

(1984) 01 BOM CK 0058

In the Bombay High Court

Case No : Writ Petitions No"s. 1898, 1590, 1591, 1711, 1883, 1896, 1897, 1899 of 1981; 173, 174, 175, 176, 177, 179, 180, 181, 312, 313, 314, 315, 317, 791, 792, 2077 of 1982; 1858 of 1981 and No. 46, 178, 316, 545 and 546 of 1982

Vibgyor Textile International

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 13-01-1984

Acts Referred:

Citation : (1989) 39 ELT 535

Hon'ble Judges : S.P. Bharucha, J

Bench : Single Bench

Judgement

1. The question that is to be determined is whether the petitioner in these petitions are entitled to cash assistance under the Export Assistant Scheme for Cotton Textiles announced by the Union of India, the 1st respondent, for the period between 1st April 1978 and 31st March 1979.
2. The petitioners are manufacturers and exporters of cotton ready- made garments. The said Scheme was introduced with a view to induce exporters to export the textiles covered thereby and give them the incentive of replenishment licences or cash assistance. The cash assistance is given by the first respondent through the Indian Cotton Mills Federation, the 2nd respondent.
3. By a circular dated 19th April 1978 the second respondent announced the said Scheme and gave therein the rates of cash assistance admissible on the export of textiles effected during the stated period. In regard to industrial garments and children"s clothing the rate of cash assistance was 12.5% of the f.o.b. value of the exports and 7.5% in regard to other ready-made garments. The last sentence of the circular stated, "It may further be noted that this circular is being issued on the understanding that no binding obligation of any nature is cast upon the Federation".

4. The petitioners entered into contracts with their foreign buyers for the sale and export of ready-made garments under the said Scheme, particulars whereof are annexed to each of the petitions. It is the case of the petitioners in the petitions that the said contracts were entered into by them at a price less than the usual market price, and that they did so in view of the cash assistance granted by the 1st respondent under the said Scheme. It is their case that in respect of the exports under the said contracts they incurred losses as the price quoted by them was less than the actual cost of the export of the goods and their margin of profit. Exports under the said contracts were effected after 1st January 1979. In respect of the said contracts the petitioners filed applications for cash assistance under the said Scheme. They were rejected by the 1st respondent. This, admittedly, was on the ground that the said Scheme had, in respect of cotton ready-made garments, been withdrawn with effect from 1st January 1979.

5. The circular announcing the withdrawal was issued by the second respondent and was dated 6th January 1979. After reference to the circular dated 19th April 1978 it stated that cash assistance applicable to the exports of shirts, blouses, dresses, skirts and trousers would be discontinued with effect from 1st January 1979 if the exports were made to USA, EEC, Australia, Finland, Sweden and Norway.

6. The petitioners made representations against the withdrawal and, ultimately, filed these petitions seeking to quash the decision to withdraw contained in the circular dated 6th January 1979.

7. An identical petition, being Writ Petition No. 1869 of 1979, came up for hearing before my brother Pendse and by his judgment and order dated 24th November 1983 he allowed it. It may be noted, however, that that petition proceeded without an affidavit in reply on behalf of the 1st respondent. Pendse J. Held that in respect of contracts concluded prior to 1st January 1979 the petitioners were entitled to the advantage of the cash assistance. The fact that the goods were actually exported subsequent to 1st January 1979 was not enough to deprive the petitioners of it. The doctrine of promissory estoppel applied. The contracts had been entered into on the assurance given under the said Scheme. They were detrimental to the interests of the petitioners and had been entered into only because of the assurance. The first respondent was, therefore, not entitled to withdraw such assurance with retrospective effect and deprive the petitioners of the advantage of the said Scheme. Whatever the reasons that prompted the first respondent to withdraw the said Scheme with effect from 1st January 1979 it could not affect the right of the petitioners to demand cash assistance in respect of contracts concluded prior to 1st January 1979. Upon a consideration of various judgments, Pendse J. held that the petitioners were entitled to the benefit of the cash assistance under the said Scheme provided that the first respondent was satisfied that the contracts set out in the petition had been entered into and concluded prior to 1st January

1979 and were in pursuance of the said Scheme. The petition as against the second respondent was dismissed.

8. There is in the first of the abovementioned petitions an affidavit in reply filed by the first respondent which sets out its case with regard to the withdrawal of the said Scheme. The deponent of the affidavit, the Deputy Chief Controller of Imports & Exports, states that the cash assistance ("cash compensatory support", as he calls it) was announced and given for the purpose of offsetting the losses of the trade. He submits that the 1st respondent was entitled to and justified in law and "on facts in withdrawing the said Scheme with effect from 1st January 1979 inasmuch as the floor price of the categories of garments in respect of which cash compensatory support has been discontinued with effect from 1st January 1979 had substantially risen in the international market and more particularly in the countries in respect of which the said declaration was applicable."

9. It was the submission of Mr. Sethna, learned counsel for the first respondent, that the court should, first, be satisfied that the petitioners had incurred losses and, secondly, that the first respondent had no good reason to withdraw the Scheme; only then could the relief sought in the petition be justifiably given. He is right.

10. The reason for withdrawal of the said Scheme is contained in the extract from the affidavit of the Deputy Controller of Imports & Exports which is set out above. What is stated there is (1) that the cash assistance or compensation was given for the purpose of offsetting losses on export and (2) that it was withdrawn with effect from 1st January 1979 when the floor price of the categories of garments in respect of which the said Scheme was withdrawn had substantially risen in the international market and, more particularly, in the countries to which the exports were to be made. This establishes that exporters entering into contracts prior to 1st January 1979 would do so at a loss and would need the cash assistance under the said Scheme to compensate for the loss. This, coupled with the averments in the petitions, satisfies me that the petitioners did incur losses upon the said contracts.

11. What is stated in the affidavit furnishes a very good reason to withdraw the cash assistance in respect of contracts entered into after 1st January 1979. The rise of prices after 1st January 1979 would not benefit those exporters such as the petitioners who had entered into contracts prior to 1st January 1979. They would sustain a loss and would need the cash assistance under the said Scheme to offset it. There was, therefore, no good reason to withdraw the cash assistance to exporters who had entered into contracts under the said Scheme prior to 1st January 1979.

12. The petitioners acted upon the representation of the 1st respondent that they would get cash assistance to compensate their losses. They entered into unprofitable contracts and suffered losses. There is no good reason, no equity, no

supervening public interest that justifies the conduct of the 1st respondent in resiling from its representation. I, therefore, agree with the view taken earlier by Pendse J.

13. Mr. Sethna, learned counsel for the 1st respondent, brought to my attention the judgment of a Division Bench of this court in *Union of India and Others Vs. Alok Exports etc.*, The Court there, upon interpretation of the representation, came to the conclusion that no promise of the sort pleaded by the petitioners had been made and that, therefore, no question of promissory estoppel arose. Mr. Sethna also drew my attention to the observations of the Supreme Court in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, . It is well laid down there and in other decisions that the doctrine of promissory estoppel is displaced in cases where, on facts, equity would require that the Government should not be held to be bound by a promise made by it. I find, for the reasons that I have already stated, that the equities are wholly in favour of the petitioners and against the first respondent.

14. Mr. Sethna, lastly, relied upon the last sentence of the said Scheme which is quoted above. He submitted that, by reason of this sentence, and even otherwise, the said Scheme did not cast upon the first respondent any obligation to maintain the benefits thereunder for the specified period. Put more bluntly, the submission was that, by reason of this sentence and otherwise, the 1st respondent was free to withdraw the benefits under the said Scheme at any time at its caprice.

15. It is crystal clear that this sentence was used in the circular announcing the said Scheme only to make it plain that the 2nd respondent incurred no obligation under the said Scheme.

16. To accept Mr. Sethna's letter submission would be tantamount to holding that, however clearly the 1st respondent may express its representations, the representations cannot be relied upon and the 1st respondent is always free not to act thereon. The 1st respondent itself would not, I think, want its representations so treated.

17. The petition is dismissed against the 2nd respondent. The decision and order of the first respondent reproduced in the circular of the 2nd respondent dated 6th January 1979 is quashed and set aside insofar as it affects those exporters who had entered into contracts under the said Scheme prior to 1st January 1979. The first respondent shall, within a period of 6 months from today, examine each of the contracts mentioned in the annexures to each of the petitions to determine whether they were entered into under the Scheme and whether they were entered into prior to 1st January 1979. To the petitioners who had entered into such contracts the 1st respondent shall grant cash assistance under the said Scheme within the said period of 6 months. The 1st respondent shall pay to the petitioners the costs in each petitions. Rules accordingly.