to the said two additional import licences as follows :-

"With reference to the above, I am to inform you that the additional licences against the AM. 90 exports has been issued by this office erroneously to you, as there is no policy provision for issue of additional licence against AM. 90 exports because, the item exported by you finds place in Appendix-12 of Import Policy AM. 90-93 (Vol. I). Hence you are requested to forward the above two additional licences before 6-9-1990 without fail to enable this office to take remedial action. In case you fail to forward the above two additional licences by 6-9-1990, this office will constrain to take steps for suspension of operation of the above licences."

The petitioner questions the action of the 2nd respondent in directing production of the said additional import licences for the purpose of cancellation and nullifying the same, as illegal and without jurisdiction and without the authority of law. The petitioner contends that none of the grounds set out in Clause 9 of the Imports (Control) Order, 1955 for cancellation and nullification of import licences can possibly be said to exist in the case of the said two additional import licences and that no show cause notice or hearing was given by the 2nd respondent to the 1st respondent or to the petitioner before issuing the said notices by way of letters purporting to recall the said two additional import licences for cancellation. The petitioner also contends that Import & Export Policy AM. 90-93 (Vol. I) has no application to the licences in question in view of the fact that it came into force after the period of exports entitling the 1st respondent to the grant of additional import licences expired by 31-3-1990 before the new Import and Export Policy for the period AM. 90-93 had come into force on 1-4-1990. During the said period when the exports were made by the 1st respondent, the item exported by it i.e., "dressed iron ore" was not included in Appendix-12 of the Import & Export Policy for April 1988 - March 1991. It is the case of the petitioner that the additional import licences are granted as an incentive for promoting exports and that therefore a vested right accrued to the 1st respondent entitling it to the additional import licences because it already exported the goods viz., "dressed iron ore" during the year April 1989 - March 1990 on the basis of the promise held out that it would be granted additional import licences if it satisfied the requirements of the entitlement under the Imports & Exports Policy for April 1988 - March 1991 period which was in force during the period when exports were made. The petitioner therefore contends that the Central Government was estopped from denying the benefit of additional import licences to the 1st respondent after it became entitled to the same by virtue of the Import & Export Policy in force during the period when the exports were made by it. The petitioner also contends that the Import & Export Policy for the period April 1990 - March 1993 which came into force from 1-4-1990 cannot be given retrospective effect so as to take away the entitlement to additional

import licences which already accrued to the 1st respondent by virtue of having made exports during the period prior to the coming into force of the said new policy, on the basis of the promise held out under the earlier policy in force during the period when the exports were made. The petitioner also contends that the action of the 2nd respondent in issuing the impugned notices was mala fide and was motivated by political considerations and was at the behest of the unsuccessful offerer M/s. Negolice Limited.

4. The 2nd respondent filed his counter affidavit dated 18-9-1990. He contends that the Writ Petition is premature because the petitioner had no grievance whatsoever in respect of the impugned notices issued to the 1st respondent. According to the 2nd respondent, the petitioner has no locus standi for filing the present Writ Petition. The 2nd respondent denied that the calling back of the said licences was mala fide or was at the instance of the petitioner's competitors and contends that the said licences were correctly called back when the 1st respondent failed to forward the licences within the time allowed i.e., upto 6-9-1990 under his letters dated 27-8-1990, 31-8-1990 and 4-9-1990. The 2nd respondent states that an import licence can be cancelled at any time if it is found that it is not in conformity with any provision of the Import & Export (Control) Order. However, in paragraph 2 of the counter affidavit, the 2nd respondent states as follows :-

"The petitioner's contention that the second respondent has called back both the additional licences for cancellation and nullification is denied. These licences have been called back because one additional licence bearing No. P/W/3234622/C/XXX/17/W/90 dated 19-7-1990 for Rs. 27,06,24,648/- for the licensing period 1990-91 has been erroneously issued. The performance of export product against which the additional licence No. P/W/3234622 dated 19-7-1990 has been issued is included in Appendix-12 of the Import and Export Policy, 1990-93 (Vol. I) and para 220 read with para 218 of the Import and Export Policy, 1990-93 (Vol. I) makes export performance of Appendix-12 item ineligible for issue of additional licences. For the convenience of the Hon"ble Court, Paras 218 to 220 and Appendix-12 of the said policy are annexed to this counter."

From the above, it is clear that the 2nd respondent does not question the grant of additional licence bearing No. P/W/3234621 dated 19-7-1990 of Rs. 21,45,90,506/-. The 2nd respondent also states in the said counter affidavit that he issued a suspension order dated 9-7-1990 suspending only the operation of the additional licence No. P/W/3234622 dated 19-7-1990 for Rs. 27,06,24,648/- when the 1st respondent failed to return the said erroneously issued additional licence as called for by him within the stipulated time i.e., by 6-9-1990. He also states that the other additional import licence issued for the licensing period 1989-90 was also called back for the purpose of review. In the light of the said contentions, the 2nd respondent urges that the Writ Petition should be dismissed.

5. In the counter affidavit dated 16-10-1990 filed on behalf of the 1st respondent, the fact of the acceptance of the offer made by the petitioner-firm in

respect of the said two additional import licences in response to the advertisement made by the 1st respondent is not disputed and it is stated that the 1st respondent's decision to accept the offer of the petitioner was announced at 4-50 P.M. on 16-8-1990. It is however denied that the petitioner was assured by the representatives of the 1st respondent that the said licences would be handed over to the petitioner immediately after the dismissal of the said Writ Petition No. 2659 of 1990 by the High Court of Delhi. It is also stated that the petitioner's deposit of Rs. 9,40,43,030/- by demand drafts towards the balance consideration was not deposited with the Commercial Manager of the 1st respondent as required by the notice of invitation of tender but was tendered in the Central Receive and Despatch Section of the 1st respondent. The receipt of the impugned notices through letters dated 27-8-1990 of the 2nd respondent by the 1st respondent was admitted and it is further stated that no show cause notice was given by the 2nd respondent to the 1st respondent for cancellation of the licence and that a show cause notice was issued only on 5-10-1990 by the 2nd respondent. A copy of the said show cause notice dated 5-10-1990 is filed by the 1st respondent. That relates only to the additional import licence No. P/W/3234622/C/XX/17/W/90 dated 19-7-1990 for c.i.f. value of Rs. 27,06,24,648/- and it is stated therein as follows :-

"2. And whereas, it has been noticed that the above mentioned additional import licence was issued to you erroneously because against the exports of AM-90 period, the licensing period is AM-91 and during this period, the said item of export is not eligible for additional import licence as the same is figuring in Appendix 12 of Import-Export Policy Volume-I, 1990-93. In view of the above and when this office asked you to forward the above additional licence in this office letters dt. 27-8-1990, 31-8-1990 and 4-9-1990 for taking remedial action, you have not forwarded the same. In this connection, your attention is also invited to this office Suspension Order dt. 7-9-1990 suspending the operation of the said additional licence.

3. Therefore, you are hereby called upon by this show cause notice under Clause 10 of Import Trade (Control) Order, 1955 to show cause within 15 days from the date of issue of this show cause notice as to why the additional import licence No. PW/3234622/C/XX/17/W/90, dt. 17-9-1990 issued for Rs. 27,06,24,648/- should not be cancelled as per Clause 9 of Import Trade (Control) Order, 1955, as the same has been issued erroneously.

4. Your reply to this show cause notice in support of your explanation should reach the undersigned within the stipulated time, failing which, it will be presumed that you have nothing to say in your defence and the matter will be decided ex parte on merits, on the basis of information available in records of this office. In case you want to be heard in person also to explain your case, you may appear for personal hearing at 11.00 AM on 19-10-1990.

5. This show cause notice is issued without prejudice to any other action that may be taken against you and your directors under any other law of the land.

6. This show cause notice is also issued subject to the further orders by the Hon"ble High Court of Andhra Pradesh and subject to the final decision in the Writ Petition No. 13146/90 and without prejudice to the statutory powers/rights of the 2nd and 3rd respondents mentioned in the above writ petition, namely, the Deputy Chief Controller of Imports & Exports, Hyderabad and the Chief Controller of Imports & Exports, New Delhi."

The 1st respondent also filed a copy of its letter dated 31-8-1990 addressed to the 2nd respondent herein in reply to the letters dated 27-8-1990 received by it in respect of the said two additional import licences. Therein the 1st respondent requested the 2nd respondent to inform in what context and under what provision the request for forwarding the said two licences without making any commitments, was made. The 2nd respondent was also informed by the said letter dated 31-8-1990 as follows :-

"It may also be pointed out in this regard that consequent to the calling of tenders the Tender Scrutiny Committee has awarded tender to the highest bidder on 16-8-1990 itself. Therefore, the question of not making a commitment does not arise at this stage. A commitment to transfer the licences to the highest bidder was already made on 16-8-1990 itself."

In spite of being so informed by the 1st respondent, the 2nd respondent gave a telegram, a copy of which is filed by the 1st respondent, wherein it is stated :

"REFLET THIS OFFICE NO. ENGG/(9 AND 8/ADDL LIC/TH/AM 90 AND AM 91/REP II/HYD DT. 27-8-1990 (.) TWO ADDL LICENCES NOT SURRENDERED SO FAR (.) SURRENDER BOTH THE ADDITIONAL LICENCES FORTHWITH WITHOUT ANY FURTHER DELAY - CONIMPEXTRA."

This was followed by the letter dated 4-9-1990 of the 2nd respondent's office referred to earlier wherein also both the said additional import licences were required to be forwarded by the 1st respondent before 6-9-1990 without fail to enable the said office to take remedial action. Thereafter, suspension order No. Engg/9/Addl. Lic/TH/Am-91/Rep. II/Hyd/823 dated 7-9-1990 was issued by the 2nd respondent to the 1st respondent in respect of the additional licence bearing No. P/W/3234622/C/XX/17/W/90 dated 19-7-1990 for a c.i.f. value of Rs. 27,06,24,648/- against exports effected during AM-90 period wherein it is stated as follows :-

"2. And whereas it has been noticed that the above mentioned Additional Licence was issued to the firm erroneously because against the exports of AM-90 period, the licensing period is AM-91 and during this period, the said item of export is not eligible for additional licence as the same is figuring in Appendix 12 of Import Export Policy Volume-I, 1990-93. In view of this, the party was requested to forward the Additional Licence on 27-8-1990, 31-8-1990 & 4-9-1990 and the party failed to forward the Licence within the stipulated time.

3. I, therefore in exercise of the powers vested in me under Clause 9(3) of

Imports (Control) Order, 1955, suspended operation of the above-said Licence issued to M/s. National Mineral Development Corporation Ltd., 10-3-311/A, Castle Hills, Masab Tank, Hyderabad-500028, pending finalisation of the proceedings above."

It is only thereafter that the said notice dated 5-10-1990 under Clause 10 of the Import Trade (Control) Order, 1955 was issued in respect of the said additional import licence dated 19-7-1990 issued for Rs. 27,06,24,648/- to show cause why it should not be cancelled as per Clause 9 of the Import (Control) Order, 1955. The 1st respondent gave reply dated 12-10-1990 to the said show cause notice. In the said reply the 1st respondent stated that the proposed action on the part of the 2nd respondent in regard to cancellation of the said additional import licence would be illegal and gave its reasons in the following manner :-

"With effect from April 1990, the Import-Export Policy was amended and the amended policy was announced and made public on 30-3-1990. Para 218(1) of the amended policy (Import-Export AM 90-93) which deals with the conditions of eligibility for the grant of Trading House Certificates reads as under :

....The eligibility of the grant of Export House/Trading House certificate shall be determined on the basis of the Net Foreign Exchange Earnings from the exports actually made in the preceding three licensing years termed as "base period". The earnings from

- (i) the exports of products specified in Appendix 12,
- (ii) re-exports as defined in para 191 of this policy,
- (iii) "Deemed Exports" as defined in Chapter XVI, and
- (iv) export from free Trade/Export Processing Zones and 100 per cent EOUs whether made directly or through others, shall not qualify for this purpose...

Similarly para 220(1) of the said Import-Export Policy AM 1990-93 which relates to grant of additional licences reads as under :-

"...The Export House/Trading Houses will be eligible to additional licences on the basis of the admissible exports made in the preceding licensing year. The value of these licences will be calculated at 10% of the NFE earnings on the total eligible exports made in the preceding licensing year. This percentage shall be 13% in cases where an Export/Trading House is able to achieve a minimum growth of 30% in terms of NFE realisation in the previous year over and above the year preceding the same. The NFE earning for this purpose, would have the same meaning as defined in Note (1) below para 218(2) above ... At the same time the entry (1) of Appendix 12 to the said Import-Export Policy for 1990-93 was amended and the.... minerals & ores".

It is thus clear from a plain reading of the relevant provisions of the Import-Export policies of the two relevant periods which are set out and reproduced hereinabove that the amendment of Appendix 12 which lists the products which

are ineligible for the grant of Trading House certificates and additional licences only means that after the date of the said amendment to the Import-Export policy, the exports of such items as are covered by the amended Appendix 12 shall be ineligible for being taken into consideration for the grant of an Export House Certificate or the issuance of additional licences. The said amendment does not at all have the effect of consequences that the export of items which were made in the past and which were permissible items (not being included in Appendix 12) at that time would be rendered ineligible to be considered for the grant of trading house certificate or issuance of additional licences merely, because, long after the said exports were completed, there was an amendment to the Import-Export Policy, whereby the said items were included in the list of ineligible items. This fact is also absolutely clear from the basic object and purpose of the Import-Export Policy itself.

The Import-Export Policy holds out a series of incentives to exporters by informing them in clear and unequivocal terms that if they make exports of the specified items excluding the specified Appendix 12 impermissible items they shall become entitled to avail of various benefits provided under the Import-Export policy. Often it is these incentives which make the very export possible. This is because the costs and prices of Indian products are considerably higher than international costs and prices. Consequently, an Indian exporter would find it possible to export goods only if he is given export incentives of considerable value which would effect and compensate for the export losses. These export benefits are, therefore, always taken into consideration by the exporter as a vital factor in export pricing. If, therefore, an item is a permissible item and the same has not been included in Appendix 12 at the time of its export, an exporter would have a right to proceed on the footing that if he exports that item, he would be entitled to the benefits which are provided in respect of such exports under the Import-Export Policy. In other words, the export of such a permissible item would in fact give rise to a vested right in the exporter to the benefit in question. Such a vested interest cannot possibly be considered to be considered to be defeated or destroyed merely because of a subsequent amendment of the list of impermissible items. It is, therefore, absolutely clear that any such amendment to the list of impermissible items would have effect only with regard to the future and not with regard to the past and the same cannot possibly be considered to take away or destroy any vested right. Any amendment of the Policy can only be prospective and cannot effect vested rights. In the present case, the exports of Processed Iron Ore were made by NMDC before 31-3-1990. Processed iron ore was, at the relevant point of time, a permissible item and was not covered by Appendix 12. In these circumstances, it is submitted that the provisions of the said amended Import-Export Policy, 1990-93 have no effect or consequences in the present case and the same cannot possibly be relied upon to cancel or nullify the said additional licence which has been issued to NMDC.

We have now explained the matter in detail and therefore any action on your part in regard to cancellation of this Import licence No. PW/3234622/C/XX/17/

W/90 dated 17-9-1990 issued for Rs. 27,06,24,648/- would be illegal.

You are already aware that the case is in the Hon"ble High Court and under the circumstances it is not known as to why the show cause notice is issued to us. Once the show cause notice has been issued to us, we thought it proper to reply and justify our case to keep the records straight."

6. Before dealing with the main contentions advanced in this Writ Petition, the preliminary objections raised by the learned Standing Counsel for the Central Government Mr. I. Koti Reddy have to be dealt with. One preliminary objection raised by him is that the petitioner has no locus standi to question the notices issued by the 2nd respondent to the 1st respondent and to seek directions to the 2nd respondent to forbear from cancelling or in any way rendering ineffective the additional import licences granted to the 1st respondent herein. This contention has no merit and cannot be countenanced. As already stated above, it is not disputed by the respondents that the licences in question granted to the 1st respondent are transferable and that pursuant to the advertisement issued by the 1st respondent on 5-8-1990, the petitioner submitted its offer in respect of the said two additional licences and that the petitioner's offers were found to be the highest and that they were accepted by the 1st respondent and that the petitioner already paid the earnest money deposit of Rs. 30,00,000/- and also the entire balance consideration of Rs. 9,40,43,030/-. The 1st respondent, by its letter dated 31-8-1990 addressed to the 2nd respondent herein in reply to the impugned letters dated 27-8-1990 of the 2nd respondent, intimated to the 2nd respondent the fact that a commitment to transfer the licences to the highest bidder was already made on 16-8-1990 itself. In view of these facts and circumstances I hold that the petitioner has locus standi to file the present Writ Petition questioning the action of the 2nd respondent impugned in this Writ Petition. Another preliminary objection raised by Mr. I. Koti Reddy that the Writ Petition is premature is only to be mentioned for rejection. By the time the Writ Petition was filed on 11-9-1990 the 2nd respondent issued two letters containing notices dated 27-8-1990 requesting the 1st respondent to forward the two additional licences in respect of which the petitioner not merely made the earnest money deposit of Rs. 30,00,000/- but also paid the entire balance consideration of more than Rs. 9.40 crores by demand drafts on 25-8-1990. By another letter dated 4-9-1990 the 2nd respondent once again asked the 1st respondent to forward the said two additional licences before 6-9-1990 without fail for enabling him to take remedial action and that if that was not done, he would be constrained to take steps for suspending the operation of the said additional licences. Thereafter, even though the petitioner was not aware, the 2nd respondent issued suspension order dated 7-9-1990 in respect of the additional licences bearing No. P/W/3234622/C/XXX/17/W/90 dated 19-7-1990. In the circumstances, it is too much for Mr. I. Koti Reddy to contend that the Writ Petition is premature. Yet another contention advanced by Mr. I. Koti Reddy is that the petitioner had an alternative remedy. I am not impressed by this contention when he has gone to the extent of contending that the petitioner had

no locus standi. By the time the impugned notices were issued to the 1st respondent, the petitioner had already become entitled to the said two additional licences on the facts and circumstances stated above and the 2nd respondent called back the said two additional licences without any notice or opportunity to the petitioner. It is the contention of the petitioner that respondents 2 and 3 have no authority whatsoever to issue the notices impugned in this Writ Petition when no proceedings for cancelling the said two additional licences or for rendering them ineffective were initiated by them. As it transpired, the 2nd respondent himself does not now question the grant of one of the two additional licences in respect of which the impugned notices were issued by him. I therefore do not see any merit in this preliminary objection also, because sub-clause (2) of Clause 10 of Imports (Control) Order, 1955 (hereinafter referred to as "the Control Order") does not provide for appeal against notices of the nature impugned in the present Writ Petition or even against an order rendering ineffective or suspending the operation of any licence under sub-clause (3) of Clause 9 of the Control Order. Moreover, the order under the said sub-clause (3) of Clause 9 may be made only "where proceedings of cancellation of such licence have been initiated under sub-clause (1)... ..". Sub-clause (1) of the said Clause 9 provides for cancellation or otherwise rendering it ineffective :

(a) if the licence has been granted through inadvertence or mistake or has been obtained by fraud or misrepresentation;

(b) if the licence has been granted contrary to rules or the provisions of this Order;

.....".

Sub-clause (1) of the Clause 10 provides that "no action shall be taken under sub-clause (1) of Clause 9 against a licensee or an importer or any other person unless he has been given a reasonable opportunity of being heard". It is not the case of respondents 2 and 3 herein that any such proceedings were in fact initiated by issuing any such notice to the 1st respondent or the petitioner prior to the filing of the Writ Petition and prior to the suspension order dated 7-9-1990 referred to above. Such a show cause notice under Clause 10 was issued to the 2nd respondent on or after 5-10-1990 and it relates only to the additional import licence No. P/W/3234622/C/XX/17/W/90 dated 19-7-1990 for c.i.f. value of Rs. 27,06,24,648/- in respect of import period A.M. 90 i.e., 1-4-1989 to 31-3-1990. In the said show cause notice, it is made clear that it was issued subject to final decision in this Writ Petition. In the circumstances, I am of the view that the present Writ Petition cannot be thrown out on the ground of alternative remedy.

7. Now for the main contentions. Mr. Koti Reddy appearing for respondents 2 and 3 concedes that as regards additional import licence No. 3234621 with reference to export period A.M. 89 there is no dispute any more and that no action is proposed to be taken by the authorities concerned. Therefore, arguments are

confined only to additional import licence No. 3234622 in respect of export period A.M. 90. Mr. V. R. Reddy appearing for the petitioner submits that during the export period A.M. 90 with reference to which the said additional licence was issued Import & Export Policy announced on 30-3-1988 effective for a period of 3 years from the 1st April, 1988 to 31-3-1991 was in force. Chapter XVIII of the said Import & Export Policy for the period April 1988 - March 1991 (hereinafter referred to as the "Old Policy") deals with Export Houses and Trading Houses. In Para 211 in that Chapter, it is stated that the objective of the Scheme for Registration of Export Houses and Trading Houses is to grant recognition and facilities to a select band of efficient registered exporters who would develop a strong marketing capability and that it is expected that they would operate as highly specialised and dynamic institutions with a strong marketing infrastructure and act as an important instrument for export growth. Sub-para (1) of Para 212 provides that "the eligibility for the grant of Export House/Trading House Certificate shall be determined on the basis of the Net Foreign Exchange Earnings (NFE earnings) from the exports actually made in the preceding three licensing years termed as "the Base Period". "It is also provided therein that, among others, the earnings from the exports of products specified in Appendix 12 shall not qualify for this purpose. Item 1 of Appendix 12 of the Old Policy is "Minerals and Ores - unprocessed". Para 213(1) provides that the Export House/Trading House Certificates will be valid for a period of three years ending 31st March of the licensing year, unless otherwise specified. Para 214 mentions the facilities that will be granted to the Export Houses/Trading Houses under this policy and one of the such facilities is "additional licences as provided hereunder". Sub-para (1) of Para 215 provides that :-

"215(1) :- The Export Houses/Trading Houses will be eligible to Additional Licences on the basis of the admissible exports made in the preceding licensing year. The value of these licences will be calculated at 10% of the NFE earnings on the total eligible exports made in the preceding licensing year. This percentage shall be 12% in cases where an Export/Trading House is able to achieve a minimum growth of 10% in terms of NFE realisation in the previous year... ..".

Sub-paras (2 to 7) of Para 215 deal with items which could be imported against additional licences. Sub-para (8) of Para 215 provides as follows :-

"215(8) :- Export Houses/Trading Houses will be eligible for Additional Licences for the period(s) for which the Export House/Trading House Certificates are valid. However, the items permissible will be those as allowed under the Policy on the date of issue of the licence(s). It may not, therefore, be necessary for an applicant Export House/Trading House to hold a valid Export House/Trading House Certificate at the time of submission of the application for the Additional licences, if otherwise due."

Para 216 dealing with the Utilisation of Additional Licences provides as follows :-

"216. The Additional licences will be issued in the name of the Export Houses/

Trading Houses only and will not be subject to "Actual User" conditions. Except for cases covered by sub-paras (3) and (5) of para 215 above, a licence holder may transfer the licence in full or in part in favour of any other person. The transfer of the licence will not require any endorsement or permission from the licensing authority..... Whenever an Additional licence is transferred, the transferor should give a formal letter to the transferee, giving full particulars regarding No., Date and Value of the licence transferred and the name and address of the transferee."

The 1st respondent applied for Trading House Certificate by application dated 12-9-1989 on the basis of its exports of iron ore processed during the three preceding licensing years 1986-87, 1987-88 and 1988-89 under Para 212(1) of the Old Policy. The authorities concerned accepted that iron ore processed was not covered by any of the items of Appendix 12 of the Old Policy and granted Trading House Certificate to the 1st respondent for the period from 1-4-1989 to 31-3-1992. Consequently, by virtue of sub-para (1) of Para 215 of the Old Policy, the 1st respondent became entitled to the grant of additional licences (i) in the year 1989-90 on the basis of the admissible exports made in the preceding licensing year 1988-89; (ii) in the year 1990-91 on the basis of the admissible exports made in the preceding licensing year 1989-90, and the 1st respondent applied for them and was granted the two additional licences in respect of which the present Writ Petition is filed. As already stated above, the dispute is now confined only to the additional licence No. 3234622 granted to the 1st respondent on the basis of the admissible exports made during the preceding licensing year 1989-90 which is prescribed in the said additional licence as "export period A.M. 90". It is not in dispute that during the export period A.M. 90 the Old Policy was in force and it was effective for the licensing period 1990-91 also and if the Old Policy was not superseded, the 1st respondent would be entitled to additional licence in the year 1990-91 on the basis of its exports of iron ore processed made in the preceding licensing year i.e., export period A.M. 90, under sub-para (1) of Para 215 of the Old Policy. Mr. V.R. Reddy, basing himself on this premise contends : (a) that a vested right accrued to the 1st respondent on the basis of eligible exports made during the export period A.M. 90 when the Old Policy was undoubtedly in force and that the 1st respondent cannot be deprived of that vested right by any alterations in the policy made after the expiry of the said export period and that no retrospective effect can be given to such alterations so as to effect vested rights; (b) that having held out that additional licence would be granted on the basis of eligible exports made during the export period A.M. 90, the Central Government and the authorities concerned cannot deny the additional licence to the 1st respondent when on the basis of the promise held out it had made eligible exports during the export period A.M. 90 and that the doctrine of promissory estoppel would apply to the facts of the case. I support of these contentions, Mr. V. R. Reddy places reliance on the fact that the additional licences are intended as incentives for promoting exports in national interest and that additional licences are very valuable and

that very large sums can be earned by transferring them which in fact exporters like the 1st respondent take into consideration in effecting exports by reducing the price of export commodities to meet international competition.

8. In support of his contention, based on the doctrine of equitable estoppel, Mr. V. R. Reddy relied on the decision of the Supreme Court in *Union of India v. Anglo Afghan Agencies* - AIR 1968, Supreme Court, 718 which is also a case which arose under Imports & Exports (Control) Act, 1947 and Imports (Control) Order, 1955. In that case, the Supreme Court considered the scope of incentives to exporters of woollen goods under a scheme called the export promotion scheme published by the Textile Commissioner. The said scheme was extended to exports of woollen textiles and woollen goods to Afghanistan. Under the said scheme, it was represented that exporters of the said goods would be entitled to import certain goods for a value equal to 100% of the f.o.b. value of the exports. In that case it was urged on behalf of the Union of India that the scheme was administrative in character and that the recitals therein that the exporters would be entitled to import certificates equal to 100% of the f.o.b. value of the exports was a mere instruction issued by the Union Government to the Textile Commissioner and it created no rights in the public generally or in the exporters who exported their goods in pursuance of the scheme and imposed no obligations upon the Government to issue the import certificates. Rejecting the said contention, the Supreme Court held as follows :-

"We hold that the claim of the respondents is appropriately founded upon the equity which arises in their favour as a result of the representation made on behalf of the Union of India in the Export Promotion Scheme, and the action taken by the respondents acting upon that representation under the belief that the Government would carry out the representation made by it. On the facts proved in this case, on ground has been suggested before the Court for exempting the Government from the equity arising out of the acts done by the exporters to their prejudice relying upon the representation.

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Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisalment of the circumstances in which the obligation has arisen."

9. Mr. V. R. Reddy also relied on the judgment of the Supreme Court in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, wherein the Supreme Court observed that "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 the Court can judge for itself which way the public interest lies and what the equity of the case demands.... ... 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. 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 it is possible for the promisee to restore status quo ante. If, however, the promisee cannot resume his position, the promise could become final and irrevocable." also relied on the judgments of the Supreme Court in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., , in Pournami Oil Mills and Others Vs. State of Kerala and Another, and in D. Navinchandra and Co. and Others Vs. Union of India (UOI) and Others, . In this connection, the judgments of a Division Bench of the Bombay High Court in Union of India Vs. Hindustan Platinum Private Limited, and of a Division Bench of the Madras High Court in Union of India Vs. Chakra Tyres Limited, can also be referred to.

10. Mr. Koti Reddy on behalf of respondents 2 and 3 points out that sub-para (2) of Para 1 of the Old Policy itself made it clear :

"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 notices/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."

He contends that in view of the said statement everyone concerned is put on notice that changes may be made at any time in public interest. He also contends that the petitioner herein cannot set up the plea of promissory estoppel because the benefit, if at all, can be claimed only by the 1st respondent and not by the petitioner. According to Mr. Koti Reddy, the Import & Export Policy for the period 1st April, 1990 to 31st March, 1993 (hereinafter referred to as the "New Policy") was brought into effect by publication in the Gazette of India, Extraordinary dated 30-3-1990 superseding the Old Policy. Item 1 of Appendix-12 of the New Policy is "Minerals and Ores" and not "Minerals and Ores - unprocessed" as in Appendix 12 of the Old Policy. In sub-para (1) of Para 220 of the New Policy it is provided that :

"220(1) : The Export Houses/Trading Houses will be eligible to Additional Licences on the basis of the admissible exports made in the preceding licensing year. The value of these licences will be calculated @ 10% of the NFE earnings on the total eligible exports made in the preceding licensing year. This percentage shall be 13% in cases where an Export/Trading House is able to achieve a

minimum growth of 30% in terms of NFE realisation in the previous year, over and above the year preceding the same... ..".

According to Mr. Koti Reddy, Para 220(1) of the New Policy only would be applicable for grant of additional licence to Trading Houses for the year 1990-91 on the basis of the admissible exports made in the preceding year i.e., 1st April, 1989 to 31st March, 1990; by virtue of the change introduced in Item 1 of Appendix 12 in the New Policy "iron ore processed" was no longer an admissible export and so the additional licence No. 3234622 in respect of the export period A.M. 90 was granted through inadvertence or mistake and therefore can be cancelled under Clause 9(1)(a) of the Imports (Control) Order, 1955.

11. In fact the suspension order dated 7-9-1990 issued by the 2nd respondent to the 1st respondent and the show cause notice dated 5-10-1990 issued by the 2nd respondent to the 1st respondent set up the same case. In the said suspension order, it is stated that the additional licence now in question was issued to the 1st respondent erroneously "because against the exports of A.M. 90 period the licensing period is A.M. 91 and during this period, the said item of export is not eligible for additional licence as the same is figuring in Appendix 12 of Import & Export Policy Volume-I, 1990-93". In para 2 of the said show cause notice also the same thing is repeated. As already stated above, the 1st respondent gave a detailed reply dated 12-10-1990 to the said show cause notice. In the said reply the 1st respondent contends that the change introduced in Item 1 of Appendix 12 under the New Policy "does not at all have the effect of consequences that the export of items which were made in the past and which were permissible items (not being included in Appendix 12) at that time would be rendered ineligible to be considered for the grant of trading house certificate or issuance of additional licences merely, because, long after the said exports were completed, there was an amendment to the Import-Export Policy, whereby the said items were included in the list of ineligible items." In so contending, the 1st respondent also relies on the fact that the said additional licences are granted by way of an incentive to exporters "by informing them in clear and unequivocal terms that if they make exports of the specified items excluding the specified Appendix 12 impermissible items they shall become entitled to avail of various benefits provided under the Import-Export Policy" and that often it is these incentives which make the very export possible.

12. The matter therefore, turns on the meaning to be given to the expression "admissible exports" made in the preceding licensing year, in sub-para (1) of Para 220 of the New Policy. I am clearly of the view that "admissible exports" can mean only exports which are admissible as per the policy in force during the period when the exports were made. This follows from the fact that by the time the New Policy came into force on 1st April, 1990 the preceding licensing year during which the exports were made i.e., export period 1st April 1989 to 31st March 1990, came to an end. The New Policy was published only on 30th March 1990. Therefore, Export Houses/Trading Houses which made exports during the

export period 1989-90 would have made exports anticipating additional licences on the basis of exports held out to be eligible during that period. If the intention of the framers of the New Policy is to withdraw the valuable benefit of additional licences to Export Houses/Trading Houses which had already effected exports on the basis of the policy in force during the export period, that could have been made explicit. Wherever the framers of the New Policy intended to mean the appendices in the New Policy they adopted unambiguous language to make the said intention clear. Thus in sub-para (2) of Para 220 itself it is stated "Items appearing in Part I of List 8, Appendix 6 of this Policy"; and "Import of capital goods listed in Appendix I-Part B of this Policy". In sub-para (1) of Para 183 of the New Policy, the language adopted is as follows :-

"183(1) :- All exports, except those mentioned in para 191 will qualify for the grant of import replenishment provided :-

- (a) the exports are made in accordance with the export policy in force; and
- (b) the exported products are not listed in Appendix 12 of this policy."

In sub-para (1) of Para 218 also the language adopted is as follows :-

"218(1) :- The eligibility for the grant of Export House/Trading House Certificate shall be determined on the basis of the Net Foreign Exchange Earnings (NFE earnings) from the exports actually made in the preceding three licensing years termed as "Base Period". The earnings from (i) the exports of products specified in Appendix 12, (ii) re-exports as defined in para 191 of this Policy, shall not qualify for this purpose."

It is significant that in sub-para (1) of Para 220 there was no reference to Appendix 12 at all, leave alone "Appendix 12 of this Policy". I am of view that in interpreting "admissible exports made in the preceding licensing year" in Para 220(1) the fact that additional licences are granted as an incentive for promoting exports and that the doctrine of equitable estoppel would apply unless a change in the policy is clearly intended in public interest, the burden of establishing which is heavily on the authorities concerned, has to be borne in mind. In this connection, it is to be noted that there is nothing to establish that a change in the policy was intended and that a valuable benefit held out to exporters under the Old Policy was being withdrawn; and even assuming that such a change was intended, respondents 2 and 3 have not placed any material to establish that public interest warranted such a change. I am therefore of the view that on a fair and reasonable interpretation of sub-para (1) of Para 220 of the New Policy, Appendix 12 of the New Policy cannot be implicitly read into it and that the expression "admissible exports" would take in exports of products which were not made ineligible for additional licences under the policy in force during the export period. It is therefore unnecessary for me to go into the question whether the petitioner can invoke the doctrine of equitable estoppel.

13. The petitioner has also alleged mala fides against the 2nd respondent. The

fact that the date of the letter of the 2nd respondent to the 1st respondent requiring the latter to forward the two additional licences by 6-9-1990 coincides with the date i.e., 4-9-1990 on which the SLP preferred by M/s. Nagolice Limited was dismissed by the Supreme Court, and that the date of earlier notices of the 2nd respondent to the 1st respondent for forwarding the two additional licences immediately to the former's office without making any commitment coincides with the date i.e., 27-8-1990 on which the High Court of Delhi dismissed Writ Petition No. 2659 of 1990 preferred by M/s. Nagolice Limited may be accidental; and may be from this the petitioner deduces that M/s. Nagolice Limited used political influence and pressure on the 2nd respondent for issuing the said notices dated 27-8-1990 and the said letter dated 4-9-1990. No other material is forthcoming to establish mala fides. No doubt, in matters like this, mala fides can seldom be established by direct evidence. I am not inclined to rely on the fortuitous coincidences alone to uphold the mala fides voiced by the petitioner. But, there is no doubt that the 2nd respondent acted high-handedly without proper application of mind and without full examination of the matter. The learned standing counsel was not able to explain under what provision of law the 2nd respondent could call for the said two additional licences or suspend them without initiating any proceeding under sub-clause (3) of Clause 9 of the Imports (Control) Order, 1955. As it transpires, the 2nd respondent did not proceed further as regards the additional licence No. 3234621 relating to export period A.M. 89, the approximate value of which is Rs. 21,45,90,506/-. The 2nd respondent has not explained in his counter affidavit why additional licence No. 3234621 was also called back on the ground that it was erroneously issued. One would expect the authorities to act in matters like this with due deliberation and care, to say the least.

14. On the facts and circumstances of this case and for the reasons stated above, I hold that exports of "iron ore processed" were admissible exports made by the 1st respondent during the Export Period A.M. 90. The 1st respondent is entitled to additional licence during the following year i.e., A.M. 91 under the said sub-para (1) of Para 220 of the New Policy. Respondents 2 and 3 have failed to establish that there is any error in the issuance of additional licence No. 3234622/C/XX/17/W/90 to the 1st respondent. The impugned notices dated 27-8-1990 and 4-9-1990 are therefore bad and are quashed. Consequently, the suspension order No. Engg/9/Addl. Lic/TH/Am-91/Rep. II/Hyd/823 dated 7-9-1990 and the show cause notice No. Engg/9/Addl. Lic/TH/AM-91/REP. II/Hyd/17 dated 5-10-1990 which was issued during the pendency of this Writ Petition, are also set aside.

15. If pursuant to the order of this Court in W.P.M.P. No. 16911/90 dated 21-9-1990, the 1st respondent returned to the petitioner, pending disposal of this Writ Petition, the demand drafts given by the petitioner towards payment of the full consideration in respect of the additional licence bearing No. 3234622/C/XX/17/W/90, the petitioner shall pay back the entire consideration amount due and payable to the 1st respondent in respect of the said additional licence within

one month from today and the 1st respondent shall receive the same and immediately transfer the said additional licence by giving a formal letter as provided under sub-para (1) of Para 221 of the Import & Export Policy April 1990-March 1993. In the circumstances of this case and relying on the decision of the Supreme Court in Prem Chand Somchand Shah v. Union of India - 1991 (2) Supreme Court Cases, 48 at page 62, I also direct respondents 2 and 3 to extend the period of validity of the said additional licence, if so desired by the petitioner, by six months beyond the period of 18 months from the date of its issue.

16. The writ petition is allowed accordingly, with costs payable by respondents 2 and 3.