IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 20.10.2023

\+ **W.P.(C) 8625/2023 & CM Nos. 32737/2023 & 41909/2023**

ASFIVE AGRO PRIVATE LIMITED & ORS ..... Petitioners

versus

UNION OF INDIA AND ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Ashish Batra, Advocate.
For the Respondents : Mr George Pothan Poothicote, Ms Sindhu Acharya and Mr Arprit Mallick, Advoates for R-1.
Mr Kirtiman Singh, CGSC with Mr Waize Ali Noor, Ms Shreya V. Mehra, Mr Taha Yasin, Mr Varun Rajwat and Mr Madhav Bajaj, Advocates of R-2.

AND

\+ **W.P.(C) 10144/2023 & CM APPL. 39327/2023, 39328/2023 & 39329/2023**

BAGADIYA BROTHERS PRIVATE LTD. ..... Petitioner

versus

UNION OF INDIA AND ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Alok Agarwal, Mr Naveen Chawla, Mr Mayank Bughani and Ms Surabhi Rana, Advocates.

For the Respondents : Mr Vineet Dhanda, CGSC.
Ms Peehu Singh Hooda, Advocate for Mr Aditya Singla, SSC.

AND

\+ **W.P.(C) 8631/2023 & CM Nos. 32749/2023 & 32943/2023**

BAGADIYA BROTHERS PRIVATE LTD. ..... Petitioner

versus

UNION OF INDIA AND ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Alok Agarwal, Mr Naveen Chawla, Mr Mayank Bughani and Ms Surabhi Rana, Advocates.

For the Respondents : Mr Vineet Dhanda, CGSC.
Ms Peehu Singh Hooda, Advocate for Mr Aditya Singla, SSC.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

VIBHU BAKHRU, J.

1. The petitioners in these set of petitions are *inter alia* engaged in the business of trading in rice. They impugn Trade Notice no. 08/2023 dated 20.06.2023 (hereafter '**the impugned Trade Notice**') issued by the Directorate General of Foreign Trade (hereafter DGFT), *inter alia*,

setting out the conditions of eligibility and procedure for allocation of quota for export of broken rice on humanitarian food security grounds.

2. The petitioners are, essentially, aggrieved by the conditions that restrict the eligibility for securing allocation of quota to only those exporters, who had exported rice to the countries in question (Senegal, Gambia and Indonesia) in the three preceding financial years. The petitioners state that they have a verifiable track record of exporting rice, thus, restricting the eligibility to export rice only to those persons that had exported rice to the specified countries offends Article 14 and Article 19(1)(g) of the Constitution of India.

3. Export of broken rice, which is otherwise proscribed, has been permitted to certain countries (Senegal, Gambia and Indonesia) in limited quantities on humanitarian grounds and to address the food security concerns of those nations.

4. Whilst the quantitative restriction as imposed for the export of broken rice to the countries in question is not challenged, the petitioners contend that excluding all rice exporters with established track record from applying for a quota to export to those countries, is discriminatory and also curtails the freedom to carry on legitimate trade.

Factual Matrix

5. Prior to 08.09.2022, export of broken rice (HS Code 1006 40 00) was classified as ‘free’ under the export policy.

6. However, on 08.09.2022, the Central Government issued a Notification (Notification no.31/2015-2020) in exercise of powers under Section 3 of the Foreign Trade (Development and Regulation) Act, 1992 (hereafter '**FTDR Act**') amending the export policy in respect of broken rice and prohibiting export of broken rice from India.

7. The prohibition to export broken rice came into effect on 09.09.2022. However, as a transitional arrangement, the Notification dated 08.09.2022 stipulated certain exceptions to the rule where consignments of broken rice were permitted to be exported during the period 09.09.2022 to 15.09.2022. The consignments in respect of which exceptions were carved out is set out below:

> "i. where loading of broken rice on the ship has commenced before this Notification;
>
> ii. where the shipping bill is filed and vessels have already berthed or arrived and anchored in Indian ports and their rotation number has been allocated before this Notification; The approval of loading in such vessels will be issued only after confirmation by the concerned Port Authorities regarding anchoring/berthing of the ship for loading of broken rice prior to the Notification; and
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> iii. where broken rice consignment has been handed over to the Customs before this Notification and is registered in their system."

8. By a subsequent Notification dated 20.09.2022 (Notification No.34/2015-2020) issued by the Central Government under Section 3 of the FTDR Act, the period during which rice could be exported subject to the conditions as stipulated in the Notification dated 08.09.2022, was

extended from 15.09.2022 till 30.09.2022. This period was further extended till 15.10.2022 in terms of the Notification dated 27.09.2022.

9. On 12.10.2022, the Central Government issued another Notification fixing the export quota of broken rice as 3,97,267 metric tons, which was to be allocated amongst those applicants where letters of credit were opened prior to 08.09.2022 or the date of message between the Indian and Foreign Bank was prior to the said date.

10. On 07.11.2022, the Central Government issued a Notification amending the Conditions no. (iii) of paragraph 2 of the Notification dated 08.09.2022. Whereas the original condition excluded the consignments of broken rice, which were handed over to the customs and registered in their system prior to 08.09.2022, from the rigors of the notification prohibiting export of broken rice; the amended condition also extended the exception to those consignments that had entered the customs station for exportation and were registered in the electric systems of the concerned custodian prior to 08.09.2022. The Notification further extended the period of export till 15.10.2022.

11. Notwithstanding that the export of only those consignments of broken rice that satisfied the specific conditions, were permitted; the DGFT on an *adhoc* basis permitted export of broken rice to Djibouti, Gambia and Senegal by certain consignors. The DGFT sent communications to the Customs Department directly communicating its decision to permit exports of specific consignments, specifically setting out the name of the consignor and the consignee.

12. In the affidavit filed on behalf of the respondents it is stated that the said consignments were permitted on the basis of specific request received from foreign Governments. It is conceded that respondent no.2 did not verify the antecedents of the exporters who were permitted to export to the aforementioned countries. According to the respondents, since the exports were permitted on the basis of specific request received from foreign countries, no such verification was conducted.

13. It is stated that the DGFT had permitted export of 1.17 LMT (lac metric ton) of broken rice to Senegal on the basis of the request received from the Ministry of External Affairs, Government of India. Similarly, the DGFT also approved the export of 1 LMT of broken rice to Gambia, and 9,990 MT of broken rice to Djibouti.

14. Aggrieved by the selective approvals to export broken rice, some of the rice exporters filed a writ petition in this Court (M/s Rudram Inc. v. Union of India & Ors.: W.P.(C) No. 4053/2023). It was, *inter alia*, contended on behalf of the petitioners in the said petition that in terms of Section 3(2) of the FTDR Act, the Central Government could make provisions for prohibiting and restricting or otherwise regulating import of goods or services only by an order published in the Official Gazette. The Central Government had, in exercise of powers, prohibited export of broken rice and thus, no exception could be carved out to permit the export of rice on a selective basis contrary to the notified policy. By an order dated 12.05.2023, this Court had expressed its *prima facie* opinion that carving out an exception for a select few to export broken rice,

without affording an equal opportunity to other rice exporters to export broken rice to the countries in question, is discriminatory.

15. It was contended by the learned Additional Solicitor General, who appeared for respondent no.2 in that case, that it would be apposite to give a further opportunity to the respondents to find an equitable solution. According to him, it was possible to do so in coordination with the Ministry of External Affairs, Government of India and the DGFT.

16. In view of the above, this Court directed that a meeting be held between the Additional Secretary (MEA), Deputy Director General of Foreign Trade, Representatives of the petitioners in that case, and any other person that the MEA considered apposite for considering a viable solution.

17. Thereafter, the DGFT issued a Notification dated 24.05.2023 in exercise of its powers under Sections 3 and 5 of the FTDR Act incorporating the following policy conditions in respect of the export of broken rice, which continued to be prohibited:

> "Export will be allowed on the basis of permission granted by the Government of India to other countries to meet their food security needs and based on the request of their government."

18. The respondents have affirmed in their counter affidavit that based on the request made by Indonesia, Senegal and Gambia through the Ministry of External Affairs, the competent authority had approved export of the following quantities of broken rice during the financial year 2023-2024: (i) 2 LMT of broken rice to Indonesia; (ii) 5 LMT of

broken rice to Senegal in six months' time; and (iii) 5000 MT of rice to Gambia in six months' time.

19. On 20.06.2023, the Central Government issued the impugned Trade Notice.

20. It is stated that, thereafter, by the Trade Notice dated 30.06.2023, the Central Government partially amended the impugned Trade Notice by decreasing the minimum threshold quantity to be allocated to 2000 MT instead of 8000 MT. It further extended the time for making an application for export allocation to 03.07.2023 and also extended the date of submission of the Landing Certificate from one month to ninety days of completion of export of allocated quota of broken rice.

Submissions

21. The learned counsel appearing for the petitioner in W.P.(C) 8631/2023 and 10144/2023 (Bagadiya Brothers Pvt. Ltd.) submitted that the petitioner is recognized as a four-star export house and has a total turnover of more than ₹3,500 crores out of which ₹1,300 crores relates to non-basmati rice, exported specifically to governments of foreign nations in the last three financial years. He also claims that the petitioner has a presence in the African countries of Senegal and Ivory Coast.

22. He contended that notwithstanding the petitioner's export credentials, the petitioner is disabled from exporting the broken rice on account of the eligibility condition, which requires export of rice to the

particular country in the past three financial years. He contended that the export of broken rice was permitted to meet the food security concerns of the countries in question and it does not matter as to which exporter serves their requirement. Thus, excluding established rice exporters from participating in the export to the said countries violates Article 14 of the Constitution of India as it has no nexus with the object sought to be achieved, which is to ensure that the rice is to be exported in the given quantities to the specified countries. He also submitted that restricting the petitioners from exporting rice is an unreasonable restriction on the freedom to carry out their business and thus, violates Article 19(1)(g) of the Constitution of India as well.

23. He referred to the decision of the Supreme Court in ***Tata Cellular v. Union of India***[1]and on the strength of the said decision contended that the respondents' action of excluding the petitioners and other established rice exporters was highly unreasonable as it favoured only few rice exporters to engage in the business of exporting to the countries in question. He also referred to the decision in ***Radhakrishna Agarwal & Others v. State of Bihar & Others***[2] in support of his contention. He referred to various authorities, mentioned in his written note, in support of the proposition that every action of the State, which is not informed by reason, can be called into question as being arbitrary.

[1] ***(1994) 6 SCC 651***
[2] ***(1977) 3 SCC 457***

24. Next, he contended that the impugned Trade Notice permitting export of broken rice to selected exporters only is tailor-made to favour five exporters, who had filed counter affidavits in W.P.(C)4053/2023. He submitted that in the earlier round of proceedings relating to the said petition, it was demonstrated that the respondents were favouring certain rice exporters including those that had no track record in the business. He submitted that the impugned Trade Notice was a renewed attempt to benefit only selected exporters. He also contended that the object to ensure capacity and quality, as averred by the respondents in their counter affidavit, has no nexus with excluding established rice exporters with the confirmed track record merely because they had not exported rice to a particular country.

25. Mr Ashish Batra, learned counsel appearing for other petitioners advanced contentions similar to those as noted above. He also contended that the bills were raised on entities in Dubai to Singapore which shows the *mala fide*.

26. Mr Kirtiman Singh and Mr Vineet Dhanda, learned standing counsel appearing for the respondents countered the aforesaid submissions. They submitted that the respondents had permitted the export of broken rice to the countries in question for strategic and humanitarian consideration keeping in view the bilateral relations with these countries, therefore, the said policy is not amenable to judicial review.

27. Mr Kirtiman Singh contended that after the Notification dated 08.09.2022 prohibiting the export of broken rice, the respondents had permitted limited quantities on the requests made by the respective governments of the countries in question. He submitted that the consignee as well as the consignor were specified by the foreign governments and the DGFT was not required to conduct any verification. He submitted that even though in some cases, the bills were raised on entities in Dubai and in Singapore by the consignors the same were at the instance of the concerned foreign Governments and that the DGFT had no role to play in the exports being billed to entities in Singapore and Dubai. He submitted that with the view to bring transparency, the DGFT issued the impugned Trade Notice to objectively allocate the quantity of wheat/broken rice to exporters who were exporting to the countries in question for ensuring capacity and quality. He submitted that to ensure economies, the minimum quantity to be allocated was fixed at 8000 MT. However, on the basis of the representations received, the same was reduced to 2000 MT by a trade notice dated 30.06.2023. He submitted that for the rice exporters to adhere to the timelines of exporting the quantity of rice till 31.12.2023, the allocation was limited to those exporters who had a well-established supply chain in the countries. He contended that the petitioners had no supply chain in the countries to which rice was permitted to be exported and had filed the petitions only to obstruct the exports to those countries. He also contended that the petitioners may not be able to fulfil the export obligation if the quotas were allocated to them.

28. Next, he submitted that the impugned Trade Notice did not offend Article 19(1)(g) of the Constitution of India as the petitioners were not in the business of exporting rice to the specific countries in question and therefore, their business was not affected in any manner. He also submitted that once the Central Government had made a policy to prohibit export of broken rice, the petitioners had no right to carry on the said business. He referred to the decision of the Bombay High Court in ***Prithviraj Enterprises & Ors. v. State of Maharashtra and Ors.***[3]and submitted that the Bombay High Court had rejected the challenge to the resolution of the State Government of Maharashtra and the Notification dated 15.01.2021 issued by the Consumer Protection Department, Government of Maharashtra, whereby contracts for transportation of food and other essential commodities from Food Corporation of India to public distribution shops were confined only to those transporters, who had work experience in transportation of food grain of the stipulated capacity in the particular district in respect of which the transporter had submitted its tender. He referred to the decision of the Supreme Court in ***State of Tamil Nadu & Another v. National South Indian River Interlinking Agriculturist Association***[4]and he submitted that there are two tests for determining whether any classification is under-inclusive. The said tests require the courts to determine if there is a rational nexus with the object sought to be achieved and whether it is proportionate. He submitted that the nexus test is required to determine

[3] ***2021 SCC OnLine Bom 946***
[4] ***(2021) 15 SCC 534***

whether the classification is violative of Article 14 of the Constitution of India and not the proportionality test, which is tailored to find the best means to achieve the object. He submitted that while applying the rational nexus test, the courts are required to show a greater degree of deference to the classification, because the legislature can classify based on the degree of harm to further the principle of substantive equality. Such classification does not require a mathematical precision. He contended that since there was some basis for restricting the allocation to only exporters having past export experience in respect of the given country, the said classification could not be struck down as violative of Article 14 of the Constitution of India merely because some other exporters may have the capacity to export rice to those countries. He also referred to the decision in the case of ***S. Subramaniam Balaji v. State of Tamil Nadu & Others***[5], and on the strength of the said decision submitted that Article 14 of the Constitution of India principally applies only when the State action imposes the burden on the citizen and not in awarding gifts. He submitted that since export of broken rice was prohibited in entirety and it was only open for a limited purpose, the same did not impose any burden on the rice exporters, therefore, permission to export limited quantity to a class of rice exporters is not amenable to any challenge on the ground of violation of Article 14 of the Constitution of India.

[5] ***(2013) 9 SCC 659***

29. Mr Kirtiman Singh also referred to the decision of the Supreme Court in ***P.V. Sivarajan v. Union of India & Another***[6]and submitted that the criteria for permitting exports based on the capacity of the exporter was not violative of Article 14 of the Constitution of India.

Reasons and Conclusion

30. The only question to be addressed is whether the respondent's policy to allocate quota of broken rice for export to the countries in question (Senegal, Gambia and Indonesia), to only those exporters that had exported rice to these countries in the three financial years prior to the Notification dated 08.09.2022 prohibiting the export of rice, violates Article 14 and 19(1)(g) of the Constitution of India.

31. At the outset, it is necessary to note that there is no challenge to the policy decision of the respondent to prohibit export of broken rice or to permit export of limited quantities of broken rice to the specified countries. The respondents state that notwithstanding that broken rice was placed in the prohibited category under the export policy, the Central Government had permitted exports of limited quantity of broken rice to certain countries. This decision was pursuant to the request made at the highest levels for permitting such export to address the food security concerns of the said countries keeping in view the strong bilateral relations with the said countries. Clearly, if the Central Government is of the view that it must address the food grain security

[6] ***AIR 1959 SC 556***

of certain friendly countries by permitting the export of rice, the said decision would not be amenable to judicial review under Article 226 of the Constitution of India.

32. The examination in these petitions is limited to the prescribed eligibility criteria for securing allocation of quota for export of rice to the countries in question. According to the petitioners, the exclusion of established rice exporters from participating in the business of exporting rice to the countries in question is not informed by reason and therefore, offends Article 14 of the Constitution of India.

33. The respondent's contention that the impugned decision to restrict the permission to export only to those exporters who had exported rice to the respective countries in the three financial years preceding the date of the Notification prohibiting export of broken rice, cannot be subjected to any judicial scrutiny on the ground that it violates Article 14 of the Constitution of India since the same does not impose any burden on the ineligible rice exporters, is unmerited. The policy to permit export of rice only to certain rice exporters and not to others is a case of classifying rice exporters in sperate classes and subjecting them to different treatment. Based on their past experience of exports, certain exporters have been put in a separate class. Whilst they are permitted to export rice to the countries in question, the others are not. The question whether the said classification falls foul of the equal protection clause, cannot be excluded from judicial review.

34. The contention that such permission is in the nature of award or a gift by the State to certain exporters and therefore, no grievance can be made in this regard, is insubstantial. This contention is fashioned by certain observations made by the Supreme Court in ***S. Subramaniam Balaji v. State of Tamil Nadu***[5]. However, reliance placed on the said decision, is wholly misconceived. In that case, the petitioner had challenged the distribution of gifts by political parties (popularly known as '*freebies*'). One of the political parties in the State of Tamil Nadu had in its election manifesto for the Assembly Elections in 2006 announced a scheme of free distribution of colour television sets to every household that did not possess the same. The said political party along with its allies secured a majority in the assembly elections held in the month of May 2006. In order to fulfil its electoral promises, the state government took a policy decision to distribute one 14" colour television (CTV) to all eligible families in the State. This was challenged before the High Court. It was contended that a promise of a gift by a candidate would amount to bribery under Section 123 of the Representation of People Act, 1951. It was also contended that the said distribution of gifts was *ultra vires* Article 14 of the Constitution of India as there was no reasonable classification based on any intelligible differentia. In the aforesaid context, the Supreme Court held that the distribution of gifts was for the public purpose to elevate the standards of living of the people. The distribution of TVs, mixtures, fans and laptops by the State was in furtherance of the Directive Principles under Article 47 of the Constitution of India, and therefore, the said decision

was not amenable to challenge. The Court also noted that the concept of equality based on classification is a proportional equality and the State is not prohibited from making a scheme, which provides benefit only to eligible and deserving persons, which form a separate class. The Supreme Court rejected the contention that the gifts being State largesse are required to be distributed equally amongst all citizens. As is apparent, this case has no application to the challenge in the present case. As noted above, the challenge in the present case is to the classification of rice exporters in two category – one, that has, exported rice in the three financial years preceding 08.09.2022 to the specified country; and those that have not.

35. The respondent's contention that the challenge to the impugned policy on the ground that it offends Article 19(1)(g) of the Constitution of India is fundamentally flawed, is equally unmerited. The argument that the petitioners were not engaged in the business of exporting broken rice to the countries in question and therefore, their freedom has not been curtailed in any manner, clearly misses the point. Prior to 08.09.2022, export of broken rice was permissible and the rice exporters were at liberty to export rice to buyers in any country including Senegal, Gambia and Indonesia. There was no requirement for them to necessarily export rice to Senegal, Gambia or Indonesia to carry on the business of exporting broken rice. However, in view of the decision of the Central Government to prohibit export of broken rice, their business of exporting broken rice has stopped. The export of broken rice is now permitted in limited quantities to certain countries only. The business

of export of broken rice is now confined to exporting limited allocated quantities to the specified countries. It is the petitioner's case that they are entitled to carry on the business of broken rice and excluding them from participating in the said business is an unreasonable restriction and thus, falls foul of Article 19(1)(g) of the Constitution of India.

36. The question whether allocation of quota for export of broken rice to certain exporters and excluding others, falls foul of Article 14 of the Constitution of India is required to be considered on the anvil whether such classification between those eligible for securing the export quota viz-a-viz other exporters, is reasonable.

37. It is material to note that the Government of India had in exercise of powers under Section 3 of the Foreign Trade (Development and Regulation) Act, 1992 prohibited the export of broken rice. This policy was amended by the Government of India by a Notification dated 24.05.2023 permitting export to source countries to meet their food security needs, on the basis of permission granted by the Government of India.

38. In terms of Section 6 of Foreign Trade (Development and Regulation) Act, 1992, the Director General of Foreign Trade (DGFT) is responsible for carrying out the said policy. The criteria for allocation of export quota has been approved by the DGFT to implement the export policy.

39. The classification between the exporters, who had supplied broken rice to the countries in question in the three years preceding the year of issuance of notification prohibiting export of broken rice, and those that had not, is required to be evaluated on the basis of the two-fold test. First, whether the said classification is founded on the intelligible differentia; and second, whether the said differentia has a rational nexus to the object sought to be achieved.

40. It would, thus, be necessary to examine the reasons, which had led to the Government to permit only those rice exporters that had in the past exported rice to the countries in question for allocation of quota of export of broken rice.

41. The respondents had produced relevant files relating to the decision to confine the allocation of quotas to rice exporters that had exported rice to the respective countries prior to imposition of the prohibition. The file notings indicates that a meeting was held on 17.05.2022 between the officials of DGFT and the Ministry of External Affairs for finalizing the mode to allocation of quota for export of broken rice to countries based on the request received from the government of those countries. At the said meeting, the participants had proposed three options, which are set out below:

> "**Option 1**: Wherever a request of a foreign government is received through MEA and recommended by MEA for strategic or for food security reasons, upon approval of the request by the competent authority, DGFT will identify **top 25** exporters to that particular country, based on the exports done during last three years to the respective country before

the prohibition kicked in, and share such details to the requesting countries, to choose as consignors for allocation of approved quota for export of broken rice. Based on the recommendation of the requesting country, the quota against each exporter shall be allotted.

Option 2: Wherever there is sufficient time to fulfill the request, as decided by DGFT in consultation with MEA, DGFT may call for applications through an online portal from those exporters who have done exports prior to imposition of prohibition to respective country, or based on a minimum threshold limit of tradable quantity, or both, and may allocate the quota based on the criteria decided. The criteria shall be notified for each case where such applications are invited separately.

Option 3: Any other option may be decided by DGFT, based on the exigency of the respective country and bilateral relationship."

42. On 05.06.2023, the Joint Director of Foreign Trade recorded the proposal to proceed with allocation of quota of broken rice / wheat by choosing any of the options as mentioned above. A file noting dated 08.06.2023 indicates that the decision was made to allocate the quota as per 'Option no.2'. Paragraph 11 of the file noting, which indicates the reasons for choosing the said option, is set out below:

> "11. In order to maintain objectivity and utmost transparency in allocation of the quota, option no.2 at Para 8 above, imposing both the criterias, seems to be a better option for allocation of quota as indicated in Para 10 above. With regard to fixing a minimum threshold limit of tradable quantity of broken rice, it is understood that minimum threshold for Bulk cargo is 8000 MT. Accordingly, it may be decided to keep the minimum threshold limit for export of broken rice at 8000 MT. Accordingly, applications may be called for from applicants who had exported broken rice under HS Code 1006 40 00 to the respective countries. The applicants will

mandatorily submit export performance data for the last three years preceding the year when export policy was amended from free to prohibited. Allocation may be made on pro-rata basis. Any applicant whose allocated quantity falls below 8000 MT shall be disqualied and the quantity shall be re-distributed amongst the eligible applicants. We may also request all the eligible exporters to submit 'Landing Certificate'."

43. The file noting dated 08.06.2023 does not indicate any reasons as to why it was decided to confine the allocation of quota to exporters that have exported rice in the three years preceding the year in which the export policy was amended to prohibit export of broken rice. However, the file noting on 09.06.2023 indicates that the objective of the allocation policy was to ensure capacity and quality. The file noting on 09.06.2023 is relevant and is set out below:

"**Note # 27**

Notes above

Vide above note an attempt is made to rationalize allocation of Broken Rice/Wheat which have been prohibited by Govt for export but limited quantity of which have been allowed for export on G2G basis request to a few friendly countries.

The objective of the allocation policy is to allocate the quantity of wheat/broken rice objectively to exporters who have been exporting to these countries so that capacity and quality is ensured for export. Also it is to be allocated in such quantity which is economic to export so that situation like someone getting the allocation and then not being able to export could be avoided. Hence, the following parameters may be incorporated in the allocation policy:

1. Applications may be called through an online portal for ease and transparency

2. Applications may be called only from exporters who have exported Wheat/Rice (all variety) respectively to the country concerned in three years previous to FY in which the item was prohibited

3. Allocation may be made with minimum threshold of 8000MT by sea and 100MT by land transport to neighbouring country

4. Application will be allowed only if the exporter applies for quantity more than minimum threshold

5. Allocation will be first made on the basis of pro rata to average export of Wheat/Rice (all variety) respectively to the country concerned in three years previous to FY in which the item was prohibited and quantity applied for, whichever is less subject to Minimum threshold.

6. Any unutilized quantity will then e reallocated again to the eligible exporters on pro-rata basis as in point 5.

Submitted for approval"

44. The DGFT approved the above note on 09.06.2023. Subsequently, a decision was taken to reduce the minimum allocation quantity of 8000 metric tons to 2000 metric tons of broken rice.

45. It is clear from the file notings that the discussion between the concerned officials held at a meeting on 17.05.2022 revolved around determining the allocation criteria, which involved only those rice exporters that had exported to the respective countries prior to the prohibition of broken rice. The first option considered was to restrict the allocation to only 25 top exporters to the particular country and leave the question of allocation of quota *inter-se* those exporters to the government of that country. The second option, which subsequently found favour with the DGFT, was to allocate export quota amongst

those rice exporters that had exported to the respective countries in question prior to the prohibition, and not restrict the allocation to top 25 exporters only.

46. The file notings do not contain any reasons for proposing the allocation of quota for export of broken rice to only those exporters that had exported rice in the past to the respective countries in question. However, the file noting of 09.06.2023 indicates that the purpose of restricting the export allocation of broken rice to only those exporters, who had exported rice to the countries in question, is "*that capacity and quality is ensured for export*".

47. In view of the above, the controversy in the present case is narrowed down considerably. It is, essentially, confined to considering whether restricting the allocation of quota for export of broken rice to only those exporters that had exported rice to the respective countries in question prior to such exports being prohibited, bears a nexus to the object of ensuring "capacity and quality".

48. It is necessary to bear in mind that the scope of judicial review in this regard is not wide. The Court is neither required to ascertain the best classification for achieving the objective of such classification nor evaluate the efficacy of the same. The Court is merely required to ascertain whether the classification has any rational nexus with the object sought to be served.

49. It is also well settled that a classification is not required to be "*scientifically perfect or logically complete*"[7]. The classification need not be mathematically accurate and cannot be called into question merely because it is disadvantageous to certain individuals or class of persons. However, it is equally well settled that the intelligible differentia to support the classification must be "*real and substantial*"[8].

50. In the present case, there is no material on record, which would even remotely suggest that persons who have exported broken rice to the respective countries would have a higher capacity to export rice or the quality of broken rice to be exported by them would in any way be superior than that which may be exported by rice exporters who had exported to other countries in the past. There is also no material to indicate that the channels of export to the countries in question are different from the channels of export to other countries. The underlying assumption of the classification is that the rice exporters who had exported rice to the countries in question in part have comparatively assured capacity to export broken rice and to ensure their quality. This assumption is not founded on any material or rational basis.

51. The petitioner in writ petition [W.P.(C) 8631/2023] had claimed that its total turnover was ₹3500 crores out of which about ₹1300 crores directly and indirectly related to non-Basmati rice exported specifically to governments of foreign countries for meeting their food security

[7] ***Kedar Nath Bajoria v. The State of West Bengal : AIR 1953 SC 404***
[8] ***Roop Chand Adlakha v. Delhi Development Authority: 1989 Supp (1) SCC 116***

needs in the last three financial years. The petitioner also states that it has its own establishment in Senegal and Ivory Coast.

52. It is material to note that the object of restricting the allocation quota to only those rice exporters who have exported to the respective countries in the three financial years preceding the year in which export of broken rice was prohibited is to ensure capacity and quality. However, there is no material whatsoever that provides any basis to assume that the quality of rice exported by such exporters was of a better quality than those exported by other rice exporters. The assumption that the quality of broken rice would be assured by restricting the allocation of export quota to only those exporters that had past experience of exporting to the respective countries, and excluding other rice exporters with the established track record of exports to other countries, is without basis.

53. *Ex facie*, the given classification of rice exporters does not bear any nexus with the object of ensuring quality of rice.

54. The assumption that the exporters that have exported rice to the given countries in question would have the capacity to do so may not be unfounded. However, the point is not whether the rice exporters that have past experience of exporting to the countries in question would have the capacity to service the export quota; the point is whether such exporters would in any manner hold out a more credible assurance of capacity to service the export orders in comparison with other rice exporters having a similar or higher export turnover but to other

countries. If the answer to this is in negative, then clearly the given classification does not have any nexus with the object of ensuring capacity to service the export orders.

55. Mr Kirtiman Singh, learned counsel for the respondent, had referred to the decision of the Bombay High Court in ***Prithviraj Enterprises and Ors. v. State of Maharashtra and Ors.***[3]. In the said case, the bids were invited for providing transportation service in respect of foodgrains from godowns of Food Corporation of India to the public distribution shops. One of the eligibility criterion was that the transporter should have an experience matching 33% of the work in a particular district taking into account total transportation work in the particular district in the last three years. The petitioners had *inter alia* challenged the said criterion of having such experience. They contended that the transporter may have vast experience of transporting goods in other districts of Maharashtra and therefore, may not qualify the criterion of the requisite experience in the particular district. The Hon'ble Bombay High Court did not find any fault in the said requirement and had rejected the challenge.

56. We are not persuaded to accept that the said decision is applicable in this case. The rationale for providing past experience of transporting foodgrains in a particular district clearly has a rational nexus of ensuring a speedy and efficient transportation of foodgrains. A transporter would require to have the fair knowledge of the roads, and other conditions in a particular district, which are relevant for the transportation. A person

that has a past experience of transporting foodgrains in a district would be aware of the roads network and its conditions. Familiarity and experience of plying transportation vehicles on a particular road network clearly has a nexus with ensuring speedy and efficient distribution of the goods in question (foodgrains).

57. In the present case, the export of rice from this country does not entail distribution of rice in the country importing foodgrains. In most cases, the exporter's obligation is discharged on loading the goods in question on a vessel in India (if the export is by sea). There is not even a suggestion that export of rice to the countries in question involves any special procedure or would yield any special experience.

58. The counter affidavit filed by the respondents also does not set out any material to suggest that the rice exporters having a past experience of exporting rice in a particular country, would be better placed to service the export orders from that country in comparison with other exporters with established track record.

59. It is important to note that the objective of the policy was to ensure capacity and quality. We are unable to find that the given classification has any nexus to the said objective.

60. Mr Kirtiman Singh also referred to the decisions of the Supreme Court in ***Michigan Rubber (India) Ltd. v. State of Karnataka and Ors.***[9] and had contended that the decision of an authority cannot be

[9] ***2012 8 SCC 216***

challenged unless the decision is such that no responsible authority acting responsibly and aware of relevant law, could have reached. The said decision was rendered in the context of challenge to pre-qualification criteria in respect of bids invited by Karnataka State Road Transport Corporation (KSRTC) for supply of tyres. KSRTC had set out a pre-qualification criteria that had restricted the eligibility to only original equipment manufacturers. Clearly, the entity procuring a particular item for its requirement has wide discretion not only in determining the quality and the features of the product being purchased but also to the nature and capacity of the suppliers. The decision of an entity to procure directly from the manufacturers can, clearly, not be called into question unless it is established that the decision is capricious or palpably arbitrary. However, the decision of an authority to exclude a set of persons from carrying on or participating in any business, which they are otherwise legitimately entitled to it, would obviously require a deeper scrutiny. The question whether a classification is reasonable must necessarily be decided on the anvil whether it has any rational nexus with the object of such classification. Such classification is obviously required to be based not on whims or surmises but on some material. Failure to ensure this standard would render the equal protection clause, illusory.

61. Mr Singh had also relied on the decision of ***Daya v. Joint Chief Controller of Imports and Exports***[10] in support of his contentions. In

[10] ***AIR 1962 SC 1796***

the said case, the decision of the Government to restrict the export of manganese and iron ore was the subject matter of challenge. The Government had restricted the export of manganese ore to only three classes of exporters: established shippers, who would be granted quotas on the basis of average quantities exported during the year 1953-55; mine owners on the basis of the annual average quantity of ore on which royalty was paid during the three calendar years 1953-55; and the State Trading Corporation of India Ltd. Thus, mine owners who had not commenced production prior to 1953 were excluded. The court rejected the challenge and upheld the policy of the Government for partially canalizing the exports. A plain reading of the decision indicates that the Central Government had fully justified its decision. It was explained that persons who had entered into contracts for export of ore had been unable to fulfil their commitments. Apart from inconvenience caused to the importing countries, it had also undermined the confidence of other countries in the capacity of India to maintain assured line of supply. The Central Government had come to a conclusion that long term interest in the Indian manganese ore would be better served if the export policy were to discourage fragmentation of quotas and encouraged bulk contracting, movement and shipment of ore. The challenge to the said policy was rejected as the court found that there was sufficient nexus in the classification with the object.

62. It is apparent that the policy of canalizing exports of manganese ore had a clear nexus with the object sought to be achieved. Established miners and shippers were also permitted to continue exporting ore to

ensure that existing export arrangements were not impacted. Thus, the Supreme Court found that there was sufficient nexus in the classification with the object.

63. As stated above, in the facts of the present case, the respondent has not produced any material to establish any rational nexus between the restricting the export quote to rice exporters that had exported rice during the three financial years preceding prohibition of export of broken rice, and the object of ensuring capacity and quality.

64. In the given circumstances, we set aside the impugned trade notice. The respondents may re-evaluate the criteria for allocation of quota for export of broken rice.

65. The pending applications are also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

OCTOBER 20, 2023
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