Glass Chatons Importers & Users' ... vs Union Of India (Uoi) on 10 April, 1961

Equivalent citations: AIR1961SC1514, [1962]1SCR862

Bench: A.K. Sarkar, K.C. Das Gupta, K.N. Wanchoo, N. Rajgopala Ayyangar, P.B. Gajendragadkar

JUDGMENT

Das gupta, J.

1. This application under Art. 32 of the Constitution is for the protection of fundamental rights under Art. 19(1)(f) and (g), Art. 31 and Art. 14 of the Constitution. The second and the third applicants are merchants who used to import considerable quantities of glass chatons upto 1957. The first applicant is an Association of merchants, some of whom were importers and some the actual users of glass chatons. Import of glass chatons - which form an important part of the raw materials for the manufacture of glass bangles and other similar articles of wear - could, be made only on licences granted by licensing authorities. Since 1955 the matter has been regulated by the Imports (Control) Order, 1955. This Order which was made by the Central Government in exercise of powers conferred by sections 3 and 4-A of the Import and Export Control Act, 1947, prohibited the import of a large number of goods including inter alia glass chatons, except under and in accordance with a licence, granted on application by the licensing authorities under the Act. Policy statements are made from time to time by the Government of India, indicating the policy for the issue of Import licences. The policy as regards the import of glass chatons for the period January, 1957 to the end of March, 1958 was that the import was totally prohibited. Since April 1958, the policy as laid down is that import was permitted only under the Export Promotion Scheme. It appears that in view of this policy statement no application was made at all by the second or third applicants or other merchants for the import of glass chatons, in 1957 or thereafter and no licence was issued to them. Licences were however issued in favour of the State Trading Corporation, for the import of glass chatons of the value of five lakhs of Rupees, for the period April-September, 1958, and again, for the import of these goods of the value of Rs. 1,25,000 for the period October, 1958 to March, 1959. The present application was made on April 27, 1959. The prayer is that respondents 1 and 2 - i.e., the Union of India and the Chief Controller, Imports, should be directed (i) to "forbear from giving the State Trading Corporation any preference over the petitioners, in the grant of permits", (ii) not to create a monopoly in favour of the State Trading Corporation, (iii) to cancel the import permits already granted in favour of respondent No. 3 - the State Trading Corporation and the petitioners also prayed that the respondent No. 3 should be directed not to import on the basis of import licences already granted.

2. It has to be mentioned at once that the periods of the import permit "already granted" as referred to in the petition has already expired and consequently, the last two prayers mentioned above cannot possibly be granted. There was no application at all by the second and the third applicants, or any of the merchants who form the association, the 1st appellant for the issue of any import licences; there can be no question therefore of respondents 1 and 2 being given any preference over the petitioners in the grant of permits. Nor is there, as far as can be made out, any scheme to issue fresh licences in favour of the State Trading Corporation so that apart from what has already happened there is no question of any future action "to create a monopoly in favour of the State Trading Corporation". Therefore the petitioners cannot be given any relief on the present application.

3. Learned Counsel however submitted that so long as Para. 6(h) of the Imports (Control) Order, 1955, remains it will be useless for his clients to make any application for licences. Para. 6 lays down a number of grounds on which the Central Government or the Chief Controller of Imports and Exports may refuse to grant a licence or direct any other licensing authority not to grant a licence. The ground mentioned in the clause (h) is "if the licensing authority decide to canalise imports and the distribution thereof through special or specialised agencies or channels". Learned Counsel has argued that this provision in clause (h) of Para. 6 is void being in contravention of Art. 19(1)(f) and (g), and Art. 31 of the Constitution. He also urged that to the extent s. 3 of the Imports and Exports Control Act, 1947, permits the Central Government to make an order as in Para. 6(h) s. 3 itself is bad. In view of these submissions the learned Counsel was permitted to urge his contentions against the validity of Para. 6(h) of the Imports (Control) Order, 1955, and also his limited attack against the validity of s. 3 of the Imports and Exports Control Act, 1947.

4. The requirement as regards any goods that they cannot be imported except and in accordance with a licence is undoubtedly a restriction on the right to carry on trade in such goods and also on the right to acquire property. Learned Counsel does not however contend that by itself this requirement of s. 3 of the Imports and Exports Control Act is an unreasonable restriction. His attack is only against the further restriction which follows from the provisions in s. 6(h) of the Order that the Central Government or the Chief Controller of Imports and Exports may refuse to grant a licence or direct any licensing authority not to grant licences - "if the licensing authority decides to canalise imports and the distribution thereof through special or specialised agencies or channels". The argument is that the further restriction on the right to carry on trade and the right to acquire property that results from this provision is totally unreasonable.

5. It is obvious that if a decision has been made that imports shall be by particular agencies or channels the granting of licence to any applicant outside the agency or channel would frustrate the implementation of that decision. If therefore a canalization of imports is in the interests of the general public the refusal of imports licences to applicants outside the agencies or channels decided upon must necessarily be held also in the interests of the general public. The real question therefore is : Is the canalization through special or specialized agencies or channels in the interests of the general public.

6. A policy as regards imports forms an integral part of the general economic policy of a country which is to have due regard not only to its impact on the internal or international trade of the country but also on monetary policy, the development of agriculture and industries and even on the political policies of the country involving questions of friendship, neutrality or hostility with other countries. It may be difficult for any court to have adequate materials to come to a proper decision whether a particular policy as regards imports is, on a consideration of all the various factors involved, in the general interests of the public. Even if the necessary materials were available it is possible that in many cases more than one view can be taken whether a particular policy as regards imports - whether one of heavy customs barrier or of total prohibition or of entrustment of imports to selected agencies or channels - is in the general interests of the public. In this state of things the burden on the person challenging that the government of the country is not right in its estimate of the effects of a policy as regards imports in the general interests of the public will be very heavy indeed and when the Government decides in respect of any particular commodity that its import should be by a selected channel or through selected agencies the Court would proceed on the assumption that that decision is in the interests of the general public unless the contrary is clearly shown. Consequently, we are unable to accept the argument that a decision that imports shall be canalised, is per se not a reasonable restriction in the interests of the general public. We wish to make it clear that while the decision that import of a particular commodity will be canalised may be difficult to challenge, the selection of the particular channel or agency decided upon in implementing the decision of canalisation may well be challenged on the ground that it infringes Art. 14 of the Constitution or some other fundamental rights. No such question has however been raised in the present case. The attack on the validity of Para. 6(h) of the Imports Control Order, 1955, therefore, fails. The contention that s. 3 of the Imports and Exports Control Act, 1947, is bad to the extent that it permits the government to make an order as in Para. 6(h) of the Imports Control Order, 1955, consequently also fails.

7. The attack on this provision in Para. 6(h) of the order that it contravenes Art. 31 is not even plausible. Assuming for the purpose of this case that the right to carry on trade is itself property, it is obvious that there is no question here of the acquisition of that right. What happens if a licence is refused to an applicant under Para. 6(h) is that the applicant can no longer carry on trade in these goods. When licence is granted to the agencies or channels through which imports have been decided to be canalised, these agencies or channels can carry on trade but this is not because of an acquisition by these agencies or channels of the right to carry on trade which the unsuccessful applicants for licence had. Article 31 of the Constitution has therefore no application.

8. It was next urged that the grant of licences to the third respondent, the State Trading Corporation of India while none has been granted to the second and the third petitioners has resulted in a denial of equal protection of laws guaranteed by Art. 14 of the Constitution. If these petitioners had applied for licences under the Export Promotion Scheme and still the State Trading Corporation had been preferred it would perhaps have been necessary to consider whether the preference accorded to the Corporation was based on reasonable and rational grounds. It is clear however that though it was open to these petitioners to apply for licences under the Export Promotion Scheme they made no application for licence thereunder. There is no scope therefore for the argument that they have been discriminated against.

9. In the result, we are of opinion that the petitioners are not entitled to any relief under Art. 32 of the Constitution. The petition is accordingly dismissed with costs.

10. Petition dismissed.