IN THE HIGH COURT OF SINDH, AT KARACHI

Present:
Ahmed Ali M. Shaikh, CJ
and Yousuf Ali Sayeed, J

C. P. No. D-7029 of 2021

Salman Talibuddin.....Petitioner

Versus

The Government of Pakistan & others.....Respondents

C. P. No. D-452 of 2022

Muhammad Ali----------Petitioner

Versus

The Government of Pakistan & others.....Respondents

Maria Ahmed, Advocate, for the Petitioners in C. P. No. D-7029/21.
Rashid Mureed, Advocate, for the Petitioner in C. P. No. D-452/22.
Kazi Abdul Hameed Siddiqui, DAG.
Khalid Rajper, Advocate for the Collectorate of Customs Appraisement (East), Karachi

Date of hearing : 17.02.2023 and 30.03.2023

ORDER

YOUSUF ALI SAYEED, J. - The Petitions impugn a Decision of the Federal Cabinet (the "**Cabinet**"), declining the grant of a one-time relaxation/permit for the import, inter alia, of a 1965 Chevrolet Corvair, bearing Vin No. 105375W189647, and a 1965 Ford Mustang, bearing Vin No. 5F07T632895 (hereinafter referred to individually as the "**Corvair**" and "**Mustang**" respectively, and collectively as the "**Subject Vehicles**") under Clause 21 of the Import Policy Order, 2020 (the "**Decision**").

2. As it transpires, the matters represent a second round of litigation, with the impugned Decision having taken place on a referral by this Court, for upon arrival of the Subject Vehicles at Karachi port, the Petitioners had sought their clearance through customs while citing SRO 833(I)/2018 issued by the Respondent No.2 (the "**SRO**"), exempting vintage and classic cars falling under PCT Code 87.03 (i.e. manufactured prior to January 01, 1968) from all duties and taxes in excess of US$5000/- per unit in the following terms:

> *"GOVERNMENT OF PAKISTAN*
> *MINISTRY OF FINANCE, ECONOMIC AFFAIRS, STATISTIC & REVENUE*
> *(REVENUE DIVISION)*
>
> ****
>
> *Islamabad, the 3rd July, 2018*
>
> ***NOTIFICATION***
>
> *(Customs, Federal Excise, Sales Tax and Income Tax)*
>
> ***S.R.O. 833 (I)/2018**.- In exercise of the powers conferred by section 19 of the Customs Act, 1969 (IV of 1969), section 16 of the Federal Excise Act, 2005, clause (a) of sub-section (2) of section 13 of the Sales Tax Act, 1990 and sections 148 and 53 read with Second Schedule to the Income Tax Ordinance, 2001 (XLIX of 2001), the Federal Government is pleased to exempt vintage or classic cars and jeeps meant for transport of persons on the import thereof from so much of the customs-duty, regulatory duty, additional customs duty, Federal excise duty, sales tax and withholding tax as are in excess of the cumulative amount of U.S. dollars five thousand per unit.*
>
> ***Explanation.-** For the purpose of this Notification vintage or classic cars and jeeps mean old and used automotive vehicles, falling under PCT Code 87.03 of the First Schedule to the Customs Act, 1969 (IV of 1969), manufactured prior to the 1st January, 1968.*
>
> *(sd/-)*
> *Additional Secretary"*

3. However, as the concerned collectorate of customs refused to accept and process the Goods Declarations submitted in respect of the Subject Vehicles on the ground that their import was not permissible under the Import Policy Order of either 2016 or 2020, the Petitioners approached this Court through C.P. Nos. 1434 and 3911 of 2021, seeking release of the Subject Vehicles on the basis of the judgment rendered by a learned Division Bench of this Court in the case reported as Moin Jamal Abbasi versus Federation of Pakistan through Secretary and 2 others 2020 PTD 660, where it had been observed that while issuing the SRO the Government had made no reference to any other restriction or prohibition as may be attracted in terms of Import Policy Order, 2016 (since superseded by the Import Policy Order, 2020), which showed a clear intention to not only exempt vintage cars from payment of duty and taxes but also relax other prohibitions or restrictions. Hence, while treating the SRO as constituting a relaxation under the Import Policy Order, the Bench went on to order the release of a vehicle falling within the scope of the SRO.

4. Whilst the decisions in several other petitions followed in the same vein, a different view came to be taken by another Division Bench, when seized with CP Nos. 1434 and 3911 of 2021 and certain other similar matters (hereinafter referred to as the "**Prior CPs**"), with it *inter alia* being observed that:

> 7. … however, as to the finding that an exemption notification issued in terms of section 19 of the Customs Act, 1969 by the Federal Government, through Ministry of Finance, Economic Affairs, Statistics and Revenue, (Revenue Division), Government of Pakistan shall also be deemed to be a Notification of the Federal Government in terms of

> Para 20 of the Import Policy Order, 2016 is objected to, and with utmost respect to the learned Division Bench and all the humility at our command, we have also not been able to persuade ourselves to agree with it. Section 19 of the Customs Act, 1969, does not govern importability; nor the Federal Government while exercising powers in terms thereof can regulate the import and export of any goods. Though the said power undoubtedly vests with the Federal Government but for that it has to exercise such powers under section 3 of The Import and Export Control Act, 1950. This aspect of the issue has not been brought before the learned Bench, whereas, in our view the use of the words "Federal Government" in SRO 833 would only be in respect of exercise of powers under the Customs Act, 1969, and it cannot be so construed to have also issued a notification in terms of the Import and Control Act, 1950, notwithstanding that it is the very same "Federal Government". Before us the Ministry of Commerce which is the concerned Ministry as of today is still saying that no notification has been issued to permit import of vintage cars, despite a request moved by FBR to issue the same pursuant to issuance of SRO 833, whereby, taxes have been reduced on such vintage cars. And the reason assigned is that the Federal Government, (Cabinet and ECC) has refused to do so. In fact once again an exercise is going on to consider this aspect of the mater. Nonetheless, as of today the very Federal Government has refused to exercise its powers in terms of the Import and Control Act, 1950; or for that matter under the Import Policy Order. Therefore, it is our considered view that till such time it is done, merely a notification issued in terms of s.19 of the Customs Act, 1969 would not suffice. As to non-issuance of necessary orders and or notification in terms of the Import and Export Control Act, 1950, we may observe that it is purely an executive function and is a matter of policy; which we cannot look into and interfere as no such case is made out."

5. In view of the disagreement with the dicta laid down in the case of Moin Jamal Abbasi (supra), the matter was referred for the formation of a Larger Bench in view of the principle laid down by the Honourable Supreme Court in the case of Multiline Associates v Ardeshir Cowasjee 1995 SCMR 362, to consider inter alia whether the SRO, as issued in terms of Section 19 of the Customs Act, 1969,

could also be treated as an SRO issued by the Ministry of Commerce in terms of Section 3 of the Import and Export Control Act, 1950, permitting the import of vintage cars which were otherwise not importable as being old and used in terms of the Import Policy Order.

6. The Prior CPs then proceeded before a Larger Bench, culminating in a split judgment dated 10.09.2021, with one of the learned members being pleased to outrightly dismiss the matters whilst the majority went on to refer the same for consideration to the Federal Cabinet, observing and directing as follows:

> "3. It is not the case that SRO 833(I)/2018 was issued by the Revenue Division without lawful authority or that it was issued with any *malafides*. It is accepted both by the learned Assistant Attorney General and learned counsel for the Customs that SRO 833 was to follow in consequence of a SRO under section 3(1) of the Imports and Exports (Control) Act, 1950, also by the Federal Government *albeit* through the Commerce Division, which was to be issued prior to or at least simultaneously with SRO 833 to expressly permit the import of vintage cars, but that was not so done, nor was SRO 833 recalled. The comments on behalf of the Federal Government concede that *"This anomaly in the policies lead to confusion and litigation"*. We are therefore of the view that in issuing the consequent SRO 833 to fix duty and taxes on import of vintage cars, the Federal Government held out and represented to citizens that the requisite SRO permitting the import of vintage cars had also been issued, or at least that import of vintage cars is not forbidden any more. After all, otherwise, there was no point in fixing duty and taxes on the import of vintage cars if the import remained prohibited. Therefore, the Petitioners acted, to their detriment, on an act / representation made by the Federal Government. The argument of the Customs amounts to saying that before acting upon SRO 833 to import a vintage car, a citizen should have first verified whether the representation in SRO 833 that a vintage car was importable, was in fact correct or not. That argument if accepted would be catastrophic to the presumption of correctness

attached to official acts.[7] Conversely, it is not difficult to imagine the chaos that would ensue if executive orders requiring action are not implemented on unwarranted excuses of verifying the underlying competency. There is another aspect of the matter. It is apparent that SRO 833 was issued for lack of coordination between the Revenue Division and the Commerce Division of the Federal Government resulting from a failure to adhere to the 'Inter-Division Procedure' set-out in Rule 8 of the Rules of Business, 1973. The consequence of such failure cannot be permitted to turn prejudicial to the case of the Petitioners.

4. Adverting now to the relief sought by the Petitioners; in our view, thus far, no writ can be issued to the Customs to release the vintage cars when SRO 902(I)/2020 i.e. the Import Policy Order issued under section 3(1) of the Imports and Exports (Control) Act, 1950, does not expressly permit the import of such vehicles. However, clause 21 of that very Import Policy Order provides:

> "21. **Relaxation of prohibitions and restrictions**.—
> (1) In terms of section 21 of the General Clauses Act, 1897, the Federal Government may, for reasons to be recorded, allow import in relaxation of any prohibition or restriction under the Order.
> (2) The Federal Government may relax the requirement of re-export on goods imported on temporary on such conditions as it may deem fit.
> (3) The Federal Government may issue import authorization in respect of any item for which relaxation is made under sub-paragraph (1) or for which import authorization is required under this Order.
> (4) The Federal Government shall issue the aforesaid condonation or authorization on its letter-head, consecutively number and duly embossed."

5. Thus, the Import Policy Order vests a certain discretion in the Federal Government to allow an import in relaxation of a prohibition therein. Mr. Shahab Imam, learned counsel for the Customs had also disclosed during the course of arguments that the Federal Government had in the past exercised such discretion to issue a one-time import permit for a vintage car. Regardless of that, in our view, clause 21 of the Import Policy Order does cater to an import made *bonafide* with unintended consequences, as is the case of these Petitioners. Therefore, we dispose of these petitions with a direction to the Federal Government to consider the case of these Petitioners for a one-time relaxation / permit of import under clause 21 of the Import Policy Order, 2020 in respect of vintage cars

falling under SRO 833(I)/2018 already imported by them, and to decide the same with 10 days keeping in mind the observations above. For said purposes, a copy of these petitions shall be forwarded by the learned Assistant Attorney General to the Commerce Division of the Federal Government, which shall be treated as applications under clause 21 of the Import Policy Order."

7. The content and wording of the summary then prepared by the Ministry of Commerce for consideration by the Cabinet is of particular significance, which reads as follows:

"F.No.5(21)/2020-DD(M&I)
Government of Pakistan
Ministry of Commerce
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SUMMARY FOR THE CABINET

Subject: **ONE-TIME RELAXATION IN PROHIBITION OF IMPORT OF VINTAGE CARS OR OTHERWISE IN LIGHT OF DECISION OF THE SINDH HIGH COURT DATED 10.09.2021 PASSED IN CP NO. 5430/2020 AND CONNECTED CPs.**

In terms of Sr. No.10 of Appendix-C, Import Policy Order (IPO), 2020 import of secondhand/used vehicles of Chapter 87 is not allowed except those specifically exempted therein **(Annex-I)**. As such, the resident Pakistanis cannot import used vehicles including vintage/classic cars.

2. Federal Board of Revenue (Revenue Division) issued SRO 833(I)/2018 dated 3rd July 2018 whereby a cumulative duty of $5000/per unit has been levied on import of vintage cars/jeeps (**PCT 8703**), which are over fifty years old **(Annex-II).** However, the said SRO could not be given effect because of ban on import of vintage cars in IPO, as submitted at Para-1 ante. To make a corresponding amendment in the IPO, a Summary for the ECC was moved by Commerce Division in January 2019 wherein, among other proposals, a proposal was submitted for allowing import, and import-cum-export of vintage cars. However, the said proposal was not approved **(Annex-III).**

3. Meanwhile some of the cars imported on the basis of SRO 833(I)/2019 arrived in the country. The importers of these cars then started

approaching different High Courts with the plea that they had imported cars on the strength of aforesaid SRO and were unaware of any ban in IPO, therefore, their cars might be released. Some Courts allowed release of imported cars **(Annex-IV)**, while others declined petitions on the grounds that the said SRO is not an SRO issued under section 3(1) of Imports and Exports (Control) Act, 1950, hence the said SRO does not operate to amend the conditions of IPO **(Annex-V).**

4. Keeping in view the divergent interpretation by various benches, the Chief Justice Sindh High Court constituted a Larger Bench to decide the question of importability of vintage cars in the light of SRO 833(I)/2018 and IPO in vogue. Besides Ministry of Commerce, Federal Board of Revenue (Revenue Division) and Collector of Customs (East & West), Karachi were impleaded as Respondents.

5. The said Larger Bench vide its Judgment dated 10.09.2021 **(Annex-VI),** while disposing of the Constitutional Petitions tabulated below, in principle agreed with Ministry of Commerce's point of view vis-à-vis import of vintage cars, i.e. their import cannot be allowed unless an appropriate amendment is made in the IPO in terms of section 3(1) of the Imports and Exports (Control) Act, 1950. However, the Court by a majority of 2 to 1 Judges directed the Federal Government to consider these petitions as applications under Para-21 of IPO for grant of one-time relaxation/condonation of prohibition in favour of already imported vintage cars, and decide the case within 10 days. CP-wise detail of cars is given as under:-

SR. No.	CP NO.	DESCRIPTION OF VEHICLE	BILL OF LADING DATE
1	D-5430/2020	Rolls Royce Silver Cloud (1960)	04.10.2020
2	D-5536/2020	Bentley S1 (1956) Vin	20.02.2019
3	D-1196/2021	Two Bentley Cars (1967 & 1947) Vin No. SBH 3054 & B219AJ respectively	26.12.2020
4	D-1434/2021	1965 Ford Mustang VinNo.5F07T632895	26.12.2020
5	D-3911/2021	Vehicle (Classic) Chevrolet Corvair (1965) Vin No. 105375W189647	11.05.2021

6. Operative part of the Judgment is reproduced below:

> "The Import Policy Order vests a certain discretion in the Federal Government to allow an import in relaxation of a prohibition therein…. In our view, clause (Para) 21 of the Import Policy Order does cater to an import made *bona fide* with unintended consequences, as is the case of these Petitioners. Therefore, we disposed of these petitions with a direction to the Federal Government to consider the case of these Petitioners for a one-time relaxation/permit of import under clause 21 of the Import Policy Order, 2020 in respect of vintage cars falling under SRO 833(I)/2018 already imported by them, and to decide the same within 10 days keeping in mind the observation above."

7. Besides the above tabulated petitioners, there are other people who have imported vintage cars and their consignments are stuck-up at various ports because of ban in the IPO. On the strength of above referred Judgment of the Honorable Sindh High Court, some petitioners, whose petitions are pending adjudication before different High Courts, have also started approaching Ministry of Commerce for grant of one-time relaxation in favour of their already imported vintage cars. However, it is likely that if one such application is accepted, then similar other petitioners/applicants will approach the Ministry for grant of one-time relaxation.

8. Under Para-21 of the Import Policy Order (IPO), 2020 the Federal Government is empowered to allow imports in relaxation of any prohibition or restriction as contained in the IPO.

9. The Prime Minister, being Minster-in-Charge of Ministry of Commerce has seen and is pleased to approve submission of the cases (vehicles) mentioned at para-5 of the Summary for decision of the Cabinet. However, to the extent of cases mentioned at para-7 ante, the Prime Minister has desired that a separate Summary may be moved after gathering complete details of the vehicles mentioned therein, if so required **(Annex-VII).**

10. In view of the foregoing, decision of the Cabinet is solicited to the extent of vehicles mentioned at para-5 of the Summary.

(Muhammad Sualeh Ahmed Faruqui)
Secretary

Islamabad, the October _____, 2021."

8. Equally, it is important to reproduce the impugned Decision that followed, which simply states that:

> "The Cabinet considered the summary titled '**One-Time Relaxation in Prohibition of Import of Vintage Cars or Otherwise in Light of Decision of the Sindh High Court dated 10.09.2021 Passed in CP No.5430/2020 and Connected CPS**' dated 27th October, 2021, submitted by the Commerce Division and **did not** approve the one-time relaxation in prohibition of import of vintage cars, proposed in para 10 of the summary."

9. Proceeding with her submissions, learned counsel for the Petitioner in in CP No. D. 7029/21 argued that the issuance of the SRO constituted a representation by the Federal Government that such import was permitted and had given rise to a legitimate expectation that the Corvair would be released upon payment of the duty prescribed therein. As such, the Corvair had been imported by the Petitioner on such a *bona fide* belief, hence the Respondents were now estopped from taking a contrary stance and the impugned Decision disallowing the release thereof was an arbitrary and unreasonable exercise of discretion under paragraph 21 of the Import Policy Order 2020. It was pointed out that the Impugned Decision was not a speaking-order, as no reason had been assigned for refusing the release of the Corvair other than mere mention in the Summary (in paragraph 7 thereof) that "*If one such application is accepted, then similar other petitioners/applicants will approach the Ministry*". It was submitted that the impugned Decision thus offended Section 24-A of the General Clauses Act 1897, and that such a 'floodgates' argument could also not be invoked in the present case as the SRO had been rescinded since the time that the Petitioner had filed his Goods Declaration, hence the number of further cases, if at all, was likely to be negligible. Additionally, attention was

invited to the comments filed on behalf of the Ministry of Commerce, whereby additional justification was sought to be provided through the assertion that the impugned Decision had been "guided by economic and environmental considerations. On the economic policy side, Government cannot allow spending of FOREX on non-essential and ultra-luxury items like vintage cars, while on the environment protection side, the Government rejected the proposal because it could cause air pollution". It was argued that such contentions were completely fallacious as the Respondents had failed to consider that no prejudice or harm would be caused to the public exchequer as payment for the Corvair had already been made, which would go to waste if the same were not cleared/released under Paragraph 21 of the Import Policy Order 2020, and that the exchequer would in fact only be benefited by such clearance/release as the duty of USD 5,000/- would be realized in such an event. Furthermore, it was pointed out that while the Respondents were contending on the one hand that the Corvair could not be released on the aforementioned pretext, they were nonetheless seeking to pave the way for it to be brought into the country by a third party through process of an auction. She submitted that the conduct of the Respondents was *mala fide* and prayed that the Petition be allowed so as to set aside the impugned Decision and direct the Respondents to allow a one-time relaxation in prohibition or restriction of the import of the Corvair under paragraph 21 of the Import Policy Order 2020.

10. For his part, learned counsel for the Petitioner in the connected matter adopted the aforementioned submissions *in toto*, and prayed for release of the Mustang accordingly.

11. In the wake of such submissions, the learned DAG candidly conceded that the Summary and impugned Decision were defective for the reasons pointed out, and declined to defend the same.

12. However, learned counsel appearing for the Collectorate of Customs Appraisement (East), Karachi (the "**Collectorate**") sought to defend the impugned Decision, submitting that the clearance/release of the Subject Vehicles had been rightly refused. However, he conceded that if the Subject Vehicles were to be auctioned, the end result would be that they would be released/cleared in favour of the auction purchaser(s) for domestic use, and was at a loss to explain why release/clearance ought not to take place in favour of the Petitioners as a one-time measure.

13. We have considered the arguments advanced in light of the material on record.

14. Needless to say, for purpose of making a determination under the Import Policy Order in terms of the judgment in the Prior CPs, the Cabinet was required to exercise its discretion *bona fide*, ascribing valid reasons, and while attending to the matter before it upon considering all relevant factors and without being influenced by extraneous or irrelevant considerations. Indeed, a process or decision falling short of that, would be arbitrary or capricious, with it being well settled that a decision of a public authority/functionary that is bereft of reasons, or if made without considering relevant considerations or is based on irrelevant/extraneous considerations, does not satisfy the test of reasonableness.

15. If any authority is required in that regard, one need look no further than the judgments of the Honourable Supreme Court reported as Brig. Muhammad Bashir v. Abdul Karim and others PLD 2004 Supreme Court 271, Asadullah Mangi and others v. Pakistan International Airlines Corporation and others 2005 PLC (C.S) 771, In re: Corruption in Hajj Arrangements in 2010 PLD 2011 SC 963, and Secretary, Government of Punjab and others v. Khalid Hussain Hamdani and 2 others 2013 SCMR 817.

16. In the case of Brig. Muhammad Bashir (supra) it was stated that:

> "There is ample power vested in the High Court to issue directions to an executive authority when such an authority is not exercising its power bona fide for the purpose contemplated by the law or is influenced by extraneous and irrelevant considerations."

17. In the same vein, it was observed in Asadullah Mangi's matter as follows:

> "We are conscious of the fact, as it is a well-entrenched legal proposition that an action which is mala fide or colourable is not regarded as action in accordance with law. Similarly, action taken upon extraneous or irrelevant considerations is also not action in accordance with law. Therefore, action taken upon no ground at all or without proper application of the mind of an authority would also not qualify as an action in accordance with law and would, therefore, have to be struck down as being taken in an unlawful manner."

18. *In re: Corruption in Hajj Arrangements in 2010*, it was held that if the action or decision in question is perverse or is such that no reasonable body of persons, properly informed could come to, or is arrived at by misdirecting itself and adopting a wrong approach or is influenced by irrelevant or extraneous matters, the Court would be justified in interfering with the same.

19. In the case of Khalid Hussain Hamdani (supra), the Apex Court observed that

> 13. In the administrative law, the authority is vested with a certain amount of discretion and the said discretion has to be exercised by applying independent mind uninfluenced by irrelevant or extraneous considerations. In Messrs Gadoon Textil Mills v. WAPDA (1997 SCMR 641), this Court was called upon to comment on the ambit of the discretionary power vested in an administrative authority. While analyzing the opinion, this Court observed as follows:--
>
> *"42. To make exercise of discretionary power valid it is necessary that apart from being legal it is also reasonable. While conferring discretion on an authority the statute does not intend to arm such Authority with unfettered discretion which may be beyond the limits of reason, and comprehension of a man of ordinary intelligence. Wade in Administrative Law has traced the principles of reasonableness which according to him is firmly established at least from 16th century and has quoted Rooke's case (1598) 5 Co. Rep. 99b where the Commissioner of Sewers had levied charges for repairing a river bank on one adjacent owner instead of apportioning it among all the owners, who had benefited. Although the power to levy charge was there, it was disallowed as inequitable and unreasonable. Coke observed:--*
>
> *"....and notwithstanding the words of the commission give authority to the commissioners to do according to their discretions, yet their proceedings ought to be limited and bound with the rule of reason and law. For discretion is a science or understanding to discern between falsity and truth, between wrong and right, between shadows and abstance, between equity and colourable glosses and pretences, and not to do according to their wills and private affections;*

for as one saith, talis discretio discretionem confundit."

This view has prevailed throughout till the modern times.

43. In Brean v. Amalgamated Engineering Union (1971) 2 QB 175) Lord Denning MR. observed as follows:-

"The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this; the statutory body must be guided by relevant considerations and not by irrelevant. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith, nevertheless the decision will be set aside. That is established by Padfield v. Minister of Agriculture, Fisheries and Food which, is a landmark in modern administrative law."

20. The governing principles applied by the English Courts had been more broadly stated by Lord Green in the Court of Appeal, while considering the subject of the proper exercise of executive discretion in the case reported as Associated Provincial Picture Houses Limited v. Wednesbury Corporation [1947] 2 All ER 680, where it was observed that:

> "The exercise of such a discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found expressly or by implication matters which the authority exercising the discretion ought to have regard to, then in exercising the discretion it must have regard to those matters. Conversely, if the nature of the subject matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, the authority must disregard those irrelevant collateral matters.
>
> …
>
> It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use

> the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably." Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington L.J. in Short v. Poole Corporation [1926] Ch 66, 90, 91 gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another."

21. Whilst impugned Decision reflects no reason whatsoever for the refusal of one-time relaxation by the Cabinet and does not constitute a speaking-order, if one were to look beyond it to the Summary and read both those documents in juxtaposition with the majority judgment in the Prior CPs, it is manifest that even the Summary does not properly encapsulate the relevant considerations forming the essence of that judgment, as set out in Paragraph 3 thereof (reproduced herein above), which have thus been completely overlooked. On the contrary, the wording of the Summary is such as to skew the process of determination through incorporation of the 'floodgates' argument and raising the specter of multiple cases coming to the fore. Even if that point is regarded as a factor that was considered by the Cabinet, the premise is wholly misconceived in our view for the very reasons pointed out on behalf of the Petitioners and is an irrelevant consideration in light of the judgment in the Prior CPs.

22. Furthermore, even if one were for the sake of argument to look to the rationale sought to be imported though the comments of the Ministry of Commerce, the points advanced therein are also of no avail as the FOREX argument taken in the matter is patently misconceived, whereas the environmental argument too is clearly irrational in the given circumstances and is negated by the step taken by the collectorate for auction of the Subject Vehicles. It is only on that score that the Collectorate was added as a respondent, following the Order dated 19.10.2022 whereby the auction was stayed. That Order reads as under:

> "Learned counsel for the Petitioner has placed a copy of Notice No. FILE NO-N-012 AUG 2021 NLCCT dated 14.10.2022, issued by the Collectorate of Customs, Appraisement (East) NLCCT, Karachi to the Petitioner, copy whereof has been provided to learned DAG, which reflects that the vehicle that is the subject of these proceedings is to be put to auction unless it has been cleared through Customs within seven days. Learned counsel for the Petitioner further submits that the matter is sub judice before this Court and it is paradoxical that the Respondents are denying permission for import on the one hand while proposing to auction the vehicle on the other so as to enable its entry, hence the proposed action is unreasonable. Let notice be issued to the Collectorate of Customs, Appraisement (East) NLCCT, Karachi, for 02.11.2022 when the concerned Assistant Collector NLCCT should be in attendance. Till then no further steps are to be taken towards auction pursuant to the notice dated 14.10.2022. DAG shall also communicate this order to the Respondent No.2 to ensure compliance through the concerned officials. To come up on 02.11.2022."

To our minds, the attempt on the part of the department to conduct such an auction has cast a dark shadow over the entire episode, with such a proposed measure being in stark conflict with the refusal of one-time release/clearance.

23. As such, it is apparent the impugned Decision is unreasonable and cannot stand. Be that as it may, being cognizant of the scope of judicial review and that the contours of these proceedings are bounded by the course already set through the judgment in the Prior CPs, we would not go so far as to order clearance/release of the Subject Vehicles. That matter remains to be decided by the Cabinet in terms of the aforementioned judgment, notwithstanding the subsequent rescission of the SRO on 07.03.2022, in as much as the case for clearance/release of the Subject Vehicles by the Petitioners and the earlier determination on that score in the Prior CPs took place during its subsistence.

24. That being so, while setting aside the impugned Decision to the extent of the Subject Vehicles, we hereby remand the matter for decision afresh through a speaking order on the basis of a proper summary to be prepared by the Ministry and placed before the Cabinet within 10 days of the date of this Judgment, incorporating Paragraphs 3 and 5 of the Judgment in the Prior CPs, as well as paragraphs 22 and 23 above. The auction of the Subject Vehicles to remain in abeyance pending such determination. The Petitions stand allowed in such terms.

25. Before parting with the matter we would like to record our appreciation for the assistance received, particularly from learned Counsel for the Petitioner in CP No.D-7029/21, who argued the matter with great exactitude.

JUDGE

CHIEF JUSTICE

Karachi.
Dated: