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

\+ W.P.(C) No.3386/2012

ASSOCIATION OF AGRO IMPORTERS AND ORS .... Petitioners
Through: Mr. Rudra Nath Sinha, Adv.

versus

UNION OF INDIA & ORS ..... Respondents
Through: Ms. Gunjan Bansal for Mr. Arun Bhardwaj, CGSC for R-1&2.
Mr. Satish Kumar, Sr. Standing Counsel for R-3.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

% **13.10.2015**

1. The petition is ripe for hearing.

2. The counsel for the petitioners however seeks adjournment on the ground that the senior engaged by the petitioners is engaged out station today.

3. The counsel for the respondent no.3 Ministry of Finance through Chairman, Central Boards of Excise and Customs states that the petitioners are unnecessarily keeping this petition pending and an official of the respondent no.3 travels from Poonch in Jammu & Kashmir on each date of hearing to give instructions in the matter.

4. In my view, the petitions cannot be kept pending in this manner and especially on the ground urged. The petitioners ought not to have briefed a senior counsel who was not available for today. The counsel for the petitioners has been given an opportunity to argue but he has not availed of the same. With the assistance of the counsel for the respondent no.3 and the

counsel for the respondents no.1&2 Union of India and Ministry of Commerce, Government of India, the records have been perused and they have also been heard.

5. The three petitioners namely Association of Agro Importers, Indo Foreign Chamber of Commerce and Vipul Aggarwal have filed this petition, (i) seeking a direction to the respondents to take immediate steps and requisite measures to implement the Policy of Line of Control (LoC) trade and in particular take measures to ensure that items are not illegally imported in contravention to LoC trade Policy; and, (ii) seeking a direction to the respondents to exclude import of Almonds from the Policy of LOC trade.

6. It is the case of the petitioners that, (i) they represent the Almond Traders of the city of Delhi and of the State of Punjab; (ii) with a view to initiate the trade between India and Pakistan, a Policy was introduced in October, 2008 for trade across the LoC between the two countries; (iii) the purport of the said Policy was to improve the relationship between the two countries and to make available across the LoC commodities / items grown in the vicinity of LoC; (iv) with that object in mind, a list of items was prepared in which trade across the LoC is permitted and which list included Almonds; (v) however in the garb of trading Almonds across the LoC, Californian Almonds are being brought into India from Pakistan affecting the petitioners; and, (vi) Pakistan is not known much as an Almonds growing country and from the value of trade it is evident that the Almonds being brought to India from Pakistan under the said Policy are not the Almonds grown in Pakistan but Californian Almonds.

Accordingly, claiming the reliefs aforesaid, this petition has been filed.

7. The respondent no.3 Chairman Central Board of Excise & Customs in its counter affidavit has pleaded that, (i) the Government of India in consultation with the Government of Pakistan decided to have cross LoC trade between two parts of Jammu & Kashmir without levy of duty on goods to be traded; (ii) Standard Operating Practices (SOP) for cross LoC trade were issued; (iii) no case has come to notice as yet of the said trade having been hijacked by unscrupulous elements; (iv) trade of Almonds is being allowed as per serial no.10 (Dry Fruits including walnuts) of Appendix-B to SOP; and, (v) Almonds are grown in and produced in Jammu and Kashmir and Pakistan Occupied Kashmir and are as such being allowed to be traded across LoC under the category of Dry Fruits and no third country origin goods are allowed to be traded across LoC.

8. The counsel for the respondent no.3 has today also argued that the petitioners, instead of making any specific complaints of violations of the said Policy, have filed this petition making vague allegations. It is stated that if any specific complaints are made, action would be taken.

9. I am of the view that this Court in exercise of powers of judicial review cannot enter into the domain of Policy making. The Competent Authority of the Government of India having taken a decision to allow trade across LoC in some items and having further decided to include Almonds in the list of items in which the said trade is permitted, it is not for this Court to intervene and to decide whether the trade across LoC in Almonds should be permitted or not. Moreover, the petitioners have not made out any ground

for interference with the said Policy decision of the respondents. The grievance of the petitioners is of misuse of the Policy. The counsel for the respondent no.3 is correct in his contention that the remedy for such grievance is by making complaints against the said specific individuals and with respect to specific transactions of items not entitled to be traded being traded in the garb of the Policy.

10. The settled principle that the mere possibility of abuse of a provision of law does not *per se* invalidate a legislation and that it must be presumed, unless contrary is proved that administration and application of a particular law would be done not with an evil eye and unequal hand (as reiterated in ***Sushil Kumar Sharma Vs. Union of India*** (2005) 6 SCC 281) can be applied to executive policies also. Supreme Court, in ***In Re: Natural Resources Allocation*** (2012) 10 SCC 1 held that a potential for abuse of methods other than auction for allocation of natural resources cannot be the basis for striking down the same as *ultra vires* the constitution. It was held that it is the actual abuse itself which must be brought before the Court for being tested on the anvil of constitutional provisions.

11. There is thus no merit in the petition. The petition is dismissed. However the same would not come in the way of the petitioners making complaints to the respondents of violations of the Policy and in which case the respondents are expected to expeditiously deal with the same and to take preventive steps to prevent the violations in future.

No costs.

RAJIV SAHAI ENDLAW, J

OCTOBER 13, 2015/‘pp’..