

PETITIONER:  
ZIPPERS KARAMCHARI UNION

Vs.

RESPONDENT:  
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 03/09/1998

BENCH:  
S. RAJENDRA BABU

ACT:

HEADNOTE:

JUDGMENT:  
Judgement

Rajendra Babu J.

I agree with what has been proposed by learned Brother Kurdukar, J. in the course of his order. However, considering the nature of the arguments addressed before us, I wish to add a few words of my own.

Shri Shanti Bhushan contended that the legislative policy had been declared by the enactment of the Industrial Development Regulation Act; that under Section 29-B (2B) thereto reservation had been made for small-scale sector of certain industries; that reservation was with reference to certain articles such as 'Zip fastener'; that when the manufacture of 'Zip fastener' was reserved for small-scale sector, there could not have been any dilution of such reservation or amending that notification; that carving out an exception thereto would only result in destruction of the reservation in favour of small-scale industry; that when 'Zip fastener' as an article had been reserved for manufacture of small-scale industries, the same article could not have been allowed to be manufactured by other industries by whatever process adopted - integrated or otherwise; that when there has been reservation in favour of small scale sector, the large scale sector industries are allowed to take over any part of that activity will hamper and may ultimately even devour the small-scale industries; that when reservation is made to articles by the legislature the Executive could not have tinkered with the expression thereto so as to create a loophole by which large-scale industries can annihilate the small-scale industries. On behalf of the respondents, Shri C.S. Vaidyanathan, learned Additional Solicitor General and Shri F.S.Nairman, Senior Advocate apart from pointing out the decision of the Bombay and Delhi High Courts submitted that the Notification impugned herein was in conformity with the provisions of the Act and no interference is called for.

The Central Government can exercise the powers under Section 29-B (2B) of the Act to determine the nature of any article or class of articles that may be reserved for production by any small-scale industrial undertaking and to determine the same, must constitute an Advisory Committee

consisting of such persons as have the necessary expertise to give advise on such matters. In the leading judgment, my learned Brother has set out the details of the constitution of Advisory Committee and the advice tendered by it to the Government before issuing Notification impugned herein. If that Committee was of the opinion that any article or class of articles must be taken out of the category of small-scale industrial undertakings, certainly, the same could be done and such exercise of power will not be ultra vires the said provision. However, the thrust of argument of Shri Shanti Bhushan is that such determination could be with reference to only nature or class of any article that could be reserved for production of small-scale industry and, therefore, there cannot be classification on the basis of the size of the industry or the process adopted to produce such articles. In other words, if such a course is adopted by taking out any category of article or class of articles from the scope of small-scale industries, it is obvious that there cannot be a competition between small-scale industry and large scale industry thereby the small-scale industry would be routed out of the market.

In matters of trade and commerce or economic policy, the wisdom of the Government must be respected and courts cannot lightly interfere with the same unless such policy is contrary to the provisions of the constitution or any law or such policy itself is wholly arbitrary. In the present case, the two categories of articles considered in the Notification are 'Zip fasteners' manufactured by small-scale industries and 'Zip fasteners' manufactured by large scale industries in integrated units. In order to improve the quality of 'Zip fasteners' must be allowed to be manufactured by integrated units which would certainly fall within the category of large scale industries as the investment has to be heavy in such cases. Articles manufactured by other industrial units. Such categorisation of goods depending upon the process adopted is well-known in fiscal statutes and is not unknown commercially. If same principle is extended in categorisation of articles for the purpose of production of quality goods and in quality if the two types of articles are different, those manufactured by adopting the integrated process and the other by ordinary process, certainly the two articles will fall into separate categories and thus, satisfy the provisions of Section 29-B (2B).

Therefore, there is no substance in the argument addressed by Shri Shanti Bhushan that the classification into 'Zip fasteners' manufactured by integrated units is violative of the provisions of the Act and that contention deserves to be rejected. I rest with the expression on this aspect of the matter.

New Delhi,.....J

September 3, 1998.(S.Rajendra Babu)