

## K. Lakshminarayanan Vs Deputy Chief Controller of Imports and Exports, Madras and Another

**Court:** Bombay High Court

**Date of Decision:** Oct. 11, 1968

**Acts Referred:** Constitution of India, 1950 " Article 246

Government of India Act, 1935 " Section 100

Imports and Exports (Control) Act, 1947 " Section 3

**Citation:** AIR 1969 Bom 224 : (1969) 71 BOMLR 302 : (1969) ILR (Bom) 446 : (1970) MhLj 144

**Hon'ble Judges:** Wagle, J; Patel, J

**Bench:** Division Bench

**Advocate:** K. Srinivasan and V.N. Gadgil, for the Appellant;

### Judgement

Patel, J.

The petitioner in both these petitions alleges that he is a partner of a dissolved firm named Bangalore Stores in Salem District. The

firm was manufacturing and exporting handloom fabrics and its then partners were the petitioner, K. Damodaran, K. Govindarajan and O. V.

Krishnaswami Chettiar. The said firm obtained licenses for import of silk yarn for the purposes of its business from the Chief Controller of Imports

and Exports with certain terms attached to the licences. Later investigation apparently showed that the said partnership had committed breaches of

the terms of license, particularly the term that the said goods after import shall be used for its own manufacture. After this was discovered, the

Deputy Chief Controller of Imports and Exports filed two complaints in the Court of the Additional Chief Presidency Magistrate at Bombay on

July 5, 1968 alleging that the said firm and its partners had committed breaches of the terms of the licenses issued to them. The firm in fact never

received any of the goods but only the licences appeared to be sold. According to him, offences punishable u/s 5 of the Imports and Exports

(Control) Act, 1947, read with Clause 5 of the Imports (Control) Order, 1955, were committed.

2. The petitioner has filed these two applications raising several points but except one all the rest are questions of fact and at best mixed questions

of fact and at best mixed questions of fact and law. As to these questions which require ascertainment of facts, it would be impossible to exercise

the jurisdiction of this Court. All facts will be disclosed at the trial Court after all the evidence is before the Court. We have therefore heard Mr.

Shrinivasan only on the constitutional question that is raised before us.

3. Only two sections of the Imports and Export (Control) Act, 1947, are relevant. Section 2 defines "import" and "export" to mean respectively

bringing into, and taking out of India by sea, land or air. Section 2 reads as follows:-

The Central Government may, by order published in the Official Gazette, make provision for prohibiting, restricting or otherwise controlling, 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:-

(a) the import, export, carriage coastwise or shipment or ships" stores of goods of any specified description;

(b) the bringing into any part or place in India of goods of any specified description intended to be taken out of India without being removed from

the ship or conveyance in which they are being carried.

4. Under the powers given by this Act, the Central Government issued an order called Imports (Control) Order, 1955. By Section 3 of the Act

import was prohibited except as otherwise provided in the said Order in respect of goods specified in Schedule I, except under and in accordance

with a licence or a customs clearance permit granted by the Central Government or by any officer specified in Schedule II.

Sub-section (2) provides for certain consequences in the case of import of goods if found to be different or not conforming to the description of the

goods given in the licence including the one regarding the taking of action under the Sea Customs Act, 1878. Clause 5 of the Imports (Control)

Order, 1955, relates to the imposition of conditions in the licence which is as follows:

5. Conditions of Licence: (1) The licensing authority issuing a licence under this Order may issue the same subject to one or more of the conditions

stated below.

(i) that the goods covered by the licence shall not be disposed of, except in the manner prescribed by the licensing authority, or otherwise dealt

with, without the written permission of the licensing authority or any person duly authorised by it;

(ii) that the goods covered by the licence on importation shall not be sold or distributed at a price exceeding that which may be specified in any

directions attached to the licence;

(iii) that the applicant for a licence shall execute a bond for complying with the terms subject to which a licence may be granted.

(2) A licence granted under this Order may contain such conditions, not inconsistent with the Act or this Order, as the licensing authority may deem

fit.

Sub-clause (3) of Clause 5 goes on to provide implied conditions of the licence. Sub-clause (4) requires the licensee to comply with all the

conditions imposed or deemed to be imposed under this clause. The other powers are ancillary to the carrying out of the provisions of restrictions.

The combined effect of the Act and this Order is that if any of the terms of the license granting the permit to import is broken or contravened by the

licensee, he renders himself liable to prosecution and punishment provided by Section 5 of the Act.

5. The contention of Mr. Shrinivasan is that the provisions of Section 3 and the Order are beyond the legislative competence of the Central

Legislature in as much as they travel beyond the limits of Entry No. 19 in List I of Government of India Act, 1935, and the corresponding Entries

of the Constitution. Section 100 of the Government of India Act reads as follows:

100. (1) Notwithstanding anything in the two next succeeding sub-sections, the Federal Legislature has, and a Provincial Legislature has not,

power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule to this Act (hereinafter called the "Federal

Legislative List").

(2) Notwithstanding anything in the next succeeding sub-section, the Federal Legislature and, subject to the preceding sub-section, a Provincial

Legislature also, have power to make laws with respect to any of the matters enumerated in List III in the said Schedule (hereinafter called the

"Concurrent Legislature List").

(3) Subject to the two preceding sub-sections, the Provincial Legislature has, and the Federal Legislature has not, power to make laws for

Province or any part thereof with respect to any of the matters enumerated in List II in the said Schedule (hereinafter called the "Provincial

Legislative List").

(4) The Federal Legislature has power to make laws with respect to matters enumerated in the Provincial Legislative List except for a Province or

any part thereof.

The corresponding Article in the Constitution is Article 246. As it is similarly worded it need not be reproduced. Under these two provisions the

Legislature at the Centre is empowered to enact laws with respect to any of the matters in List I and the Provincial Legislature is entitled to legislate

with respect to any of the matters falling within List II.

6. Rules regarding construction of Articles and the Lists of the Constitution are well settled. One is that liberal construction should be placed on the

articles and the Lists of the Constitutional provisions and secondly that the Court should determine the pith and substance of the matter and if it

finds that essentially the legislation is with respect to a matter which falls within the jurisdiction of the particular legislature, the Court ought not to

declare its invalidity on the ground merely that it incidentally encroaches in some measure upon the jurisdiction of another Legislature entitled to

frame laws with respect to another matter.

This has been decided in a large number of cases, such as *Gallagher v. Lynn* 1937 AC 863; *Prafulla Kumar Mukherjee v. Bank of Commerce*

*Ltd., Khulna* 74 I A 23; AIR 1947 PC 60 and *Chaturbhai M. Patel Vs. Union of India (UOI) and Others*, .

7. In the present case the argument is that the Legislature by enacting Section 3 of the Imports and Exports (Control) Act, 1947 went beyond its

legislative competency inasmuch as it took upon itself power much wider than the power of merely controlling the imports and exports and it is

under these powers that the subsequent order i. e. Imports (Control) Order, 1955, has been framed. In this connection Mr. Shrinivasan cited

before us the decision in *State of Bombay v. F. N. Balsara* AIR 1951 SC 318. The Court there was concerned with considering the validity of the

provisions of Bombay Prohibition Act. While dealing with the question of prohibition, it prohibited the possession and sale of any liquor except in

terms of the Act and the Rules framed thereunder. A contention was raised on behalf of the respondent that the subject of import and export being

within the competence of the Central Legislature and as the word "import" would include within its ambit the subsequent dealing with the imported

goods, the Provincial Legislature had trenched upon the powers of the Central Legislature. This contention was negatived by the Supreme Court,

the Court holding that prima facie there was no real conflict between the two Entries. Mr. Justice Fazl Ali in paragraph 7 said:

If we forget for the time being the principles which have been laid down in some of the American cases, it would be difficult to hold that the word

"import" standing by itself will include either sale or possession of the article imported into the country by a person residing in the territory in which

it is imported." On the footing of this observation it is argued that the Supreme Court gave a very narrow meaning to the word "import" in Entry 19

in List I, while the word "import" used in Section 3 of the Act has a wider meaning and this meaning has been given in the decision in *Abdul Aziz*

*Aminudin Vs. State of Maharashtra*, . This case also related to import of goods under licence to which certain conditions were attached. The

appellant committed breaches of those terms and he was consequently prosecuted. His conviction was confirmed by the High Court and he

appealed to the Supreme Court. In the appeal, relying upon *Balsara's* case AIR 1951 SC 318 it was argued that the word "Import" has got a

limited meaning and if that limited meaning is given to the words in Section 3 of the Imports and Exports (Control) Act, there was no power in the

Central Government to impose conditions in the licence restricting the disposal of the goods. This contention was repelled saying that this

observation cannot be applicable to the interpretation of the words "import and export" in the Act in the present case. In this case the real question

before the Supreme Court as is made clear in the later part of the judgment was, whether the order issued by the Central Government was ultra

vires the powers contained in Section 3; the Court was not actually considering the question as to what was the precise meaning of the word

import". Section 3 regulated the import and as a necessary corollary to the regulating of the import it would be entitled to impose conditions, and

Section 3 has been so framed as to enable the Government to impose conditions in this regard. But that does not mean that the Supreme Court

decided the question of validity of the Order not on the basis of the provisions of Section 3 of the Imports and Exports (Control) Act, 1947, taken

as a whole, but only on the meaning of the word "import". As we have already said, the subsequent portion of the judgment clearly indicates that

their Lordships considered the terms of Section 3 as a whole and affirmed its validity. Let us see now what is the pith and substance of Section 3.

8. Section deals with the question of imports and exports. It enables the Government by order to prohibit, restrict or otherwise control the import

and export. There is no doubt that when Entry No. 19 in List I enables the Central Legislature to legislate in respect of import and export, it would

necessarily include the power to completely prohibit or limit the import of goods, and in fact by Section 3 this power has been taken for the

purpose of the sub-ordinate legislation. As the whole tenor of the Act shows, it was not dealing in any matter with any transactions of commerce or

trade in a province. It is not argued and cannot be argued that the Government is bound to permit the imports freely. In order to see that foreign

exchange is not wasted, control of imports is necessary. As a corollary it must follow that those who import goods do not take advantage of the

consumers' needs. It is necessary therefore to regulate the disposal for that limited purpose only and that is what is intended by the said order and

the conditions of the licence. The Act and the Order do not purport to legislate with respect to commerce or trade. They merely incidentally affect

the goods imported under the licence. Under the circumstances we are satisfied that neither Section 3 of the Act nor the Order impugned is

beyond the legislative competence of the Central Legislature.

9. In the result, the applications must be dismissed as of no merit.

LGC/D.V.C.

10. Applications dismissed.