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

+ W.P.(C) 2160/2016

PAN PARAG INDIA LTD. Petitioner
Through: Mr. Pankaj Bhatia, Advocate with
Mr. Dhruv Surana and Mr. Nipun Goel,
Advocates.

versus

DIRECTOR GENERAL
OF FOREIGN TRADE & ANR. Respondents
Through: Mr. Vineet Malhotra, Advocate with
Mr. Vishal Gohri and Mr. Shubhendu
Kaushik, Advocates for respondent
No.1.
Mr. S.K. Dubey, Advocate with
Mr. Udit Malik, Advocate for
respondent No.2.

And

+ W.P.(C) 2174/2016

KOTHARI PRODUCT LTD. Petitioner
Through: Mr. Pankaj Bhatia, Advocate with
Mr. Dhruv Surana and Mr. Nipun Goel,
Advocates.

versus

DIRECTOR GENERAL
OF FOREIGN TRADE & ANR. Respondents
Through: Mr. Vineet Malhotra, Advocate with
Mr. Vishal Gohri and Mr. Shubhendu
Kaushik, Advocates for respondent
No.1.
Mr. S.K. Dubey, Advocate with

Mr. Udit Malik, Advocate for
respondent No.2.

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Date of Decision: 15th March, 2016

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

CM Appl. 9231/2016 (exemption) in W.P.(C) 2160/2016
CM Appl. 9313/2016 (exemption) in W.P.(C) 2174/2016

Allowed, subject to all just exceptions.

W.P.(C) 2160/2016 & CM Appl. 9230/2016
W.P.(C) 2174/2016 & CM Appl. 9312/2016

1. Present writ petitions have been filed seeking a direction to respondent No.1-Director General of Foreign Trade, not to proceed with the cases under Section 16 of the Foreign Trade (Development and Regulation) Act, 1992 (hereinafter referred to as 'the Act, 1992').
2. In the petitions, it has been averred that the respondent No.1 has no jurisdiction to decide the review applications filed at the instance of DRI.
3. Learned counsel for petitioners states that Section 16 of the Act, 1992 does not confer the power of review in individual cases which have been passed by adjudicating authorities and which are subject matter of appeals. In support of his submission, he relies upon a judgment of this Court in *Samir Kohli & Ors. Vs. Union of India & Ors., W.P.(C) 4489/1995*. The relevant portion of the said judgment is reproduced hereinbelow: -

“28. It is in this context that the power under Section 41 has been given to the Central Government. That provision reads as follows:

41. Control by Central Government (1) The Authority shall carry out such directions as may be issued to it from time to time by the Central Government for the efficient administrative of this Act.

(2) If in, or in connection with, the exercise of its powers and discharge of its functions by the Authority under this Act, any dispute arises between the Authority and the Central Government the decision of the Central Government on such dispute shall be final. (3) The Central Government may, at any time, either on its own motion, or on application made to it in this behalf, call for the records of any case disposed of or order passed by the Authority for the purpose of satisfying itself as to the legality or propriety of any order passed or direction issued and may pass such order or issue such direction in relation thereto as it may think fit: Provided that the Central Government shall not pass any order prejudicial to any person without affording such person a unreasonable opportunity of being heard.”

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29. The question whether the power under Section 41 (3) is quasi-judicial or not has to be contextualized in the overall setting of the provision. DDA in its myriad functions, as policy maker, town planner, agency for implementation of housing and other building policies, is obliged to decide various issues. Most of these are not judicial, or quasi judicial; they are certainly administrative in nature and require application of mind to the relevant considerations. Thus, for instance, if the DDA has to decide whether a class of services ought to be permitted within a residential locality, it would have to first see the relevant provisions of the Master Plan; it would also consider the impact of its decisions, on the amenities existing in the area, and the likely additional pressures which they would be subjected to, etc. However, the interested parties cannot claim as a matter of right that their proposals ought to be accepted, or that the DDA should give each of them, a hearing, and issue a reasoned order. Now, in a given case, concerning an individual or a collective, such as a co-operative society, the same considerations would apply. If the

DDA consequently, forms an opinion in such individual cases, those decisions would not stand on a different footing from the larger policy paradigm with which Sections 41 (1) and 41 (2) are concerned. Unless it is shown that the decision in an individual case is likely to result in an adverse consequence to the party concerned (i.e for instance change of plot user in a lay-out plan, in the case of a plot owner or plot-allottee from commercial to residential, etc) the decision cannot be considered “quasi judicial”. Even so, the safeguard, to allay all apprehensions, is enacted through the proviso to Section 41 (3) that an order which can result in an adverse consequence to a party, should be preceded by notice to her (or him).

30. There is another way of looking at the matter. If one views the power of the Central Government in the overall setting of a law that essentially deals with town planning, the “dispute” between DDA and the Central Government is a unique one; it is as to the policy that the former has to adopt. Thus, the view of the latter is given primacy. In amplification of this power, it is clarified, by Section 41 (3) that the Central Government can reverse decisions of DDA, in pending or closed cases. In such an eventuality, the DDA would be the “aggrieved party” so to speak. If the logic of a dispute, to be decided by the Central Government in a “quasi judicial” capacity is to be accepted, it would lead to startling results. Town planning would be chaotic, and paralysed; every decision of the DDA, which implicates “a case” would be reviewable under Section 41 (3) and the DDA as well as the concerned party would have to be heard; the Central Government would then have to issue detailed reasoned orders. This would bog the entire process of planning and implementation of the Master and other plans in a modern, and efficient manner – a result surely not intended by Parliament. It is thus held that the power under Section 41 (3) of the Act is a supervisory one, and not “quasi-judicial” in the sense traditionally understood. However, there can be no doubt that whatever be the character of the order, it would be reviewable under Article 226 of the Constitution, in terms of the settled authorities, on the basis of established public law principles, to the extent such orders are reviewable.”

4. Having heard learned counsel for petitioners, this Court is of the view that Section 16 of the Act, 1992 confers very wide powers of review upon the Director General. The relevant portion of the said Section reads as under:-

“16. Review.—*The Central Government, in the case of any decision or order made by the Director-General, or the Director-General in the case of any decision or order made by any officer subordinate to him, may on its or his own motion or otherwise, call for and examine the records of any proceeding for the purpose of satisfying itself or himself, as the case may be, as to the correctness, legality or propriety of such decision or order and make such orders thereon as may be deemed fit.”*

(emphasis supplied)

5. This Court is of the view that the Director General has full power to deal with an application filed by DRI inasmuch as the power of review can be exercised by the Director General either *suo motu* or ‘otherwise’.

6. In the opinion of this Court, Section 16 of the Act, 1992 clearly contemplates review of judicial orders also inasmuch as it states that the reviewing authority may “*call for and examine the records of any proceedings*”. The said expression is missing in Section 41 of the DDA Act, 1957.

7. Further, the judgment in ***Samir Kohli*** (supra) is clearly inapplicable to the facts of the present case as it deals with Section 41 of the Delhi Development Act, 1957, which is not *pari materia* to the present case. In any event, the scheme of Delhi Development Act, 1957 (for short “DDA Act, 1957”), is entirely different from the Act, 1992.

8. In fact, the Supreme Court in ***Union of India and Others Vs. Dhanwanti Devi and Others***, (1996) 6 SCC 44 has held as under:-

“10. Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute.....”

(emphasis supplied)

9. Further, the Supreme Court in ***Padma Sundara Rao (Dead) and Others Vs. State of T.N. and Others, (2002) 3 SCC 533*** has held as under:-

“9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington Vs. British Railways Board (1972) 2 WLR 537 : 1972 AC 877 (HL)*. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.”

(emphasis supplied)

10. Keeping in view the aforesaid, this Court is of the view that the present writ petitions are bereft of merit. Accordingly, the same are dismissed.

MANMOHAN, J

MARCH 15, 2016

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