
(1972) 05 P&H CK 0035

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No's. 914, 915 and 916 of 1970

Vishwakarma Industries

APPELLANT

Vs

The Union of India and Another

RESPONDENT

Date of Decision : 26-05-1972

Acts Referred:

Citation : AIR 1973 P&H 88

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Judgement

1. This order will dispose of C.W. 914 of 1970, M/s. Nishkam Udyog v. Union of India, C.W. 915 of 1970, M/s. Mithal Industries v. Union of India and C.W. 916 of 1970, M/s. Vishwakarma Industries v. Union of India, as common questions of law and fact arise in all these petitions. The facts in all the three petitions are similar and, in order to decide the points involved, it is sufficient to state the facts of C.W. 916 of 1970.

2. The petitioner is a firm registered under the Indian Partnership Act and is engaged in the manufacture of medical and surgical equipments and appliances from imported stainless steel sheets at Hiranagar, district Kathua in Jammu & Kashmir State. It is thus a priority industry as entered at Item No.39 in the Appendix to Public Notice No. I & E/IV/2-1/66/A, dated August 4, 1966 a copy of which is Annexure "A" to the writ petition. The firm is registered with the Director of Industries, J&K State, as an actual user importer under Small Scale Industries Registration Scheme of the Government of India. The sponsoring authority is the Director of Industries of the State while the Licensing Authority is the Assistant Iron and Steel Controller, Government of India, Faridabad (respondent 2). In para 2 of the said Public Notice, the basis of licensing and procedure for submission of import licence applications was stated as under:--

"(i) The entitlement of the applicant for grant of special licence will be calculated on the basis of the value of Import Licence for Iron & Steel & Ferro Alloys issued to him for the period April-September '64 and October '64-March '65. If any

applicant has not obtained an import licence in the said period, the entitlement for the special licence will be calculated on the basis of the value of the licences issued to him during the period April '65-March '66. The allotment of Iron and Steel imported through M/s. Minerals and Metals Trading Corporation of India Ltd., against recommendations of the sponsoring authorities, in lieu of import licences for part of demands against import applications for those periods will be taken into account for the calculation of the entitlement.

(ii) In the case of an applicant engaged in the priority industries listed in the Appendix to this Public Notice the entitlement for the special licence will be three times the value of the import licence (including allotments, if any, from M/s. M.M.T.C.) for Iron and Steel & Ferro Alloys, issued to him for the period April 64-September '64 and October '64-March '65 or 12 times the value of the import licence (including allotments, if any from M/s. M.M.T.C) issued to him for the period April '65-March '66 as the case may be, without taking into account the enhancement in the value of licence allowed as a result of devaluation of the rupee.

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On the basis of this Public Notice, the petitioner submitted an application on September 8, 1966, claiming entitlement for the year April 1966-March 1967 in accordance with the import licence applications for the period April-September, 1964 and October, 1964-March 1965. The money value of the Import licence for April-September, 1964 was stated to be Rs.22,000.00 while the value of the import licence for the period October, 1964, March 1965, was stated as Rs.53500.00. On the basis thereof, the firm claimed that it should be issued import licence for Rupees 2,26,500.00, that is, three times the amount of Rs.75,500.00 mentioned above. The petitioner-firm, was, however, granted an import licence dated September 29.1967, for Rupees 66,000.00 only by respondent 2. The petitioner-firm did not file any appeal against the non-issue of the licence for the remaining amount of Rs.1,60,500.00 but filed representations dated March 30, 1968, August 24,1968 and December 25, 1968. The period for filing an appeal was thirty days which expired long before the first representations was made. On the basis of these representations, an additional licence was issued in the name of the petitioner-firm on March 27, 1969, but, before it could be despatched, it was cancelled in view of the instructions contained in letter dated April 3, 1969 a copy of which is Annexure R-3 to the return. The petitioner then filed the present petition claiming that the respondents should be directed to issue the additional licence for Rs.1,60,500.00 to which the petitioner-firm was entitled but not granted by an arbitrary decision of the respondents.

3. Written statement has been filed by the respondents in which inability to issue any additional licence has been emphasised.

4. The petitioner-firm amended the writ petition so as to plead that some other firms had been differently treated and thus the petitioner-firm had been discriminated against. The Government of India set up a Special Committee to make the allotments of the imported stainless steel to the various manufacturers of all categories, that is, actual users, established exporters etc. The Committee considered the representations made by the Jammu and Kashmir Stainless Steel Manufacturers' Association, Jammu in its meeting held on August 17, 1967, and arrived at the following decision:

"The Jammu and Kashmir Stainless Steel Manufacturers' Association, Jammu, have represented on behalf of their members namely, (i) Ess. Tee industry (ii) Raj Industries, (iii) Modern Metal Mills against the discrimination against them in the grant of licence for import of stainless steel. Their request was examined in detail and it was decided that in terms of the import Policy followed by this office for import of raw materials and components, the allotments made through State Government Raw Material Depots during 1964-65 should have been taken into account for determining the firm's entitlement for import raw materials and components for 1966-67 period. The committee decided that these cases may also be considered on the same basis and release orders may be issued for 1971-72 period for the value that may become admissible to them and subject to other requirements such as machinery in terms of the current import policy. It was also decided that no additional value should be allowed for back periods."

In a subsequent meeting, the Committee resolved that the cases required reconsideration on the basis of the following points:--

"(i) The firms were granted licences for six months viz. for April-September, 1965. For the next six months they applied for grant of licence but the Director of Industries, Jammu and Kashmir State, did not recommend issue of licence because he had imported stainless steel with him for allocation. Instead of licence, he released stainless steel worth Rs.53,000.00 each to the firms. It may be stated that the allotment of stock instead of licence was made for the convenience of the Director of Industries and not for any fault of the firms. In the circumstances, the firms should not have been made to suffer in the form of reduction of quota for the purpose of grant of licence during the year, namely 1966-67.

(ii) The firms should have been given the benefit of the allotments made during October, 1964-March, 1965 through the State Corporation or at least licences during 1966-67 should have been granted on the basis of the value of the licence or the allotments made during 1964-65 whichever is favorable to the firm. If this was given the parties would have been entitled to additional licenses for quite substantial amount."

"the units in Jammu and Kashmir need more assistance being situated in backward area. The request for grant of additional licence will, therefore, require sympathetic consideration. If it is considered that any relaxation in these cases

will have adverse repercussion, it will be worthwhile to consider the question of grant of some additional licences to the firms on ad hoc basis to make up the loss which they sustained due to their receipt of licences for a lesser value during 1966-67."

5. These petitions came up for hearing before me on February 1, 1972, when the learned Advocate-General, appearing for the respondents, stated that he had instructions from the respondents to undertake that the cases of the petitioners for entitlement of the quota for the year April, 1966-March, 1967 and subsequent years would be referred to that Special Committee in terms of Annexure "J" to the writ petitions and that the decision by the Special committee would be made on or before March 20, 1972. The learned counsel for the petitioners agreed to that offer and I adjourned the petitions to March 21, 1972, with a direction to the respondents to refer the cases of the petitioners to the Special Committee for consideration in terms of Annexure "J" to the writ petitions. This time was extended to May 15, 1972, as the Special Committee was not able to meet before March 20, 1972. That committee met on May 6, 1972, and took the following decision:--

"The substance of the Committee's decision in all these six cases including the three writ petitioners, is that the entitlement of the parties for the period 1966-67, as claimed by them, will be worked out taking into account the allotments made through MMTC or State Government Depots during the period 1964-65 or 1965-66, as the case may be (which were excluded earlier). The Additional entitlement of M/s. Nishkam Udyog, Solan, (2) M/s. Mittal Industries, Solan and (3) M/s. Vishwakarma Industries, Hiranagar, works out to Rs.10,980.00 Rs.10,932.00 and Rupees 1,59,000.00 respectively. The benefit of the additional entitlements will be given effect to from 1971-72 period only by issue of release orders in consonance with the canalisation policy of the Government during the said period. The benefit of the additional entitlements will not accrue to them retrospectively. In other words, the claims of the three writ petitioners for additional entitlements for 1966-67, have been recognised in terms of value, but, due to passage of time and having regard to the uniform principles of import licensing followed in similar cases, namely the availability of foreign exchange, the over all economy of the country,. the essentiality for import, the indigenous production, the import policy in force and other relevant factors, it has been decided to give the benefit of the additional entitlement from 1971-72 period and increase the value of the release orders correspondingly for this period. They will not be entitled to the additional quota for the past period including April-March, 1967 period."

Since no additional quota has been allotted to the petitioners for the period April, 1966 to March 1967, they have not felt satisfied with this decision of the Special Committee and the petitions have been argued on merits.

6. The first point for consideration is whether the petitioners have a legal right to claim the quota of stainless steel in terms of the Public Notice dated August 4,

1966, the relevant part whereof has been set out above. This Public Notice was issued in pursuance of the import and export policy laid down by the Central Government. The nature of this policy came up for decision before their Lordships of the Supreme Court in *Ramchand Jagadish Chand Vs. Union of India (UOI) and Others*, , and their Lordships held as under:--

"But under Clause 2 of the Export Promotion Scheme as outlined in appendix 42 in so far as it related to licences for import of artsilk yarn, the Controller of Imports is authorised to grant licences upto the percentages specified in that clause: there is no right thereby created to the exporter to obtain a licence for the full value of the commodity exported. Under clause 2, the Controller has the power to grant a licence for any amount upto 100% of the rupee equivalent of the foreign exchange earned on the basis of the F.O.B. value of the goods exported. By that clause, the exporter is not given the option to claim any import licence for any amount, not exceeding the value of the foreign exchange earned by export of goods. The clause invests the Controller with authority, it does not impose an obligation upon him enforceable at the instance of the exporter, to issue a licence for the amount (subject to the maximum prescribed) claimed by the exporter. The power is plainly discretionary. It is true that the discretion has to be exercised reasonably and not arbitrarily. The licensing authority would normally issue an import licence for 100% of the value of the goods exported, but having regard to special considerations such as difficult foreign exchange position or other matters which have a bearing on the general interest of the State, import licences for a smaller percentage may be granted to the exporters." (Emphasis is mine).

It is quite clear from these observations that the person entitled to the licence or quota has no legal right which can be enforced through a Court if the Issuing Authority is not able to grant the licence to the extent of the full entitlement. The Court has to see whether the refusal is arbitrary and on extraneous considerations or has been necessitated for good reasons. In the decision taken by the Special Committee on May 6, 1972, it has been stated that "the claims of the three writ petitioners for additional entitlements for 1966-67, have been recognised in terms of value, but, due to passage of time and having regard to the uniform principles of import licensing followed in similar cases, namely, the availability of foreign exchange, the overall economy of the country, the essentiality for import, the indigenous production, the import policy in force and other relevant factors, it has been decided to give the benefit of the additional entitlement from 1971-72 period and increase the value of the release orders correspondingly for this period. They will not be entitled to the additional quota for the past periods including April-March, 1967 period." The reasons stated by the Special Committee cannot be said to be extraneous or not relevant nor can it be said that the decision has been taken arbitrarily. The petitioners have, therefore, no right to the issuance of writ of mandamus directing the respondents to issue additional entitlement to them in terms of the Public Notice, referred to above, over and above the licences that were granted to them in

September, 1967 for the period April 1966 to March, 1967.

7. In the Joint Chief Controller of Imports and Exports, Madras Vs. Aminchand Mutha Etc., , their Lordships, referring to the import and export policy, observed:--

"It will be seen that these administrative instructions do not create any right as such in favour of persons with whom they deal. They are for guidance of the authorities in the matter of granting quotas for the purpose of the Order."

These observation also lead to the conclusion that the petitioners cannot claim any legal right to receive the full entitlement in terms of the Public Notice and no writ can be issued to the respondents calling upon them to do so.

8. Again, in Probhudas Morarjee Rajkotia and Others Vs. Union of India (UOI) and Others, , their Lordships of the Supreme Court reiterated what had been said in Ramchand Jagadish Chand Vs. Union of India (UOI) and Others, with the following observations:--

"It is contended that under Clause 5.4 of the Scheme the petitioners were entitled to import licences upto the "monetary extent mentioned in Annexure V". It was conceded that the petitioners had no absolute right to the grant of a licence to the maximum amount prescribed and the Controller had the discretion to impose a restriction. It was submitted, however, that the discretion had to be exercised reasonably and not arbitrarily. The legal proposition for which the petitioners contend to undoubtedly correct. The Licensing Authority would normally issue an import licence upto the monetary extent prescribed but having regard to the special considerations such as difficult foreign exchange position or other matters which have a bearing on the general interest of the State, import licences for a smaller percentage may be granted to the exporters."

Great reliance has been placed by the learned counsel for the petitioners on the decision of their Lordships of the Supreme Court in the Union of India v. M/s. Anglo? (Indo) Afghan Agencies AIR 1968 SC 718. In that case, the provisions of Imports (Control) Order, 1955, issued u/s 3 of the Imports and Exports (Control) Act, 1947, were under consideration and it was observed:--

"The orders which the Central Government may issue in exercise of the power conferred by Section 3 of the Imports and Exports Control Act may be executive or legislative. In exercise of that power, the Order was issued on December 7, 1955, that was clearly legislative in character. It appears that prior to the issuance of this notification several orders had been issued under the Defence of India Rules and under the Imports and Exports Act dealing with the grant of licences to import certain classes of goods. Those orders which are set out in the IVth Schedule to the Order were repealed by Clause 12 of the Order of 1955, and machinery for granting licences was set up by the Order dated December 7, 1955. Counsel for the respondents submitted that the Export Promotion Schemes published by the Government under Paragraph 52 of the Government Notification

dated December 29, 1954, must be deemed to be issued u/s 3 of the Imports and Exports Control Act, 1947, since the schemes have been published in the Gazette of India, and contain general provisions relating to the grant of licences and impose restrictions upon the rights of citizens to carry on business in certain commodities. Being general provisions restricting the rights of citizens to carry on business in certain commodities the Schemes were, it was said, legislative in character, and the obligations imposed or the sanctions prescribed thereby must on that account be deemed to be enforceable by command of the Court.

It cannot be assumed merely because the Imports Trade Policy is general in terms and deals with the grant of licences for import of goods and related matters, it is statutory in character. The Imports and Exports (Control) Act, 1947, authorises the Central Government to make provisions prohibiting, restricting or otherwise controlling import, export, carriage etc., of the goods and by the Imports (Control) Order, 1955, dated December 7, 1955, and by the provisions, which were sought to be repealed, restrictions were already imposed. The order was clearly legislative in character. The Import Trade Policy was evolved to facilitate the mechanism of the Act and the orders issued thereunder. Even granting that the Import Trade Policy notifications were issued in exercise of the power u/s 3 of the Import and Exports (Control) Act, 1947., the order as already observed authorised the making of executive or administrative instructions as well as legislative directions. It is not the form of the order, the method of its publication or the source of its authority, but its substance, which determines its true character. A large majority of the paragraphs of the Import and Export Schemes are in the form of instructions to departmental officers and advice to persons engaged in the export and import business with their foreign counterparts. It may be possible to pick out paragraphs from the Scheme which appear in isolation to be addressed generally and have direct impact upon the rights and liberties of the citizens. But a large number of paragraphs of the Scheme refer to matters of procedure of departmental officers and heterogeneous material: it sets out forms of applications, the designations of licensing authorities, amounts of application and licensing fees, last dates for applications, intermixed with definitions of "Established Importers", "Actual users", "New Comers" and others and details of different schemes such as Quota Registration Schemes, Export Promotion Schemes etc. There is no pattern of order or logical sequence in the policy statement: It is a jumble of executive instructions and matters which impose several restrictions upon the rights of citizens. Some of the provisions which impose restrictions upon citizens in the exercise of their right to carry on trade without statutory limits may be open to serious objections, but we do not find it necessary to embark upon an enquiry whether the provision which authorises the issue of import entitlement certificate for the full f.o.b. value of the goods exported is legislative in character. Granting that it is executive in character, this Court has held that the Courts have the power in appropriate cases to compel performance of the obligations imposed by the Schemes upon the departmental authorities.

The question whether the Import Trade Policy is legislative in character has not been expressly dealt with in any decision of this Court. It appears to have been assumed in certain case, that it is executive in character, but even so it had been held that when it is declared under an export policy that a citizen exporting goods shall be entitled to certain import facilities, in appropriate cases the Courts have the power to direct the concerned authority to make that facility available to the citizen who has acted to his prejudice acting upon the representation in the policy and has been denied that facility."

Their Lordships then noticed the decisions in *Ramchand Jagadish Chand Vs. Union of India (UOI) and Others*, and *Probhudas Morarjee Rajkotia and Others Vs. Union of India (UOI) and Others*, and observed:--

"In these case it was clearly ruled that where a person has acted upon representations made in an Export Promotion Scheme that import licences upto the value of the goods exported will be issued, and had exported goods, his claim for import licence for the maximum value permissible by the Scheme could not be arbitrarily rejected. Reduction in the amount of import certificate may be justified on the ground of mis-conduct of the exporter in relation to the goods exported, or on special consideration such as difficult foreign exchange position or other matters which have a bearing on the general interests of the State. In the present case, the Scheme provides for grant of import entitlement of the value, and not upon the value of the goods exported. The Textile Commissioner was, therefore, in the ordinary course required to grant import certificate for the full value of the goods exported: he could only reduce that amount after enquiry contemplated by Clause 10 of the Scheme."

Their Lordships then referred to their decision in *Joint Chief Controller of Imports and Exports, Madras Vs. Aminchand Mutha Etc.*, and continued:

"In each of three cases, the Court observed that the Court was competent to grant relief in appropriate cases, if contrary to the Scheme, the authority declined to grant a licence or import certificate or the authority acted arbitrarily,. Therefore, even assuming that the provisions relating to the issue of Trade Notices offering inducement to the prospective exporters are in character executive, the Union Government and its offices are, on the authorities of this Court not entitled at their mere whim to ignore the promises made by the Government. We cannot, therefore, accept the plea that the Textile Commissioner is the sole judge of the quantum of import licence to be granted to an exporter, and that the Courts are powerless to grant relief, if the promised import licences is not given to an exporter who has acted to his prejudice relying upon the representation. To concede to the Departmental authorities that power would be to strike at the very root of the rule of law."

After noticing the facts of the case before them, their Lordships held in para.19 as under:--

"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, no 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 representations."

Lastly, in para 23 of the report, their Lordships observed:--

"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 appraisal of the circumstances in which the obligation has arisen."

It is apparent from this decision that it was based on the ground of equity or equitable Estelle on the ground that the respondents before their Lordships had, acting on the representation of the Central Government exported various articles which entitled them to import licence of the equal value which could, however, be reduced by the Textile Commissioner after an enquiry under Clause 10 of the Order which was not made. The relief was not granted on the ground that the provision of the scheme conferred a legal right on the respondents to claim the import licence to the extent of 100 per cent of the export value of their goods as stated therein but on the ground of the conduct of the respondents in exporting the goods on the representation of the Central Government that they would be granted import licence of 100 per cent value of the goods exported and the Central Government was held bound in equity to honour its commitment and assurance on the faith of which the respondents acted to their prejudice. No such equity is to be found in favour of the petitioners in the petitions before me. The petitioners did not in any way act to their prejudice on the faith of the representation made in the Public Notice. They were already carrying on their manufacturing business and the Central Government only held out the hope to them that the imported stainless steel etc. would be supplied to them to the extent of three times the value of their goods for the year April, 1964 to March 1965 and this clause in the Public Notice does not confer any legal right on the petitioner-firms to claim that the respondents are in law bound to supply them the said raw material in accordance with their entitlement by asking this Court to issue a writ of mandamus to them. The Public Notice only gave notice of the policy of the Government in the matter which it expected to follow and fulfil but if it could not do so for any valid reason, this Court cannot compel the respondents, to perform the promises held out in the Public Notice.

9. In the The Deputy Assistant Iron and Steel Controller and Another Vs. L. Manickchand, Proprietor, Katrella Metal Corporation, Madras, , their Lordships observed as under:--

"Now, it has to be borne in mind that in the present stage of our industrial development imports requiring foreign exchange have necessarily to be appropriately controlled and regulated. Possible abuses of import quota have also 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 time 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 overall picture of the various factors having an important impact on the final decision on the allotment of import a quota to the various applicants. Shri Singhvi's suggestion that the respondent's concern may have to close down if the import licence is not granted according to 1968-69 policy is difficult to accept in view of the assertion in the writ petition claiming turnover of 8 to 10 lacs by purchasing raw material from local markets."

10. I have already pointed out above that the petitioners did not file any appeal after they were granted import licences in September, 1967, of a lesser value than claimed by them but resorted to making representations six months later. They, therefore, allowed the time to pass with the results that the respondents find it difficult, nay impossible, to grant them the additional entitlement for the year April, 1966, to March 1967, to the full extent due to the foreign exchange position and other factors. There is no equity in favour of the petitioners on the basis of which, following the decision in AIR 1968 SC 718 (supra), the respondents can be compelled to issue the licences for the additional amount to the petitioners. In this connection, the learned counsel for the petitioners has referred to para. 86 of the Hand Book of Rules and Procedure, Import Trade Control, 1966, which reads as under:-

"86. Issue of import licences to actual users for back period:--

(1) Where an application for import licence from an actual user is not disposed of during the licensing period concerned on account of any delay or laches on the part of the applicant, no licence against such application will be issued after the expiry of the licensing period or after the close of the monetary ceiling. However, if the delay in the disposal of the application is on the part of the licensing authority or sponsoring authority or any other Government Department, the application will be considered on merits on the basis of recommendations of the sponsoring authority concerned.

(2) While dealing with an import application for a back period in appeal or otherwise, the authorities concerned will consider such an application having regard to the general principles laid down, that is, availability of monetary ceiling, availability of goods applied for from indigenous sources or other commercial channels, essentiality of the goods applied for, stocks held by the

applicant and expected arrivals against licences in hand, past imports and consumption of the item(s) in question by applicants, actual production during the preceding year, estimated production and other factors considered relevant and necessary.

(3) In cases where the applications for licences are not disposed of during the licensing period concerned or before the close of the monetary ceiling on account of delay on the part of the sponsoring authority or the licensing authority or any other Government Department, the value of the licences issued in such cases will be treated as first charge on the monetary ceiling to be allocated to the concerned sponsoring authority for the next licensing period and the necessary intimation in this regard will be given to the sponsoring authority."

and has submitted that because there was delay by the licensing authority in issuing the proper licences to the petitioners, they are entitled to the additional quota upto the limit of short entitlement from the subsequent licensing periods under sub-para (3) of para. 86 *ibid*. It is pertinent to note that the value of the licences not issued can be treated as "first charge on the monetary ceiling to be allocated to the concerned sponsoring authority for the next licensing period." (emphasis is mine). The next licensing period after 1966-67, to which these petitions relate was 1967-68 which expired long ago and presumably the stainless steel etc., imported during and for that licensing period must have been distributed by now. Para 86(3) does not entitle the petitioners to a first charge on the monetary ceiling for any period subsequent to the "next licensing period". It is, therefore, not possible, owing to the lapse of time, now to issue a writ of mandamus to the respondents directing them to compensate the petitioners for the material for which no licence was issued to them within their entitlement according to the Public Notice dated August 4, 1966. Under the circumstances, I hold that the refusal of the respondents to issue additional licences for the period in question is neither arbitrary nor illegal and the petitioners are not entitled to a writ of mandamus as prayed for by them. They should rest content with the decision made by the Special Committee on May 6, 1972, which has been set out above.

11. For the reasons given above, there is no merit in these petitions which are dismissed but the parties are left to bear their own costs.

12. Petitions dismissed.