

PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
M/S. INDO-AFGHAN AGENCIES LTD.

DATE OF JUDGMENT:
22/11/1967

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
SIKRI, S.M.
SHELAT, J.M.

CITATION:
1968 AIR 718 1968 SCR (2) 366

CITATOR INFO :

R	1971 SC1021	(11)
D	1971 SC1997	(8)
D	1971 SC2399	(13)
D	1972 SC1126	(5)
R	1972 SC1311	(24)
R	1972 SC2112	(18)
RF	1973 SC 106	(145)
R	1973 SC 303	(10)
RF	1973 SC 381	(16)
RF	1973 SC2232	(15)
RF	1976 SC 386	(15)
RF	1977 SC1496	(13)
D	1977 SC2149	(14)
R	1978 SC 803	(11)
E&R	1979 SC 621	(20, 21, 22, 24, 25, 26, 29, 30, 31)
RF	1980 SC1285	(13, 20, 26, 36, 37, 41, 42, 44)
F	1985 SC 941	(4)
RF	1986 SC 806	(10)
RF	1986 SC 872	(179, 180)
RF	1986 SC1021	(13, 21)
RF	1988 SC1247	(3)
E&F	1991 SC 14	(11)
RF	1992 SC1075	(3)

ACT:
Imports and Exports (Control) Act (18 of 1947), s. 3--Import Trade Policy--Notifications under--If executive instructions--Whether enforceable--Representation to exporters that they will be given certificates to import material equal to 100% of the value of the exports--When quantum in import certificate can be reduced--Claim of exporters if founded on equity.

HEADNOTE:
Section 3 of the Imports and Exports (Control) Act, 1947, authorises the Central Government to make, by order, provisions for prohibiting, restricting or otherwise controlling import, export, carriage etc. of goods of specified description. In exercise of this power, the Central Government issued the Imports (Control) Order, 1955, and other orders setting out the policy governing the grant

of import and export licences. The Central Government also evolved an Import Trade Policy to facilitate the mechanism of the Act and the orders issued thereunder. and it was modified from time to time by issuing fresh Schemes in respect of new commodities. In 1962, the Central Government promulgated the Export Promotion Scheme providing incentives to exporters of woollen textiles and goods. It provided for the grant to an exporter, certificates to import raw materials of a total amount equal to 100% of the F.O.B. value of his exports. Clause 10 of the Scheme provided that the Textile Commissioner could grant an import certificate for a lesser amount if he is satisfied, after holding an enquiry, that the declared value of the goods exported is higher than the real value of the goods. The Scheme was extended to exports of woollen textiles and goods to Afghanistan.

The respondents exported woollen goods to Afghanistan and were issued an Import Entitlement Certificate by the Textile Commissioner not for the full F.O.B. value of the goods exported, but for a reduced amount. In doing so, the Textile Commissioner collected evidence ex parte and acting upon the report of a Committee appointed by him passed orders without informing the respondents or giving them an opportunity to explain the materials on the basis of which the 'import entitlement' of the respondents was reduced. Some of the exporters had appeared before the Committee and explained the circumstances in which they made the exports, but the report of the Committee was not made available to them. The respondents made representations to the Central Government but the Government confirmed the orders. The respondents then filed writ petitions in the High Court. The High Court set aside the orders of the Textile Commissioner and Government, and held that the respondents were entitled under the Scheme to obtain import licences for an amount equal to 100% of the F.O.B. value of their exports, unless it was found on enquiry duly made under cl. 10 of the Scheme that the respondents had by 'over-invoicing' the goods disentitled themselves to the import licences of the full value; and that the Textile Commissioner without making any such enquiry, proceeded upon his subjective satisfaction that the respondents had 'over invoiced' the goods exported; and that Government also acted in a similar manner in dealing with the representation of the respondents.

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In appeal to this Court, it was contended: (1) that the Export Promotion Scheme was administrative in character, that it contained mere executive instructions issued by the Central Government to the Textile Commissioner. and created no enforceable rights in the exporters who exported their goods in pursuance of the Scheme and that it imposed no obligations upon the Government to issue import certificates, (2) that the textile Commissioner was the sole judge of the reasons for reducing the import entitlement, that the Scheme did not require him to set out the reasons for reducing the import entitlement, or to give an opportunity to the respondents because, the exercise of the power to reduce, conferred upon the Textile Commissioner, was not limited by the terms of cl. 10 of the Scheme, and was not, except on proof of mala fide exercise, open to judicial review; (3) that the Government on grounds of 'executive necessity' was the sole judge of the validity of its action in matters relating to import and export policy, because the policy depended upon the economic climate and other related matters and had to be in its very nature

flexible with power in the Government to modify or adjust it as the altered circumstances necessitate; and (4) that if the Government is held bound by every representation made by it regarding its intentions, the Government would be held bound by a contractual obligation even though no formal contract in the manner required by Art. 299 of the Constitution was executed.

HELD: The Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisal of the circumstances in which the obligation had arisen. [385 E-F]

(1) Whether the Schemes for implementing the Import Trade Policy are merely executive or administrative instructions, or are legislative directions as well, depends not on their form, or the method of publication or the source of their authority. but it is their substance that determines their true character. It cannot be assumed merely because the policy is general in terms and deals with the grant of licences for import of goods and related matters, that it is statutory in character. But even if it is only executive or administrative in character, courts have power in appropriate cases to compel performance of the obligations imposed by the Schemes upon the departmental authorities. [376 H; 377 B--C, F--G]

(2) The Textile Commissioner was not the sole judge of the quantum of import licence to be granted to an exporter and courts are competent in appropriate cases to grant relief, if, contrary to the Scheme, the Government and its officers at their mere whim ignore the promises made by the Government and arbitrarily decline to grant the promised import licence to an exporter who has acted to his prejudice relying upon the representation r381 C--D]

Where a person has acted upon representations made in an Export Promotion Scheme that import licence upto the value of the goods exported will be issued, and had exported goods, his claim for the import licence for the maximum value permissible by the Scheme cannot be arbitrarily rejected. In such a case reduction in the amount of import certificate may be justified on the ground of misconduct of the exporter in relation to the goods exported or on special considerations such as difficult foreign exchange position, or other matters having a bearing on the general interests of the State. But, where, as in the present case, the Scheme provided for the grant of import entitlement of the value and not

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up to the value, of the goods exported, the Textile Commissioner should in the ordinary course, grant import certificate for the full value of the goods exported: he may reduce that mount only after the enquiry contemplated by cl. 10 of the Scheme, that is, enquiry made after giving an opportunity to the respondents and held in a manner consistent with the rules of natural justice and the basic concepts of justice and fair-play. [379 H: 380 A--C]

Ramchand Jagadish Chand v. Union of India & Ors. [1962] 3 S.C.R. 72, Probhudas Morarjee Rajkotia & Ors. v. Union of India & Ors. A.I.R. 1966 S.C. 1044- and Joint Cheil Controller of Imports and Exports, Madras v. M/s.Amin Chand Mutha, [1966] 1 S.C.R. 262, followed.

(3) Executive necessity, if any, does not release the Government from honoring its solemn promises relying on

which citizens have acted to their detriment especially when the representation in the Scheme was not' subject to any implied term that the Government will not be bound to grant the import certificate for the full value of the goods exported if they deem it inexpedient [376 A--C]

Rederiaktiebolaget Amphitrite v. The King, [1921] 3 K.B. 500 and Robertson v. Minister of Pensions, [1949] 1 K.B. 227, referred to.

(4) The respondents were not seeking to enforce any contractual right: they are seeking to enforce compliance with the obligation which is laid upon the Textile Commissioner by the terms of the Scheme. The claim of the respondents was rounded upon the equity which arose in their favour as a result of the representation made on behalf of the Government in the Export Promotion Scheme, and the action taken by the respondents acting upon the representation. Even though the case did not fall within the terms of s. 115 of the Evidence Act, it was still open to a party who had acted on a representation made by the Government to claim that the Government should be bound to carry out the promise made by it, though not recorded in the form of a formal contract as required by the Constitution. [382 D-G, 383 H]

Ahmad Far Khan & Ors. v. Secretary of State for India in Council and Anr. L.R. 28 I.A. 211, The Municipal Corporation of the City of Bombay, v. The Secretary of State for India in Council, I.L.R. 29 Born. 580 and The Ganges Manufacturing Co. v. Surujmull, I.L.R. 5 Cat. 669, applied.

Collector of Bombay v. Municipal Corporation of the City of Bombay & Ors. [1952] S.C.R. 43. referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 885893 of 1967.

Appeals from the judgment and order dated February 2, 1967 of the Punjab and Haryana High Court in Civil Writs Nos. 1947, 1921 to 1927 and 1949 of 1965.

AND

Civil Appeals Nos. 973 to 975 of 1967.

Appeals from the judgment and order dated April 26, 1967 of the Punjab High Court in Letters Patent Appeal Nos. 127 to 129 of 1967.

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B.R.L. Iyengar, R.N. Sachthey and S.P. Nayar, for the appellants (in all the appeals).

Bhagirath Dass, Sobhag Mal Jain and B.P. Maheshwari, for the respondents (in C.As. Nos. 885 and 893 of 1967).

O.P. Varma, for the respondents (in C.As. Nos. 886 to 890 and 892 of 1967).

A.K. Sen and O.P. Varma, for the respondent (in C.A. No. 891 of 1967).

K.L. Arora and H.K. Puri, for the respondents (in C.As. Nos. 973 and 974 of 1967).

A.K. Sen, H.L. Anand and K.B. Mehta, for the respondent (in C.A. No. 975 of 1967).

The Judgment of the Court was delivered by

Shah, J. The facts which give rise to Appeal No. 885 of are these: The Textile Commissioner published on October 10, 1962, a scheme called the Export Promotion Scheme providing incentives to exporters of woollen goods. The scheme was extended by a Trade Notice dated January 1, 1963, to exports of wooden goods to Afghanistan. Messrs. Indo-Afghan Agencies-hereinafter called the respondents--a firm dealing

in woollen goods at Amritsar exported to Afghanistan in September, 1963, woollen goods of the f.o.b. value of Rs. 5,03,471-73 nP. The Deputy Director in the office of the Textile Commissioner, Bombay issued to the respondents an Import Entitlement Certificate for Rs. 1,99,459 only/-. Representations made by the respondents to the Deputy Director and to the Union Government that they be granted Import Entitlement Certificate for the full f.o.b value- of the goods exported failed to produce any response.

But in a petition under Art. 226 of the Constitution moved before the High Court of Punjab by the respondents for a writ or an order directing the Union of India, the Textile Commissioner and the Joint Chief Controller of Imports and Exports, Bombay, to issue a licence "permitting import of wool-tops, raw wool, waste and rags of the value of Rs. 3,04,012-73 nP", the orders of the Textile Commissioner and the Central Government were set aside. The High Court held that the Export Promotion Scheme specifically provided for granting certificates to import materials of the "value equal to 100% of the f.o.b. value of the goods exported", and the respondents were entitled to obtain import licences for an amount equal to 100% of the f.o.b. value, unless it was found on enquiry duly made under el. 10 of the Scheme that the respondents had by "over-invoicing" the goods disentitled themselves to the import licences

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of the full value; that no such enquiry was made by the Textile Commissioner and that officer merely proceeded upon his "subjective satisfaction" that the respondents had 'over-invoiced' the goods exported; and that the Union Government acted on irrelevant grounds. The Union of India, the Textile Commissioner and the Joint Chief Controller of Imports and Exports have appealed to this Court with certificate granted by the High Court.

The genesis of the export control scheme may first be noticed. The Imports and Exports (Control) Act 18 of 1947 was enacted on March 24, 1947 with the object of enabling the Central Government to continue to exercise the power to prohibit, restrict or otherwise control imports and exports which had till then been controlled by orders issued in exercise of the powers conferred by r. 84 of the Defence of India Rules, 1939, as extended by the Emergency Provisions (Continuance) Ordinance 20 of 1946. By s. 3 of that Act it was provided:

"(1) The Central Government may by order published in the Official Gazette, make provisions 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 :--

(a) the import, export, carriage coastwise or shipment as ships stores of goods of any specified description;

(b) the bringing into any port or place in India of goods of any specified description intended to be taken out of India without being removed from the ship or conveyance in which they are being carried.

(2).....

(3).....

By s. 4 the orders made under r. 84 of the Defence of India Rules, 1939, or under that rule as continued in force by the Emergency Provisions (Continuance) Ordinance, 1946, and in force immediately before the commencement of the Act were, insofar as they were not inconsistent with the provisions of the Act, to continue to remain in force and to be deemed to have been made under the Act.

In exercise of the powers conferred on the Central Government by s. 3, the Central Government issued the Imports (Control) Order, 1955. By paragraph-3 of the Order it was enacted that:

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"(1) Save as otherwise provided in this 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 any officer specified in

(2) If, in any case, it is found that the goods imported under a licence do not conform to the description given in the licence or were shipped prior to the date of issue of the licence under which they are claimed to have been imported, then, without prejudice to any action that may be taken against the licence under the Customs Act, 1962 (52 of 1962), in respect of the said importation, the licence may be treated as having been utilised for importing the said goods."

The Central Government also issued periodical orders which were published in biannual official publications setting out the policy governing the grant of import and export licences. By paragraph 52 of the notification published in the Gazette Extraordinary dated December 29, 1954, it was declared that in certain items there was "direct and intimate" inter-relationship between imports and exports, and since the ability to export some of those manufactured goods depended largely on the facility with which the exporter or the manufacturer could procure the basic raw materials required in the manufacture, a scheme had been devised with a view to promote export of such goods for the grant of special import licences to replace the imported raw material content of the exported product, and to provide an inducement for larger exports. The details of the Scheme were set out in Appendix-23 to the Notification. The Scheme covered a number of commodities of which export was permitted. From time to time this Appendix was modified and fresh schemes were issued in respect of new commodities.

On October 10, 1962, the Government of India promulgated the Export Promotion Scheme for woollen textiles and woollen goods. Clause 2 of that Scheme provided, insofar as it is material:

"It has been decided that manufacturers--exporters and merchants--exporters of the above woollen textiles and woollen goods will be entitled to import raw materials, namely, raw wool, wool tops, shoddy, man-made fibres and tops, permissible types of dyes and chemicals and machinery and machinery parts and spare parts for woollen industry for a total amount equal to 100% of the f.o.b. value of the exports."

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Clause 4 provided:

"Only such exporters who satisfy the Textile Commissioner that they are interested in export (either by past performance or by showing proof of action taken to obtain firm order etc.) will be registered by the Textile Commissioner."

Clause 6 imposed certain obligations upon the registered exporters, such as adherence to the code of conduct as and when evolved; adoption of the standard contract form with suitable clauses for arbitration and settlement of disputes; abiding by the decision of the Textile Commissioner in the matter of dispute between the exporter and his foreign customers; forwarding figures of exports of woollen goods made by him every month to the Textile Commissioner and abiding by such quality control and pre-shipment inspection procedures as may be evolved Clause 7 provided for the application for grant of import licences against actual exports effected on a monthly or on a quarterly basis. Clause 9 provided:

"After scrutiny of the applications, the Textile Commissioner shall issue an entitlement certificate indicating the items and value for which licence should i

ssued to

the applicant. On receipt of the application and entitlement certificate, the Joint Chief Controller of Imports and Exports, Bombay, shall issue the license."

Clause 10 provided:

"In case where the Textile Commissioner considers that the declared value of the goods exported is higher than the real value of the goods, the matter may be investigated further by calling for further evidence, e.g. purchase vouchers and any other corroborative evidence to facilitate scrutiny. It shall be the duty of the registered exporter to furnish such evidence as is called for in this connection. On the basis of his enquiry, the Textile Commissioner may assess the correct value of the goods exported and issue an entitlement certificate on the basis of such assessed value."

By notification dated January 1, 1963, the Scheme was extended to exports of woollen textiles and woollen goods to Afghanistan with effect from October 1, 1962.

It was urged on behalf of the Union of India that the Export Promotion Scheme was administrative in character and the recital therein that the exporters will be entitled to import certificates equal to 100% of the f.o.b. value of the exports was a

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mere instruction issued by the Union Government to the Textile Commissioner: it created no rights in the public generally or in the exporters who exported their goods in pursuance of the Scheme and imposed no obligations upon the Government to issue the import certificates. On behalf of the respondents it was contended that the Scheme was statutory in character and obliged the Textile Commissioner, unless the exporter was after due investigation under cl. 10 of the Scheme, shown to have "overinvoiced" the goods exported, to issue import certificates of the full value of the exports, and a person exporting goods in pursuance of the Scheme who was denied an import certificate of the full f.o.b. value could seek the assistance of the High Court by a petition for the issue of a writ under Art. 226 of the Constitution, for an order compelling the Textile Commissioner to carry out the obligations imposed upon him by the Scheme.

The Textile Commissioner in the present case made his order without informing the respondents and giving them an

opportunity to explain the materials on the basis of which the "import entitlement" of the respondents was proposed to be reduced. It was stated in the affidavit of the Union of India that it was not a necessary requirement of the Scheme to set out the reasons for reducing the import entitlement: that under paragraph 20(d) to Appendix 23 of the Import Trade Control Policy for the year April 1962 to March 1963 the licensing authority was authorised to refuse the issue of a licence or "to reduce the value of the licence to such amount as he deemed fit" in cases where he considered the value of the goods exported was over-invoiced, and the Trade Notice having been issued in exercise of the executive power of the State, attack by the respondents on the ground set up was "completely misplaced and without any foundation in law".

In passing the orders impugned by the respondents, the Textile Commissioner did not hold an enquiry consistent with the rules of natural justice. Counsel for the Union of India submitted that for good reasons of which the Textile Commissioner was the sole judge, it was open to that Officer to reduce the import entitlement below the f.o.b. value of the goods exported, and exercise of the power conferred upon him is not limited by the terms of cl. 10 of the Scheme, and is not, except on proof of mala fide exercise open to judicial review. This exalted claim about the nature of the authority conferred upon the Textile Commissioner as representative of the Government may first be examined.

Counsel for the Union said that the import and export policy of the Government is based on availability of foreign exchange. requirement of goods of foreign origin for internal consumption,
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economic climate in the country, and other related matters, and has in its very nature to be flexible, and on that account the power of the Government to modify or adjust it as the altered circumstances necessitate, cannot be restricted on the ground that promises made by the Government in different situations are not carried out, however amoral that claim may appear to be. According to Counsel the Government is the sole judge of the validity of its actions in matters relating to Import and Export Policy, and the citizens who have acted on the representations of the Government have only such rights as the Government in its wisdom chooses to recognise or accept at any given time. He relied in support of his submission upon the doctrine of "executive necessity" on which Rowlatt J, relied in *Rederiaktiebolaget Amphitrite v. The King*. (1) In that case during the First World War certain neutral shipowners obtained an undertaking from the British Government that if the shipowners sent a particular ship to the United Kingdom with a specified cargo, she shall not be detained. On the faith of that undertaking, the owners sent the ship to a British port with that specified cargo. The British Government withdrew their undertaking and refused her clearance. On a petition of right for damages for breach of contract it was held that the Government's undertaking was not enforceable in a Court of law, it not being within the competence of the Crown to make a contract which would have the effect of limiting its power of executive action in the future. Rowlatt, J., observed at p. 503:

" what I have to consider is whether this was a contract at all. I have not to consider whether there was anything of

which complaint might be made outside a Court, whether that is to say what the Government did was morally wrong or arbitrary that would be altogether outside my province."

He then proceeded to state:

"No doubt the Government can bind itself through its officers by a commercial contract, and if it does so it must perform it like anybody else or pay damages for the breach. But this was not a commercial contract, it was an arrangement whereby the Government purported to give an assurance as to what its executive action would be in the future in relation to a particular ship in the event of her coming to this country with a particular kind of cargo. And that is, to my mind, not a contract for the breach of which damages can be sued for in a Court of law. It was merely an expression of intention to act in a particular way in a

(1) [1921] 3 K.B. 500.

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certain event. My main reason for so thinking is that it is not competent for the Government to fetter its future executive action, which must necessarily be determined by the needs of the community when the question arises. It cannot by contract hamper its freedom of action in matters which concern the welfare of the State."

This observation is, "clearly very wide and it is difficult to determine its proper scope": Anson's "English Law of Contract", 22nd Ed., p. 174. It may also be noticed that before Rowlatt, J., the applicants claimed enforcement of a contract against the Crown, and the learned Judge came to the conclusion that there was no contract and no damages could be awarded. In *Robertson v. Minister of Pensions*(1), Denning, J. observed at p. 231:

"The Crown cannot escape by saying that estoppels 'do not bind the Crown for that doctrine has long been exploded. Nor can the Crown escape by praying in aid the doctrine of executive necessity, that is, the doctrine that the Crown cannot bind itself so as to fetter its future executive action. That doctrine was propounded by Rowlatt J., in *Rederiaktiebolaget Amphitrite v. The King* but it was unnecessary for the decision because the statement there was not a promise which was intended to be binding but only an expression of intention. Rowlatt, J., seems to have been influenced by the cases on the right of the Crown to dismiss its servants at pleasure, but those cases must now all be read in the light of the judgment of Lord Atkin in *Reilly v. The King*--(1954) A.C. 176, 179)..

In my opinion the defence of executive necessity is of limited scope. It only avails the Crown where there is an implied term to that effect or that is the true meaning of the contract."

Denning, I was dealing with a case of a serving army officer, who wrote to the War Office regarding a disability and received a reply that his disability had been accepted as attributable to "military service". Relying on that

assurance he forbore to obtain an independent medical opinion. The Minister of Pensions later decided that the appellant's disability could not be attributed to war service. It was held that as between subjects such an assurance would be enforceable because it was intended to be binding intended to be acted upon, and was in fact acted upon; and the assurance was also binding on the Crown because no term could be implied that the Crown was at liberty to revoke it.

(1) [1949] 1 K,B- 227.

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The defence of executive necessity was not relied upon in the present case in the affidavit filed on behalf of the Union of India. It was also not pleaded that the representation in the Scheme was subject to an implied term that the Union of India will not be bound to grant the import certificate for the full value of the goods exported if they deem it inexpedient to grant the certificate. We are unable to accede to the contention that the executive necessity releases the Government from honouring its solemn promises relying on which citizens have acted to their detriment. Under our constitutional set-up no person may be deprived of his right or liberty except in due course of and by authority of law: if a member of the executive seeks to deprive a citizen of his right or liberty otherwise than in exercise of power derived from the law-common or statute--the Courts will be competent to and indeed would be bound to, protect the rights of the aggrieved citizen.

The orders which the Central Government may issue in exercise of the power conferred by s. 3 of the Imports and Exports Control Act may be executive or legislative. In exercise of that power, the Order was issued on December 7, 1955, that was clearly legislative in character. It appears 'that prior to the issuance of this notification several orders had been issued under the Defence of India Rules and under the Imports and Exports Act dealing with the grant of licences to import certain classes of goods. Those orders which are set out in the IVth Schedule to the Order were repealed by cl. 12 of the Order of 1955, and machinery for granting licences was set up by the Order dated December 7, 1955. Counsel for the respondents submitted that the Export Promotion Schemes published by the Government under paragraph-52 of the Government Notification dated December 29, 1954, must be deemed to be issued under s. 3 of the Imports and Exports Control Act, 1947, since the Schemes have been published in the Gazette of India, and contain general provisions relating to the grant of licences and impose restrictions upon the rights of citizens to carry on business in certain commodities. Being general provisions, restricting the rights of citizens to carry on business in certain commodities, the Schemes were, it was said, legislative in character, and the obligations imposed or the sanctions prescribed thereby must on that account be deemed to be enforceable by command of the Court.

cannot be assumed merely because the Import Trade Policy is general in terms and deals with the grant of licences for import of goods and related matters, it is statutory in character. The Imports and Exports (Control) Act, 1947, authorises the Central Government to make provisions prohibiting, restricting or otherwise controlling import, export, carriage etc. of the goods and by the Imports (Control) Order, 1955, dated December 7, 1955,

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and by the provisions which were sought to be repealed restrictions were already imposed. The order was clearly

legislative in character. The Import Trade Policy was evolved to facilitate the mechanism of the Act and the orders issued thereunder. Even granting that the Import Trade Policy notifications were issued in exercise of the power under s. 3 of the Imports and Exports (Control) Act, 1947, the Order as already observed authorised the making of executive or administrative instructions as well as legislative directions. It is not the form of the order, the method of its publication or the source of its authority, but its substance, which determines its true character. A large majority of the paragraphs of the Import & Export Schemes are in the form of instructions to departmental officers and advice to persons engaged in the export and import business with their foreign counterparts. It may be possible to pick out paragraphs from the Scheme which appear in isolation to be addressed generally and have direct impact upon the rights and liberties of the citizens. But a large number of paragraphs of the Scheme refer to matters of procedure of departmental officers and heterogeneous material: it sets out forms of applications, the designations of licensing authorities, amounts of application and licensing fees, last dates for applications, intermixed with definitions of 'Established/reporters', 'Actual users', 'New comers', and others and details of different schemes such as Quota Registration Schemes, Export Promotion Schemes etc. There is no pattern of order or logical sequence in the policy statement: it is a jumble of executive instructions and matters which impose several restrictions upon the rights of citizens. Some of the provisions which impose restrictions upon citizens in the exercise of their right to carry on trade without statutory limits may be open to serious objection, but we do not find it necessary to embark upon an enquiry whether the provision which authorises the issue of import entitlement certificate for the full f.o.b. value of the goods exported is legislative in character. Granting that it is executive in character, this Court has held that Courts have the power in appropriate cases to compel performance of the obligations imposed by the Schemes upon the departmental authorities.

The question whether the Import Trade Policy is legislative in character has not been expressly dealt with in any decision of this Court. It appears to have 'been assumed in certain cases, that it is executive in character, but even so it has been held that when it is declared under an export policy that a citizen exporting goods shall be entitled to certain import facilities, in appropriate cases the Courts have the power to direct the concerned authority to make that facility available to the citizen who has acted to his prejudice acting upon the representation in the policy, and has been denied that facility. In *M/s Ramchand Jagdish Chand v.*

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Union of India and Ors. (1) this Court was called upon to decide whether a person who had, pursuant to a representation in the Export Promotion Scheme that exporters will be awarded import licences upto a certain percentage of the export value of the goods was entitled to call upon the Union to issue in his favour import entitlement of the value of the goods exported. Under the 'Export Promotion Scheme' relating to artificial silk fabrics it was represented that with a view to stimulate exports of Indian "artsilk fabrics" etc. it was decided to grant import licences for the import of permissible varieties of artsilk yarn upto the percentages specified.

The Scheme empowered the Controller of Imports and Exports to issue a licence upto 66 2/3 per cent. of the export value in the case of Indian "artsilk sarees" and upto 100 per cent in the case of other Indian "artsilk fabrics". M/s Ramchand Jagadish Chand, a firm of exporters relying upon the Scheme exported Indian "artsilk" goods and earned foreign exchange and applied for an import licence equivalent to the value of the goods it had exported. They were, however, not given an import licence for the value of the goods exported. They thereafter filed a writ petition in this Court for an order that the import certificate had been arbitrarily reduced and thereby the fundamental right of the exporter to carry on trade in artsilk was infringed. The Court held in that case that the State had the right to impose control in the larger interest of the general public on imports and to make orders 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. Since in that case the power granted to the licensing authority was to grant licences only upto the maximum specified in cl. 2 of Appendix. 42, the restriction imposed was held not to be unreasonable. It was also observed that it did not impose an obligation upon the controller enforceable at the instance of the exporter, to issue a licence for the amount (subject to the maximum prescribed) claimed by the exporter, and since the order of the Controller granting a licence only for 45% of the value of goods exported did not infringe the fundamental right of the exporter under Art. 19(1)(g) of the Constitution, the petition filed by the exporter was liable to be dismissed. But the Court observed:

"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 'up-

(1) [1962] 3 S.C.R. 72.

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to 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."

Opinion was therefore expressed that if the power granted to the Controller was arbitrarily exercised, it was open to judicial review. In Ramchand Jagadish Chand's case(1) a Committee was appointed to determine the value of the goods exported by the exporter and the Committee scrutinised the claim of the exporter and found that the 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 exporter was given a right to make a representation and to be heard before the order was passed to his prejudice. In Probhudas Morarjee Rajkotia and others v. Union of India and others(2), a Special Exports Promotion Scheme for Engineering goods was promulgated by the Government of India. To give incentives to the manufacturers of engineering goods in India to export their products outside India, it was declared by the Scheme that import licences will be granted

to exporters for materials upto the specified percentage of the f.o.b. value of the goods exported. An exporter claimed that he had exported goods of the f.o.b. value exceeding Rs. 9.44 lakhs and demanded import licence of the value of Rs. 4.39 lakhs odd. The licensing authorities issued to the firm import licences for Rs. 3.77 lakhs odd. The exporter then moved this Court by a petition under Art. 32 of the Constitution for the issue of a writ against the Union of India granting an import licence for the balance of Rs. 62,337/- in accordance with the provisions of the Special Exports Promotion Scheme, and this Court held that even though there was no absolute right to the grant of an import licence for the maximum amount prescribed, the Controller could impose restrictions if special considerations such as 'difficult foreign exchange position or other matters which have a bearing on the general interest of the State warranted, but the discretion to be exercised by him was to be reasonable and not arbitrary. On a consideration of the affidavit filed, and the power given to the Controller to grant licences upto and not of the value of the goods exported, it was held that no case of arbitrary exercise of the power to reduce the import entitlement was made out.

In these cases it was clearly ruled that where a person has acted upon representations made in an Export Promotion Scheme that import licences upto the value of the goods exported will be issued, and had exported goods, his claim for import licence for the maximum value permissible by the Scheme could not be arbit(1) [1962] 3 S.C.R. 72. (2) A.I.R. 1966 S.C. 1044.

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rarily rejected. Reduction in the amount of import certificate may be justified on the ground of misconduct of the exporter in relation to the goods exported, or on special considerations such as difficult foreign exchange position, or other matters which have a bearing on the general interests of the State. In the present case, the Scheme provides for grant of import entitlement of the value, and not upto the value, of the goods exported. The Textile Commissioner was, therefore, in the ordinary course required to grant import certificate for the full value of the goods exported: he could only reduce that amount after enquiry contemplated by el. 10 of the Scheme.

The judgment of this Court in Joint Chief Controller of Imports and Exports, Madras v. M/s Amin Chand Mutha etc.(1) may also be usefully referred to. In that case, after the dissolution of a firm which was the holder of quota right as an established importer, one of the partners applied to the Chief Controller to make a division of the quota rights between the partners. He also applied to the Joint Chief Controller who was the licensing authority for grant of a licence for the period January to June 1957 but in the application he could not mention his share in the quota right because the Chief Controller had not before the date of the application approved of the division of the quota right. After expiry of the period for which the licence was to be issued, the Chief Controller informed the applicant that instructions had been issued to the Joint Chief Controller about the division of the quota right. But the Joint Chief Controller declined to grant a licence to the applicant on the ground that the order of the Chief Controller had no retrospective operation. The applicant succeeded in obtaining an order from the High Court of Madras directing the Joint Chief Controller to grant a licence. This Court confirmed the order of the High Court. It was held that the licensing authority had to

deal with the application for a licence on the footing that the approved quota was given to the partners of the dissolved firm from the date of dissolution and the agreement divide, and could not refuse the licence solely on the ground that the approval of the Chief Controller was granted after the expiry of the import period. The Court observed that the Chief Controller had no power to refuse division of the quota right if he was satisfied about the dissolution of the firm, and it followed that when he gave his approval it must take effect from the date of the agreement, and on that interpretation of the order of the Chief Controller, the application for the issue of the licence should have been granted by the licensing authority. The Court proceeded to observe that as no order of the Central Government prohibiting the import of the articles for which the licence was applied for was published in the Gazette, it was open to the

(1) [1966] 1 S.C.R. 262.

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licensing authority to issue a licence for the period January to June 1957, even if there was a change in the import policy of the Government of India with respect to those articles. In *Amin Chand Mutha's case*(1) the Court enforced compliance with the provisions relating to the grant of a licence under the licensing instructions issued by the Central Government.

In each of the three cases, the Court observed that the Court was competent to grant relief in appropriate cases, if, contrary to the Scheme, the authority declined to grant a licence or import certificate or the authority acted arbitrarily. Therefore even assuming that the provisions relating to the issue of Trade Notices offering inducement to the prospective exporters are in character executive, the Union Government and its officers are, on the authorities of this Court, not entitled at their mere whim to ignore the promises made by the Government. We cannot therefore accept the plea that the Textile Commissioner is the sole judge of the quantum of import licence to be granted to an exporter, and that the Courts are powerless to grant relief, if the promised import licence is not given to an exporter who has acted to his prejudice relying upon the representation. To concede to the Departmental authorities that power would be to strike at the very root of the rule of law.

By the Export Promotion Scheme for woollen textiles as extended to exports to Afghanistan, the exporters were invited to get themselves registered with the Textile Commissioner for exporting woollen goods, and it was represented that the exporters will be entitled to import raw materials, of the total amount equal 100% of the f.o.b. Value of the exports. Machinery for scrutiny of the applications and the issue of import entitlement was provided by s. 9 of the Scheme, and the Textile Commissioner was invested with the authority to determine whether in any given case the declared value of the goods exported was higher than the real value of the goods and to assess the correct value of the goods exported and to issue import certificates on the basis of such assessed value. Undoubtedly the Textile Commissioner had authority, if it was found that a fraudulent attempt was made to secure an import certificate in excess of the true value of the goods exported, to reduce the import certificate. But the authority vested in the Textile Commissioner by the rules even though executive in character was from its nature an authority to deal with the matter in manner consonant with

the basic concept of 'justice and fair-play: if he made an order which was not consonant with the basic concepts of justice and fair-play his proceeding was open to scrutiny and rectification by the Courts. The Textile Commissioner acted upon a report of the Committee appointed by him, and before that Committee the respondents had no oppor-

(1) [1966] 1 S.C.R. 262. up. C.I/68--10

Sup.C.I/68--10

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tunity to present their case. He collected evidence ex parte and did not disclose it to the respondents and without giving an opportunity to them to represent their case reduced the import certificate. In dealing with a representation made by the respondent, the Government of India also acted similarly and declined either to make available the evidence on which the Textile Commissioner had acted or to give a hearing to the respondents. The Textile Commissioner and the Union of India did not purport to act in exercise of the power under cl. 10 of the Scheme: they have sought to support the order on the plea that the subjective satisfaction of the Textile Commissioner is determinative of the extent of the import certificate which may be granted to the respondents.

It was somewhat faintly urged that if the Government is held bound by every representation made by it regarding its intention. when the exporters have acted in the manner they were invited to act, the Government would be held bound by a contractual obligation even though no formal contract in the manner required by Art. 299 of the Constitution was executed, and the exporter would be entitled to claim damages contrary to that provision for breach of the contract even though no formal written contract had been executed in the manner provided by that Article. But the respondents are not seeking to enforce any contractual right: they are seeking to enforce compliance with the obligation which is laid upon the Textile Commissioner by the terms of the Scheme, and we are of the view that even if the Scheme is executive in character, the respondents who were aggrieved because of the failure to carry out the terms of the Scheme were entitled to seek resort to the Court and claim that the obligation imposed upon the Textile Commissioner by the Scheme be ordered to be carried out.

We hold that the claim of the respondents is appropriately rounded upon the equity which arises in their favour as a result of the representation made on behalf of the Union of India in the Export Promotion Scheme, and the action taken by the respondents acting upon that representation under the belief that the Government would carry out the representation made by it. On the facts proved in this case, no ground has been suggested before the Court for exempting the Government from the equity arising out of the acts done by the exporters to their prejudice relying upon the representation. This principle has been recognised by the Courts in India and by the Judicial Committee of the Privy Council in several cases. In *The Municipal Corporation of the City of Bombay v. The Secretary of State for India in Council*(1), it was held by the Bombay High Court that even though there is no formal

(1) I.L.R. 29 Bom. 580.

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contract as required by the statute. the Government may be bound by a representation made by it.' In that case in answer to a requisition by the Government of Bombay addressed to the Municipal Commissioner to remove certain fish and vegetable markets to facilitate the construction

of an arterial road, the Municipal Commissioner offered to remove the structures if the Government would agree to rent to the Municipality other land mentioned in his letter at a nominal rent. The Government accepted the suggestion and sanctioned the application of the Municipal Commissioner for a site for tabling and establishing the new markets. The Municipal Commissioner then took possession of the land so made available and constructed stables, workshops and chawls thereon. Twenty-four years thereafter the Government of Bombay served notices on the Municipal Commissioner determining the tenancy and requesting the Commissioner to deliver possession of the land occupied by the markets, and to pay in the meantime rent at the rate of Rs. 12,000/- per annum. The Municipality declined to pay the rent, and the Secretary of State for India filed a suit against the Municipal Commissioner for a declaration that the tenancy of the Municipality created by Government Resolution of December 9. 1865, stood determined and for an order to pay rent at the rate of Rs. 12,000/- per annum. It was urged before the High Court of Bombay that the events which had transpired had created an equity in favour of the Municipality which afforded an answer to the claim of the Government to eject the Municipality. Jenkins, C.J., delivering the judgment of the Court observed:

"The doctrine, involved in this phase of the case is often treated as one of estopped, but I doubt whether this is a correct, though it may be a convenient name to apply.

It differs essentially from the doctrine embodied in section 115 of the Evidence Act, which is not a rule of equity, but is a rule of evidence that was formulated and applied in Courts of law; while the doctrine, with which I am now dealing, takes its origin from the jurisdiction assumed by Courts of Equity to intervene in the case of, or to prevent fraud."

After referring to Ramsclen v. Dyson(1), the learned Chief Justice observed that the Crown comes within the range of equity and proceeded to examine whether the facts of the case invited the application of that principle.

This case is, in our judgment a clear authority that even though the case, does not fall within the terms of s. 115 of the Evidence Act, it is still open to, a party who has acted on a representation made by the Government to claim that the Government

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shall be bound to. carry out the promise made by it, even though the promise is not recorded in the form of a formal contract as required by the Constitution.

In Ahmad Yar Khan and others v. Secretary of State for India in Council and another(3), the plaintiffs claimed title to a canal supplied with water from the Sutlej having been constructed at great expense by their predecessors for purposes of irrigation, with the sanction and encouragement of the Government, partly on Government lands and partly on the lands of private owners under arrangements with them. It was held that the plaintiffs became proprietors of the canal and entitled to have the waters of the Sutlej admitted into it so long as it was used for the purpose for which it was originally designed. Similarly in The Ganges Manufacturing Co. v. Surujmull(2), Garth C.J., observed that a man may be estopped not only from giving particular evidence. but from doing any act or relying upon any particular argument or contention, which the rules of equity

and good conscience prevent him from using as against his opponent.

Counsel for the Union invited our attention to the observations made by Patanjali Sastri J., in *Collector of Bombay v. Municipal Corporation of the City of Bombay and others*(3). The learned Judge observed that equity cannot be enforced so as to violate an express statutory provision, and he was therefore unable to share the view expressed by Jenkins C.J. in *The Municipal Corporation of the City of Bombay v. The Secretary of State for India in Council*(1). In *Collector of Bombay v. Municipal Corporation of the City of Bombay and others*(a) the facts were these: Acting upon a representation made by the Government of Bombay, the Municipal Commissioner of Bombay had given up certain old markets and had constructed new markers on a site made available to the Municipality by the Government at considerable expense. The Resolution under which the Government had granted the land stated expressly that no rent should be charged to the Municipality as the markets will be like other buildings for the benefit of the whole community. When the Collector of Bombay sought to enhance the land revenue, the Corporation sued for a declaration that the order of assessment was ultra vires and that it was entitled to hold the land for ever without payment of any assessment. The High Court of Bombay held that the Government had lost its right to assess the land in question because of the equity arising on the facts of the case in favour of the Municipality and a limitation on the right of the Government to assess under s. 8 of the Bombay City Land Revenue Act arose. A majority of the Judges of this Court held that

- (1) L.R. 28 I.A. 211. (2) I.L.R. 5 Cal. 669.
(3) [1952] S.C.R. 43. (4) I.L.R. 29 Bom.
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the Government was not, under the circumstances of the case, entitled to assess land revenue on the land in question, because the Corporation had taken possession of the land in terms of the Government resolution and had continued in such possession openly, uninterruptedly and as of right for over 70 years, and had thereby acquired the limited title it had been prescribing for during the period, the right to hold the land in perpetuity free of rent. Chandrasekhara Aiyar J., observed that even if it be assumed that there was no representation in fact that the land was rent free at the time when it was given to the Municipality, if there was a holding out of a promise that no rent will be charged in the future, the Government must be deemed in the circumstances of the case to have bound themselves to fulfill it, and a Court of Enquiry must prevent the perpetration of a legal fraud. Chandrasekhara Aiyar J., observed at p. 63:

"Whether it is the equity recognised in Ramsden's case, or it is some other form of equity, is not of much importance, Courts must do justice by the promotion of honesty and good faith, as far as it lies in their power."

Patanjali Sastri J., expressed a contrary view holding that the express provisions of the statute could not be overridden by considerations of equity.

Under our jurisprudence the Government is not exempt from liability to, carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise, solemnly made by it, nor claim to be

the judge of its own obligation to the citizen on an ex parte appraisement of the circumstances. in which the obligation has arisen. We agree with the High Court that the impugned order passed by the Textile Commissioner and confirmed by the Central Government imposing cut in the import entitlement by the respondents should be set aside and quashed and that the Textile Commissioner and the Joint Chief Controller of Imports and Exports be directed to issue to the respondents import certificates for the total amount equal to 100% of the f.o.b. value of the goods exported by them, unless there is some decision which fails within cl. 10 of the Scheme in question.

The facts which give rise to. the other appeals are substantially the same as the facts in Civil Appeal No. 885 of 1967, except that in four out of those appeals the exporters had appeared before the Committee appointed by the Textile Commissioner and had explained the circumstances in which the exports were made by them. But it is common ground that the report of the

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Committee was not made available to them and the Textile Commissioner, before he passed the orders, did not call for their explanations. It must therefore be held that enquiry in a manner consonant with the rules of justice was not made in the case of those four exporters also.

The appeals therefore fail and are dismissed with costs. One hearing fee.

V.P.S.
dismissed.
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Appeals