

**Administrative Discretion in the Issue of Import Licences—Ramchand Jagdish Chand v. Union of India.<sup>1</sup>**

For the year 1958-59 the import trade control policy of the Government of India had provided, for promoting exports, that import licences for artsilk yarn would be granted to actual exporters *up to* 100% 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 was less. The government having come to know of certain malpractices<sup>3</sup> relating to the value of the goods exported by the exporters announced the appointment of a committee for scrutinising the value of goods exported for the purpose of granting import licences. The petitioner, in *Ramchand Jagdish Chand v. Union of India*,<sup>3</sup> had applied for an import licence on the basis of his exports worth about rupees seven lakhs to Singapore to a firm named Abdul Razak and Co. The committee, after giving an opportunity to the petitioner to present his case, found that he had inflated the value of the exports and fixed the actual value at a figure lower than what he had declared and on that basis he was granted a 100% licence. This amount worked out to 45% of the value of exports declared by the petitioner. In a petition under Art. 32 of the Constitution the petitioner contended before the Supreme Court that he should have been granted licence for 100% of the value as declared by him.

The problem before the court was simply that of valuation of the goods exported. This depended on certain facts. But the court went on to determine the correctness of the value of the licence issued to the petitioner with reference to the discretion enjoyed by the licensing authority to issue the licence *up to* 100%. The validity of the administrative discretion in turn was determined with reference to the valuation arrived at by the committee. Thus to the contention of the petitioner that he was granted licence for 45% of the value of the goods exported, the court's reply was that the power of

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1. A.I.R. 1963 S.C. 563.

2. The exporters had inflated the prices of the goods exported. They had generally exported the goods to the Indian firms situated in Singapore, etc. In many cases these were the sister concerns of the firms situated in India. The former were interested in sending money to their relatives in India. The inflation of invoice prices served the purposes of getting import licences for higher value by the exporters in India and facilitated the remittance of money by the Indians situated in foreign countries.

3. *Supra* note.



the licensing authority was to grant a licence for any amount *up to* 100%. The power was plainly discretionary. In the court's view, however, discretion had 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."<sup>4</sup> The court found that the power exercised by the authority was supported by a "reasonably discernible principle." The petitioner had appeared before the committee and furnished documentary evidence in support of the invoice value. The court found the valuation arrived at by the committee supported by evidence. The licence was issued for 100% of the value arrived at by the committee. In these circumstances the court refused to interfere.

Was there really some discernible principle in the exercise of discretion by the licensing authority in the case in point? True there was a committee to scrutinize the value of goods exported and licences for 100% of the value so determined were actually issued. But after the correct valuation had been arrived at, there was absolutely no principle for the guidance of the licensing authority for the exercise of the discretion to issue licences *up to* 100%.

Could it be that the licensing authority was bound to accept the value of exported goods as declared by the exporters? As per policy an exporter was to be given licence *up to* 100% 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." The customs valuation could be left out of consideration for the present purpose, since it appears there was no customs valuation.<sup>5</sup> One of the contentions of the petitioner could have been that since the country had actually received the foreign exchange on the basis of his exports, it was no concern of the licensing authority to consider at what value he had exported the goods. This could have been done only in a situation where foreign exchange had not been received so as to create the doubt whether it would be received or not, though the goods had been exported. The short answer to this is that the

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4. *Ibid.* at 567.

5. Since there is no export duty on the export of artsilk goods, there was no question of assessment of value by the customs.



foreign exchange has to be earned on the basis of exports made. If the value of the exports made is in doubt, it cannot be said that the exchange was received on the exclusive basis of exports made. The basis may be something else, e.g., a means to facilitate the remittance of payment by the Indians situated abroad to their relations in India. Therefore there is no doubt that the licensing authority was competent to go into the question of value of exports made, even though the foreign exchange may have actually been received. There was thus no difficulty for the court to dispose of the case on the simple ground of valuation.

However, since the court entered into the difficult area of administrative discretion and since such questions of discretion are likely to arise in future, it will be appropriate to discuss this problem. The Supreme Court recognised as early as 1954 in *Dwarka Prasad v. State of U.P.*<sup>6</sup> that absolute discretion cannot be conferred, in the absence of procedural safeguards in the form of provisions for appeal etc., on the administrative authority for the grant of licences to carry on trade and business. The confirmation of this principle is to be found in the court's later judgment in *Chandrakant v. Jasjit Singh*<sup>7</sup> where the court declared as bad, in the absence of provision for appeal, a law which empowered the customs collector to refuse to licence a person as clearing agent on the ground, *inter alia*, that "the applicant is not otherwise considered suitable". The need for administrative discretion arises because of certain variable factors it is not possible to make a general rule or standard applicable to the generality of individuals. Necessity is felt to individualise administrative function affecting private interests. The administrative discretion though necessary for administrative efficiency or effectiveness, however, creates the danger of abuse of power by the authority besides making private rights uncertain. Therefore, control of administrative discretion through provisions containing standards for the guidance of the administrative authority wherever possible, and procedural safeguards become a necessity.

In the case in point the court recognised that the administrative discretion was restricted by considerations of foreign exchange and the general interest of the state. It is submitted that "the general interest of the State" is too vague a concept to be regarded as a standard. If it is taken to be a sufficient standard

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6. A.I.R. 1954 S.C. 224.

7. A.I.R. 1962 S.C. 204.



then no provision can ever be declared to be bad since the general interest of the state is always present in every provision. With regard to consideration of foreign exchange for the exercise of discretion, unfortunately this is a matter of court's own reading and inference; no where in the import trade control policy this was provided. In *Lenox Photo Mount Mfg. Co. v. Joint Chief Controller of Imports*,<sup>8</sup> a recent judgment of the Madras High Court, an application for the import of raw material for use in the applicant's factory was rejected on the ground, *inter alia*, of foreign exchange shortage. The import policy had laid down certain considerations, e.g., availability of indigenous raw material etc., but foreign exchange was not mentioned as one of the considerations for the purpose of rejecting an actual user application by the licensing authority. The court held that the application for the licence was rejected on extraneous considerations. Besides, the "foreign exchange consideration" is not free from difficulty. There are a number of licensing authorities and each licensing authority has to deal with hundreds of applications. "It would be an extraordinary situation if a licensing authority who deals with hundreds of applications is to be empowered to consider matters relating to foreign exchange and the like while dealing with each application and to come to his independent conclusion in the matter."<sup>9</sup>

In considering the question whether the discretion enjoyed by the administrative authority imposes a reasonable restriction on the private right or not, the necessary enquiry has to be whether or not it was possible to provide standards. A law conferring discretion on the administrative authority ought to become unreasonable where it transcends the limit set by the demand for flexibility in public interest. Was it possible to provide standards in the matter of percentage in the case in point? It appears not. Licences were issued under the Export Promotion Scheme. The government could not have been aware as to how much worth of goods will be exported by giving the incentive and how much foreign exchange will be involved. In fact certain amounts were allotted to the licensing authorities at Calcutta, Bombay and Madras for the purpose of granting import licences under the scheme.<sup>10</sup> Those amounts were soon exhausted contrary to the

8. W.P. No. 403 of 1961, decided 8-7-1963.

9. *Ibid.*

10. Cf. *Lilarams v. Joint Chief Controller of Imports*, W.P. No. 264 of 1959, decided 6-5-1960. Thus Madras was given three instalments of Rs. 25,15,25 lakhs which were all exhausted.



expectation of the authorities. By the very nature of the subject a broad discretion had to be conferred on the licensing authority.

What are the safeguards necessary to be provided against abuse of power in such a case? One can only think of procedural safeguards. One such safeguard could be that the Chief Controller of Imports who is at the apex of import and export control organization gives a general direction according to the exigency of the situation to the licensing authorities from time to time in the matter of percentages. Since this will be a direction of general nature to dispose of the applications according to a fixed rule, it will eliminate the danger of abuse of power which will otherwise be involved if the licensing authority was to apply its discretionary power to individual applications. It is learnt that this is in fact done in cases involving discretion on the part of the licensing authority. Another safeguard which ought to be provided is of appeals from the initial order. In this respect also, the departmental rules/instructions have necessary provisions.

The case indicates that where discretion conferred on the authority is broad, still it will be valid if in its exercise some discernible principle can be found. This also does not appear to be a correct approach. Under this approach there is not much of a check against the abuse of power. The individual rights are made to depend on the whims and caprices of the individual officer. If the exercise of discretion is to conform to certain principles why not incorporate those principles in the statute or rules! Further, it may not be easy to find the discernible principle unless a large number of cases have occurred.

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