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AJOOMAL LILARAM AND ANOTHER

v.

UNION OF INDIA AND OTHERS

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December 13, 1982

[O. CHINNAPPA REDDY AND V. BALAKRISHNA ERADI, JJ.]

*Constitution of India—Art. 136—Public sector undertaking—Wrong statements made in affidavits filed—Government's instructions disregarded—Relief granted to petitioners.*

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In June 1982 the Chief Controller of Imports and Exports issued export instructions on the subject of Export Policy of Niger Seeds during 1982-83. Paragraphs 2 and 3 of the instructions stated that the Government had decided to allow export of Niger Seeds within an overall ceiling of 10,000 metric tonnes through the National Agricultural Cooperative Marketing Federation of India (NAFED) subject to a minimum export price of Rs. 8,500 per metric tonne. In addition to NAFED, private exporters who registered their contracts with NAFED were also allowed to export the seeds on the basis of first come first served, against firm commitments backed by irrevocable letters of credit, subject to availability of ceiling. It was also stated that the NAFED would be responsible to monitor the ceiling and ensure that export of the seeds did not exceed the overall quantity of 10,000 metric tonnes during the year. A Trade Notice on these lines was issued by the Joint Chief Controller of Imports and Exports.

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On the faith of the trade notice the petitioner entered into contract with a foreign-buyer who opened a firm irrevocable letter of credit in favour of the petitioner. The petitioner thereupon requested the NAFED to register the contract and that one thousand tonnes of seed might be reserved for him for export. About six weeks later the petitioner reminded the NAFED by letter and telegram about his request for allotment of the quota.

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In the meanwhile the NAFED wrote to the Government of India, Ministry of Commerce that it was for NAFED and its Board of Directors to formulate guidelines regarding the release and modalities of export of the seeds and it forwarded two statements—one showing names of 22 applicants whose requests for allotment of quotas were said to be backed by letters of credit and the other containing list of 34 names of applicants whose contracts were not backed by letters of credit. The petitioner's name was included in the first list.

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Reiterating the earlier instructions the Government wrote to the NAFED that the allotment of quotas should be in conformity with the instructions and the Trade Notice and that it was not for the NAFED to issue another Trade Notice.

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**A** In disregard of the instructions the NAFED selected certain applicants and gave time to them to produce letters of credit. The petitioners were not in this list.

The Delhi High Court dismissed in limine the petitioners' petition under Art. 226 of the Constitution.

**B** The petitioners thereupon filed their petition under Art. 136 of the Constitution.

Allowing the petition,

**C** HELD : While the petitioners satisfy all the requirements of the Trade Notice some of the applicants chosen by the NAFED for allotment of quota did not furnish the letters of credit and the NAFED's action in giving them time for their production was not in accordance with the terms stipulated by the Trade Notice. [6 H]

**D** The file produced by the Government of India exposed the statement made in the NAFED's affidavit that the petitioners were not in the list of 22 as false. Its counsel was misled and wrongly instructed to argue that the petitioners were not included in that list. But the petitioners in fact figured in the statement entitled "enquiries received from private parties backed by letters of credit for export of Niger seeds" prepared by the NAFED and sent to the Government of India. [7 E]

**E** Even if the claim of NAFED that the selected applicants had secured a higher price and that that would help to earn more foreign exchange is correct, they were not eligible for registration firstly because their contracts were not backed by letters of credit in terms of the Trade Notice and secondly because the ceiling had already been reached. [7 G]

**F** The counter-affidavit filed by the Government of India fully substantiates the claim of the petitioners that the NAFED had disregarded the trade instructions issued by the Government of India as well as the Trade Notice which was issued pursuant to the trade instructions. [8 A]

CIVIL APPEALTE JURISDICTION : Civil Appeal Nos. 3741-42 of 1982.

**G** From the Judgment and Order dated the 22nd October, 1982 of the Delhi High Court in C.W. Nos. 3577 and 3575 of 1982.

*V.M. Tarkunde, K.K. Venugopal, F.S. Nariman, Rajiv Datta and A.N. Bhanot* for the Appellants.

**H** *M.K. Banerjee*, Additional Solicitor General and *Miss A. Subhashini* for the Respondent,

*M.C. Bhandare and S. Bhandare* for the Respondent.

The Order of the Court was delivered by

CHINNAPPA REDDY, J. It transpires from the facts which we shall presently set out that the National Agricultural Cooperative Marketing Federation of India, NAFED for short, is a law unto itself and its officers are not unduly concerned either about carrying out the Export Trade Instructions issued by the Government of India or about filing truthful affidavits in the Supreme Court of India.

On June 23, 1982, the Chief Controller of Imports and Exports, Ministry of Commerce, Government of India, issued Export Instruction No. 59 of 1982 on the subject of Export Policy of Niger Seeds during 1982-83. Paragraphs 2 and 3 of the Instruction are important and may be fully set out. They are as follows :—

“On a review of the position it has been decided to allow export of Niger Seeds within an overall ceiling of 10,000 (Ten thousand) tonnes through the canalising agency, viz. The National Agricultural Cooperative Marketing Federation of India Ltd. (NAFED) subject to minimum export price of Rs.8,500/- (Rupees eight thousand five hundred) per metric tonne. While the NAFED can continue to undertake exports themselves, private parties will also be allowed to export Niger Seeds as Associates of NAFED against firm commitments backed by irrevocable Letter of Credit subject to availability of ceiling. Export by private parties will be allowed on first come, first-served basis. For this purpose, the exporters should register their contracts with the NAFED. The NAFED will stop registration of contracts as soon as the ceiling is exhausted.

The NAFED will be responsible to monitor the ceiling and ensure that export of Niger Seeds not exceeding the overall quantity of 10,000 M.T. during 1982-83. In other words, the export will be allowed only against the balance quantity left unutilised out of the ceiling of 10,000 tonnes released *vide* Export Instruction No. 15/82 dated 7.4.1982.”

**A** Pursuant to the Trade Instruction, a Trade Notice was published by the Joint Chief Controller of Imports and Exports on the same lines. We may mention here that out of the 10,000 tonnes, export of which was to be allowed, the NAFED reserved to itself the right to export 5,000 tonnes and decided to allow its associates to export the remaining 5,000 tonnes.

**B**

On the faith of the Trade Notice, the petitioner in Special Leave Petition No. 10230 of 1982 entered into a contract with M/s. Curtis (Confirmers) Limited of London on 7.7.82 for the sale and export of 1,000 metric tonnes of Indian Niger Seeds at the price of Rs. 8,560 per metric tonne, f.o.b. at any Indian Port. Shipment of 200 metric tonne was to be by October, 1982, 300 metric tonnes by February, 1983 and 500 metric tonnes by March, 1983 at buyer's option with one month's clear notice. The payment was to be by 'firm, irrevocable credit, to be opened through first class bank for 10% value now and for balance 90% to be opened 15 days prior to shipment'. The petitioner forwarded the contract to NAFED on 22.7.82 with a request that the contract may be registered and promising to send the letter of credit in two or three days. An Irrevocable Documentary Letter of Credit was duly opened by the Banque Nationale de Paris on behalf of the foreign buyer in favour of the petitioner for the amount of Rs. 8,56,000 being 10% of the total value of the goods. The letter of credit also stipulated that within 15 days before each shipment, 'the credit value was to be increased to cover the amount of each shipment and that would be advised as an amendment to the credit'. Letter of Credit was forwarded to the NAFED by the petitioner on 26.7.82 with a request that the quantity of one thousand metric tonnes might be reserved for him for export. The NAFED sent a reply on 6.8.82. "We will revert in the matter shortly". On 3.9.82 the petitioner reminded the NAFED both by letter and telegram about his request for allotment of quota. The petitioner also sent a telegram to the Government of India that matters were unduly delayed though he had completed all the formalities. It appears that meanwhile, the NAFED wrote to the Ministry of Commerce, Government of India, on 17.9.82 informing the Government of India that it was for the NAFED and its Board of Directors to formulate guidelines regarding release and modalities of export. A copy of the guidelines formulated by the NAFED on 16.9.82 was enclosed.

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**H** Two statements containing the names of the applicants for quotas

and other particulars were also enclosed. The first statement showed the names of 22 applicants whose requests for allotment of quotas were said to be backed by Letters of Credit. The appellants in the appeals before us are included in this list though this was denied in the counter affidavit filed on behalf of the NAFED. More about it later. The second statement contained a list of 34 names of applicants whose contracts were not backed by any Letters of Credit. On receipt of this letter the Government of India by their letter dated 30.9.82 objected to the guidelines said to have been approved by the NAFED as they were contrary to the guidelines issued by the Government of India. It was pointed out that according to the instructions of the Government of India the allotment had to be made on first come first served basis whereas according to the guidelines prepared by the NAFED the quotas were to be allotted by a committee consisting of the Chairman and officials of the NAFED, the Government and the trade, after considering all the applications received within a certain specified period. In fact the guidelines issued by the Government of India required that registration of applications should be stopped as soon as the ceiling limit was reached on a first come first served basis. Further, the guidelines prepared by the NAFED provided that Letters of Credit would have to be submitted within three weeks after allotment and this was again contrary to the guidelines issued by the Government of India which required that the Letters of Credit should be made available for registration of the requests for allotment of quotas. The letter of the Government again and again emphasised that quotas should be allotted on first come first served basis to exporters against firm commitments, backed by irrevocable Letters of Credit, subject to availability of ceiling. The Government asked the NAFED to refer to the fact that the letter of the NAFED itself showed that there were 22 parties who had registered their contracts for export, whose requests for allotment were backed by Letters of Credit and that the total of their requests came to 4,859 tonnes. On the other hand, it was pointed out, the requests of the other 34 parties for quotas were not backed by Letters of Credit. The Government of India finally instructed the NAFED to ensure that exports of Niger Seeds were undertaken in conformity with the instructions issued by the Government of India in E.I. No. 59/82 dated 23.6.82. The NAFED was reminded that while the NAFED

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**A** was only a canalising agency for export of Niger Seeds, the export would have to be undertaken by them only within the policy as laid down by the Government. The NAFED was further told that a Trade Notice had already been issued by the Joint Controller of Imports and Exports and that it was not for the NAFED to issue another Trade Notice as proposed by it.

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**C** The instructions of the Government of India reiterated by their letter dated 30.9.82 fell on deaf ears. The NAFED ignored the instructions of the Government of India and persisted in the error of its ways. At a meeting held on 16.10.82 the NAFED purported to select applicants for export quotas neither on a first come first served basis as originally announced in the Trade Notice nor only from among applicants whose contracts were backed by Letters of Credit. They proposed to give time to the selected applicants to produce Letters of Credit.

**D** The petitioners moved the Delhi High Court under Article 226 of the Constitution for redress but their Writ Petitions were dismissed in limine. They have come to this Court under Article 136 of the Constitution. As we were told that the applicants who had been selected for allotment of quotas had been able to secure a higher price from their buyers and, therefore, allotment of quotas to the petitioners would result in considerable loss of foreign exchange, we were anxious to know the present attitude of the Government of India in the matter. The Government of India has now appeared before us through the learned Additional Solicitor General and a counter affidavit has been filed on their behalf by a Deputy Secretary in the Ministry of Commerce.

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**G** The NAFED has no clear or definite answer to the petitioners' claim. First, it was said that the letter of Credit furnished by the petitioner did not conform to the requirement of the Trade Notice, but the argument was not pursued as it was seen from the file produced by the Government of India that the Letters of Credit furnished by such of the selected applicants for quotas as did furnish Letters of Credit were all similar to those produced by the petitioners. In fact, some of the chosen ones furnished no Letters of Credit and it was proposed to give them time for the production of Letters of Credit. This, of course, was not in accordance with the terms stipulated by the Trade Notice. It is also clear from the letters which the NAFED addressed to the Govern-

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ment of India that it was never for a moment doubted by anyone that the Letters of Credit produced by the petitioners conformed to the requirements of the Trade Notice. The present stand is a clear after-thought and a pretence. In the counter affidavit filed on behalf of the NAFED it was stated that 22 applicants for allotment claimed that they had firm contracts backed by Letters of Credit for full value. The total quantity covered by these applications was 4,859 tonnes. It was asserted that the petitioners did not fall in this category. It was stated that the petitioners came in the category of those who had secured a price of Rs. 8,600 per tonne but whose contracts were not backed by Letters of contract. The Learned Counsel who appeared for the NAFED also submitted before us, on instructions, that the petitioners were not among the 22 applicants whose contracts were considered by the NAFED as backed by Letters of Credit. But a perusal of the file produced by the Government of India exposed the statement made in the affidavit filed on behalf of the NAFED as false. The NAFED had itself prepared a statement showing "Enquiries received from private parties backed by Letters of Credit for export of Niger Seeds". This statement was sent to the Government of India along with its letter dated 17.9.82 and it contains a list of twenty two names. Both the appellants in the appeals figure in it. It is clear to us that the statement in the counter affidavit is false. It is also clear to us that the Learned Counsel was misled and wrongly instructed to argue before us that the appellants were not included in the list of twenty two.

It appeared to us that a copy of the letter dated 17.9.82 of the NAFED to the Government of India was not made available even to the Learned Counsel. We repeatedly asked for it and we could ultimately get it from the file produced by the Government of India,

One of the submissions made to us was that the selected applicants had secured a higher price per tonne and that would help to earn more foreign exchange. In the first place their contracts are not backed by Letters of Credit as stipulated by the Trade Notice and they were not eligible for registration. In the second place the ceiling had already been reached and for that reason also they could not be registered.

The counter affidavit filed by the Government of India fully substantiates the claim of the appellants that the NAFED had

- A** disregarded the trade instructions issued by the Government of India as well as the Trade Notice issued pursuant to the trade instructions. In paragraph 27 of the counter affidavit, it is expressly stated "I submit that the answering respondents have no objection if relief is granted to the petitioners provided they fulfil the requirements of the export instructions issued by respondents 1, 2
- B** and 4". In the circumstances we have no option but to allow these appeals. Necessary directions have already been issued by us on 29.11.82. The appellants are entitled to get their costs in each of these appeals from the 6th respondent, the National Agricultural Co-operative Marketing Federation Ltd. We fix the costs at Rs. 5,000/- in each appeal.

**C**

P.B.R.,

*Petition allowed.*