JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.4284 of 2016
Asif Trading Company
Versus
Federation of Pakistan, Ministry of Commerce & Trade, etc.

Date of Hearing:	22.02.2017
Petitioner by:	Mr. Shahid Kamal Khan, Advocate
Respondents by:	Ms. Sitwat Jahangir, learned Standing Counsel, Mr. Umar Bhatti, Section Officer, Ministry of Commerce & Trade/respondent No.1, Dr. Adnan Masood, Animal Quarantine Department/respondent No.4,

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MIANGUL HASSAN AURANGZEB J:- Through the instant writ petition, the petitioner, Asif Trading Company, has voiced its grievance against the inaction on the part of the respondents to grant permission for the export of livestock/live animals.

2. The learned counsel for the petitioner submitted that the petitioner is engaged in the business of exporting live animals to different countries since 2003; that the petitioner established its own quarantine house in Islamabad after permission in this regard was granted by respondent No.4 (Animal Quarantine Department); that in 2013, respondent No.2 (the Ministry of National Food Security and Research) gave permission to the petitioner to continue the export of live animals; that after the said permission was granted to the petitioner, the petitioner purchased live animals from the market, and deposited Rs.29,48,375/- for the export of 5,725 live animals from 12.04.2013 to 04.09.2013; that additionally the petitioner deposited Rs.28,50,900/- with respondent No.3 (the Federal Board of Revenue) as advance income tax; that quarantine certificates were also issued by respondent No.4, but these certificates have long expired; that on 23.01.2013, the Hon'ble Peshawar High Court had passed restraining orders against the commercial export of live animals and poultry in W.P. No.2169-P/2013; that the Pakistan Poultry Association as well as the Animal and Meat Importers and Exporters Association of

Pakistan challenged the said order dated 23.01.2013 in Civil Appeals No.388 and 1043 of 2013 before the Hon'ble Supreme Court; that the petitioner also joined the said proceedings by filing C.M.A. No.6658/2013; that vide order dated 12.05.2016, the said civil appeals were allowed and it was declared that the Hon'ble High Court had no jurisdiction to initiate a *Suo Moto* action; that consequently, the order dated 23.01.2013, passed by the Hon'ble High Court, was set-aside by the Hon'ble Supreme Court; that respondent No.2's review petition against the said order dated 12.05.2016, was dismissed; and that the Hon'ble Supreme Court declared that the parties who had filed applications for impleadment as parties to the said civil appeals have a right to be dealt with in accordance with the law.

3. The learned counsel for the petitioner further submitted that vide notification S.R.O. No.344(I)/2016, dated 18.04.2016, Export Policy Order, 2016, was issued; that by virtue of the said notification, the subject of the export of live animals was taken away from the administrative control of respondent No.2 (the Ministry of National Food Security and Research), and given to respondent No.1 (the Ministry of Commerce and Trade); that the petitioner applied to respondent No.1 for permission to export live animals for which the fee and advance income tax had been deposited by the petitioner in 2013; and that the respondents have no justification in not permitting the petitioner to export live animals. The petitioner prayed for a direction to the respondents to allow the petitioner to export live animals for which permission had already been granted in the year 2013.

4. On the other hand, the position taken by respondent No.1 (the Ministry of Commerce and Trade) was that under the Export Policy Order, 2013, export of livestock could take place in accordance with the procedure and conditions prescribed by respondent No.2 (the Ministry of National Food Security and Research); that Export Policy Order, 2013 was repealed by the Export Policy Order, 2016 (notified vide S.R.O. No.344(I)/2016, dated 18.04.2016); that under Export Policy Order, 2016, the export of livestock has been altogether banned; that vide letter dated 13.07.2016, the petitioner applied for permission to export

ten thousands live animals; that the Economic Coordination Committee of the Cabinet ("E.C.C.") vide its decision dated 30.07.2013, banned the commercial export of live animals with effect from 01.10.2013; and that the petitioner could have exported live animals prior to 01.10.2013, but not thereafter.

5. The position taken by respondent No.2 (the Ministry of National Food Security and Research) and respondent No.4 (the Animal Quarantine Department) was that export of live animals was allowed by the E.C.C. in its decision dated 03.03.2009; that the then Ministry of Livestock and Dairy Development made policy guidelines for the export livestock which were communicated to respondent No.4 for their implementation; that respondent No.4's role is to provide health certification services to the exporters of live animals in accordance with the provisions of the Pakistan Animals Quarantine Act, 1979 and the rules made thereunder; that under the Export Policy Order, 2013, livestock was an exportable commodity; that the E.C.C. in its meeting held on 30.07.2013, imposed a ban on the export of live animals with effect from 01.10.2013; that respondent No.4 had issued health certificates to the petitioner for the export of 5,725 live animals prior to the imposition of the ban; that animals health certificate had been issued for 5,725 live animals, and the petitioner had deposited the requisite fee; that at that stage, the petitioner was not prevented by the respondents from exporting the said live animals; that as per the information provided by the Deputy Collector, Customs Division, Khyber Pakhtunkhwa, the petitioner had exported 4,600 live animals to Afghanistan through Torkham Customs Station between 12.04.2013 to 04.09.2013; that a ban has been imposed on the export of live animals/livestock under the Export Policy Order, 2016; and that to permit the petitioner to export live animals at this stage would be a violation of the said Policy.

6. I have heard the contentions of the learned counsel for the petitioner as well as the learned Standing Counsel, and have perused the record with their able assistance.

7. It is not disputed that until 01.10.2013, there was no prohibition on the export of livestock/live animals. The petitioner

had been exporting live animals after obtaining requisite permissions and certificates from the relevant Ministry and respondent No.4 (the Animal Quarantine Department). Respondents No.2 and 4 admit that between 12.04.2013 to 04.09.2013, the petitioner had exported 4,600 live animals to Afghanistan. Respondent No.2 had granted permission to the petitioner to export 5,725 live animals from 12.04.2013 to 04.09.2013. Respondents No.1, 2 and 4 admit that the petitioner had deposited a fee amounting to Rs.29,48,375/- for the export of 5,725 live animals in 2013. In the Export Policy Order, 2013, there was no prohibition on the export of live animals from Pakistan. The E.C.C. in its meeting held on 30.07.2013, decided to impose a ban on the commercial export of live animals with effect from 01.10.2013. In exercise of the power conferred by Section 3(1) of the Imports and Exports (Control) Act, 1950, the Federal Government made the Export Policy Order, 2016. This Order was notified vide S.R.O. No.344(I)/2016, dated 18.04.2016. This Order repealed Export Policy Order, 2013 (under which the export of live animals was permissible under certain conditions). Paragraph 4(1) of the Export Policy Order, 2016, provides that export of all goods shall be allowed except those in Schedule-1 of the said Order. "Livestock" is listed at Serial No.6 of Schedule-1 to the Export Policy Order, 2016. Therefore, the export of livestock/live animals was prohibited under Export Order Policy, 2016. The ban on the export of livestock continued ever since 01.10.2013 (when E.C.C.'s decision dated Export Order Policy, 2016, was effective from). These are the admitted facts.

8. It appears that the Human Rights Cell of the Hon'ble Peshawar High Court had taken notice of the acute shortage of livestock in the Province of Khyber Pakhtunkhwa caused by the smuggling of cattle heads like buffalos, cows, sheep and goats. Vide order dated 23.01.2013, passed by the Hon'ble Peshawar High Court in W.P.No.2169-P/2012, the export of poultry products to Afghanistan was restrained. The Dairy Farming and Livestock Association of the Provinces of Punjab and Khyber Pakhtunkhwa undertook before the Hon'ble Peshawar High Court that without a valid permit they will not export cattle heads

or meat to Afghanistan nor will they exceed the exports beyond the limits/quantity which would cause an increase in the prices of meat in the local market or cause a shortage/scarcity of meat in the local market. Paragraph-5 of the said order is reproduced herein below:-

> ***"5. In view of the frank & fair commitments/undertaking given voluntarily by the two associations, they are allowed to export culled chicken, cattle heads or meat to Afghanistan through valid permits, issued by the competent authorities."***

9. Perusal of the said order dated 23.01.2013, shows that a restriction on the export of live animals had not been imposed by the Hon'ble Peshawar High Court. Be that as it may, the said order dated 23.01.2013, was challenged by the Animal and Meat Importers and Exporters Association before the Hon'ble Supreme Court in Civil Appeal No.1045/2013. Vide order dated 12.05.2016, the Honourable Supreme Court allowed the said appeal and set-aside the order impugned therein. The Hon'ble Supreme Court held that since the impugned order dated 23.01.2013, had been passed pursuant to a *Suo Moto* action initiated by the Hon'ble Peshawar High Court, the same was without jurisdiction in view of the law laid down in the case of Dr. Imran Khattak and another Vs. Ms. Sofia Waqar Khattak, PSO to Chief Justice and others (2014 SCMR 122). The review petition against the said order dated 12.05.2016, was dismissed on 26.09.2016. In the said order dated 26.09.2016, it was observed that since applications filed by parties in the main appeal had not been disposed of on merits, the rights of such parties would be determined by the competent forum.

10. After the order dated 12.05.2016, was passed by the Hon'ble Supreme Court, the petitioner, on 27.05.2016 applied to respondent No.4/Animal Quarantine Department to allow the petitioner to export of 10,000 animals, and to extend the dates in the health certificates already issued in the petitioner's favour. A similar letter was addressed by the petitioner to respondent No.1 on 13.07.2016.

11. Now, the petitioner has neither challenged the legality of decision of the E.C.C. (which imposed a ban on the export of live animals), nor the vires of the Export Policy Order, 2016, (which

did not permit the export of livestock/live animals). What the petitioner is seeking is a declaration to the effect that since the permission to export 5,725 live animals had been granted to the petitioner by the competent authority prior to the imposition of the ban on the export of live animals in 2013; and since the certificate of health for such animals had also been issued by respondent No.4/Animal Quarantine Department, the petitioner had a legal right to export such animals regardless of the ban presently in vogue. The learned counsel for the petitioner candidly admitted that the health certificates issued by respondent No.4/Animal Quarantine Department regarding the 5,725 live animals had expired several years ago.

12. Furthermore, the petitioner had been granted permission by respondent No.2/Ministry of National Food Security and Research to export 5,725 live animals between 12.04.2013 to 04.09.2013. The petitioner did not export these live animals in the said period. As mentioned above, the order dated 23.01.2013, passed by the Hon'ble Peshawar High Court in W.P. No.2169-P/2012, did not restrain the petitioner from exporting live animals to Afghanistan. Paragraph 5 of the said order (reproduced above) shows that the export of cattle heads to Afghanistan by exporters with valid permits issued by competent authorities was not restrained. In the said order, it was also observed by the Hon'ble Peshawar High Court that the export of cattle heads should be properly channelized and supervised in an effective manner. An undertaking was taken from the Dairy Farming and Livestock Association to the effect that export of cattle heads or meat to Afghanistan will not take place without a valid permit. Therefore, it is my view that since permission to export live animals had been granted by the competent authority to the petitioner, the Hon'ble Peshawar High Court did not, in any manner, restrain the petitioner from exporting live animals to Afghanistan. The petitioner has not brought on record any document to show that the respondents had restrained the petitioner from exporting 5,725 live animals between 12.04.2013 to 04.09.2013, on the basis of the order passed by the Hon'ble Peshawar High Court.

13. Since there was nothing preventing the petitioner to export 5,725 live animals between 12.04.2013 to 04.09.2013, the petitioner has no legal right to seek the export of these animals after the imposition of a ban on their export vide the above mentioned decision of the E.C.C., and the provisions of the Export Policy Order, 2016. This case does not involve any retrospective imposition of a ban on the export of live animals. The petitioner could have exported the 5,725 live animals prior to the imposition of the ban. At this stage, permission to export of live animals would be in violation of the Export Policy Order, 2016.

14. In view of the above, this petition, being devoid of merits, is dismissed with no order to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

Sultan*

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