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

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LPA 899/2015 & CM No.30620/2015

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Date of decision : 9th May, 2017

ASSOCIATION OF AGRO IMPORTERS

& ANR.

..... Appellants

Through: Mr. Tanmaya Mehta,
Ms. Swati Gupta and
Ms. Mudita Sharda, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Suparna Srivastava, Adv.
for R-1 to 3.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. The present appeal challenging an order dated 13th October, 2015 in WP (C) No.3386/2012 has been filed by the Association of Agro Importers and the Indo Foreign Chamber of Commerce purporting to be a duly registered body representing the almond traders of the city.

M/s Indo Foreign Chamber of Commerce has been arrayed as appellant no.2 which is described as a body representing the traders of

State of Punjab, represented before us by Mr. Vipul Aggarwal, (petitioner No.3 in WP(C)No.3386/2012) who is one of the traders of the almonds in the city.

2. The writ petition was filed complaining of certain violations and illegalities in the working of the LoC Border Trade Policy which was being implemented by the respondents in the state of Jammu and Kashmir. Premised on violations which stand detailed in the writ petition, the appellant had made the following prayers by way of WP(C)No.3386/2012:

“(a) To issue appropriate writ direction or order under Article 226 of the Constitution to the respondent to take immediate steps and requisite measures to implement the policy of LoC trade and in particular to take measures to ensure that items are not illegally imported in contravention to Loc trade policy.

(b) To issue appropriate writ direction or order under Article 226 of the Constitution directing the respondents to exclude import of Almonds from the policy of LoC trade.”

3. This writ petition came to be rejected by the Id. Single Judge by the order dated 13th October, 2015 holding that the appellants had not

made any specific complaints of violation of the policy and that the issues raised by the appellant were in the domain of policy making and that the court could not possibly interfere in the same. For want of material, it was held that the appellant had not made out any ground of interference with policy decision of the Government.

4. So far as prayer for striking down the LoC trade policy was concerned, placing reliance on the pronouncement of the Supreme Court reported at **(2005) 6 SCC 281 Sushil Kumar Sharma v. Union of India** it was held that 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 the administration and application of a particular law would be done not with evil eye and unequal hand. The Id. Single Judge placing reliance on **(2012) 10 SCC 1 Re : Natural Resources Allocation** has further 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 is the actual abuse itself which must be brought before the Court for being tested on the anvil of constitutional

provisions.

5. It appears that while the writ petition was pending, based on certain additional information, an application dated 9th October, 2015 by the appellant was filed before the Id. Single Judge in the Registry. Before this application could be registered and place before this court, the writ petition itself came to be disposed of by the impugned order dated _____. This application therefore, is being placed before us along with the appeal paper book.

6. Mr. Tanmaya Mehta, learned counsel for the appellant also submits that apart from the response dated 19th August, 2015 to the RTI query made to the respondent, which was filed along with the aforesaid application, the appellant had made a further query and received a communication dated 16th November, 2015 whereby, the respondents have informed the appellant regarding the quantum of Almond Badam Giri imported during the period 2001-07 into India as well as for the period 2008 – 2015 under the Barter System under Cross LoC Trade between Jammu and Kashmir (India) and PoK (Pakistan occupied Kashmir).

7. The writ petition was dismissed by the order dated 13th October, 2015 by the Id. Single Judge which has been assailed by way of present appeal.

8. We are informed by Ms. Suparna Srivastava, learned counsel for the respondents that she has been instructed by communication dated 19th December, 2016 by the Ministry of Home Affairs that the Government of India has decided to initiate an investigation into the matter by the National Investigation Agency regarding the import of Almond Badam Giri by the Cross LoC mechanism through trade facility centre in Jammu and Kashmir and that the investigation is in progress.

9. It therefore, appears that the matter raised by the appellant by way of WP(C) No.3386/2012 has received attention of the Government at the highest level.

10. In view of the submissions made by Ms. Suparna Srivastava, learned counsel noted hereinabove, Mr. Tanmaya Mehta, learned counsel for the appellant makes a prayer that he would not press the appeal, if it is directed that the appeal as well as the application filed

by the appellant be treated as a representation to the respondent who may consider the same while taking a view regarding the matter under investigation.

This request is reasonable.

11. In view of the above, this appeal is disposed of with a direction that the respondent shall treat the appeal and the application filed by the appellant as representation made to them and shall consider the material placed by the appellant before taking a final view in the matter in the pending investigation as well as while formulating a policy with regard to the matter of Cross Border Trade Policy.

The appeal and application are disposed of in the above terms.

Dasti.

ACTING CHIEF JUSTICE

ANU MALHOTRA, J

MAY 09, 2017
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