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W.P.(MD) Nos.10076, 15392, 15399, 15403, 15410 & 15442 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.10.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

**W.P.(MD) Nos.10076, 15392, 15399, 15403, 15410 & 15442 of 2022
and
W.M.P.(MD) Nos.7176, 7178, 11038, 11043, 11046, 11052 & 11075 of 2022**

W.P.(MD) No.10076 of 2022:

All India Chamber of Match Industries
rep.by its Secretary J.Vijayanand
115 E, Bungalow Street
Kadalaiyur Main Road
Kovilpatti, Thoothukudi District

... Petitioner

-VS-

1.The Union of India
rep.by its Under Secretary
Ministry of Agriculture and Farmers Welfare
Department of Agriculture
Krishi Bhavan, New Delhi



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2. Deputy Director
Government of India
Department of Agriculture and
Farmers Welfare
Krishi Bhavan
New Delhi

3. The Plant Protection Officer
Plant Quarantine Station
Door No.101, Plot No.110
2nd Street, CGE Colony
Thoothukudi
Thoothukudi District

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of declaration to declare clause 14(2) of Plant Quarantine (Regulation of Import into India) Order 2003 and consequential office memorandum dated 07.05.2022 issued by the second respondent in so far it empowers the respondents to charge additional fee at five times of normal rates for Plant Quarantine inspection is concerned as Ultra Vires of Article 14 and 19(1)(g) of the Constitution of India.

For Petitioner : Mr.Ajmal Khan, Senior Counsel
for M/s.Ajmal Associates

For Respondents : Mr.K.Govindarajan
Deputy Solicitor General of India



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COMMON ORDER

[Order of the Court was made by S.M.SUBRAMANIAM, J.]

The relief sought for in these writ petitions is to declare Clause 14(2) of the Plant Quarantine (Regulation of Import into India) Order, 2003 and its consequential office memorandum dated 07.05.2022 issued by the second respondent in so far as it empowers the respondents to charge additional fee at five times of normal rates for plant quarantine inspection is concerned as ultra vires to the Articles 14 and 19(1)(g) of the Constitution of India.

2. The issues raised by the petitioners herein regarding constitutional validity of the above provision are no more *res integra* and the High Court of Gujarat at Ahmedabad, by order dated 28.06.2022, in special civil applications Nos.16280 of 2021 etc., batch has elaborately considered the constitutional validity of the above provision and declared as ultra vires to the Constitution of India.



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3. The relevant portion of the said order is extracted hereunder:

“38. As mentioned hereinabove, the action of the respondents conflates two different scenario. On one hand relaxation is granted to import timber with phytosanitary certificate and on the other hand, they are being penalised for obtaining such certificates. Similarly, the use of Methyl Bromide is considered to be harmful for environment, and on the other hand such chemical is being used for exports and imports. The petitioners are penalised for importing consignments of timber, which is subjected to fumigation by different chemical equivalent to Methyl Bromide or by Methyl Bromide on payment of necessary charge. Simultaneously, a penalty is being imposed upon them for importing the timber which is fumigated by the exporting countries as per their standards. There cannot be any scintilla of doubt that the respondents have all the power and authority to regulate, classify and impose reasonable restrictions on the trade on the articles or goods which are imported in India keeping in mind the principles, as mentioned by the Apex Court, but concurrently in wake of the actual scenario which is prevailing as on today and in absence of any other alternative to the petitioners coupled with the fact that relaxation is granted to them to import timber; the levy of penalty on imports is intrinsically prejudicial to their trade and business. Either the respondents should not grant any



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relaxation of import of such timber or if they are allowing the same no penalty should be imposed. Thus, the action of the respondents in levying fine or penalty will amount to reasonable restrictions having direct impact on their right guaranteed under Article 19(1)(g) of the Constitution of India, since the petitioners cannot carry on with their trade unless they pay such fine or penalty. The respondents before imposing fine or penalty should have deliberated on the issue and the adversity faced by the petitioners, since the issuance of phytosanitary certificate is beyond their sphere or ambit. They cannot insist the exporting country to issue phytosanitary certificate as per the requirement of Indian parameters. Without resolving the issue at the ends of NPPOs of each country, the petitioners are being penalised. Thus, such an action of the respondents is arbitrary and invades their right to trade, hence the same calls for interference.

38. Since this Court has held the action of the respondents in levying fine or penalty as arbitrary and violates the fundamental rights, the cardinal question of law which necessitates to be addressed is “whether this Court, while exercising its powers conferred under Article 226 of the Constitution, set aside the impugned Regulation and subsequent OM’s which are in form of delegated legislation. In this regard, it may be apposite to refer to pertinent observations of the Supreme Court made in recent decision :



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In case of Rachna vs. Union Of India, 2021 (5) SCC 638, the Apex Court has held thus:

“Judicial review of a policy decision and to issue mandamus to frame policy in a particular manner are absolutely different. It is within the realm of the executive to take a policy decision based on the prevailing circumstances for better administration and in meeting out the exigencies but at the same time, it is not within the domain of the Courts to legislate. The Courts do interpret the laws and in such an interpretation, certain creative process is involved. The Courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. The Court is called upon to consider the validity of a policy decision only when a challenge is made that such policy decision infringes fundamental rights guaranteed by the Constitution or any other statutory right.”

In case of Franklin Templeton Trustee Services Private Limited vs Amruta Garg, 2021 (9) S.C.C. 606, the Apex court has held thus :

“Policy decisions can only be faulted on the grounds of mala fides, unreasonableness, arbitrariness and unfairness, in addition to violation



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of fundamental rights or exercise of power beyond the legal limits. The principle of manifest arbitrariness requires something to be done in exercise in the form of delegated legislation which is capricious, irrational or without adequate determining principle. Delegated legislations that are forbiddingly excessive or disproportionate can also be manifestly arbitrary.”

It can be distinctly inferred from the aforementioned observations that it is in the absolute realm of the executive to take a policy decision, and such policy decision can only be interfered with if it is ultimately found that the policy suffers from the vice of mala fide, unreasonableness, arbitrariness and unfairness, in addition to violation of fundamental rights or exercise of power beyond the legal limits. It is the solemn and constitutional obligation of the Court to examine that in framing of policy no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution. Unquestionably, in the present case, the impugned Regulation and the subsequent OMs do not satisfy the principles of rationality and they infract the fundamental rights of the petitioners guaranteed under Article 19(g) of the Constitution of India, hence this Court, in exercise of powers conferred under Article 226, has the explicit authority to set aside the same.



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39. On the substratum of the aforementioned reasoning and analysis, the impugned Regulation 14(2) of the Plant Quarantine (Regulation to Import into India) Order, 2003 of Chapter-VI is declared as arbitrary and unreasonable and in violation of fundamental rights guaranteed under Article 19(g) of the Constitution of India to the extent it stipulates charging of fees of five times of normal rates. The same is quashed and set aside to the said extent only. As a sequel the subsequent impugned Office Memorandums, which reiterate such imposition of penal fees are also quashed and set aside to such extent only.

40. The writ petitions are allowed. Rule made absolute accordingly.”

4. Since the impugned provision has already been declared as unconstitutional and the Directorate of Plant Protection, Quarantine & Storage, N.H.-IV, Faridabad (Haryana)-121 001, by office memorandum dated 12.07.2022, has accepted and implemented the above order of the High Court of Gujarat, there is no reason to take a different view in the present matter. Therefore, we are inclined to consider the present writ petitions on the sole ground that the impugned provision has already been declared as ultra vires to the Constitution of India.



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5. Accordingly, these writ petitions are allowed and the impugned provision *i.e.*, Clause 14(2) of the Plant Quarantine (Regulation of Import into India) Order, 2003 and its consequential office memorandum dated 07.05.2022, issued by the second respondent, in so far as it empowers the respondents to charge additional fee at five times of normal rates for plant quarantine inspection is concerned, are declared as ultra vires to the Constitution of India in terms of the order dated 28.06.2022, passed in special civil applications Nos.16280 of 2021 etc., batch, by the High Court of Gujarat at Ahmedabad. No costs. Consequently, connected miscellaneous petitions are closed.

[S.M.S., J.]

[V.L.N., J.]

06.10.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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Ministry of Agriculture and Farmers Welfare,
Department of Agriculture,
Union of India,
Krishi Bhavan, New Delhi.
- 2.The Deputy Director,
Government of India,
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Farmers Welfare,
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