

1961

August 8

M/s. RAMCHAND JAGADISH CHAND

v.

UNION OF INDIA AND OTHERS

(P.B. GAJENDRAGADKAR, K. SUBBA RAO,
M. HIDAYATULLAH, J. C. SHAH and RAGHUBAR
DAYAL, JJ.)

Import Licence—Import Trade Control Policy—Export Promotion—Scheme—Right of State to impose restrictions on imports—If infringes fundamental right—Licencing Authority—Powers granted under the scheme—Whether uncanalised and arbitrary—Emergency Provisions (continuance) Ordinance, 1946—Imports and Exports (Control) Act, 1947 (18 of 1947) s.3—Imports (Control) Order 1955, Cl. 3, Appendix 42, cl. 2—Constitution of India—Arts. 14, 19(1)(g).

Intervener—Writ petition dismissed by High Court—Petitioner could be heard as intervener in Supreme Court—Right of appeal—Constitution of India—Art. 226.

Government of India published a scheme known as the "Export Promotion Scheme" according to which the value of import licence for raw materials in an industry depended upon the value of specified varieties of goods exported by the applicant for an import licence. It also empowered the Controller of Imports and Exports under cl. 2 of Appendix 42 of the Import (Control) order 1955 to issue a license up to 66 $\frac{2}{3}$ per cent of the export value in the case of Indian artsilk sarees and up to 100 per cent in the case of other Indian artsilk fabrics. The appellent firm R of exporters and importers relying upon cl. 2 of the Export Promotion Scheme applied for an import licence equivalent to the value of the goods it had exported and earned foreign exchange. In view of certain malpractices the Government of India suspended the "Export Promotion" scheme and set up a committee for verification of the values of goods exported. The Committee after scrutinising the firm's claim found that rates of some of the items could not be accepted as reasonable, and recommended an import licence approximately of the value of 45 per cent of the goods exported. The firm R after making an infructuous demand for a licence for the full value of the goods exported filed a writ petition. They submitted that the Controller of Licences had arbitrarily reduced the value of their import licence and had thereby unlawfully infringed their fundamental right. They also claimed that the Controller was bound to grant licence under the Export Promotion Scheme for the full value of the goods exported by them and in failing to do so had practised discrimination

against them, because several other importers during the identical period were given licences for the full value of goods exported.

Held, that the fundamental right of a citizen to carry on any occupation, trade or business under Art. 19(1)(g) of the Constitution is not absolute; it is subject to reasonable restrictions which may be imposed by the State in the interest of the general public.

The right of the State to impose control in the larger interest of the general public on imports has accordingly not been denied; nor is the authority of the State to issue the Imports (Control) Order, 1955 in exercise of the powers conferred by the Imports and Exports (Control) Act providing for imposition of restrictions by permitting import of certain goods only in accordance with the licences or customs permits granted by the Central Government, open to challenge. The authority to grant or refuse to grant the licence is conferred upon high officers of the State and the grant of licence is governed by the Import Trade Control Policy and detailed provisions are made setting out the grounds on which licences may be refused, suspended or cancelled and provision to afford a hearing before action is taken is also made; thus the powers conferred under cl.3 of the Imports (Control) Order, 1955 are not uncanalised or arbitrary.

The power granted to the licensing authority to grant licences only up to the maximum specified in cl.2 of the appendix 42 is by itself not an unreasonable restriction, nor will the notification directing scrutiny of all applications amount to imposing an unreasonable restriction. 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 and the order passed by the Controller granting a licence only for 45% of the value of goods exported does not infringe the fundamental right of the petitioner under Art. 19(1)(g) of the Constitution by imposing an unreasonable restriction.

Held, further that in the absence of evidence to show that discriminatory treatment was made between the aggrieved person and to persons similarly circumstanced, there can be no violation of Art. 14 of the Constitution which confers a guarantee against arbitrary discrimination between persons similarly circumstanced.

Held, also that where an application for writ of mandamus, direction or order under Art. 226 of the

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Constitution is dismissed by the High Court, the only remedy to the aggrieved person is to come up by appeal and he has no right to be heard as an intervener.

CRIMINAL JURISDICTION : Writ Petition No. 1 of 1960.

Under article 32 of the Constitution of India for the enforcement of Fundamental Rights.

A. V. Viswanatha Sastri, K.K. Jain and Ganpat Rai, for the Petitioners.

C. K. Daphtary, Solicitor-General of India, V.A. Saiyed Mohamad and T. M. Sen, for the Respondents.

1961. August 8. The Judgment of the Court was delivered by

Shah J.

SHAH, J.—Controls on exports and imports imposed as an emergency measure during the last war in respect of certain commodities were kept alive after the lapse of the Defence of India Rules by the Emergency Provisions (Continuance) Ordinance, 1946 which was later replaced by the Imports and Exports (Control) Act, 1947 (18 of 1947), by s.(3) of the Act, the Central Government was authorised by order published in the Official Gazette, to provide for prohibiting, restricting or otherwise controlling, in all cases or in specified classes of cases, and subject to such exceptions if any, as may be made by or under the order, *inter alia* the import, export, carriage xxx xxx of goods of any specified description. By sub-s.(2) of s.3., it was provided that all goods to which an order under sub-s.(1) applied shall be deemed to be goods of which the import or export has been prohibited or restricted under s.19 of the Sea Customs Act. Exercising authority under s.3 of the Imports and Exports (Control) Act, 1947, the Central Government issued notifications from time to time prohibiting, restricting or otherwise controlling the export and import of diverse commodities. By a consolidated order dated

December 7, 1955, known as the Imports (Control) Order, 1955, restrictions on the import of certain goods were imposed by cl. 3 of the said order. By cl. 3, it was provided that save as otherwise provided in the order, no person shall import any goods of the description specified in Schedule I, except under, and in accordance with, a licence or a customs clearance permit granted by the Central Government, or by an officer specified in Schedule II. For implementing the scheme of controlling imports, diverse provisions were made in cls. 3 to 11 of the Imports (Control) Order.

The Government of India makes known its import policy every six months by issuing in the Government Gazette the procedure and the conditions for eligibility of licences and for the grant of import licences. This policy is published for the use of the public in a hand-book called the "Import Trade Control Policy". The policy is obviously framed having regard to requirements for home consumption of commodities to be imported, the foreign currency situation and the economy of the country as a whole.

By para 51 of the Import Trade Control Policy for the licencing period October 1958 to March 1959, a scheme of "Export Promotion" permitting imports depending upon the value of specified varieties of goods exported by the importer was devised. It was recited in that paragraph that in certain items, the inter-relation between imports and exports was direct and intimate and the ability to export some manufactured goods depended largely on the facility with which the exporter or the manufacturer could procure the basic raw materials required in the manufacture. With a view to promoting the export of such goods, a scheme was therefore devised for the grant of special import licences to

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replace the imported raw material component of the product exported or to provide an incentive for larger exports.

Artsilk yarn and artsilk fabrics were covered by the Export Promotion Scheme. In Appendix 42, cl.2 of the Import Trade Control Policy for October 1958 to March 1959, it was stated:

“With a view to stimulate exports of Indian artsilk fabrics, sarces, garments, hosiery and other artsilk manufactures, it has been decided to grant import licences at the ports under the Export Promotion Scheme for the import of permissible varieties of artsilk yarn to actual exporters upto the following percentage of the rupee equivalent of foreign exchange earned on the basis of the f. o. b. value of the artsilk goods exported, or the value assessed by customs, whichever is less.

(i) 66-2/3 per cent in the case of Indian artsilk sarces,

(ii) 100 per cent in the case of other Indian artsilk fabrics including Indian artsilk hosiery goods.”

The petitioners, M/s. Ram Chand Jagadish Chand are a firm engaged in business as exporters and importers. In the period October 1958 to March 1959, the petitioners exported to Singapore, Bush Shirt Cloth, Glass Nylon, Art silk Piece Goods and Superior Class Nylon of the total C.I.F. value of Rs. 7,10,817/-, and relying upon cl. (2) of the Export Promotion Scheme as outlined in the Import Trade Control Policy, called upon the Controller of Imports to issue licences for artsilk yarn for Rs. 4,04,218.62 np. and Rs. 3,03,490.93 np. respectively for the months of February and

March 1959. The petitioners claimed that they had, pursuant to the Export Promotion Scheme, exported artsilk goods to Singapore and had earned net foreign exchange of the value of Rs. 7,07,709.55 np. and that they were entitled to import licences for artsilk yarn of that amount. In September 1959, the petitioners were informed by the Assistant Controller of Imports and Exports that a consolidated licence for the months of February and March, 1959 was granted to them for import of artsilk goods of the value of Rs. 3,19,354/-.

It appears that the Government of India, having come to learn of certain malpractices by the importers of artsilk yarn, while suspending the Export Promotion Scheme as from March 9, 1959, announced that applications which were pending with the port licensing authorities will be scrutinised by a Committee and in May 1959, the Government of India appointed a Committee for verification of the value of goods exported. The petitioners appeared before the Committee and furnished documentary evidence in support of their claim for 100% of the rupee equivalent of the cloth exported. The Committee accepted as reasonable the rates at which the exported "Flock Printed Nylon Dyed" cloth was exported by the petitioners, but in their view, the rates at which "Bush Shirt Cloth" was exported could not be accepted as reasonable and for the purpose of the Export Promotion Scheme, the value of that cloth should be computed at the rate of Re. 1.50 np. per yard of 36" width. The Controller of licences accepted the recommendation of the Committee and issued to the petitioners an import licence for Rs. 3,19,354/- only. The petitioners after making an infructuous demand for a licence for the value of the goods exported, filed this petition under Art. 32 of the Constitution for a writ or direction in the nature of *mandamus* directing the Chief Controller of Imports and Exports to grant to the petitioners an import

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licence for the months of February and March 1959 equivalent to 100% of the goods exported by them in relevant previous months and in the alternative, to issue a writ of *certiorari* calling for the records and proceedings resulting in the issue of a licence of the value of Rs. 3,19,354/- and for an order quashing the same and granting to the petitioners a licence for the full amount claimed by them. The petitioners submitted that the Controller of licences had arbitrarily reduced the value of their import licence under the Export Promotion Scheme and had thereby unlawfully infringed their fundamental right to carry on business. They also claimed that the Controller was bound to grant licence to import artsilk yarn under the Export Promotion Scheme for the full value of the goods exported by them, and in failing to do so, had practised discrimination against the petitioners, because several other importers of artsilk yarn who were the petitioners' rivals in trade during the identical period were given licences for amounts "ranging between 85 and 100 per cent of their exports". In paragraph 22 of their petition, the petitioners submitted a table setting out the names of eight such exporters, the amount and the percentages granted to such exporters.

The fundamental right of a citizen to carry on any occupation, trade or business under Art. 19 (1)(g) of the Constitution is not absolute: it is subject to reasonable restrictions which may be imposed by the state in the interests of the general public. The right of the State to impose controls in the larger interest of the general public on imports has accordingly not been denied: nor has the authority of the State to issue the Imports (Control) Order, 1955 in exercise of the powers conferred by the Imports and Exports (Control) Act providing for imposition of restrictions by permitting import of certain goods only in accordance with licences or customs permits granted by the

Central Government, been challenged. It was suggested somewhat faintly by Mr. Viswanatha Sastri on behalf of the petitioners that the power granted under cl. (3) of the Imports (Control) Order, 1955 was uncanalised power in the matter of fixing percentages and to that extent, the authority imposed an unreasonable restriction on the freedom to carry on business. But the authority to grant or refuse to grant licences is conferred upon high officers of the State and the grant of licences is governed by the Import Trade Control Policy which is issued from time to time and detailed provisions are made in the Imports (Control) Order setting out the grounds on which licences may be refused, amended, suspended or cancelled (see cls. 6 to 9 of the Order). Provision to afford a bearing to the licence before action is taken under cls. 6 to 9 is also made. It cannot therefore be said that the power conferred is uncanalised or arbitrary.

The argument seriously canvassed by counsel for the petitioners was that relying upon cl. 2 of appendix 42 of the Import Trade Control Policy, the petitioners had exported artsilk fabrics, and had earned foreign currency, and they could not, except for good and adequate reasons, be deprived of import licence to the full extent of 100% of the value of the artsilk fabrics exported. The petitioners say that they purchased the goods from various merchants and by exporting those goods earned foreign exchange which was duly credited to their account by their bankers, and in reducing the import licence to approximately 45% of the value of the goods exported, the State has, by executive order, imposed an unreasonable restriction upon their right to carry on business. But under cl. 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

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created to the exporter to obtain a licence for the full value of the commodity exported. Under cl. 2 of the scheme 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 an 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. But by the use of the expression "upto the following percentage of the rupee equivalent" power to fix arbitrarily a percentage of the value of the goods exported for awarding an import licence is not granted.

In granting a licence to the petitioners for Rs. 3,19,354/-, has the authority been exercised arbitrarily or is it supported by some reasonably discernible principle? Ram Murth Sharma, Deputy Chief Controller of Imports and Exports in his affidavit stated that of the Export Promotion Scheme wrongful advantage was taken by some exporters of artsilk fabrics: it was found by the Government of India that invoice values or artificial silk fabrics were inflated by the exporters by more than 100% of the value with the object of importing "speculative" commodities like artificial

silk yarn. Sharma stated that "as against 381 thousand yards of artificial silk fabrics exported during the period January—June, 1957 at a value of about Rs. 456 thousand *i.e.*, at about Rs.1-2-0 per yard the merchants sought to show the rise in price for the export of such goods during October—March 1959 at Rs. 2-9-0 per yard so that for 986 thousand yards exported, the invoice value shown was 28,799 thousand rupees, even though the actual price of the goods in the wholesale market had not at all risen to that extent between those two periods. The index number of wholesale price in India in respect of "silk and rayon" fabrics during the month of June 1957 was 85 and during the month of March 1959 it rose to 95.7 only thus showing a rise of about 11%. Against this rise, the rise in the price invoiced by the exporters showed a rise of over 125% during the span of the same period. This will clearly show that the aforesaid rise was shown by merchants merely with a view to get licences for higher value for the import of speculative item like "Art Silk Yarn." Relying upon this evidence, counsel for the Union contended that this perversion of the Export Promotion Scheme had serious repercussions on the foreign exchange position, and the scheme was suspended by notification dated March 6, 1959, and the Government directed that the pending applications for import licences for artsilk yarn be scrutinised by a Committee appointed in that behalf. The Committee scrutinised the cases of 1106 parties including the petitioners, and the petitioners were given a licence for Rs. 3,19,354/-, and by reducing the value of the import licence, no fundamental right of the petitioners under Art. 19 of the Constitution was infringed.

A scrutiny of the applications for licences in view of the misuse of the Export Promotion Scheme and granting of licences on the result of such scrutiny cannot be regarded as imposing an

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unreasonable restriction. The State is as much concerned with earning foreign exchange as maintaining and consolidating its export trade. If a large quantity of goods be dumped at excessive prices in foreign markets to meet a temporary demand in the ultimate result the export trade of the State may suffer. If taking advantage of temporary demands in the foreign market, the exporters charge excessive prices which are not commensurate with reasonable profits on the real value of the goods and seek to invest the profits earned in speculative commodities thereby endangering the internal economy of the country, the State may be justified in taking steps to prevent the exporters from obtaining advantage of such excessive profits by refusing to afford facilities for importing goods to the exporters who seek to rely upon the export value of the goods at inflated rates. The affidavit of Sharma shows that in a number of cases, the importing firm in the foreign country was only a "sister concern" of the exporting house, and the exporters adopted the expedient of inflating the price with the object of adjusting the excess value received by them. It appears therefore that some exporters under cover of the Export Promotion Scheme by inflating the prices were found not only to import speculative varieties of goods for very much larger values than the real prices justified, but were suspected by the authorities even to repatriate foreign assets without disclosing the same to the State as required by law. It cannot therefore be said that the power granted to the licensing authorities to grant licences only upto the maximum specified in cl. 2 of the Scheme is by itself an unreasonable restriction; nor will the notification directing scrutiny of all applications amount to imposing an unreasonable restriction.

Counsel for the petitioners however submitted that the Controller had placed no evidence on the record that the petitioners have, for the goods

purchased by them in the Indian market, not paid Rs. 7,07,709.55 nP. or that any part thereof represented foreign assets intended to be repatriated contrary to law. Counsel submitted that M/s. V. M. S. Abdul Razak & Company to whom the goods were consigned are not a "sister concern" of the petitioners and that in the affidavit of the Deputy Chief Controller of Imports and Exports it is not denied that the petitioners had received the full value for which the goods were exported by them.

But in considering the case of the petitioners, the Committee observed :

"The party has purchased Bush Shirt Cloth from J. C. Vakaria & Sons, Govardhandas Iswardass International Trading Agency, Agwarwla Brothers and Calcutta Silk Manufacturing Co., Ltd. Rates vary from Rs. 3.87 to Rs. 3.92. x x x x neither the purchase vouchers nor the export invoices contain any description nor give any idea as to whether the material was Nylon, Rayon, Nynon, etc."

The committee also observed that the petitioners were "not able to produce adequate justification of the prices of Art Silk Bush Shirting Cloth. Samples cannot be linked with the relative purchase vouchers or export invoices." They then pointed out that the correspondence with M/s. Abdul Razak & Company did not give any "justification nor contained any description to link the goods with the materials sent," and in the light of these findings, the Committee recommended that the value of bush shirt cloth for the purposes of import licence be calculated at the rate of Re. 1. 50 nP. per yard. It is somewhat unfortunate that the Committee have not stated in the reasons given by them that Re. 1. 50 nP. was the prevailing market rate in respect of Bush Shirt Cloth at the time of the export in the Indian market. But in paragraph 22 of the respondents' affidavit, it is stated that "the petitioner firm has been granted licence equal to

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100% of the value which has been arrived at as reasonable value of the exports effected by the firm."

The petitioners alleged that the decision of the Committee was arbitrary; the licensing authority contends that the decision was made after ascertaining the reasonable value in the Indian market at the material time of the goods exported by the petitioners. The petitioners have not placed before the court any independent evidence to show that the current market rate of "bush shirt cloth" which was exported, substantially exceeded the rate of Re. 1. 50 nP. per yard of 36" width. In the circumstances, we would not be justified in assuming that the Committee made an arbitrary decision in arriving at the value of the bush shirt cloth exported for the purpose of recommending the grant of import licence.

The contention that the order passed by the Controller granting a licence only for 45% of the value of the goods exported infringes the fundamental right of the petitioners under Art. 19 (1) (g) by imposing an unreasonable restriction cannot therefore be sustained.

Does the fact that the petitioners have been granted licence approximately for 45% of the total value of the goods exported amount to discrimination entitling them to protection of Art. 14 of the Constitution? Under the Export Promotion Scheme, the petitioners have exported artsilk goods of the value of Rs. 7,07,709.55 nP. and may in the normal course have been entitled to import licence for 100% of the value of the goods exported unless there was a reduction in the value of the licence for imports on account of certain circumstances such as general deterioration of the foreign exchange position or necessity to conserve a particular currency or other circumstances justifying a departure from the maxima set out in cl. 2 of

appendix 42 of the Export Promotion Scheme. The reduction may also be justified on grounds personal to the petitioners or to a group to which they belonged. Any malpractice or under-hand dealing may warrant such a reduction.

It was the case of the respondents that many exporters were guilty of malpractices and with a view either to speculate in artsilk goods or to repatriate unlawfully foreign assets, the value of the goods exported was unduly inflated. In the order passed by the Committee appointed by the Government of India, dealing with the case of the petitioners, it was observed that the petitioners had business relations with certain firms and that the rates at which bush shirt cloth were purchased varied from Rs. 3.87 to Rs. 3.92 nP. The Committee was not satisfied that the documentary evidence produced by the petitioners related to the goods exported by them. These findings disclosed that, in the view of the Committee, there was reason to believe that the claim of the petitioners that they had purchased goods approximately for the prices at which they were exported, was not made out. The Committee accordingly recommended that the value of "bush shirt cloth" should be computed at the rate of Rs. 1.50 nP. per yard. It is true that there is no definite evidence on the record indicating that that was the current market rate, but the court may be justified in holding that the members of the Committee who were vitally concerned with the trade in artsilk goods were conversant with the current market rates of the cloth which was exported by the petitioners.

Counsel for the Union has placed before us in the course of the hearing the report of the Committee in respect of seven out of the eight exporters who the petitioners claimed had been given import licence for the full value of the exports. The report of the Committee with regard to M/s. Rajasthan Exporters and Importers, Calcutta

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is not placed before us on the plea that it is not immediately available. On a perusal of the report of the Committee with regard to the other exporters, it may be stated that the claim of the petitioners that Raghunath Rai Piyarilal were given import licence for the full value of the goods exported is not correct. It appears from the record that only 40% of the F.O.B. value was to be taken for "Glass Nylon dyed" exported in respect of application No. 36. Similarly, in respect of application No. 35, 40% of the F.O.B. value was to be taken for the purpose of granting import licences. It is true that in the cases of the other importers - Premasukhdass Sitaram, Indian Exporters and Importers Corporation, M/s. Universal Watch Emporium, M/s. Jawahar Knitting Hosiery, M/s. Vastralaya Ltd. and M/s. Agarwala Trading Co., Ltd., the Committee have recommended acceptance of the purchase prices submitted by the exporters in granting import licences. It may, therefore, be assumed that these importers were given licence for 100% of the export value of the goods. But the Committee have given reasons which appear to be *prima facie* good for accepting the claims of these exporters. If, on the materials placed before them, the Committee were satisfied that there was some misconduct or under-hand dealing on the part of the petitioners, or that the evidence led before them justified the Committee in holding that the goods exported were not of the value claimed by the petitioners in their invoices, an order recommending that import licence may be granted for the value of bush shirt cloth computed on the basis of Re.1.50 nP. per yard does not amount to discriminatory treatment of the petitioners. Article 14 confers a guarantee of the equal protection of the law—a guarantee against arbitrary discrimination between persons similarly circumstanced. On the materials placed before the Committee, there was evidence to show that the record produced by the

petitioners was unsatisfactory; they were not satisfied that the prices which the petitioners said they had paid for purchasing the goods were in truth paid. If there was evidence to show that in respect of other persons who were in the opinion of the Committee found also to have inflated the prices in the manner adopted by the petitioners and still the Controller had granted import licences to those persons for the full amount of the export value or a percentage substantially in excess of the percentage for which import licence was granted to the petitioners, a case of discrimination could have been made out; but in the absence of such evidence, we do not think that any case of discrimination is made out.

The petition fails and is dismissed with costs.

The application filed by M/s. M. Shaams and Company for intervention is dismissed, because Miscellaneous Application No. 264 of 1960 which was filed by the applicants in the High Court of Judicature at Bombay for a writ of mandamus, direction or order under Art. 226 of the Constitution has been dismissed by the High Court and the remedy applicants is to file an appeal to this Court.

Petition dismissed.

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