

(1996) 03 MAD CK 0120

In the Madras High Court

Case No : Writ Petition No's. 17744, 17249, 17250, 17490, 17491, 17842 to 17852, 17872, 17873, 17979 to 17984 of 1995 and 651 to 654, 900, 901, 913 to 922 of 1996

Tehzeeb Katari

APPELLANT

Vs

Government of India and Others

RESPONDENT

Date of Decision : 07-03-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 19

Citation : (1996) 56 ECC 1

Hon'ble Judges : K.A. Swami, C.J.;Kanakaraj, J

Bench : Division Bench

Judgement

Kanakaraj, J.—The export of readymade garments from India to various parts of the world is on the basis of the demand in the other countries, and on the basis of a peculiar quota system. Some of the foreign countries, importing readymade garments from India imposed restrictions of the import of both textiles, and garments from other parts of the world including India. Some of these countries, called "quota countries" entered into bilateral agreements with the Government of India from time to time fixing the quota of imports permitted from India. There are other countries called "non-quota countries" which do not place any such restrictions, but apparently exports to these non-quota countries are not very attractive in terms of profits. The quota countries like U.S.A., Canada, Norway and the European Union permit India to export textiles and garments up to a maximum ceiling limit per annum. This ceiling limit is taken as the quota, which is in turn distributed among the individual exporters on the basis of the policy of the Government taking note of the interest of the country, the economic growth and the preservation of foreign exchange, etc.

2. We are concerned in these writ petitions with the export entitlement policy for the period from 1994-19% which contained the procedure for submission of applications for allotment of entitlements for exporting garments to the European Union countries, U.S.A., Canada. The system adopted and the percentage of the

quota for each system is indicated in the following tabular statement:--

Distribution	of	Annual	Level(Percentage)
----- a) Past			
Performance Entitlement (PPE) System	70	(Of which High Value Entitlement)	(10)
b) Manufacturer Exporters Entitlement (MEE) System	15	(Of which MEE for new comers)	(2)
c) Non-quota Exporters Entitlement (NOE) System	15	(Of which NOE for Handloom garments)	(2)
d) First come First Served (FCFS) System			Nil
----- Total			100

3. Though no reservation was made under the category of FCFS, it was made clear that quantities available from unforeseen circumstances shall be allocated on FCFS basis and PPE basis in the ratio of 30: 70. The writ petitions with which we are concerned are by persons who were getting entitlement quota in the category of MEE system and NOE system.

4. For the sake of convenience we will narrate the facts of one writ petition under the MEE system and one writ petition in NOE system. The petitioner in W.P. No. 17744 of 1995 is a manufacturer and exporter of cotton garments to West European countries, United States of America and Middle East. They are also registered as a small scale industry. The petitioner points out that the garment quota policy is normally evolved on a long-term basis with a view to ensure that the quotas are distributed in an even manner. The petitioner then describes the requirements of a manufacturer to seek the benefit under the scheme. They relate to the industry being a small scale industry, the industry having a minimum of 150 permanent workmen and having their own machines for the manufacture of garments. They are then required to make an application in the prescribed manner with necessary documentary evidence. As already stated the quota policy was issued for the period 1994-1996 (till December 1996). By a press notification dated 10.10.1996, the manufacturer-exporters were subjected to some more stringent conditions for getting entitlement. These conditions required that the machineries which were five years old would not be taken into account. Further, they were asked to submit their applications for quota allotment for the year 1996 on or before 20.11.1995. It is the case of the petitioner that they had invested nearly a sum of Rs. 10,00,000 in order to replace the machinery which were five years old. While so, a further press notification was issued on 28.11.1995 announcing a total change in the garment quota policy. The allotment for the MEE system and NQE system were totally withdrawn and the new policy was announced for the period from 1.1.1996 to December, 1998. This policy envisaged as follows:--

- (i) Past performance entitlement (PPE) 80%
- (ii) First come First served entitlement (FCFS) 20%

Though most of the writ petitions had been filed challenging the press notification, subsequently they have filed amendment petition seeking a declaration that the notification hearing No. 1/29/93 EP (T & J) dated 4.9.1995 is violative of the petitioners' right guaranteed under Articles 14 and 19 of the Constitution of India. The amendment petitions were ordered by us on 20.2.1996. According to the petitioner, the amended notification was purely at the instance of certain non-manufacturer-exporters and therefore, vitiated by mala fide considerations. The petitioner who had invested huge amounts on the basis of the policy for 1994-96 is practically forced out of business. It is therefore, contended that the respondents are estopped from arbitrarily withdrawing the earlier scheme. The petitioner who had a quota of 1,49,671 pieces during the year 1995 will only get a quota of 79,176, pieces in the year 1996.

5. In W.P. No. 651 of 1996 the facts are as follows:-

In this writ petition reference is made not only to the MEE quota, but reference is also made to the NQE quota. While under MEE quota certain restrictions were placed regarding the provision for new machineries, the NQE quota is on the basis of the right of exporters who make exports to nonquota countries, to get a quota for export to the quota countries.

They also referred to the press notification issued on 10.10.1995 inviting applications to be submitted on or before 20.11.1995. The petitioner and several others had made their applications by 20.11.1995. By a circular dated 22.11.1995 the last date for submission of applications was extended up to 15.12.1995. While so, the respondents had in the meanwhile, by the impugned notification dated 28.11.1995 scrapped the quota available for the MEE and NQE systems. It is therefore, contended that the action of the respondents clearly discloses certain ulterior motives for the scrapping of the policy. Secondly, it is contended that those who had performed their obligations and became entitled to NQE quota cannot be deprived of their right by the principle of promissory estoppel. Thirdly, it is pointed out that the very existence of MEE exporters is threatened by scrapping the quota of MEE exporters. Lastly, it is contended that there was no need at all to introduce the policy from 1.1.1996 and the respondents could have as well waited to introduce the policy after December, 1996. In W.P. No. 17842 of 1995 an additional point is also raised that the impugned notification suffers from the vice of discrimination and arbitrariness.

6. In the counter-affidavit filed on behalf of respondents 1 and 2, reference is made to the policy of the Government for the period 1994-96. It is pointed out that textiles and garments are two distinct industries and different considerations apply in respect of their exports. In the Agreement on Textiles and Clothing (ATC) resulting out of the Uruguay Round of Negotiations between the major importing and exporting countries of textiles and garments including India, it was agreed that all textile and garments quotas established under the Multi-Fibre Arrangement (MFA) of 1974, would be phased out in stages during the period of

10 years ending on 31.12.2004. Prior to 1.1.1995, the imposition of quotes by importing countries was governed by the provisions of the MFA but after 1.1.1995 they are governed by ATC. It is also pointed out that the Uruguay Round of Negotiations of the GATT were started in the year 1988 and continued till 1993 and the Uruguay Round of Final Act was accepted by all the negotiating parties in the year 1994. The Final Act incorporates separate agreements for different sectors including one for the textiles and clothing sectors. It is this agreement which is known as the Agreement on Textiles and Clothing (ATC). Therefore, since the Government of India had committed itself to the phasing out of quotas by December 2004, they had to introduce change in the quota policy from 1995 onwards. The goal sought to be achieved is to enable any exporter whether based in India or abroad to export textile and garments to any other part of the world without any quota restrictions with effect from 1.1.2005. With a view to provide the right environment for the textiles and clothing exporters to be ready for the achievement of the said goal the Government had to necessarily change some of its quota policies. There was need for encouraging new entrepreneurs to enter the export business so that the challenge of the future could be met. The Government felt that under the FCFS system any exporter, whether new or existing had an equal chance to get quotas because it is a price-based system and it is not dependent on past performance. It was the considered view of the Government that the introduction of a new dynamism would make the trade more competitive and it will be in the best interest of the country in terms of earning foreign exchange. This is primarily the reason why the MEE and NQE quotas were eliminated and a larger allocation was made under PPE system and the rest of the percentage earmarked for FCFS system. It is contended that the above change of policy had been undertaken in the public interest and has a rationale and logical basis.

7. It is also pointed out in the counter-affidavit that there were complaints that the quotas under MEE system were being obtained by fraud and by misdeclaring the production capacities by unscrupulous people masquerading as exporters. It had become difficult to examine each and every declaration because there were more than 2,000 exporters in the year 1994 seeking allocation under the MEE system. There were also several instances where MEE quotas were being sold contrary to the policy that MEE quotas could not be sold. Though action was being taken against such fraudulent people, but the misutilisation could not be prevented completely. The need to plug the misuse immediately, was felt by the garment industry.

8. So far as NQE system is concerned, it was meant to provide an incentive to the non-quota exporters and make them more competitive. Despite the incentive, the growth of non-quota exports was not commensurate with the quantum of quota that was being distributed for encouraging such exporters. It was also found that the way to boost exports to non-quota countries lay elsewhere. The idea of permitting quotas obtained as incentives to be sold at premium was to cross-subsidise the nonquota exports and thus lower the actual

selling price of items. It was an indirect subsidisation to the NQE exporters. Actually, the foreign buyers were constrained to bear this indirect subsidy. With the emergence of a large number of least developed and developing countries in the international clothing market whose wages costs were substantially lower than in India, the foreign buyers preferred those countries instead of being made to bear the indirect subsidy from Indian exporters. It was found that the clothing exports, had severely suffered on this account from the end of 1994 onwards. Though the clothing quotas were not being fully exploited, the quota premium were still ruling high. There was, therefore, a need to lower the quota premium by an immediate abolition of the NQE system so that the genuine quota exporters could do business. The only way to set right the malady was to preserve only the PPE and FCFS systems. It was felt that unless NQE was abolished the country's quota exports could not be protected. It was felt that Indian exporters should be encouraged to compete internationally on the basis of their own- inherent strength and not on the basis of any cross-subsidisation.

9. The respondents therefore, deny the allegations in the various writ petitions and contend that the only objective was to maintain stability, increased foreign exchange earnings per unit of quota, i.e., by higher unit value realisation, modernisation and technological upgradation of the industry and diversification of product range, etc. The other objective was to prevent middlemen from cornering the quotas and prevent the genuine quota exporters from doing business.

10. It is contended that the Government had always power to amend the quota policy from time to time. In fact, the quota policy from 1994 to 1996 was announced in September 1993, and was changed even in the year 1995 by decreasing the MEE quota by five per cent and increasing the NQE quota by five per cent. It is therefore, pointed out that there was a substantial change in the quota policy even between the years 1994 and 1996. It is also pointed out that several representations had been received from almost the entire garment exporting industry and several meetings were held at various centres. Different associations of garments exporters, trade and industry had discussed the matter with the Government and it is only thereafter that the new policy was announced. This is precisely the reason why a press release was issued on 28.11.1995, though the notification itself came, into being on 22.12.1995.

11. The respondents categorically deny that the impugned policy was brought out at the instance of the non-manufacturer exporters. In this connection it is pointed out that the New Investors, Entitlement system provides much more substantive benefits to manufacturer-investors than the old MEE system. There are as many as 32,000 exporters registered with the third respondent council and there was consensus among most of the exporters that the impugned policy is the best policy which will encourage the genuine exporters.

12. On the question of legitimate expectation it is pointed out that no exporter was assured of any particular quota. The grant of quota was dependent on the

number of applications received in the importing country and several other factors. Such expectations could only be based on conjecture and speculation. On the question of promissory estoppel, it is contended that the Government has a right to change its policy in tune with its perception of what is good for the public and the individual sufferings cannot take precedence over the larger public interest. Every exporter knows that the allotment of quotas is never static and would change from time to time. The Government cannot therefore be tied down by any principle of promissory estoppel when they are acting in the larger interest of the country.

13. On the above pleadings, the following points arise for consideration:--

i) Is the impugned notification vitiated by mala fide considerations at the instance of non-manufacturers?

ii) Are the respondents barred by principle of promissory estoppel and legitimate expectation, from issuing the impugned notification?

iii) Is the impugned notification arbitrary or discriminatory and thus violative of Article 14 of the Constitution of India?

14. Taking the first question for consideration, we have no hesitation in holding that the petitioners have not made out a case that the respondents have acted at the instance of the non-manufacturers. Though some allegations have been made in the affidavits of the petitioners, no attempt has been made to prove those allegations. On the other hand, the respondents in their counter-affidavit have elaborately set out the reasons for the change in the policy and the representations which they had received from all sections of the trade. "We have already set out the recitals in the counter-affidavit elaborately and we do not propose to repeat the same once over again except to say that the impugned notification was issued on the basis of good and valid reasons and cannot be characterised as whimsical or arbitrary. The respondents have not only stated that the change in the policy is attributable to the Uruguay Round of negotiations resulting in the Agreement on Textiles and Clothing, they have also referred to the fact that India has committed to the policy of phasing out the quota system with effect from 1.1.2005. That apart, reference has been made to the necessity to encourage new entrepreneurs by way of implementing the Uruguay Round of negotiations. It is also pointed out that there are defects in MEE system as well as NQE system and the malpractices which are being carried on in those systems. A case has been made out for protecting the interest of the genuine exporters at the cost of middlemen who were cornering most of the quotas." We are therefore, convinced that the impugned notification is not on account of any influence exercised by the non-manufacturers, but due to the realisation of the defects in the MEE and NQE systems as well as the necessity to implement the decisions taken in the Uruguay Round of Negotiations. The first contention therefore, fails. The extension of the last date for the receipt of applications to 15.12.1995 and announcing the change in the policy on 28.11.1995, does not

give rise to any suspicion of an attempt to help others. In the same way the argument that the respondents could have waited till December, 1996 to introduce the new policy does not appeal to us, because of the urgency to make the change, for which they had the power, and because of the several reasons given in the counter-affidavit which we accept as true and genuine. Accordingly point No. (1) is answered in the negative.

15. All the counsel have laid emphasis on the second point relating to promissory estoppel and legitimate expectation. It is argued that the base period for all the export entitlements under NQE is two years earlier, than the date of issue of quota. In other words, the base period for arriving at the entitlement for 1995 is the year 1993. Therefore, the argument, is, when the petitioners had put in sufficient performance in the year 1993, for getting a quota under the NQE system, the respondents cannot at the last minute, deny the same on the ground that the MEE system has been scrapped. Similarly, the manufacturers complain that they had invested huge amounts by way of replacing the machineries which had become five years old and were therefore, hoping to get sizable amount of quota under the MEE system and they have been suddenly deprived of the same by the impugned notification. Both by way of investment and engagement of labour, they have altered their position and therefore, they plead that the principle of promissory estoppel is attracted and the impugned notifications cannot be given effect to.

16. On the other hand, Mr. V.T. Gopalan, learned Senior Central Government Standing Counsel, for the respondents argues that even under the quota policy for 1994-96 the petitioners were not entitled to any specified quota. They were fully aware that the allotment of quota will change from time to time. Even during the period 1994-96 the percentage of allotment had once been changed. Above all, the notification dated 4.9.1993 for the period from 1994 to 1996 itself contained a salutary clause which is as follows:--

Government reserves the right to make amendments to any of the foregoing provisions as may be found necessary without giving prior notice, Government also reserves the right to amend the policy as necessary depending upon the outcome of the Uruguay Round of Negotiations and the future of Multi-Fibre Arrangement.

He therefore, argues that it is futile on the part of the petitioners to contend that the policy cannot be amended. For the purpose of showing that over a period of years the percentage in respect of each category had undergone several changes, the respondents have filed a tabular statement which indeed shows that the percentage of quota for one or other of the categories had never been constant. Therefore, we are of the view that it is not correct to say that the petitioners had any legitimate expectation in respect of any specified quota nor were they assured of the allotment of any specified quota. On facts, the principle of promissory estoppel and legitimate expectation have no application.

17. We will now turn to the decisions cited on behalf of both parties. The first judgment is Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., . In that case certain import entitlement was not fully honoured by the authorities even though the parties had made sufficient exports for getting import entitlement. It has to be noticed that the entitlement of the parties was recognised, but had not been honoured fully. The Supreme Court of India even while holding that the parties were entitled to (lie full import entitlement observed:

Reduction in the amount of import certificate may be justified on the ground of misconduct of the exporter in relation to the goods exported, or on special considerations such as difficult foreign exchange position, or other matters which have a bearing on the general interests of the State.

18. In Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, no doubt, there is a reference to the principles of promissory estoppel, but the facts of the said case are totally different from the facts of the present case. Similarly, in Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others, the question turned on the validity of withdrawal of the concession. But the Court held that the withdrawal of a concession was not based on any misuse or abuse of the concession earlier given and therefore, it was held that the withdrawal was not justified. Similarly, VII Resins Pvt. Ltd. v. State of J. and K. 1989 (3) SCC 11 is clearly distinguishable on the facts. Surendra Kumar Gyani Vs. State of Rajasthan and Another, is relied upon for the proposition that the doctrine of legitimate expectation is attracted on the facts of the case. That case related to a change in the policy with regard to the allotment of land to Group Housing Societies. The apex Court has only pointed out that before introducing any change in the guidelines for allotment, it was desirable that an opportunity should have been given to the Societies to make representation. In Union of India and others Vs. Hindustan Development Corpn. and others, the apex court has observed as follows while dealing with the applicability of the doctrine of legitimate expectation:--

But there again the court has to see whether it was done as a policy or in the public interest either by way of CO., rule or by way of a legislation. If that be so, a decision denying a legitimate expectation based on such grounds does not qualify for interference unless in a given case, the decision or action taken amounts to an abuse of power. Therefore, the limitation is extremely confined and if the according of natural justice does not condition the exercise of power, the concept, of legitimate expectation can have no role to play and the court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the Court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed to have intended.

Learned Counsel for the petitioner also relied on a decision in Mohan Rao

Pandamudi v. Govt. of Tamil Nadu 1995 11 MLI 577. In that case the contention of the authorities in answer to a plea on promissory estoppel was that the promise depended upon a condition and therefore, the principle of promissory estoppel cannot be raised. This plea of the authorities was on the basis that the promise must be certain, unambiguous and unqualified. The Division Bench however, found that the promise in that case contained in Government order, G.O.Ms.No. 474 dated 3.11.1986 could not be considered to be ambiguous and qualified. The Division Bench also observed that there was no doubt that if the promise was opposed to public interest or was opposed to law or beyond the authority of "he person or authority making the promise, then, the principle of promissory estoppel could not arise. It is only on the facts of the said case it was held that the promise being unambiguous, was enforceable. On facts the said judgment cannot be applied to the issue raised in these writ petitions. It is worthwhile to quote the relevant observation of the Division Bench:

Learned Advocate General relied upon a decision of the Supreme Court in Delhi Cloth and General Mills Ltd. Vs. Union of India (UOI), , in support of the contention that the promise was conditional, therefore, it could not furnish a basis for applying the rule of promissory estoppel. There is no doubt that the aforesaid decision does lay down that if the promise depends upon a condition the question of promissory estoppel does not arise, because the promise must be certain, unambiguous and unqualified. But as pointed out by us, the Government order G.O.Ms. No. 474, dated 3.11.86 cannot be considered to be ambiguous or imposing any such conditions which would make the promise contained in the Government Order ambiguous and qualified.

19. On the other hand learned Senior Central Government Standing Counsel for the respondents has relied on certain weightily and important decisions relating to the doctrine of promissory estoppel and legitimate expectation. In The Deputy Assistant Iron and Steel Controller and Another Vs. L. Manickchand, Proprietor, Katrella Metal Corporation, Madras, the Supreme Court observed as follows:--

Now, it has to be borne in mind that in the present stage of our industrial development imports requiring foreign exchange have necessary to be appropriately controlled and regulated. Possible abuses of import quota have also to be effectively checked and this inevitably requires proper scrutiny of the various applications for import licence. In granting licences for imports, the authority concerned has to keep in view various 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 terms of the policy in force at the lime of his application because from the very nature of things at the time of granting the licence the authority concerned may often be in a better position to have a clearer over-all picture of the various factors having an important impact on the final decision on the allotment of import quota to the various applicants.

In *Andhra Industrial Works Vs. Chief Controller of Imports and Others*, , the Supreme Court has again reiterated the well established principle that an applicant has no vested right to an import licence in terms of the policy in force at the time of the application; that no person can merely on the basis of a policy statement claim a right to the grant of an import licence, enforceable at law. The policy can be changed or rescinded by mere administrative orders or executive instructions issued at any time.

In *R.K. Garg v. Union of India* AIR 1981 SC 2138 the apex Court had observed as follows:--

Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc.

In *Delhi Cloth and General Mills Ltd. Vs. S. Paramjit Singh and Another*, , apex court observed:-

Absent blatant disregard of constitutional provisions, legislative innovation by social and economic experimentation must be permitted to continue without judicial interference.

20. There is yet another judgment of the Supreme Court which has to be noticed carefully, and it is *Kasinka Trading and another, etc. etc. Vs. Union of India and another*, . In that case, the parties had challenged the withdrawal of a time-bound exemption notification in respect of import of P.V.C. resin. The entire gamut of decisions on the principle of promissory estoppel and the legitimate expectation were analysed by the apex court. It was pointed out that notifications like this cannot be said to be holding out any unequivocal promise by the Government intended to create any legal relationship between the Government and the party concerned. It was pointed out that it would be futile to contend that even if the public interest so demanded and the Central Government was satisfied that the exemption did not require to be extended any further, it could not still withdraw the exemption. Observed the Supreme Court:--

The withdrawal of exemption in "public interest" is a matter of policy and the courts would not bind the Government to its policy decisions for all times to come, irrespective of the satisfaction of the Government that a change in the policy was necessary in the "public interest". The Courts do not interfere with the fiscal policy where the Government acts in "public interest" and neither any fraud or lack of bona fides is alleged much less established. The Government has to be left free to determine the priorities in the matter of utilisation of finances and to act in the public interest while issuing or modifying or withdrawing an exemption notification u/s 25(1) of the Act.

21. We have yet another recent decision of the apex court which also emphasis(ed) the point relied on by the respondents. In *S.B. International Ltd. and Others Vs. Asstt. Director General of Foreign Trade and Others*, the principle

of promissory estoppel was relied upon seeking a right to the grant of advance licence on the basis of the policy of the Central Government. Observed the Supreme Court:

We are, therefore, of the opinion that the contention that a vested right accrues to an applicant for issuance of advance licence on the basis of the norm obtaining on the date of application is unacceptable. The scheme and the context militate against the contention. The fact that the policy is statutory in nature (delegated legislation) has no relevance on the question at issue.

22. We may also refer to the decision of a learned single Judge of the High Court of Calcutta in *Kariwala Exports Private Limited and Anr. v. Apparel Export Promotion Council and Ors.* (W.P. Nos. 2311 to 2313 of 1995 dated 9.2.1996), where the validity of the very notification in question was challenged. The following extract will be useful:

As conceded by the petitioner, the Government is entitled to alter its policies when required by the exigencies of a situation. In the instant case, the Government has chosen to do so in a manner which adversely affects the writ petitioners, but, in my view, that is not sufficient in itself to warrant interference by the writ court.

In the instant case, no right of the writ petitioners has been affected. The Export Entitlement Policy of 1994-96 as the name suggests, relates to entitlement, that is, to be considered for allotment of quota on the fulfilment of certain conditions. In the said circumstances, the petitioners have based their claim on the doctrine of legitimate expectation, which, as explained by the Hon"ble Supreme Court in the *Hindustan Development Corporation case* (supra) falls short of being a right in the conventional sense.

As to the applicability of the doctrine of promissory estoppel, it does not appear that the writ petitioners have, in any way, altered their position on account of the Entitlement Policy. The petitioners have only fulfilled the condition which would have entitled them to a quote under the Non-quota Entitlement Scheme, had the said scheme continued to be in force. Not only have the petitioners not altered their position, as such, they have not also done so to their detriment and have not suffered prejudice thereby.

The decisions cited by the respective parties in this regard are no doubt good law, but do not appear to have application to the facts of this case.

The doctrine of legitimate expectation entails that such expectation must be founded on the sanction of law or custom or an established procedure which has been regularly followed. In other words, the continued and consistent acts of the concerned authority must give rise to an expectation in the mind of the concerned individual that he could legitimately expect a thing to happen or to be done. No right as such accrues, and consequently, if a policy is altered, which prevents such thing from happening or being done, no grievance can be raised

for its non-performance.

Thus, the views expressed by the learned single Judge of Calcutta High Court accords with the view taken by us.

23. For all the above reasons and on the basis of the weight of the authorities cited on behalf of the respondents, we have no hesitation in holding that the respondents are not barred by the principle of promissory estoppel or legitimate expectation from issuing the impugned notification. The second point is answered in the negative and in favour of the respondents.

24. So far as the third point is concerned, we have already noticed the fact that the impugned notification was issued on the basis of the good and valid reasons which are set out in the counter-affidavit. It is not therefore, arbitrary, but based on sound reasoning. No question of discrimination arises because each entitlement is based on a classification which is wholly in accordance with the policy decision and bears a nexus to the policy sought to be achieved. The impugned notification does not discriminate against the person and another but only deals with a class of persons which is easily identifiable wholly different from the other class. Further, the first come first served (FCFS) system is open to everybody and is mainly granted to "applicant[s]" based on a price-based system. It has already been explained in the counter-affidavit that allotments under this head are made on the basis of the applications received on a particular day irrespective of the time of receipt. The allotments are made on the basis of high price realisation, the highest prices getting the first preference. Thus, the maximum amount of foreign exchange is earned by this process. We are unable to see any discrimination in this process. Further, as rightly pointed out: by learned Senior Central Government Standing Counsel for the respondents, the manufacturing [manufacturers?] are also eligible to get quota under the Past performance Entitlement. In fact, most of the manufacturers do get a sizable quota under PFE system which is even now in vogue. The third point is also answered in the negative.

25. For all the above reasons, we hold that there are no merits in the writ petitions and all of them are accordingly dismissed. W.M. Ps. No. 3540 to 3564 seeking amendment are allowed. No costs.