(1983) 05 BOM CK 0005

Bombay High Court

Case No: Appeal No. 698 of 1982 in Writ Petition No. 1717 of 1981

Extrusion Processes Pvt. Ltd. and Another		APPELLANT
	Vs	
The Chief Controller of Imports and Exports and Others		RESPONDENT

Date of Decision: May 27, 1983

Acts Referred:

- Constitution of India, 1950 - Article 226
- Imports and Exports (Control) Act, 1947 - Section 3

Citation: AIR 1983 Bom 369

Hon'ble Judges: Sujata Manohar, J; Kania, J

Bench: Division Bench

Advocate: T.R. Andhyarujina and S. Ganesh, for the Appellant; R. Bulchandani, S.G. Shah, A.G. Noorani and N.R. Jethmalani, for the Respondent

Judgement

Sujata Manohar, J.

Extrusion Processes Pvt. Ltd. filed a petition in this High Court, being Writ Petition No. 1717 of 1981 challenging the grant of an import license to M/s. Oriental Containers Ltd. (respondent No. 3) permitting them to import plaint and machinery for the production of aluminum collapsible tubes. By this judgment and order dated 10-12-1982 the learned single Judge of this Court, who heard the petition, dismissed the petition with costs. The petitioner have come in appeal from this decision.

2. The petitioner manufacture, inter alia, aluminium collapsible tubes. According to the petitioner, from the year 1963 onwards they have also been manufacturing plaint and machinery for the production of aluminium collapsible tubes. Their manufacturing division is known as "Packmachines". The petitioner claim to have manufactured 9 such plants for the production of aluminium collapsible tubes. There plants, however are being utilised by High petitioner themselves or by their

allied concerns,. Admittedly no such plant has been sold commercial to any outside party in India, The petitioner, however, claim to have sole exported on such plant to an outside party in Zambia,

3. Respondent No. 3 M/s. Oriental Constitution Ltd., were desirous of manufacturing aluminium collapsible tubes. They were granted a Letter of Intent dated 29-11-1980 for setting up a plaint in a backward area for manufacturing aluminium collapsible tubes respondent No. 3 wanted an import license for importing the requisite plant and machinery. The Hand Book of Import-Export Procedure for the year 1981-82 lays down the procedure for making an application for an import license for capital goods including plant and machinery. Under para 107 of the Hand Gook of Import-Export Procedures, 1981-82, where the value of capital goods required to be imported exceeds Rs. 20 lakhs, the intending application had to advertise his requirements in the Indian Trade Journal or the Indian Export Service Bullention so as to enable interested indigenous manufactures to respond to his requirements first. In the advertisement the applicant is request to given details. of specification of the capital goods required by him, the desired period of delivery and other relevant particulars. A period of 45 days from the date of publication of the advertisement is made available to the indigenous manufactures to make their officer to the applicant. The officers are required to send their proposal directly to the application with a copy addressed by register deposit A. D. to the Directorate General of Technical Development, Ministry of Industry, New Delhi. After a period of 45 days from the date of the advertisement, the intending importer may apply to the licensing authority for a license to import the Capital Goods in question. In the application for import the application is required to state the serial number of and the date of publication of the advertisement, offers received and their individual appreciation by the applicant. The application is also required to state clearly the reasons for rejections of the offer received. This procedure has been provided in order to ascertain where the capital goods which are to be imported are manufactured indigenously or no; this being a relevant factor, under the import policy of the relevant period, to bone in mind in granting or refusing an import license to the applicant.

4. In compliance with this procedure which was prescribed, respondent No. 3 issued an advertised dated 21-1-1981 in the Indian Trade Journal advertising that they were interested in importing plant and machinery for the manufacture aluminium collapsible tubes. Respondent 3 set out in the advertisement specification of plant and machinery enquired by them. These included (1) Annealing Over, (2) Internal Lacquering Machine, (3) Decorating Part considering of (a) Base Coating Machine and Combined Dying Oven and (b) Four-Color Offset Printing Machine, (4) Capping Machine and (5) Automatic Tube Latexing Machine. Respondent No. 3 did not include in this advertisement Impact Extrusion Press and Automatic Training Machine, although these two machines are important parts of the plant for the manufacture aluminium collapsible tubes. This was done because at the relevant

time, that is to say, prior to April 1981 both these machines could be imported under an Open General License and it was not necessary to comply with the above procedure for the purpose of importing these two machines. Under the Import Policy, However which was announced as from April 1981 by the Government of India, these two machines, namely Impact Extrusion Press and Automatic Trimming, Realing, Beading, Knurling Machine (hereinafter referred to as the Automatic Trimming Machine) were removed from the list of its which could not be imported under an Open General License. The Import Policy for 1981-82 contained a general statement to the effect that care had been taken to see that indigenous manufactures received due protection fro their development. In view of this alteration made in the Import Policy for the year 1981-82, respondent No. 3 made an additional application on 28-4-1981 for an import license for an import license of ran Impact Extrusion Press and an Automatic Trimming Machine. There two machine were valid at Rs. 15,041.74. Since the value of these to machines was less than Rs. 20 lakhs, no fresh advertisement in respect of these two machines was given by respondent No. 3.

5. In response to the advertisement, which had been issued by respondent No. 3 on 21-1-1981, the petitioner and an offer dated 24-2-1981 to the respondent No. 3 for supplying the complete plant including the items of machinery specified by respondent No. 3 in the advertisement. Respondent No. 3 had, however, submitted in the meanwhile an application on or about 23-2-1981 to the concerned Ministry for an import license in respect of these machine although the period of 45 days prescribed in the Hand Book of Import-Export Procedure ahd not expire from the date of advertisement. On receipt, however, of an offer from petitioner respondent No. 3 address a letter dated 25-3-1981 to the petitioner asking for the names and addresses of the parties to whom the petitioner had supplied the entire plant,.and the capacities of such plant supplied. The respondent No. 3 also informed the petitioner that they would like to visit these plants. Thereafter corresponding was exchanged between the petitioner and respondent No. 3. It is not necessary to go into the details of this correspondence except to note that in the correspondence while the petitioner expressed their engines to discuss the proposal with respondent No. 3, they did not supply the names of any third party to whom they had sold their plant in India. In fact, it is an admitted position that the petitioner have not supplied such a plant to an outsider in India. It is also necessary to note that although the petitioner had offered to supply the entire plant including internal lacquering machine and automatic tube Latexing machine in their offer of 23-2-1981, the petitioner themselves splice an order in April 1981 for the import of these two machines. It is the case of the petitioner machines. It is the case of the petitioners that these two machines were imported by them merely as prototypes, and that, by staying these machines, they wanted to manufacture similar machines in their factory.

6. On 22-4-1981 respondent No. 3 addressed a latter to the Secretary for Industrial approvals, Ministry of Industry, New Delhi in connection with their pending application for the import of the capital goods for the manufacture aluminium collapsible tubes. they mentioned that their application for an import license had not been processed earlier since they had not then complied with the advertisement procedure and waited for 45 days for the receipt of officers from local manufactures. In this letter type pointed out that they had now complied with the advertisement procedure and that they had received two offers from indigenous source in respondent to the advertisement issued by them. They enclosed these two officers, one of which was from Metal Box India Ltd. and he other one was from the petitioners. In their comments on these offers, respondent No. 3 mentioned that Metal Box India Ltd. had not quoted for an internal lacquering machine and a tube Latexing machine. The petitioner, however, had made an offer for the entire plant. Respondent No. 3 pointed out that the petitioner were themselves engaged in the business of manufacture aluminium collapsible tubes; that they were not basically manufactures of machines for making these tubes. Respondent No. 3 also stated that the petitioner had no experience and expertise in manufacturing these machines. They also pointed out that they had asked the petitioner to arrange a visit to a plant successfully commissioned by them, but this was not done since the petitioner had not supplied such a plant to anybody in India. Respondent No. 3 stated that it was possible to comment on the qualify of the plant manufacture by the petitioner since they were not shown any such plant. Respondent No. 3 also said that they were going into a new business in a backward area: their business involved Hague capital investment, and they did not wish to take any risk. They also said that the risk in purchasing that plant from the petitioner was high because the petitioner would also be their direct rivals in trade, inasmuch as, the main business of the petitioner was manufacturing and selling aluminium collapsible tubes. In this connection they also expressed their doubts about after-sale service and said that they would not like to depends on their trade rivals for after-sale service.

7. In the meanwhile the petitioner addressed a letter dated 28-8-1981 to the Deputy Chief Controller of Import and Exports pointing out that they were in a position to supply the machinery required by respondent No. 3, but they had learned that respondent No. 3 were being granted a clearance fro the import of this machinery. The petitioner said that they apprehended that respondent No. 3 might have made misrepresentations about them and therefore they set out in the letter their "full case'' for the consideration of the Government. Similar representations were thereafter made by the petitioner to the Hon''ble Minister for Industry, Government of India. New Delhi and also to the Hon''ble Deputy Minister for Industry, Government of India, New Delhi in Sept. 1981.

8. The application of respondent No. 3 for an import license was processed by the Directorate General of Technical Department attached to the Minister of Industry some time in August, 1981 or a little prior thereto. The Directorate did not clear the

import of an Impact Extraction Press and advised respondent No. 3 to approach M/s. Guest Keen Williams Ltd. for that item. M/s. Guest Keen Williams Ltd., however expressed their inability to supply this item. There after sometime on 3rd August, 1981 the Directorate General of Technical Development gave their approval to the application of the respondent No. 3 for an import license. Out of 10 times for which an import license had been asked for by the respondent No. , the Directorate General of Technical Development cleared 8 items. Thereafter the Capital Goods Committee in Ministry of Industrial Development, Secretariat for Industrial Approvals, considered the application of Respondent No. 3 at its meeting held on 10th Sept., 1981 and it also approved the granting of an import license to the respondent No. 3 as recommended by the Directorate General to Technical Development. The proposal thus recommended by these two bodies was for the grant of an import license for the import of capital goods valued at DM. 1,129,160.

9. In the meanwhile, in view of representations addressed by the petitioner to the Minister for Industry, Deputy Minister for Industry and to the Chief Controller of Imports and Exports, the petitioner received a letter dated 22-9-1981 from P. K. Sunkaria, Development Officer in the Directorate General of Technical Development, stating that in connection with the petitioners'' representation he would visit the factory of the petitioner on 29/30th Sept., 1918. Accordingly P. K. Sunkaria inspected the factory of the petitioner on 29/30th Sept., 1981 in order to ascertain the facilities available at this factory and the capacity of the petitioner to manufacturing the plant in question as claimed by them. The petitioner thereafter supplied certain information and particulars required by P. K. Sunkaria. Respondent No. 3, on coming to know of the efforts made by the petitioner also addressed a letter on 9th Oct., 1981 to the Minister of Industry putting forward their case for the grant of an import license and setting out why, according to them, the petitioner were not suitable party from whom the plant could be purchased. Before any final decision was taken by the Ministry, however,, the petitioner filed the present petition on 1-12-1981. Thereafter respondent No. 3 received a letter dated 11-12-1981 form the Ministry of Industry. Department of Industrial Development, Government of India, New Delhi in respect of their two application for an import license. granting approval of the Government to the import of capital goods valued at DM 1,269.160. Thereafter an import license dated 29-5-1981 was issued to the respondent No. 3 bearing No. P/CG2085013. The petitioner was thereafter amended to challenge the letter of 11-12-1981 (1982?) and import licensed dated 29-5-1981. The grant of this license is the bone of contention in the present proceedings. The petition was dismissed by the learned trial Judge. The petitioners have thereupon filed the present appeal.

10. As the stage of the appeal the respondent 1 and 2 namely, the Chief Controller of Imports and Exports and the Union of India disclosed for the first time an extract from the minutes of the 17th meeting of the Capital Goods Committee held on 10th Sept., 1981 and a copy of a letter dated 7th Nov., 1981 from A. K. Banerjee, Assistant

Economic Adviser, Ministry of Industry Development, Secretariat for Industrial Approvals. These documents throw some light on the proceedings before the Directorate General of Technical Development and the Capital Goods Committee. They have been taken on order in appeal.

11. Can the action of the Government in granting an import license to respondent No. 3 be considers as contrary to the principles of natural justice? In the first place, the grant of an import license is a purely administrative action. Undoubtedly even a purely administrative action cannot be wholly arbitrary. Principles of natural justice, which are flexible enough to be moulded to suit the requirements of a given situation, will apply to such an administrative action in a suitable modified or attenuated form. Questions relating to a refusal to grant such a license have come up before the Courts in the number of cases. Magarry V. C. in the case of Mclness v. Ouslow Fane reported in (1978) 3 All ER 211, has classified these license cases into three types in the following words.

"First, there are what may be called the forfeiture cases. In these, there is a decision which takes away some existing right to position, as where a member of an organisation is expelled or a license is revoked. Second, at the other extreme there is revoked. Second, at the application cases. There are cases where the decision merely refused to grant the application the right or position that he seeks such as membership of position that he seeks, such as membership of the organisation, or a license to do certain acts. Third, there is an intermediate category, which may be called the expectation cases, which differ from the what has already happened that his application will be granted. This head includes cases where an existing license-holder applies for a renewal of his license, or a person already elected or appointed to some potion seeks confirmation from some confirming authority. There is a substantial distinction between the forfeiture cases and the application cases. In the former, since there is a threat to take away some right or interest, the right to an unbiased tribunal, the right to notice of the charges and the right to be heard in answer to the charges would be apt. In the application cases, on the other hand, nothing is being taken away and there would be no question of any charge and so there would be ordinarily no requirement of an opportunity of being heard in answer to the charges. Instead, there is the far wider and less defined question of the general suitability of the applicant for a license, or membership. In application cases, therefore, an applicant can insist only on a fair application Court the pronounced polish relating to the grant of such license to his case and a fair appreciation of all the facts which are present before the licensing authority".

Cases relating to renewal of license or "expectation cases'' fall between the other two categories and manner in which principles of natural justice are to be applied to such case will depend upon the circumstance relating to such cases, the procedure prescribed and other relevant material pertaining to such cases.

12. The present case is clearly a case of an application for a license. Mr. Andhyarujina, learned Counsel for the petitioners fairly stated before us that the petitioners were not pressing for a right to be head by respondent Nos. 1 and 2 nor were they insisting on a reasoned order. He submitted, and, in our view rightly, that the petitioners were entitled to insist on a fair course of conduct on the part of respondents Nos. 1 and 2 a fair consideration by them of the material relevant to the case in view of the proclaimed import policy while deciding to grant or not to grant an import license in favour of respondent No. 3.

13. It is the contention of the petitioners that this duty to act fairly implies in the present case a duty to given an opportunity to the petitioners to state their cases and a duty to given to the petitioners an opportunity to deal with the allegation made against them. We have to examine whether any such duty as claimed by the petitioners is imposed upon respondents Nos. 1 and 2 in granting an import license to respondent No. 3. It is important to bear in mind that a person who applies for an import license has naturally a direct interest in the outcome of his application. Nevertheless he does not have any vested right to obtain a license in terms of the Import Policy. He cannot, therefore, insist on a legal right to an import license being granted to him. Nor can he insist on a hearing being given to him or on a reasoned order which he can subsequently challenge. The Supreme Court in the case of Andhra Industrial Works Vs. Chief Controller of Imports and Others, has held that Import Control Policy statement as distinguished from an Import or Export Control Order is not a statutory document and no person can merely on the basis of such a Statement, claim a right to the grant of an import license, enforceable at law. There are similar observations made by the Supreme Court in the earlier case of The Deputy Assistant Iron and Steel Controller and Another Vs. L. Manickchand, Proprietor, Katrella Metal Corporation, Madras, .

14. The decision to grant or refuse a license has to be based on a broad consideration of the policy laid down, and the general suitability and needs of the person applying for a license. A fair consideration must be given by the authority to the relevant data before it. But ordinarily, it is not necessary to given the applicant a hearing, much less is it necessary to given a reasoned order granting or refusing a license. Such an insistence would make the procedure for issuing licenses even more cumbersome than it is and can easily make the task of issuing licenses impractical. If, therefore, the person who applies for an import license, has no right to be heard and has no right to be informed about the material adverse to him before an order is passed refusing an import license to him, a third party, such as the petitioner, who has no direct stake in the grant or refusal of an import license, cannot have such a right. To grant such a right would make the work of respondent Nos. 1 and 2 of granting or refusing an import license extremely cumbersome, time consuming and elaborately formal, and may defeat the very purposes of the policy which respondent Nos. 1 and 2 seeks to implement. For example, if the petitioners are entitled to be supplied with material adverse to them and are entitled to make

representations or comments on such material, then, in fairness, there comments will have to be conveyed to the respondent No. 3 who, in turn, would be entitled to comment on the comments. Ultimately it may even involve giving everybody a notice and a hearing. In the present case, it is only the petitioner who has respondent to the advertisement (apart from M/s Metal Box Containers Ltd). In a given case there may be a larger number of parties who respond to the advertisement. Agricultural Lands these parties will, then have to be given an opportunity to make comments and/or a hearing. If there are any disputed question of fact, a party may even insist on leading evidence; and after such an elaborate hearing. it is but fair that parties should expect a reasoned order from respondents Nos. 1 and 2. If such an elaborate procedure is required to be followed every time an import license is to be granted, the work of respondent Nos. 1 and 2 will become impossible. Such a procedure is not contemplated while granting an import license in our view a duty to act fairly, which is imposed on respondent Nos. 1 and 2 in granting such licenses. does not require such an elaborate procedure to be followed.

15. In their policy statement for the relevant period, respondent Nos. 1 and 2 have made it clear that while grating an import license they would bear in mind local availability of the material for the import of which a license is applied for. In order to fairly implement this policy, respondent Nos. 1 and 2 have devised a procedure for ascertaining local availability of such items, which procedure is set out in the Hand Book. The procedure requires the applicant to issue an advertisement for the goods that he wants to imports, and writ for 45 days to enable the local supplies to respond to the advertisement. All replies received by him are required to be forwarded to the respondent 1 and 2. All persons who respond to such an advertisement have also been asked to send a copy of their offer directly to respondent No. 1. Thereafter the applicant has to forward his own comments on the officers which he receives. This requirement of offering comments is not so much to enable the applicants to find fault with the local suppliers, or to enable him to explain to respondents Nos. 1 and 2 why the local offers are not being accepted by the applicant. In fact, if the goods of the requisite quality are available within the country at a reasonable price. ordinarily a person who wants such goods would be happy to purchase them locally without going though the trouble of applying for an import license. It is, of course, possible that a person may want to import such goods for extraneous considerations, but the present cases is not such a case. There procedure, therefore, which is prescribed is only to enable the respondent Nos. 1 and 2 to ascertain if suitable goods are available locally. Moreover the policy does not state that if suitable goods are locally available, an import license will not be given nor does it state that persons who have answered the advertisement will be entitled to any order for the purchase of the goods offered by them. Individual offertory do not get, but virtue of this prescribed procedure, any direct interest or stake in the grant or refusal of an import license to the advertiser. Their interest, if it

can be called an interest. is merely as the general beneficiaries of a policy which states that local availability of such goods will be kept in mind while granting an import license. As such beneficiaries, they have only a right to insist that the proclaimed policy is fairly administered. They do not have any right to make individual representations in an application made by somebody else.

16. It was submitted by Mr. Andhyarujina, learned Counsel for the appellants (petitioners) that the present case is closer to "expectation cases" and therefore duty to act fairly in the present case implies a duty to give the petitioners an opportunity to meet adverse comments against them. This submission is made plausible entirely because of the use of the term "expectation". The cases which Megarry V-C considered as "expectation cases" are those cases where a person had previously acquired some interest or right and had a reasonable expectation that such a right or interest would be continued or confirmed. The petitioners in the present case do not have any such rights and there can therefore be no question of any expectation on their part that those rights will be continued. It is, however, submitted on behalf of the petitioners that they had at least an expectation that they would be heard in the matter. According to them, this expectation has been aroused (1) because of the advertisement procedure, (2) because of the deletion of two machines viz., Impact Extrusion Press and Automatic Trimming Machine from the Open General License category, which has been done, according to the petitioners, on account of an application made by them and lastly, (3) on account of the fact that they received a letter from respondent No. 1 dated 19-8-1981 informing the petitioners that their suggestion for banning the import of certain items of machinery required for manufacturing aluminium collapsible tubes was taken into consideration in framing the Import policy fro the year 1981-82; and Impact Extrusion Press and Automatic Trimming Machine had been removed from the Open General License category. The letter further stated that the import of these items would only be against an import license and that while considering the applications for import, indigenous availability would be duly kept in view. In these circumstances the petitioners claim that they had a reasonable expectation that they would be given a hearing or at least an opportunity to meet adverse comments against them. as far as the first factor is concerned, there is nothing in the advertisement procedure which arouses any expectation that a hearing would be given to the petitioners, or an opportunity would be given to them to answer adverse comments. On the contrary, the procedure makes it quite clear that comments are invited only from the person who applies for an import license and not from anybody else. On the second point, the deletion of certain machinery from the list of items allowed to be imported under an Open General License does not give the petitioners any special rights. It may be that the petitioners made representations which were considered by respondents Nos. 1 and 2 while framing the Import Policy for the year 1981-82. But that does not give the petitioners any special rights of hearing in respect of any application for an import license made under the Import Policy for the year 1981-82. It is also difficult

to see how the letter of 19th August, 1981 creates any special rights in favour of the petitioners. The letter merely states what the now Import Policy for 1981-82 states, namely that indigenous availability will be kept in view while granting an import license for the two machines in question. No special rights are created in favour of the petitioners by virtue of this letter. Mr. Andhyarujina drew our attention to the case of Regina v. Liverpool Corporation reported in 9197 (2) 2 QB 299. In that case Liverpool Corporation had issued taxicab licenses to 300 taxicabs. The Corporation wanted to increase the number of such licenses. When the owners of taxicabs heard that the Corporation proposed to increase the number of taxicabs, their association took up the matter with the Corporation. They received a letter from the town clerk which in effect gave them an assurance and an undertaking that the Association would be heard before any decision was taken. The Corporation, however, proceeded to increase the number of licenses without hearing the Taxicab Owners'' Association. In these circumstances, the Court held that the Corporation had acted contrary to the principles of natural justice in not hearing the Association. the decision in that case is based upon the undertaking and assurance which were given on behalf of the Corporation that the Associations of Taxicab Owners would be heard before any decision was taken. It was because of this special undertaking that the Court held that the Association was entitled to be heard. That case has no application to the facts of the present case, where no assurance has been held out to the petitioners that they would be heard before granting an import license to respondent No. 3 or anybody else.

17. In the circumstances of the present case, respondents Nos. 1 and 2 appear to have acted fairly by the petitioners. Firstly, they have insisted on respondent No. 3 complying with the procedure prescribed under the Handbook. Respondent No. 3 had originally applied for an import license without waiting for 45 days after the issue of the requisite advertisement. the respondent 1 and 2 insisted on their waiting for the requisite period. Secondly, as the import policy for 1981-82 removed Impact Extrusion Press and Automatic Trimming Machine from the category of goods importable under an Open General License, respondents No. 3 were required to make a separate application for the import of these machines. Since the value of these two machines was less than Rupees 20 lakhs, they did not follow the advertisement procedure. There is nothing unfair or mala fide about this conduct. In any case the representation of the petitioners and the respondent No. 3 covered the entire plant including these machines. So no prejudice is caused to the petitioners by non-advertisement of these two machines. Thirdly, the recommendatory bodies, namely the Directorate General of Technical Development as well as the Capital Goods Committee had before them not merely the application of respondent No. 3 but also the offer made by the petitioners and the comments on that offer made by the respondent No. 3 and they considered the question of granting an import license to respondent No. 3 in the light of this material. From the extract of the minutes of the meeting of the Capital Goods Committee held on 10th Sept., 1981 it

appears that respondent No. 3 had been asked to approach M/s. Guest, Keen & Williams Ltd. for an Impact Extrusion Press. the petitioners had been, by then, registered with the Directorate General of Technical Development as manufacturers of Impact Extrusion Press. According to the petitioners, respondents Nos. 1 and 2 acted unfairly or mala fide in not referring respondent No. 3 to them and instead referring respondent No. 3 to someone else. But this submission cannot be accepted. The claim of the petitioners as suppliers of this machine was very much before the licensing authorities. For various cogent reasons we will refer to hereafter, their claim was considered as not a bar to the grant of an import license. Referring respondent No. 3 to another local party does not spell out unfairness or mala fide conduct. On the contrary it indicates an anxiety to explore the possibility of local supply of the required machine. the claim of the petitioners in this connection was very much before the licensing body. In view of the representations made by the petitioners, respondents Nos. 1 and 2 also sent P. K. Sunkaria to ascertain the capability to the petitioners to supply the machinery in question. although the meetings of the two recommendatory bodies were held prior to Sunkaria''s visit, the final decision was taken only after the visit. It is difficult to accept the petitioners'' contention that the visit was an empty formality. In these circumstances, it cannot be said that respondents Nos. 1 and 2 have acted in an unfair manner.

18. Even on merits, there is much to be said in favour of the grant of an import license to the respondent No. 3. There are important factors which weigh against the petitioners. The petitioners have admittedly not effected any commercial sales of such a plant in India though they claim to have manufactured such plants since 1963 and there are a number of concerns using such plants in India. They did not even disclose to respondent No. 3 the name of the party to whom they ahd supplied such a plant in Zambia. In any case a party wising to purchase the plant cannot be expected to visit Zambia to inspect such a plant in operation. From the material on record, there is also some doubt whether at the time when they made an offer for the supply, inter alia, of a tube latexing machine and an internal lacquering machine, the petitioners were in a position to manufacture the same, because in April, 1981, about two months after they made the offer, they placed an order for the import of these two machines. The import was made, according to the petitioners, to enable them to secure prototypes for manufacturing similar machines in India. therefore, at least when they made the offer, they had not manufactured these machines. Thus, at the relevant time, the petitioners were not in a position to supply the entire plant. another important factor which must weigh against the petitioners is the fact that they are themselves manufactures of aluminium collapsible tubes and they would become direct rivals in trade of respondent No. 3 when respondent No. 3 set up their own plant to manufacture such tubes. One can understand the reluctance of respondent No. 3 to set up a plant with the help of their would be trade rivals and their reluctance to depend on

such trade rivals for after-sale services. In these circumstances, even assuming that some of the comments made by the respondent No. 3 on the petitioners may or may not be accurate, the decision of the respondents Nos. 1 and 2 to grant an import license to the respondent No. 3 cannot be considered either as unreasonable or as a decision which disregards the proclaimed policy of the Government. A statement that indigenous availability would be kept in view does not preclude the respondents Nos. 1 and 2 from granting an import license simply because there are one or two local manufacturers of such goods. There are a number of other factors which may determine the grant or refusal of an import license e. g. even if the goods are available locally, they may not be of the required quality, local supply may be inadequate for the demand, or there may be other factors such as those enumerated above which may make it inadvisable for the purchaser to place an order locally. Apart from these factors, there can be trade agreements between India and other countries under which such goods can be imported, or there may be package agreements which would entail import of such goods. In fact there may be a number of factors which respondents Nos. 1 and 2 have to take into account in grating an import license. Local availability is only one of the factors to be kept in mind while granting an import license, and in the present case respondents Nos. 1 and 2 appear to have kept this factor in mind in granting the import license to respondent No. 3. In their affidavit, respondents 1 and 2 have set out some of the reasons for granting an import license to respondent Nos. 3. Unfortunately, the affidavit filed by respondents 1 and 2 in this connection leaves much to be desired. it repeats some of the objections taken by respondent No. 3 to the offer made by the petitioners. These objections are not based on an accurate data concerning the petitioners. The affidavit, however, is made only on the basis of such records as are available at the Bombay office of respondents 1 and 2, and these don''s amount to much. In fact, apart from an extract from the minutes of the 17th meeting of the Capital Goods Committee held on 10th Sept., 1981 and a "letter" dated 7th Nov., 1981 signed by A. K. Banerjee, Assistant Economic Advisor in the Secretariat for Industrial Approvals, no other record was produced at the hearing of the appeal. Not much value can, therefore, be attached to the statements in this affidavit.

19. The petitioners have submitted that respondents Nos. 1 and 2 have acted mala fide in granting the license. This submission must also be rejected in view of the facts which have been set out earlier. The petitioners had also pleaded promissory estoppel. There does not appear to be any representation made by the respondents Nos. 1 and 2 to the petitioners by the respondent No. 3 or that no import license will be granted in respect of the machinery which is being manufactured by the petitioners. It is also difficult to see how the petitioners can be said to have acted to their disadvantage pursuant to any such representation. The petitioners have also not pressed this ground in the appeal.

20. The decision of respondents Nos. 1 and 2 does not cast any slur on the petitioners. In fact, it is merely a decision to grant an import license to the

respondent No. 3. It has no bearing on the reputation of the petitioners.

21. It was submitted by Mr. Noorani, learned counsel for the respondent No. 3, that the petitioners had suppressed a number of facts from the Court and hence their petition should be rejected. There is some substance in this grievance. But the suppression does not appear to be so serious as to justify a dismissal of the petition on this ground alone. We need not go into this aspect of the matter since even on merits we are satisfied that the petitioners have no case.

22. The conduct of the respondents Nos. 1 and 2, however, in the present case has been somewhat unsatisfactory. They did not comply with the order of the trial Court to give inspection of certain documents to the petitioners. Even the affidavit which they filed in reply to the petition leaves much to be desired. This is an affidavit based on such records as are available in Bombay . Quite clearly the record pertaining to the application of respondent No. 3 for an import license is not in Bombay and none was produced in Court except for the two documents referred to earlier. The reasons given in the affidavit for granting an import license to the respondent No. 3 appear to be based on surmises of the draftsman rather than on the record of the application for the import license. No satisfactory explanation is forthcoming as to why the record in the possession of respondents 1 and 2 relating to the application of respondent No. 3 for the import license in question was not availed of by respondents 1 and 2 any why a proper affidavit in reply was not filed on their behalf although there was sufficient time for this purpose available to respondents 1 and 2. Nor is any explanation given by respondents 1 and 2 for their failure to give inspection as ordered. In view of this unsatisfactory conduct, we do not propose to grant to the respondents Nos. 1 and 2 any costs.
In the premises, the appeal is dismissed. Appellants will pay to respondent Nos. 3 the costs of the appeal. the respondents nos. 1 and 2 will bear their own costs.

23. Appeal dismissed.