BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.11.2023**

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

W.A.(MD) Nos.1901 and 1931 of 2023
and C.M.P.(MD) No.14561 of 2023 in W.A.(MD) No.1901 of 2023

Association of Synthetic Fibre Industry,
Registered Address: D-15, F-18-19,
2nd Floor, NDSE Part – II, New Delhi – 110 049,
Through its Director General,
Mr.S.C.Kapur ... Appellant/3rd Petitioner in W.A.(MD) No.1901 of 2023

1.The Secretary to Government of India,
Ministry of Chemicals and Fertilizers
(Department of Chemicals & Petro Chemicals),
New Delhi.

2.The Director General,
Bureau of Indian Standards,
Manak Bhavan,
9, Bahadur Shah Zafar Marg,
New Delhi - 110 002.

3.The Secretary,
Ministry of Textiles,
Government of India,
Udyog Bhavan,
New Delhi – 110 011.

4.The Secretary,
Ministry of Commerce & Industry,

Udyog Bhavan,
New Delhi - 110 011.

5.The Secretary,
Ministry of Consumer Affairs,
Udyog Bhavan,
New Delhi. ... Appellants in W.A.(MD) No. 1931 of 2023 and Respondents 2 to 6 in W.A.(MD) No.1901 of 2023

-Vs.-

Sree Kaderi Ambal Mills (P) Ltd.,
R.O. - Super B-3, Industrial Estate,
K.Pudur, Madurai - 625 007.
Represented by its Managing Director,
S.V.Petha Perumal ... 1st Respondent in W.A.(MD) No.1901 of 2023/Respondent in W.P.(MD) No.1931 of 2023

COMMON PRAYER:- Writ Appeals filed under Clause 15 of Letters Patent Act, to set aside the order dated 27.09.2023 made in W.P.(MD)No. 20421 of 2023 on the file of this Court.

For Appellant in W.P.(MD) No.1901 of 2023 : Mr.Sathish Parasaran
Senior Counsel
for M/s.Dominic S.David

For Appellants in W.P.(MD) No.1931 of 2023 and Respondents 2 to 6 in W.P.(MD) No.1901 of 2023 : Mr.AR.L.Sundaresan
Additional Solicitor General of India
Assisted by Mr.K.Govindarajan
Deputy Solicitor General of India

For 1st Respondent in W.P.(MD) No.1901 of 2023 and Respondent in W.P.(MD) No.1931 of 2023	: Mr.Issac Mohanlal Senior Counsel for Mr.K.Rajasekaran

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COMMON JUDGMENT

(Judgment of the Court was delivered by **S.M.SUBRAMANIAM, J.)**

W.A.(MD) No.1931 of 2023 has been instituted by the Government of India, Ministry of Chemicals and Fertilizers, Department of Chemicals and Petro Chemicals, and W.A.(MD) No.1901 of 2023 has been instituted by Association of Synthetic Fibre Industry/third party, questioning the validity of the order dated 27.09.2023, passed in W.P.(MD) No.20421 of 2023.

2. The respondent in W.A.(MD) No.1931 of 2023 - Sree Kaderi Ambal Mills (P) Ltd., filed the Writ Petition, praying for a direction to the respondents to expedite the certification process to issue the mandatory certification to the petitioner's overseas suppliers for supplying the raw materials i.e., polyester synthetic fibre and consequently, to forbear them from insisting on the quality control order i.e., the Mandatory Certification from BIS for importing the polyester

synthetic fibre till BIS disposes of all the applications filed by the petitioner's overseas suppliers.

3. The respondent / writ petitioner mill is a spinning mill and is in existence for about 40 years. The respondent exports synthetic yarn / thread and sewing thread to various countries, including Sri Lanka, Morocco, Bangladesh and Nigeria etc. The respondent mill is procuring their major raw materials i.e., polyester synthetic stable fibres from foreign suppliers in China through their importing sourcing company M/sT Expert. The Synthetic (Polyester fibre) is to be imported.

4. It is not in dispute that the Government of India has taken a policy decision and a notification was issued on 15th April, 2021. The policy decision was taken by the Government of India in exercise of the powers conferred by Section 16 of Bureau of Indian Standards Act, 2016 (Act 11 of 2016) and the following are the decisions:-

> 1. **Short title, commencement and application**. – (1) This order may be called the Polyester Staple Fibres (Quality Control) Order, 2021.
>
> (2) It shall come into force on the expiry of one hundred and eighty days from the date of its publication in

the Official Gazette.

(3) It shall apply to goods or articles specified in column (1) of the Table below, but shall not apply to such goods or articles meant for export.

2. **Conformity to standards and compulsory use of Standard Mark.** - Goods or articles specified in column (1) of the Table below shall conform to the corresponding Indian Standard given in column (2) of the said Table and shall bear the Standard Mark under a licence from the Bureau of Indian Standards as per Scheme-I of Schedule-II of the Bureau of Indian Standards (Conformity Assessment) Regulations, 2018.

3. **Certification and enforcement authority**. - The Bureau of Indian Standards shall be the certifying and enforcing authority in respect of the goods or articles specified in column (1) of the Table.

4. **Penalty for contravention**. - Any person who contravenes the provisions of this order shall be punishable under the provisions of the said Act.

TABLE

Goods or article	Indian Standard	Title for Indian Standard
(1)	(2)	(3)
Polyester Staple Fibres (PSF)	S 17263:2019	I Textile- Polyester Staple Fibres - Specification

[F. No. PC-II 46016/ 6/2020-Tech.CPC – Pt-1]

KASHI NATH JHA, Jt. Secy."

5. Admittedly, none of the parties before this Court has challenged the policy decision of the Government of India published in exercise of the powers conferred by Section 16 of Bureau of Indian Standards Act, 2016. Policy being not in question, let us consider the relief sought for in the Writ Petition by the respondent before the learned Single Judge.

6. Pertinently, the respondent mill has not submitted any application before the Government of India seeking exemption and the cause established by the respondent in the writ proceedings would reveal that their Chinese raw material suppliers submitted an application to the Government of India seeking certification from the notification dated 15th April, 2021.

7. Learned Single Judge considered the issues raised between the parties and formed an opinion that the respondent mill is in existence for about 40 years and thousand and odd employees are working in the

mill and their livelihoods are in stake and consequently, directed the appellants in W.A.(MD) No.1931 of 2023 to consider the application submitted by the respondent's suppliers as expeditiously as possible, preferably within three months and further directed the appellants to consider the plight of the workers who are depending on the respondent's mill and exempt the mandatory requirement of BIS certification on Polyester Staple Fibres for a further period of three months enabling them to open their units.

8. In this backdrop, the learned Additional Solicitor General of India appearing on behalf of the appellants solicited our attention with reference to the policy decision of the Government of India, which remains unchallenged. The Government of India has no objection for processing the application submitted by any foreign supplier, including Chinese suppliers in accordance with law. However, the learned Additional Solicitor General of India impressed upon us that the direction issued by the learned Single Judge under Para 9(ii) is running counter to the policy decision and more so such exemption if granted would open the pandora's box and many such foreign suppliers will seek exemption for mandatory requirement of BIS Certification and in such

circumstances, the policy itself would be defeated. More so, it will be violative of Sections 15 and 31 of Bureau of Indian Standards Act, 2016.

9. Section 31 of Bureau of Indian Standards Act, 2016 enumerates that

> "Compensation for non-conforming goods.—Where a holder of licence or certificate of conformity or his representative has sold any goods, article, process, system or service, which bears a Standard Mark not conforming to the relevant standard, or with colourable imitation, the certified body or licence holder or his representative shall be liable to compensate the consumer for the injury caused by such non-conforming goods, article, process, system or service in such manner as may be prescribed."

Section 15 of Bureau of Indian Standards Act, 2016 enumerates that

> "15. Prohibition to import, sell, exhibit, etc.—(1) No person shall import, distribute, sell, store or exhibit for sale, any goods or article under sub-section (1) of section 14, except under certification from the Bureau.
>
> (2) No person, other than that certified by the Bureau, shall sell or display or offer to sell goods or articles that are notified under sub-section (3) of section 14 and marked with the Standard Mark, including Hallmark and claim in relation to the Standard Mark, including Hallmark, through

advertisements, sales promotion leaflets, price lists or the like.

(3) No certified jeweller or seller shall sell or display or offer to sell any notified goods or articles, notwithstanding that he has been granted certification, with the Standard Mark, including Hallmark, or any colourable imitation thereof, unless such goods or article is marked with a Standard Mark or Hallmark, in a manner as may be specified by regulations, and unless such goods or article conforms to the relevant standard.”

10. Relying on the above provisions, the learned Additional Solicitor General of India contended that the Writ Petition itself is not entertainable since the Government has not received any application from the respondent / writ petitioner. Thus, the respondent failed to establish any cause for entertaining the Writ Proceedings and in respect of the application submitted by the Chinese suppliers the respondent has no locus to approach the High Court seeking an direction to dispose of the application submitted by a foreign company.

11. Learned Senior Counsel appearing on behalf of the respondent / writ petitioner mainly contended that the respondent mill is running for about four decades and thousand and odd workers are

employed and their livelihoods are in peril and considering those factors, the learned Single Judge issued a direction granting exemption atleast for a period of three months, enabling the respondent mill to import the raw materials.

12. It is further contended that there is no impediment for the Government of India to dispose of the application submitted by the foreign supplier and the respondent also, in support of the application, sent representation to look into the application and decide the same on merits considering the facts and circumstances. Thus, the Writ Petition is entertainable and the respondent being an aggrieved person on account of restrictions imposed to import raw materials from Chinese Suppliers, the contentions raised in this regard by the Government of India is untenable.

13. Learned Senior Counsel appearing for the appellant / third party in the other Writ Appeal filed in W.A.(MD) No.1901 of 2023 made a submission that the Writ Petition filed by Sree Kaderi Ambal Mills (P) Ltd., is not maintainable since they cannot be construed as an aggrieved person. The policy decision of the Government of India having not been challenged and more so the Government of India based on the policy of

self reliance considering the national interest issued the notification under the provisions of Bureau of Indian Standards Act, 2016 Act. The respondent mill has an opportunity to purchase raw materials from various other Indian Companies, who all are supplying adequately as per the Bureau of Indian Standards Act, 2016 Act. When there are availability of raw materials within the country, there is no necessity to consider the relief as such sought for by the first respondent mill in the Writ proceedings, which would offend the policy decision taken by the Government of India encouraging the national level suppliers.

14. Government of India in this context issued the notification with an object of fixing standards and sustaining self reliance policy. It is useful to remind the philosophy of Bertrand Russel who had elaborately articulated about the polices of Regionalism, Nationalism and Internationalism. The renowned philosopher Russel supported Nationalism, contemned Regionalism and said Internationalism is an utopian idea. Nationalism being the consideration deliberated by the Government of India while taking the present policy decision, Courts in exercise of Power of Judicial Review are not expected to subscribe the contrary view, if any, submitted. When the Government of India

encourages the national suppliers to supply raw materials by fixing standards and maintaining the quality, there is no reason for the Constitutional Courts to grand exemption for the purpose of importing the very same raw materials from the foreign suppliers without certification, which would offend the national interest and its policy.

15. The relief granted by the learned Single Judge in para 9(i) has not been seriously opposed by the Additional Solicitor General of India, but with a rider to consider the applications submitted by the foreign suppliers independently and on its own merits and in accordance with law. However, the directions issued by the learned Single Judge in para 9(ii) is concerned, we found it is beyond the scope of powers of judicial review and in violation of Sections 15 and 31 of Bureau of Indian Standards Act, 2016.

16. Thus, we set aside the order dated 27.09.2023, passed in W.P.(MD) No.20421 of 2023 and the submissions of the learned Additional Solicitor General of India is recorded to the extent that the Government of India will process and consider the applications submitted by the foreign suppliers on its own merits and in accordance with law.

17. Accordingly, W.A.(MD) No.1923 of 2023 stands allowed and the other Writ Appeal filled by Association of Synthetic Fibre Industry in W.A.(MD) No.1901 of 2023 is closed. No costs. Consequently, connected Writ Miscellaneous Petition in W.A.(MD) No. 1901 of 2023 is closed.

[S.M.S.J.,] & [V.L.N.J.,]
01.11.2023

NCC :Yes/No
Index :Yes/No
SJ

To

1.The Secretary to Government of India,
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(Department of Chemicals & Petro Chemicals),
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2.The Director General,
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S.M.SUBRAMANIAM, J.
AND
V. LAKSHMINARAYANAN, J.

SJ

4.The Secretary,
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5.The Secretary,
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W.A.(MD) Nos.1901 and 1931 of 2023

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