P.T.R. Exports (Madras) Pvt Ltd. & Ors vs The Union Of India & Ors on 9 May, 1996

Author: K. Ramaswamy

Bench: K. Ramaswamy

PETITIONER:
P.T.R. EXPORTS (MADRAS) PVT LTD. & ORS.

Vs.

RESPONDENT:
THE UNION OF INDIA & ORS.

DATE OF JUDGMENT: 09/05/1996

BENCH:
K. RAMASWAMY, FAIZAN UDDIN, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

O R D E R These special leave petitions arise from the judgment and order of the Division Bench of the Madras High Court dated March 7, 1996 made in writ petition Nos. 17490 and batch and 147/96 and batch. The admitted facts are that the petitioners are exporters of readymade garments to divers countries. The export and import is governed by Foreign Trade Development Regulations Act, 1992. The Government of India, Ministry of Commerce evolved 1992-93 Export and Import Policy declaring that the export policy to augment productivity, modernization and competitiveness of the Indian agriculture industry and service. For the year 1994- 95, export policy for the readymade garments was notified in notification No.1 1-29-93 dated September 4, 1993. The policy classified allotment under heads, namely (a) Past Performance Entitlement (for short, 'PPE'); and (b) Manufacturer Export Entitlement (for short, 'MEE'); and (c) Non-quota Exporters Entitlement (for short, 'NQE'). The Uruguay round of negotiations of the GATT received final approval of the negotiations incorporating separate agreements to diverse sectors including the Textile and Clothing sector. The latter is known as the Agreement on Textile and Clothing (ATC). Thereunder, the Government of India committed to phase-out incentives or quota by December, 2004 and planned

to introduce changes in quota also w.e.f. January 1, 2005. The goal thereby sought to be achieved is that an exporter, whether in India or abroad, would export garments to any other part of the world without any quota restrictions for providing right environment for textile and clothing exporters to be ready to achieve the goal. Consequently, new export policy from ATC w.e.f. January 1, 1996 was introduced withdrawing the previous policy referred to hereinbefore. it was initially notified on November 28, 1995 announcing total change in the garment quota policy, the allotment for MEE and NQE system were thereby totally withdrawn under the new policy. The new policy envisages only two methods, namely, (i) Past Performance Entitlement (PPE) 80%; and (ii) First Come, First Serve (FCFS) 20%. The petitioners have challenged this change in the policy in the High Court on three grounds one of which is promissory estoppel on legitimate expectation. The High Court in the impugned judgment negatived all the three contentions, Thus, these special leave petitions.

Shri Vaidyanathan, learned counsel, contended that the Government had promised to grant MEE and NQE quotas for those who upto date their quality of products by purchasing new machines after expiry of 5 years life span or given promise that all those who performed their applications MEE were entitled to NQE quota and that, therefore, the respondents are estopped to recile from the promise made to them. They cannot act in a way detrimental to their legitimate expectations. We find no force in the contention. It is seen that the change in the policy is as a result of GAAT agreement with all contracting countries. The quota system was available to export garments and clothing to European countries, viz., U.S.A, Canada, Norway etc. The Government took the policy that with a view to meet more competitive quality in the foreign markets introduced FCFS system giving 20% of the export. PPE was provided with 80% of the export. The new dynamism in the policy would make the trade more competitive and it will be in the best interest of the country and to boost in export potentiality and foreign exchange, on account thereof MEE and NQE quotas were eliminated and large allocation was issued to PPE system and rest of 20% was marked for FCFS quotas were eliminated and large allocation was issued to PPE system and rest of 20% was marked for FCFS system. It was also pointed that the Government encountered that MEE system was beset with floods of false declarations of the productive capacity by unscrupulous traders masquerading as exporters. Though action was being taken against persons who committed fraud but it became difficult to stop misutilisation of the scheme completely. Consequently, MEE system was eliminated. Though incentives were provided under NQE system, the growth of non-quota exports was not commensurate with the quantum of quota allocated to the scheme to encourage such exports. The idea of permitting quotas obtained as incentives to be sold at premium is to cross-subsidy the non-quota export and thus to lower the actual selling price of the item, as an indirect subsidisation to the NQE exporters. But the foreign buyers indirectly are constrained to bear the subsidy. With potential development of the developed and developing countries in the international garment and clothing market, the foreign buyers preferred other countries, instead of purchasing from the Indian exporters to bear the indirect subsidy. Resultantly, export of clothing has severely suffered at the 1994 end onwards. The Government, therefore, took policy to abolish NQE system so that the genuine quota exporters could do business so as to stop the malady and to preserve PPE and FCFS system.

In the light of the above policy question emerges whether the Government is bound by the previous policy or whether it can revise its policy in view of the changed potential foreign markets and the

need for earning foreign exchange? It is true that in a given set of facts, the Government may in the appropriate case be bound by the doctrine of promissory estoppel evolved in Union of India Vs. Indo-Afghan Agencies [(1968) 2 SCR 366]. But the question revolves upon the validity of the withdrawal of the previous policy and introduction of the new policy. The doctrine of legitimate expectations again requires to be angulated thus: whether it was revised by a policy in the public interest or the decision is based upon any abuse of the power? The power to lay policy by executive decision or by legislation includes power to withdraw the same unless in the former case, it is by malafide exercise of power or the decision or action taken is in abuse of power. The doctrine of legitimate expectation plays no role when the appropriate authority is empowered to take a decision by an executive policy or under law. The Court leaves the authority to decide its full range of choice within the executive or legislative power. In matters of economic policy, it is a settled law that the Court gives the large leeway to the executive and the legislature. Granting licences for import or export is by executive or legislative policy. Government would take diverse factors for formulating the policy for import or export of the goods granting relatively greater priorities to various items in the overall larger interest of the economy of the country. It is, therefore, by exercise of the power given to the executive or as the case may be, the legislature is at liberty to evolve such policies.

An applicant has no vested right to have export or import licences in terms of the policies in force at the date of his making application. For obvious reasons, granting of licences depends upon the policy prevailing on the date of the grant of the licence or permit. The authority concerned may be in a better position to have the overall picture of diverse factors to grant permit or refuse to grant permission to import or export goods. The decision, therefore, would be taken from diverse economic perspectives which the executive is in a better informed position unless, as we have stated earlier, the refusal is mala fide or is an abuse of the power in which event it is for the applicant to plead and prove to the satisfaction of the Court that the refusal was vitiated by the above factors.

It would, therefore, be clear that grant of licence depends upon the policy prevailing as on the date of the grant of the licence. The Court, therefore, would not bind the Government with a policy which was existing on the date of application as per previous policy. A prior decision would not bind the Government for all times to come. When the Government are satisfied that change in the policy was necessary in the public interest, it would be entitled to revise the policy and lay down new policy. The Court, therefore, would prefer to allow free play to the Government to evolve fiscal policy in the public interest and to act upon the same. Equally, the Government is left free to determine priorities in the matters of allocations or allotments or utilisation of its finances in the public interest. It is equally entitled, therefore, to issue or withdraw or modify the export or import policy in accordance with the scheme evolved. We, therefore, hold that the petitioners have no vested or accrued right for the issuance of permits on the MEE or NQE, nor the Government is bound by its previous policy. It would be open to the Government to evolve the new schemes and the petitioners would get their legitimate expectations accomplished in accordance with either of the two schemes subject to their satisfying the conditions required in the scheme. The High Court, therefore, was right in its conclusion that the Government are not barred by the promises or legitimate expectations from evolving new policy in the impugned notification.

The special leave petitions are accordingly dismissed.