
(1951) 12 MAD CK 0024
In the Madras High Court
Case No : Writ Petition No. 713 of 1951

S.P. Shaik Abdul Khader and Co.

APPELLANT

Vs

A.R. Subramania Pillai and Another

RESPONDENT

Date of Decision : 14-12-1951

Acts Referred:

Constitution of India, 1950 — Article 19(6)
Imports and Exports (Control) Act, 1947 — Section 3

Citation : AIR 1952 Mad 840 : (1952) 65 LW 189 : (1952) 1 MLJ 284

Hon'ble Judges : Subba Rao, J

Bench : Single Bench

Advocate : M.K. Nambiar, for K.C. Jacob and S.K.L. Ratan, for the Appellant; N. Rajagopala Aiyangar and V.V. Raghavan for Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Subba Rao, J.—This is an application for issuing a writ of certiorari to quash the order of the Deputy Chief Controller of Exports, Custom House, Madras. The petitioner is a registered partnership firm carrying on business at Tirunelveli Pella. The petitioner entered into a partnership with the first defendant on terms and conditions set out in the partnership deed dated 1-12-1950. The partnership deed was executed subsequent to the agreement dated 30-9-1960. The scope of the agreement, the partnership deed and the terms thereof are in dispute. During September 1950, two lots of hundred tons of chillies were exported under two contracts with the Co-operative Wholesale Establishment, Ceylon. Subramania Pillai, the respondent had shipped the goods in his own name and realised the sale proceeds through bank.

2. The petitioner's case is that two consignments were made pursuant to the aforesaid partnership entered into between the parties.

3. The 1st respondent does not deny the export but states that he paid a share in the proceeds to the petitioners firm as brokerage and that by reason of that payment it was never intended that the petitioner's firm should become partners

with him. The first respondent applied for a quota that was to be allotted to him on the strength of the aforesaid exports. The petitioner wrote a letter dated 26-10-51 to the second respondent claiming that he was entitled to a moiety in the said quota. The second respondent replied that as the first respondent had shipped the goods in his own name, and duly realised the sale proceeds through bank, and as the petitioner retired from the partnership, the quota would be allotted to the parent firm or the individual, who retained the good will. This application is filed as aforesaid for quashing that order.

4. Learned counsel for the petitioner raised before me the following two points : (1) The order of the second respondent violates the fundamental rights under Article 19(1)(g) of the Constitution of India. (2) The order is, on the face of it, vitiated by an error.

5. Article 19(1) of the Constitution reads as follows :

"19(1). All citizens shall have the right--(g) to practise any profession, or to carry on any occupation, trade or business. 6. Nothing in Sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it prescribes or empowers any authority to prescribe, or prevent the State from making any law prescribing or empowering any authority to prescribe the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business."

6. Therefore, under Sub-section (6) the fundamental right guaranteed does not prevent the State from making any law imposing in the interests of the general public, reasonable restrictions on the exercise of the right.

7. The learned counsel's contention is that the petitioner is carrying on export business, and that by the order of the second respondent he is precluded from carrying on the business. He also argued that the law imposing the restrictions on the export trade was unreasonable.

8. The Imports and Exports (Control) Act, 1947 was enacted for the purpose of continuing for a limited period powers to prohibit or control imports and exports. u/s 3, the Central Government was authorised to make an order prohibiting, restricting or otherwise controlling in all cases, or, in specified classes of cases, and subject to such exceptions, if any as may be made by or under the order, the import, export, carriage coastwise or shipment as ships, stores of goods of any specified description. On the 21st of February 1949, the Government of India issued a notification. It reads :

"In exercise of the powers conferred by Sub-rule (3) of the Rule 84 of the Defence of India Rules and in supersession of the Notification of the Government

of India in the Department of Commerce, No. 91-C. W. (1) 44 dated the 29th January 1944, the Central Government is pleased to prohibit the export to any place outside India, of any goods of the description specified in the schedule annexed, except the following namely :

(e) any goods of the description specified in Part D of the said schedule and covered by an export licence issued by or under the order of the Central Government in the Ministry of Commerce or the Chief Controller of Exports or an Export Trade Controller or Deputy Chief Controller of Imports and Exports appointed in this behalf by the Central Government."

The Exports control policy was designed to conserve essential supplies for civilian consumption, in this country. It also made possible the fair distribution of available exportable surplus among India's customers at controlled prices. A person or firm desirous of exporting any controlled commodity must comply with the Export Control Regulations and procedure. To that effect general instructions were given by the Ministry of Commerce prescribing the procedure and also the conditions for the issue of permits. Some of the said instructions are found in the Export Trade Control Circular No. 289 of 1951. It says that it has been decided to regulate the export of chillies to all permissible destinations on the principle of established shippers and under cover of licences issued by the office. One of the important rules prescribed for guidance is that those shippers, who have effected the export of chillies during any of the three financial years 1948-49, 1949-50 and 1950-51, may choose any one of the three years as their basic year and that allotments will be made to those shippers in proportion to their basic exports subject to the maximum limit of 15 tons per quarter per individual shipper. Under the general instructions given, it is also provided that exporters, who are not satisfied with the decision of the licensing authorities, or those, who have not received any reply from them within a reasonable time, may appeal, in the case of commodities included in Part D to the Chief Controller of Exports, New Delhi. Under the provisions of the Imports and Exports (Control) Act, 1947, the notification issued thereunder and the general instructions forwarded to the officers restrictions were imposed in the interests of the general public, having regard to the imperative necessity to control export trade for the economic stability of the country. Specific and reasonable instructions were given to the officers and an appeal also was provided to rectify the orders of the subordinate officers. I cannot say that the restrictions imposed are not reasonable within the meaning of Article 19(6) of the Constitution of India, nor is the machinery provided for the implementation of the policy unsatisfactory.

9. It was then contended that the order of the Controller of Exports was vitiated by an error on the face of the record. The Controller has construed the partnership deed and had come to the conclusion that, in the circumstances of the case, the proper course was to allot the quota to the parent firm, or the individual, who retained the goodwill. It was argued that, as the Controller found that 200 tons of chillies were exported by the partners on 30-9-1950, quota

should have been allotted to each of them for exporting 100 tons of chillies as each of the persons must be deemed to have exported 100 tons in 1950-51. The Controller construed the terms of the partnership and held that the partnership was either continued by the 1st respondent or that he was carrying on the business with the goodwill of the partnership. He, therefore, took the view that the quota should be given to the 1st respondent, who was continuing the business. I cannot say that the order is vitiated by an error on the face of the record.

10. Further, it was represented to me that a suit is now pending in respect of the partnership business and that the rights of the parties will be decided therein. Any observations that may have been made by the Controller of Exports or by me, in the course of this order, will not preclude the court from deciding the rights of the parties therein, or appointing a Receiver, if a case is made out for one.

11. Further, the general instructions issued provide for an appeal against the order of the Exports Trade Controller to the Chief Controller of Exports, New Delhi. It is true that there is no statutory right of appeal as contended by the learned counsel for the petitioner. But the same instructions, which regulate the conditions under which the permits are issued, also provide for an appeal. If the Export Trade Controller is wrong because he has not followed the instructions strictly, his order certainly can be questioned by preferring an appeal provided for under the same instructions.

12. For the aforesaid reason, the application fails and is dismissed with costs. Advocate's, fee Rs. 100.