IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2278 OF 2024

M/s Shah Nanji Nagsi Exports Ltd., A company incorporated Under the Companies Act, Having its Registered Office at Upper Ground Floor, Block No.UGC-03, UGC-04, Govindam Apartment, Kamptee Road, Zudio, Kadbi Chowk, Nagpur – 440015. Through its Director Ashwin Shah. **PETITIONER**

VERSUS

1. The Director General of Foreign Trade, Ministry of Commerce and Industry, Department of Commerce, Vanijya Bhawan, 16, Akbar Road, New Delhi. E-mail: dgft@nic.in.
2. The Assistant Director General of Foreign Trade, DGFT, Udyog Bhawan, New Delhi – 110 001.
3. Joint Director General of Foreign Trade, New Secretariat Building, 1st Floor, East Wing, Civil Lines, Opp. V.C.A. Ground, Nagpur – 440 001. **RESPONDENTS**

Shri Sahil S. Dewani, counsel for the petitioner.
Shri Nandesh S. Deshpande, Deputy Solicitor General of India for the respondent nos. 1 to 3.
Shri Yashraj Kinkhede with Ms Tuhita Hirekhan, counsel for the Intervenor in C.A.W. No. 1371 of 2024.

CORAM : NITIN W. SAMBRE AND VRUSHALI V. JOSHI, JJ.

DATE : NOVEMBER 22, 2024

ORAL JUDGMENT (PER : NITIN W. SAMBRE, J.)

RULE. Rule is made returnable forthwith and heard finally with consent of the counsel for the parties.

2. The petitioner, a century old company in the business of trading, has claimed to be holding the Import – Export Code under the provisions of Section 7 of the Foreign Trade (Development and Regulation) Act, 1992 (for short, 'the Act of 1992').

3. In such capacity, the petitioner's application for grant of permission to import 10,000 Metric Tonnes of Pop Corn/Maize Corn from Brazil-South came to be partially allowed whereby the permission to import only 2000 Metric Tonnes is granted, which has prompted the petitioner to question the decision of the said respondent in the present writ petition.

4. In exercise of the provisions of Section 5 of the Act of 1992, the Central Government 'has notified the Foreign Trade Policy-2023 (for short, 'the FTP-2023') which is in relation to the Export-Import of Goods and Services and the same was brought into operation with effect from April-2023. Though India which is the major producer of Maize claimed to be exporting Two Million Metric Tonnes of Maize per year, the import of Pop Corn Maize is very miniscule as compared to the exports. The import of Pop Corn/Maize Corn is mainly from the United States of America, Brazil, South Africa and Argentina as experienced in the Foreign Trade Policy under the Act of 1992.

5. The petitioner claims to have applied for 'Restricted Import Authorization' *vide* application dated June 05, 2023 seeking license for import of 10,000 Metric Tonnes of Pop Corn/Maize Corn. The petitioner accordingly submitted all the requisite details, viz. Earlier Sales, Turnovers and a certification of the 'Actual User' in compliance with the conditions imposed by the competent authority in compliance with the order of the Andhra Pradesh High Court.

6. The Maize Corn was moved from 'State Trading Enterprises' to 'Free' in view of the notification dated September 29, 2014. In the matter of processing the request made by the petitioner, a deficiency letter was issued by the respondent no.2 on September 15, 2023 seeking details of justification for import alongwith calculation for requirement. *Vide* communication dated September 22, 2023, the petitioner gave justification and requirement that in the previous financial year the import of Pop Corn was 9598.16 Metric Tonnes and for the upcoming eighteen months, it was expecting import to the tune of 25000 Metric Tonnes. As the current license of the petitioner had only 3837 Metric Tonnes of unutilized Maize, it requested the respondents to issue new import license *vide* communication dated October 09, 2023.

7. The earlier request of the petitioner was dealt with by the respondents in the following manner :-

License No.	License Date	Application No.	License Allotted Qty. in MT	License Applied Qty. in MT	License Applied Date	License Allotment Date
5050000080	30-Oct-18	50/21/008/00041/ AM19/1289 HD	5000	5000	12-Sep-18	30-Oct-18
5019002523	12-Sep-19	50/21/008/50293/ AM20/842	5000	5000	26-Jul-19	12-Sep-19
5019003636	20-Jul-20	50/21/008/50300/ AM20/133 HD	10000	10000	20-Oct-19	20-Jul-20
01110020031	11-Nov-21	ARNXIMLAPPLY 02469998AM22	10000	10000	13-Oct-21	11-Nov-21
0111007518	23-Mar-23	ARNXIMLAPPLY 02469998AM22	5000	10000	02-Dec-21	23-Mar-23
0111013950	04-Mar-24	ARNXIMLAPPLY 01148806AM24	2000	10000	05-Jun-23	04-Mar-24

In this background, since the request of the petitioner for grant of license to import 10,000 Metric Tonnes of Maize is not allowed and only a meager quantity of 2,000 Metric Tonnes' license was granted, the petitioner has approached this Court by the present writ petition.

8. Shri Sahil Dewani, learned counsel for the petitioner has submitted that the application of the petitioner in categorical terms reflects that it had requested for grant of license to import 10,000 Metric Tonnes of Pop Corn/Maize Corn from Brazil-South. According to him, the Maize under the EXIM Code 1005 is a 'free item' to be imported pursuant to Chapter 10 of ITC(HS), 2012 of Schedule 1 of the Import Policy. He would claim that the aforesaid fact can be inferred from the contents of the notification dated September 29, 2014 published in the official gazette of India by the Ministry of Commerce & Industry. According to him, *vide* Circular dated July 26, 2019, even though the High Court of Judicature at Hyderabad in Writ Petition No. 23102 of 2018 had directed not to clear the imports of maize corn (pop corn) for the importers who are not holding such authorization, the condition mentioned in the said order was duly satisfied by the petitioner. According to him, he fits into Clause 9.03 of the FTP which defines 'Actual User'. In the aforesaid background, he would urge that though the Central Government under Section 3 of the Act of 1992 is conferred with the power to make provisions relating to imports and exports, there are no restrictions imposed on the import of Maize Corn/Pop Corn. So as to substantiate such contention, he would draw support from sub-Sections 1 and 2 of Section 3 of the Act of 1992 which read thus :-

"*3. Powers to make provisions relating to imports and exports.– (1) The Central Government may, by Order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports.*
(2) The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the [import or export of goods or services or technology]."

According to him, Section 9A of Chapter IIIA deals with quantitative restrictions. The Central Government is empowered under the aforesaid provision to control quantitative restrictions. He would claim that even for the existing FTP in relation to export and import, there are no quantitative restrictions imposed by the Central Government or any other authority and in such an eventuality, he would claim that the order impugned is not sustainable.

In addition to above, the counsel for the petitioner would urge that a similar issue fell for consideration before the Division Bench of this Court in *Narendra Udeshi Versus Union of India & Others* [**2003(1) Mh.L.J. 155**]. The Division Bench in paragraphs 11 and 15 has observed as under :-

"*11. After hearing Counsel on both sides and after perusing the records placed before us, we are of the opinion that the A.L.C. circulars and the public notice dated 20th May, 2002 issued by the DGFT, cannot be sustained as they are wholly inconsistent with the EXIM policy framed by the Central Government and in fact they purport to amend the EXIM Policy provisions which power is exclusively vested in the Central*

Government and not with the DGFT. It is pertinent to note that the EXIM policy announced by the Central Government in exercise of the powers vested in it under section 5 of the said Act has statutory force. It is not in dispute that under the EXIM policy prevalent in 1997-2002 as well as 2002-2007, natural rubber could e imported duty free under an advance licence (except for the period when the Central Government had banned import of natural rubber under an advance licence). Under these circumstances, the implementing agency namely, the DGFT who is empowered to prescribe the norms and the procedures for implementing the EXIM policy could not prohibit import of natural rubber under advance licence, when the EXIM policy specifically permits import of natural rubber under an advance licence. The impugned Circulars and the public notice issued by DGFT, in fact, nullify the express provisions of the EXIM Policy framed by the Central Government. Power to amend the policy being within the exclusive domain of the Central Government the said powers cannot be usurped by the DGFT in the guise of laying down regularly measures. By prohibiting import of natural rubber under the advance licence in the Hand Book of procedures, the DGFT has encroached upon the powers of the Central Government and purported to amend the EXIM policy 2002-2007 which power is not conferred upon the DGFT. As stated hereinabove section 6(3) of the Act expressly prohibits the DGFT from exercising the power of amending the EXIM Policy. Therefore, in the absence of any power under the statute, the A.L.C. circulars and the public notice dated 20th May, 2002 to prohibit import of natural rubber under Advance licence could not be issued by the DGFT. The said circulars and public notice being wholly contrary to the police provisions of the Central Government, cannot be sustained and are liable to be quashed and set aside.

15. The procedures to be prescribed by an authority in implementing the policy must be in consonance with the policy. If the procedural norms are in conflict with the policy, then the policy will prevail and the procedural norms to the extent they are in conflict with the policy, are liable to be held to be bad in law. In the instant case, since the impugned circulars and the public notice issued by DGFT are in conflict with the policy, the same are liable to be quashed and set aside."

9. Based on the aforesaid observations, it is the contention of the counsel for the petitioner that even if the Central Government is vested with the power under Sections 3 and 9A to make provisions in relation to import and export and impose quantitative restrictions, in absence of express provisions thereby restricting import or imposing any quantitative restrictions, the respondents' decision is arbitrary and violative of the fundamental rights guaranteed under Article 19(1)(g) of the Constitution of India. The counsel for the petitioner would urge that the petitioner is in the business of consumption of Pop Corn/Maize Corn since long and had already furnished the statistics in relation to grant of license for last more than five years. According to him, the petitioner had formed an opinion that the respondents will act strictly in accordance with the provisions of Sections 3 and 9A of the Act of 1992. According to him, in absence of there being any statutory embargo created for putting quantitative restrictions, it is legitimately expected of the respondents to permit the petitioner to import the Maize Corn to the extent of 10,000 Metric Tonnes as has been claimed. According to him, the act of the respondents of granting 2,000 Metric Tonnes of Pop Corn / Maize Corn is also against the policy of legitimate expectation. He would draw support from paragraphs 7, 8, 9 and 10 of the judgment of the Apex Court in *Food Corporation of India Versus M/s Kamdhenu Cattle Feed Industries* [**(1993) 1 SCC 71**].

> "*7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14*

of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law. A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is 'fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision-making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.

8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.

9. In Council of Civil Service Unions v. Minister for the Civil Service the House of Lords indicated the extent to which the *legitimate expectation interfaces with exercise of discretionary power. The impugned action was upheld as reasonable, made on due consideration of all relevant factors including the legitimate expectation of the applicant, wherein the considerations of national security were found to outweigh that which otherwise would have been the reasonable expectation of the applicant. Lord Scarman pointed out that "the controlling factor in determining whether the exercise of prerogative power is subject to judicial review is not its source but its subject-matter". Again in Preston, in re it was stated by Lord Scarman that "the principle of fairness has an important place in the law of judicial review" and "unfairness in the purported exercise of a power can be such that it is an abuse or excess of power". These decisions of the House of Lords give a similar indication of the significance of the doctrine of legitimate expectation. Shri A.K. Sen referred to Shanti Vijay and Co. v. Princess Fatima Fouzia which holds that court should interfere where discretionary power is not exercised reasonably and in good faith.*

10. From the above, it is clear that even though the highest tenderer can claim no right to have his tender accepted, there being a power while inviting tenders to reject all the tenders, yet the power to reject all the tenders cannot be exercised arbitrarily and must depend for its validity on the existence of cogent reasons for such action. The object of inviting tenders for disposal of a commodity is to procure the highest price while giving equal opportunity to all the intending bidders to compete. Procuring the highest price for the commodity is undoubtedly in public interest since the amount so collected goes to the public fund accordingly, inadequacy of the price offered in the highest tender would be a cogent ground for negotiating with the tenderers giving them equal opportunity to revise their bids with a view to obtain the highest available price. The inadequacy may be or several reasons known in the commercial field. Inadequacy of the price quoted in the highest tender would be a question of fact in each case. Retaining the option to accept the highest tender, in case the negotiations do not yield a significantly higher offer would be fair to the tenderers besides protecting the public interest. A procedure wherein resort is had to negotiations with the tenderers for obtaining a significantly higher bid during the period when the offers in the tenders remain open for acceptance and rejection of the tenders only in

> *the event of a significant higher bid being obtained during negotiations would ordinarily satisfy this requirement. This procedure involves giving due weight to the legitimate expectation of the highest bidder to have his tender accepted unless outbid by a higher offer, in which case acceptance of the highest offer within the time the offers remain open would be a reasonable exercise of power for public good.*"

The counsel for the petitioner has invited our attention to the law laid down in *R.M. Seshadri Versus District Magistrate, Tanjore & Others* [**(1954) 2 SCC 320**], so as to claim that in absence of there being any embargo, usurping of powers by the authority of restricting the import quantitatively will lead to arbitrary use of powers and also putting unreasonable restrictions on the trade practices of the petitioner. He has drawn support from paragraph 10 of the aforesaid judgment, which reads thus:-

> "*4. We are of opinion that this appeal can be disposed of on the second ground. It may be stated that the Madras Cinematograph Rules, 1933, were amended by the notification G. O. Mis. 1054, Home, dated March, 28, 1948, in exercise of the powers conferred by Section 8 of the Cinematograph Act, 1918 (Central Act II of 1918), and in place of condition 4 of the licence in Form A, the impugned conditions were inserted. Section 8 empowers the State Government to make rules for the purpose of carrying into effect the provisions of the Act. The object of the Act as stated in the preamble is to make provisions for regulating" exhibitions under the Cinematograph Act. Without going into the question whether it is within the' contemplation of the Act that educational and instructional films should be shown and whether the holder of a cinema licence may be compelled to exhibit such films as falling within the scope of the Act, the question which still arises for consideration is whether the impugned conditions amount to "reasonable restrictions" within the meaning of Article 19(1)(g). Approved 'films are those films which are either produced by the Government or are purchased from the private producers. As the*

private producers do not possess any machinery for marketing their films the Government purchases them from such producers and charges hire from the cinema licensees for showing such films. Condition 4(a) compels a licensee to exhibit at each performance one or more approved films of such length and for such length of time as the Provincial Government or Central Government may direct. Neither the length of the film nor the period of time for which it may be shown is specified in the condition and the Government is vested with an unregulated discretion to compel a licensee to exhibit a film of any length at its discretion which may consume the whole or the greater part of the time for which each performance is given. The exhibition of a film generally takes 2 hours and a quarter. Now if there is nothing to guide the discretion of the Government it is open to it to require the licensee to show approved films of such great length as may exhaust the whole of the time or the major portion of it intended for each performance. The fact that the length of the time for which the approved films may be shown is also unspecified leads to the same conclusion, in other words, the Government may compel a licensee to exhibit an approved film, say for an hour and a half or even 2 hours. As the condition stands, there can be no doubt that there is no principle to guide the licensing authority and a condition such as the above may lead to the loss or total extinction of the business itself. A condition couched in such wide language is bound to operate harshly upon the cinema business and cannot be regarded as a reasonable restriction. It savours more of the nature of an imposition than a restriction. It is significant that the condition does not profess to lay down that the approved films must be of an educational or instructional character for the purpose of social or public welfare. We think therefore, that condition 4(a) as it stands at present amounts to an unreasonable restriction on the right of the licensee to carry on his business and must be declared void as against the fundamental right of the appellant under Article 19(1)(g)."

10. As against above, Shri Nandesh Deshpande, learned Deputy Solicitor General of India would invite attention of this Court to the legal position in relation to the grant of license. According to him, it is a

privilege and not an absolute right and that being so, the petitioner cannot claim as of right grant of import license for 10,000 Metric Tonnes of Maize Corn. So as to justify the aforesaid contention, he has invited our attention to Clause 2.13 of the FTP-2023. According to him, the said clause provides as under :-

> "No person can claim an Authorisation as a right and DGFT or RA shall have power to refuse to grant or renew the same in accordance with provisions of FT (D&R) Act, Rules made thereunder and FTP."

He would urge that the Act of 1992 was enacted to safeguard the goal to be achieved under the new Trade Policy viz. increased productivity and competitiveness and to achieve a strong import-export performance. According to him, the export and import policies are two wheels of the chariot of Trade Policy and as such to regulate the foreign trade the Act of 1992 came to be enacted so as to facilitate the export and import. According to him, the procedural acts to be carried out to accomplish the objectives of the policy cannot be subjected to the judicial review as in the case in hand, the petitioner was granted maximum quantity of 2000 Metric Tonnes as compared to 1,000 Metric Tonnes to past importers and upto 500 Metric Tonnes to new importers based on the processing capacity. He would claim that the authorization to import is not an absolute right. To regulate grant of authorization, administrative decisions like the one in the present case based on processing capacity cannot be interfered or faulted with. The Deputy Solicitor General of India has further claimed that the respondents are required to have fair playing field so as to cater to the requirement of all the importers and in such an eventuality reasonable restrictions on the quantity of import as imposed by the respondents cannot be faulted with. In addition to above, he would urge that this Court cannot issue mandamus in favour of the petitioner to permit import of balance 8,000 Metric Tonnes of Maize and as such, he has sought for dismissal of the present writ petition.

11. In rejoinder, Shri Sahil Dewani, counsel for the petitioner would urge that the quantity of 2,000 Metric Tonnes granted by the respondents *vide* license dated March 04, 2024 is already exhausted and the same can be inferred from the additional affidavit dated June 17, 2024 to which the respondents have not submitted any counter, thereby accepting the said position. That being so, he would claim that the order impugned is required to be quashed and set aside to the extent of not granting authorization to import balance 8,000 Metric Tonnes of Pop Corn/Maize Corn. As such, he would claim that a declaration needs to be issued that the petitioner has the authorization to import balance 8,000 Metric Tonnes of Pop Corn/Maize Corn under the application in question.

12. We have considered the rival claims.

13. The fact that the petitioner is importing Maize Corn for a substantial period is not in dispute and in tabular form it has given the figure of such import from 2018 till this date. In the applications which were preferred on December 02, 2021 and June 05, 2023 authorization

was sought for 10,000 Metric Tonnes as against allotted quantity of 5,000 and 2000 Metric Tonnes respectively. The respondents are gradually reducing the quantity of the Pop Corn / Maize Corn to be imported.

14. The fact about the respondents having power to make provisions relating to imports and exports under Section 3 of the Act of 1992 is not in dispute. The Central Government in such an eventuality is required to publish an order in the official gazette making provisions for the development and regulation of foreign trade by facilitating imports and increasing exports. Sub-Section 2 of Section 3 of the Act of 1992 contemplates that the Central Government may by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology. In response to the Court's query, the Deputy Solicitor General of India though has tried to claim that it is vested with the power to deal with issuance of authorization, he is unable to demonstrate before this Court that the Central Government has made any order published in the official gazette thereby prohibiting, restricting or otherwise regulating import of Maize Corn/Pop Corn.

Even otherwise, under Section 5 of the Act of 1992, the Central Government has power to frame the Foreign Trade Policy and also to make amendments in the same, part of which is produced on record. Upon perusal of the same, we are unable to read any such restriction but for the oral claim of the respondents that the authorization to import cannot be claimed as of right. In addition, the Central Government is also empowered under Section 9A of the Act of 1992 to impose quantitative restrictions. When confronted, the respondents are not in a position to demonstrate that the Central Government in the matter of import of Maize Corn has imposed any quantitative restrictions.

15. In such an eventuality, the stand taken by the respondents that under the FTP-2023, since authorization is not a right, the petitioner can only be granted authorization for 2,000 Metric Tonnes to import Pop Corn/ Maize Corn cannot be said to be substantiated based on exercise of statutory powers, rather such restrictions imposed by the respondents by granting authorization for only 2,000 Metric Tonnes of import of Maize Corn is without authorization under Section 9A of the Act of 1992 and also in absence of statutory provision to import Maize Corn. Even if the counsel for the respondents has drawn support from paragraph 2.13 of the FTP-2023 so as to claim that authorization is not a right however, complete reading of the said clause further provides that while dealing with the issue of authorization, the respondents have to be within the framework of the Act of 1992, the rules framed thereunder and the FTP-2023. Merely because the respondents are clothed with power to deal with the request of authorization for import that by itself cannot give leverage to restrict or refuse grant of authorization for the quantity of Pop Corn/Maize Corn which is sought to be imported. It is rightly so claimed by the counsel for the petitioner that the act of the respondents has to be inferred as exercising unregulated discretion to compel the licensee like

the petitioner to have only restrictive quantity of imported Maize Corn though it has the capacity to process large quantity which fact is not disputed on record. The exercise of discretion in the case in hand which is sought to be justified based on the examination of capacity of the petitioner is also not recognized under any of the statutory provisions or the rules framed under the provisions of the Act of 1992 or the FTP-2023.

16. In that view of the matter, in absence of there being any principle to guide the licensing authority, the Licensing Authority cannot be said to be clothed with powers to restrict the quantity of import just because they feel so or by relying on such procedure or consideration which are not known to law, statute or the rules framed thereunder. Such conduct of the respondents can be regarded as imposing unreasonable restrictions which violates the fundamental rights guaranteed under Article 19(1)(g) of the Constitution of India. Rightly so, the counsel for the petitioner has placed reliance on the decision in *R.M. Seshadri* (supra) so as to claim that the conduct of the respondents is not only arbitrary but the same amounts to exercising powers in a colourable and arbitrary manner.

17. There is another facet to the matter viz. counsel for the petitioner from the record has demonstrated that the Maize Corn or Pop Corn to be imported was shifted from the list of 'State Trading Enterprise' to 'Free' and in such an eventuality the importers like the petitioner on their own can apply for the import license or authorization. Such policy is in existence as could be inferred from Notification No. 93 (RE-2013) of 2009-2014

dated September 29, 2014. The Central Government has revised the import policy for some primary agricultural commodities like Maize Corn and based on such revision in the import policy, the petitioner since then was made to understand that the petitioner can import the Maize Corn as per its requirement under the import-export Code allotted to him. It is specifically pleaded by the petitioner that it has sufficient capacity to process 10000 Metric Tonnes and above quantity of Maize Corn/Pop Corn and has already exhausted the permitted import of 2,000 Metric Tonnes by actually consuming the same. As such, the petitioner rightly so, legitimately expected from the respondents that it will have the import authorization of 10,000 Metric Tonnes as prayed in absence of there being any adverse provision relating to import of Maize or an embargo under Section 9A of the Act of 1992 viz. putting quantitative restrictions on the import of Maize from foreign country. As such, the restrictions imposed on the petitioner are also hit by the principle of legitimate expectation as the petitioner has every right to legitimately expect that it will be entitled for the import of 10,000 Metric Tonnes of Maize Corn.

18. Admittedly, there are no principles to guide the Licensing Authority in the matter of grant of authorization and in such an eventuality, the expectation from the Licensing Authority or the Authority granting authorization is to act fairly and to adopt a procedure which can be said to be 'fairplay in action'. In *M/s Kamdhenu Cattle Feed Industries* (supra), the Apex Court has held that due observance of the statutory obligation as a part of good administration raises a reasonable or legitimate expectation

in fairly treating every citizen. As a sequel of the impugned decision, the same will lead the petitioner suffering a business loss as it would be unable to work in the capacity that it has. The respondents as such were expected to give due weightage to reasonability and legitimate expectation of the petitioner which can be said to be form of principle of non-arbitrariness.

In this view of the matter it has to be observed that the respondents who are 'State' are required to act in consonance with Article 14 of the Constitution of India thereby not acting arbitrarily. The respondents cannot claim that they have been vested with unfettered discretion as per the provisions of Sections 3 and 9A of the Act of 1992 to impose restrictions on the quantity to be imported. The respondents are expected to act fairly and to adopt a procedure which can be termed as fair play in action. There is absence of any component in the decision making process of the respondents that empower them legally to impose such restrictions to limit the quantity of imported Maize. As such, an unfair treatment is meted out to the petitioner by the respondents thereby affecting its right to trade guaranteed under Article 19(1)(g) of the Constitution of India.

19. While dealing with the request of the petitioner for permitting authorization to import, the law contemplates a procedure to be adopted and adhered to for imposing the restrictions under the Act of 1992. We have already observed that Sections 3 and 9A of the Act of 1992 provide

for the making of the provisions by the Central Government relating to import and export and prohibit, restrict or otherwise regulate in a specified class of cases or in all cases of import or export so also putting quantitative restrictions.

20. As we are of the view that there are no such statutory restrictions under Sections 3 and 9A of the Act of 1992, it is held that the reliance placed by the respondents on Clause 2.13 of the FTP-2023 lacks merit. Therefore the contention canvassed by the Deputy Solicitor General of India that the said clause confers absolute right in the respondents to reject authorization does not hold any water. We have already held that even otherwise such refusal can be only on the basis of the Act of 1992, Rules framed thereunder and the FTP-2023.

21. In the aforesaid background, we are of the view that the decision of the respondents in refusing to grant balance 8,000 Metric Tonnes authorization to the petitioner to import Maize Corn/Pop Corn pursuant to the application at Exhibit D is not sustainable and is held to be arbitrary and violative of Article 19(1)(g) of the Constitution of India. It is declared that the petitioner is entitled for authorization to import another 8,000 Metric Tonnes of Maize Corn/Pop Corn pursuant to the application at Annexure D and such aurhorization be issued in favour of the petitioner expeditiously and in any case within a period of four weeks from the date of production of this order.

22. The writ petition is allowed in above terms. Rule accordingly. No costs. With the disposal of the present writ petition, pending civil applications, if any, also stand disposed of.

(VRUSHALI V. JOSHI, J.) **(NITIN W. SAMBRE, J.)**

APTE