* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 01.02.2023
% Judgment delivered on: 09.02.2023

\+ **W.P.(C) 1532/2021 & CM APPLs. 4398/2021, 29609/2021**

FOREVER TOY TRADERS ASSOCIATION ..... Petitioner
Through: Mr. Rajinder Mathur, Mr. Tarun Mathur and Mr. Akshat Singhal, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents
Through: Mr. Nirvikar Verma, Advocate for R-1/UOI.
Mr. Pushkar Karni Sinha, Advocate for R-2.

\+ **W.P.(C) 8185/2022 & CM APPLs. 24732/2022, 4908/2023**

TOY ASSOCIATION GURUGRAM ..... Petitioner
Through: Mr. Naresh Raichura, Mr. Rajat Vats, Mr. Kalp Raichura, Mr. Saroi Raichura and Mr. Dharmender Kumar, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents
Through: Mr. Ankit Verma, Government Pleader for R-1 & 2.
Mr. Vivek Singh and Mr. Abhishek Gupta, Advocates for R-3.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

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SATISH CHANDRA SHARMA, C.J.

1. The Petitioners before this court have filed these present Petitions as a Public Interest Litigation stating that members of Association are importing Toys manufactured from foreign countries, and they have imported large number of Toys on or before 01.01.2021. However, on account of a notification dated 25.02.2020, issued by the Ministry of Commerce and Industries, they are not able to sell their toys as by the notification it has been made mandatory that the toys imported by importer should confirm the standard laid down under BIS (Conformity Regulations), 2018 (hereinafter to be referred as "**Regulations, 2018**"), and the toys so imported should qualify the parameters laid down under the quality control orders which have come into force with effect from 01.09.2020.

2. The Petitioners have prayed for the following reliefs:

Reliefs prayed for in W.P.(C.) No. 1532/2021

> *"a) Issue a writ of certiorari or any other appropriate writ, order or direction for quashing the impugned gazette orders of the respondent dated 25.02.2020 called the Toys (quality control) order 2020 and the Gazette Notification of Respondent No.1, dated 15th September 2020 titled the Toys (Quality Control) Amendment Order 2020 and for issuance of a writ of mandamus or any other appropriate writ or direction, directing the respondents to defer the implementation of the impugned gazette orders of the respondent dated 25.02.2020 called the Toys (quality control) order 2020 and the Gazette Notification of Respondent No.1, dated 15th September 2020 titled the Toys (Quality Control) Amendment Order 2020 for a period of at least 24 months or any other further period as may be deemed necessary.*

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b) Pass any other and further orders that it may deem fit and proper in the circumstances of the case."

Reliefs prayed for in W.P.(C.) No. 8185/2022

"A) Issue a writ of Mandamus under article 226 of constitution of India r/w Article, 14, 19 (1) (g) 21, 31a restraining respondents from not taking any punitive actions against the toy manufacturer associated with petitioner for selling/ purchasing/ exhibiting/ storing of their legitimate stock in trade of toys imported or manufactured before 01-01-2021 pursuant to notification dated 25.02.2020 without providing adequate compensation to petitioners under article 31(A).

B) and further alternatively be please to quash the notification dated 25.02.2020 as being unconstitutional and ultra vires the Constitution of India by which prohibition is imposed on selling or disposing of toys which do not confirm to BIS standards, on the ground that it virtually wipes out millions of small toys makers from all over India, in order to give unjust market space to large and rich toys manufacturer.

C) The petitioner humbly prays that alternatively your lordships may please to direct respondent to pay reasonable compensation U/Article 31 their legitimate stock of Toys as on dated 1.1.2021.

D) Pass such further or other orders which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in the interest of justice."

3. The Petitioners in the prayer clause have prayed that they should be permitted to sell their toys which they have imported from manufacturer before 01.01.2021 and the notification dated 25.02.2020 should not come in their way. The Petitioner in the W.P.(C.) No. 8185 has also prayed for compensation in respect of the stocks which were imported or manufactured prior to 01.01.2021.

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4. A reply has been filed by the Union of India. The Union of India has placed reliance upon an order of Bombay High Court in Writ Petition (L) 5853/2020 titled ***United Toys Associations & Anr Vs. UOI & Ors.,*** and it has been stated that the Bombay High Court has declined to grant interim relief to the Petitioner therein.

5. The Respondents have stated that sub-standard toys are being imported in the country, and there are large numbers of Labs available for obtaining desired certificate in the country.

6. It has been stated that toys which are being imported, were found to be sub-standard toys, and Quality Council of India (QCI) submitted a detailed and exhaustive report in respect of toys available in the market. The report was submitted in 2019, and the toys were subjected to certain tests in NABL accredited laboratories as per the Indian Standards IS-9873, and the report was also placed in public domain. The report was sent to all State Governments/ Union Territories. Thereafter, the foreign trade policy for importing toys have been made stringent through the revised notification dated 02.12.2019, and after consultation with stakeholders, a notification was issued on 25.02.2020 notifying the order in E-gazette, and six months time was granted to all stakeholders to be prepared with the date of implementation fixed as 01.09.2020.

7. The Union of India has stated that the action of the Union of India is to promote domestic industry under the Nation Action Plan for toys and to ensure that sub-standard toys are not imported as they contain toxic material.

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8. It has been stated by the Respondents that the Toy Quality Control Order dated 25.02.2020 has been issued in larger public interest.

9. A reply has also been filed by Respondent No.3/ Bureau of Indian Standards, stating that the notification dated 25.02.2020 has been challenged after 15 months by filing a Petition in April, 2020 and the notification is very much in force for last one and a half year. It has been stated that in larger public interest to safeguard the children below 14 years, various standards have been provided and members of Petitioners' Associations were given an extension till 01.01.2021 in respect of implementation of the said notification.

10. It has been further stated that till 15.07.2022, the Respondent No. 3/ Bureau of Indian Standards, has granted 851 licenses to the domestic toy manufacturers for use of BIS Mark on toys conforming the Indian Standards for safety of toys, and by no stretch of imagination sub-standard quality toys can be permitted to be sold in the country.

11. This Court has heard learned Counsels for the Parties at length and perused the record.

12. This Court has carefully gone through the writ petitions filed by the Petitioners' Associations as well as counter-affidavits filed by the Respondents.

13. Undisputedly, in order to ensure that sub-standard toys with toxic substances are not sold in the market, a notification has been issued by the Government of India in exercise of powers conferred under the Bureau of

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Indian Standards Act, 2016 (hereinafter to be referred as **"BIS Act, 2016"**) making it mandatory for the toys manufacturer to obtain a registration certificate under the Act, and the **Regulations, 2018**. The notification dated 25.02.2020 is reproduced as under:

"***MINISTRY OF COMMERCY AND INDUSTRY***

(Department for Promotion of Industry and Internal Trade)

ORDER

New Delhi, 25th February, 2020

S. O. 853(E).– In exercise of the powers conferred by sub-sections (1) and (2) of section 16 read with section 17 and sub-section (3) of section 25 of the Bureau of Indian Standards Act, 2016 (11 of 2016), the Central Government after consulting the Bureau, is of the opinion that it is necessary and expedient so to do in the public interest, hereby makes the following Order, namely:–

*1. **Short title and commencement** – (1) This Order may be called the Toys (Quality Control) Order, 2020.*

(2) It shall come into force with effect from 01.09.2020.

2. Application: In this order, unless the context otherwise requires-

(a) this Quality Control Order shall apply to (Toys) Product or material designed or clearly intended, whether or not exclusively, for use in play by children under 14 years of age or any other product as notified by the Central Government from time to time.

(b) This order shall apply to Toys as they are initially received by the Children and, in addition, this shall apply after

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a toy is subjected to reasonably foreseeable conditions of normal use and abuse unless specifically noted otherwise.

3. ***Conformity to standard and compulsory use of Standard Mark –*** *the goods or articles specified in the column (1) of the Table below shall conform to the corresponding Indian Standard (s) mentioned in the column (2) of the Table and shall bear the Standard Mark under a license from the Bureau as per Scheme-1 of Schedule- II of BIS (Conformity Assessment) Regulations, 2018:*

Provided that nothing in this order shall apply to goods or articles meant for export.

4. ***Certification and enforcement authority. –*** *The Bureau shall be the certifying and enforcement authority for the goods or articles specified in column (1) of the following Table.*

TABLE

Goods or articles	***Indian Standard***	***Title of Indian Standard***
(1)	***(2)***	***(3)***
Toys	*IS 9873 (Part 1): 2018*	*Safety of Toys Part 1 Safety Aspects Related to Mechanical and Physical Properties.*
	IS 9873 (Part 2) : 2017	*Safety of Toys Part 2 Flammability.*
	IS 9873 (Part 3): 2017	*Safety Requirements for Toys Part 3 Migration of Certain Elements.*
	IS 9873 (Part 4): 2017	*Safety of Toys Part 4 Swings Slides and Similar Activity Toys for Indoor and Outdoor Family Domestic Use.*
	IS 1973 (Part 7): 2017	*Safety of Toys Part 7 Requirements and Test Methods for Finger Paints.*
	IS 9873 (Part 9) : 2017	*Safety of Toys Part 9 Certain Phthalates Esters in Toys and Children's Products.*
	IS 15644: 2006	*Safety of Electric Toys.*

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Note: for the purpose of Table, the latest version of Indian Standards including the amendments issued thereof, as notified by the Bureau from time to time, shall apply from date of such notification.

[F. NO. 11(4)/2017-C.I]
MANMEET K. NANDA, Jt. Secy."

14. The Government of India, keeping in view the fact that large numbers of toys were imported in the country prior to issuance of the aforesaid notification, had granted six months time to the Industry in the matter of implementation of the notification.

15. The documents on record reveal that the impugned notification issued by the Government of India is, in fact, in larger public interest, and the present Writ Petitions are not PILs but personal interest litigation of certain toy manufacturers.

16. Under the garb of PIL, the toy manufacturers want to import sub-standard toys in the country, and by no stretch of imagination they can be permitted to violate the norms fixed by the Government of India under the Toys (Quality Control) Order 2020 (hereinafter to be referred as "**Order 2020**"). The Order 2020 was published on 25.02.2020. However, it has come into force with effect from 01.09.2020. Meaning thereby, enough time was granted to all manufacturers/ importers to comply with the Order 2020.

17. The intention of issuance of Toys Quality Control Order is to protect health and safety of children who are normal consumers of toy products, and the Order 2020 has been formulated by the Government of India in consultation with the Bureau of Indian Standards (BIS) in the interest of safety of children.

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18. A similar Petition was filed before the Bombay High Court i.e. ***United Toys Association*** (Supra), and Bombay High Court by an order dated 18.12.2020 has declined to grant any interim relief in the matter.

19. This Court has failed to understand as to how public interest is involved in the present case. On the contrary, the Order 2020 has been issued in public interest as large number of toys were found to have toxic material, and they were subject to various tests by the QCI.

20. The present PILs are nothing but frivolous PILs. Therefore, this Court does not find any reason to interfere with the Order 2020.

21. The Hon'ble Supreme Court in the case of *Kalyaneshwari v. Union of India,* (2011) 3 SCC 287, held as under:-

> *"41. In Ashok Kumar Pandey v. State of W.B. [(2004) 3 SCC 349 : (2011) 1 SCC (Cri) 865] this Court took a cautious approach while entertaining public interest litigations and held that public interest litigation is a weapon, which has to be used with great care and circumspection. The judiciary has to be extremely careful to see that no ugly private malice, vested interest and/or seeking publicity lurks behind the beautiful veil of public interest. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief.*
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> *42. In Rajiv Ranjan Singh „Lalan" (8) v. Union of India [(2006) 6 SCC 613 : (2006) 3 SCC (Cri) 125] ,* ***this Court reiterated the principle and even held that howsoever genuine a case brought before a court by a public interest litigant may be, the court has to decline its examination at the behest of a person who, in fact, is not a public interest litigant and whose bona fides and credentials are in doubt; no trust can be placed***

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by the court on a mala fide applicant in a public interest litigation.

43. The courts, while exercising jurisdiction and deciding a public interest litigation, have to take great care, primarily, for the reason that wide jurisdiction should not become a source of abuse of process of law by the disgruntled litigant. Such careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose true facts and approach the Court with clean hands. Thus, it is imperative that the petitions, which are bona fide and in public interest alone, be entertained in this category. Abuse of process of law is essentially opposed to any public interest. One who abuses the process of law, cannot be said to serve any public interest, much less, a larger public interest. In the name of the poor let the rich litigant not achieve their end of becoming richer by instituting such set of petitions to ban such activities."

(emphasis supplied)

22. The Hon'ble Supreme Court has dealt with the issue of genuine PILs and abuse of process of law in the garb of Public Interest Litigation. The Present Writ Petition is nothing but personal interest litigation on behalf of the persons who are dealing in toys/ traders of toys, and, therefore, these Petitions deserve to be dismissed.

23. The Hon'ble Supreme Court in the case of *State of Uttaranchal v. Balwant Singh Chaufal*, (2010) 3 SCC 402, the Apex Court has held as under:-

"143. Unfortunately, of late, it has been noticed that such an important jurisdiction which has been carefully carved out, created and nurtured with great care and caution by the courts, is being blatantly abused by filing some petitions with oblique motives. We think time has come when genuine and

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> ***bona fide public interest litigation must be encouraged whereas frivolous public interest litigation should be discouraged. In our considered opinion, we have to protect and preserve this important jurisdiction in the larger interest of the people of this country but we must take effective steps to prevent and cure its abuse on the basis of monetary and non-monetary directions by the courts.***
>
> *144. In BALCO Employees' Union v. Union of India [(2002) 2 SCC 333 : AIR 2002 SC 350] this Court recognised that there have been, in recent times, increasing instances of abuse of public interest litigation.* ***Accordingly, the Court has devised a number of strategies to ensure that the attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. Firstly, the Supreme Court has limited standing in PIL to individuals "acting bona fide". Secondly, the Supreme Court has sanctioned the imposition of "exemplary costs" as a deterrent against frivolous and vexatious public interest litigations. Thirdly, the Supreme Court has instructed the High Courts to be more selective in entertaining the public interest litigations."***
>
> *(emphasis supplied)*

24. The Hon'ble Supreme Court in the aforesaid case has held that frivolous public interest litigations should be discouraged and in the considered opinion of this Court, the present case is nothing but a personal interest litigation hence a frivolous public interest litigation which deserves to be dismissed.

25. The Hon'ble Supreme Court in the case of *Tehseen Poonawalla v. Union of India,* (2018) 6 SCC 72*,* has held as under *:*

> *"97. Yet over time, it has been realised that this jurisdiction is capable of being and has been brazenly misutilised by persons with a personal agenda. At one end of that spectrum are those cases where public interest petitions are motivated by a desire*

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to seek publicity. At the other end of the spectrum are petitions which have been instituted at the behest of business or political rivals to settle scores behind the facade of a public interest litigation. The true face of the litigant behind the façade is seldom unravelled.

98. The misuse of public interest litigation is a serious matter of concern for the judicial process. Both this Court and the High Courts are flooded with litigations and are burdened by arrears. Frivolous or motivated petitions, ostensibly invoking the public interest detract from the time and attention which courts must devote to genuine causes*. This Court has a long list of pending cases where the personal liberty of citizens is involved. Those who await trial or the resolution of appeals against orders of conviction have a legitimate expectation of early justice. It is a travesty of justice for the resources of the legal system to be consumed by an avalanche of misdirected petitions purportedly filed in the public interest which, upon due scrutiny, are found to promote a personal, business or political agenda. This has spawned an industry of vested interests in litigation. There is a grave danger that if this state of affairs is allowed to continue, it would seriously denude the efficacy of the judicial system by detracting from the ability of the court to devote its time and resources to cases which legitimately require attention. Worse still, such petitions pose a grave danger to the credibility of the judicial process. This has the propensity of endangering the credibility of other institutions and undermining public faith in democracy and the rule of law. This will happen when the agency of the court is utilised to settle extra-judicial scores. Business rivalries have to be resolved in a competitive market for goods and services. Political rivalries have to be resolved in the great hall of democracy when the electorate votes its representatives in and out of office. Courts resolve disputes about legal rights and entitlements. Courts protect the rule of law. There is a danger that the judicial process will be reduced to a charade, if disputes beyond the ken of legal parameters occupy the judicial space."* (Emphasis Supplied)

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26. In light of the aforesaid judgment delivered by the Hon'ble Supreme Court, the present Petitions are nothing but personal interest litigations filed at the behest of traders of toys/ manufacturers of toys, who want to avoid compliance of the Order 2020 dated 25.02.2020.

27. The Order 2020 which is formulated under Section 16(1) and (2) read with Section 17 and Section 25(3) of the BIS Act, 2016 *prima facie* confers power upon the Central Government to issue direction as may be necessary to protect the interest of consumers and various other stakeholders.

28. The Order 2020 has been issued to ensure that the consumers who are children only below the age of 14 years are not exposed to sub-standard goods/ goods containing toxic material/ toys containing toxic material.

29. The Order 2020 has been issued in consultation with various stakeholders as well as in consultation with the BIS in the interest and safety of children.

30. In the considered opinion of this Court, the Petitioners have not been able to make out any case for interference. Accordingly, both the Writ Petitions stand dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

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