(1984) 09 DEL CK 0037

In the Delhi High Court

Case No : Civil Writ Appeal No''s. 1041 and 1160 of 1984

Bottle Glass Pvt. Ltd. APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 28-09-1984

Acts Referred:

Citation : AIR 1985 Delhi 400 : (1986) 59 CompCas 750 : (1984) 2 ILR Delhi 809

Hon'ble Judges : Prakash Narain, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : J.K. Sibbal, R.C. Pathak, N.S. Mathur, M.S. Gujral and Madan Lokur, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) The challenge in this. and in the .connection writ petition No. 1160 of 1984. is to the cancellation of the fishing permits issued to the petitioner and to the decision of the respondents to invoke the Bank Guarantee which had been furnished by the petitioner.

(2) With a view to regulate the fishing, in the maritime zones of India by foreign vessels, the Parliament enacted "The Maritime Zones of India" (Regulation of Fishing by Foreign Vessels) Act, 1981 (hereinafter referred to as ''the said Act''). According to this Act, prohibition has been imposed on fishing in the territorial waters and in the waters included in the exclusive economic zones of India by foreign vessels except under .licenses on permits issued by the Central Government .Section 4 of the Maritime Act provides for grant of licenses to the owners of the foreign vessels by the Central Government ''to do fishing in the deep sea waters. Section 5 of the said Act provides for the grant of permission to Indian citizens for using foreign-vessels for fishing in the exclusive economic zone or the territorial waters of India subject to the conditions prescribed. Section 6 of the Act provides for cancellation or suspension of the license or permit, as the case may be, for violation of the conditions of such a license or

permit.

(3) u/s 25 of the said Act the Central Government has been authorised to frame rules to carry out the purposes of the same generally as also specifically on the terms ''and condition on which a license or a permit may be granted. These rules have been framed. The rules were notified in the Official Gazette of 26th August, 1982. These rules are called the Maritime Zone of India (Regulation -of Fishing by Foreign Vessels) Rules, 1982.

(4) The Government of India had invited offers from interesting entrepreneurs with a view to ensure early and proper exploitation of the fishing resources of the said exclusive economic zone. With this end in view, and as advanced technology for deep sea fishing was not available in India, the Government of India took measures to encourage deep sea fishing by Indian entrepreneurs by permitting them to charter foreign vessels or to import foreign vessels. Various incentives were offered to induce the Indian entrepreneurs so as to induce them to take to the fishing industry.

(5) According to the petitioner, the deep sea fishing can be done in Various ways and manners. The most standard method is stated to be of a deploying specialised vessels which are geared for the purpose of catching and storing fish on the high sea. Another sophisticated but ''a more economic method is to employ, instead of a single ship, pairs of identical vessels simultaneously. This method is also known as "pair trawling".

(6) In view of the incentives offered by the respondents, the petitioner-company applied on 9th March, 1981 and 28th July, 1981 seeking permission to charter five pairs of identical foreign vessels. The .said application was processed and on 15th January, 1982 a letter of intent was issued by respondent No. I to the petitioner. The petitioner was permitted to charter five pairs of fishing trawlers from M/s. Singapore Union Line Pvt. Limited, Singapore for a period of three years, renewable on satisfactory performance for another two years. According to this letter of intent, the petitioner was required to fulfill certain conditions. These included entering into suitable arrangement for chartering the proposed foreign vessels from their foreign owners. One of the conditions mentioned in the letter of intent was that the petitioner should make irrevocable arrangements for purchase of vessels as per schedule given under Condition No. 3 of Annexure I to the said letter of intent. The said Conditions 3 reads as follows:

"3.Charter will be permitted for a period of 3 years.. renewable on satisfactory performance for another 2 years. The maximum number of vessels that may be chartered by one applicant for one type of fishing will be limited to five. This restriction shall not be applicable to Public Sector Undertakings, State Fisheries Corporation and Fishermen Cooperative, Wherever pair trawling is involved, each pair will be treated as one vessel for determining the maximum number of vessels. There will be specific obligations on the part of Indian Charterer to purchase a stipulated number of vessels before the end of the specified period of time as per the following schedule:

No. of vessels No. of months from the beginning of charter operation permitted when obligatory purchase becomes due ____ First Second Third Fourth Fifth Vessel Vessel Vessel Vessel Vessel ________________ ____ One 24 Two 18 30 Three 12 24 33 Four 12 24 33 42 Five 12 24 33 42 51

Another relevant clause of this Annexure is Clause 4 which required the furnishing of a Bank guarantee and the said clause reads as under :

"4.The charterer will have to give before the commencement, a bank guarantee to the value- of Rs. 2 lakhs which would be invoked in the event of the charterer not making irrevocable arrangements for the purchase of the vessel(s) at the end of the prescribed time mentioned in the above schedule."

(7) The petitioner, on 24th February, 1982, entered into an agreement with M/s. Singapore Union Line Pvt. Ltd. chartering its trawlers. Thereafter on 5th June, 1982 the respondents granted to the petitioner permit to charter 5 pairs of trawlers from the said Singapore owners. One of the conditions which was reiterated in this permit was that the petitioner should place firm orders with 10 per cent of the cost of the vessels as deposit for the acquisition of vessels within the respective periods prescribed as mentioned in Condition No.. 3 extracted above. It was further stated that should the petitioner fail to fulfill this condition the Bank guarantee will be invoked immediately on the ''expiry of the prescribed period. It was also stated in the permit that the petitioner shall bs bound by such additional conditions or modifications as may be prescribed and will also be bound by the Rules which may be formulated under the Act. The petitioner was further required to commence fishing operations, within six months of the issue of the said permit.

(8) On the charter, agreement dated 24th February. 1982 being approved by respondent No. 1 the petitioner, in terms of the permit and as required by the respondents, furnished a bank guarantee for rupees two lacs. This bank guarantee could be invoked in case the petitioner failed to fulfill the condition of purchasing the vessels as provided in Condition No. 3 mentioned hereinabove. On 26th August, 1982 Maritime Rules were promulgated. Schedule Ii contained- the schedule of purchase of vessels. The said Schedule reads as follows :

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_________ No, of Vessels or No. of months from the beginning of charter operation Pair of Vessels when obligatory purchase and actual fishing operators permitted. become due ____ ____________________________ First Second Third Fourth Fifth Vessel Vessel Vessel Vessel Vessel or first or second or third or fourth or fifth pair of pair of pair of pair of pair of vessel vessel vessel vessel vessel ____

One 18 Two 18 30 Three 18 24 33 Four 18 24 33 42 Five 18 24 33 42 51 ______
____

This was followed by the Government formulating and releasing "Terms and Conditions for Charter of Foreign Fishing Vessels". These Terms and Conditions incorporated in it the aforesaid Schedule Ii to the said Rules which clearly indicated that reference to vessel meant a single vessel or a pair of vessels.

(9) It is not in dispute that prior to 15th June, 1983 the petitioner -was required to purchase i pair of trawlers as per the conditions of the permit. On 21st March, 1983 the petitioner filed an application with the respondents for permission to import a pair of trawlers which was more than five years old. Approval for the vessels which were sought to be imported was not granted by the Government of India. It was stated that the proposal of the petitioner was to import old vessels of more than 12 years and such proposal could not be considered by the Ministry. The petitioner was accordingly required to send a proposal for import of, deep sea fishing vessels of not more than 5 years old. The petitioner sent its reply dated 23rd May, 1983. It stated that the vessels which it proposed to import had been thoroughly rebuilt and would have been suitable. However, as the said vessels were not acceptable, the petitioner represented that it had now to search for .vessels which were not more than 5 years old. As this would take time the petitioner requested that it may he allowed to submit fresh proposal by .15th June. 1983.

(10) On 19th June, 1983 the petitioner filed a second application for permission to import a pair of trawlers, namely, Chilung No. 1 and Jeo Chuan No. 1 costing about rupees thirty lacs. Apparently, not being aware of the said application having ben filed, the respondents sent a show cause notice dated 28th June, 1983 to the petitioner. It was stated therein that fresh proposal for purchase of vessels not more than 5 years old had "not been received so far". The petitioner was asked to explain as to why the bank guarantee should not be invoked as it had failed to submit the proposal for acquisition of vessels within the stipulated date i.e. by 15th June, 1983. Vide its letter dated 1st July, 1983, the petitioner sent a reply to the aforesaid show cause notice. The petitioner explained the causes for the delay in submitting its proposal. It was further stated that fresh proposal had already been submitted on 19th June, 1983. A duplicate set was also submitted on 30th June, 1983. In the said letter it was also mentioned that the vessels which had been chartered by the petitioner had been apprehended by the Western Region Coast Guard and had been detained indefinitely and this had caused enormous hardship to the foreign credit as well as irreparable monetary loss. While giving this as an excuse for the late submission of the proposal, the petitioner also requested, the Government of India to intervene and have the detained vessels released from the Coast Guard.

(11) In response to the fresh proposals received from the petitioner, the respondents wrote a letter dated 2nd August, 1983. In this letter reference was made to the petitioner''s letters dated 19th June and 1st July, 1983 and it was

stated that the petitioner''s proposals for acquisition of second-hand vessels were being examined. The petitioner was, however, advised that it may .try for outright purchase of vessels rather than obtaining it on deferred payment basis. Petitioner''s attention was also drawn to the fact that the bank guarantee in respect of the first pair of chartered vessel would expire on 31st August, 1983. The petitioner was requested that the validity of the bank guarantee may be extended up to 31st August, 1984.

(12) The petitioner, in response to the aforesaid letter dated 2nd August, 1983, did furnish a fresh bank guarantee. The petitioner, however, did not receive any reply from respondent No. 1 to its proposal dated 19th June, 1983 for purchase of a pair of vessels. On 7th December, 1983 the Government of India finalised and announced policy guidelines for allowing import of used trawlers. One the clauses of the guidelines provided that there would be pari pass obligation for construction of indigenous vessel by the importer at the ratio of 1: 1 i.e. for every used vessel to be imported, the importer should simultaneously place a firm order backed by suitable financial commitment to be prescribed, for building an indigenous vessel with one of the approved Indian shipyard. It was further stated that the import would be allowed only after satisfaction of fulfillment of the said conditions for placement of the firm order with indigenous yard.

(13) The Fishing Vessels Acquisition Committee set-up by the Government of India held a meeting on 13th December, 1983. It, inter alia, considered the proposal for import of two second-hand vessels by the petitioner. While, the Committee felt that the price of the imported vessel of rupees thirty lacs per vessel was reasonable, it, however, observed that as per the policy on the import of second-hand vessels the petitioner may be permitted to import only one second-hand vessel if it simultaneously place an order for indigenous construction of another deep sea fishing vessel. The petitioner was not aware of what had transpired at this meeting. Not having received a reply to its proposal dated 19th June, 1983, .the petitioner wrote another letter dated 14th December, 1983 to the respondents. It was stated therein that due to the passage of time the Validity of the agreement between the petitioner and M/s. Singapore Union Line Pvt. Ltd. had expired''. The petitioner then gave a proposal to purchase newly built trawlers being supplied by M/s. Australian Ship Building Industries (W.A.) Private Limited, Australia.

(14) It appears that no note was taken of the petitioner''s aforesaid letter dated 14th December, 1983. Presumably basing themselves on the minutes of the meeting dated 13th December, 1983, the petitioner received a letter dated 4th January, 1984 from the Government of India. In the said letter approval of the Government of India was conveyed for the acquisition of one second-hand vessel from M/s. Singapore Union Line Pvt. Ltd., namely, Chilung-I. It was further stated that this letter of intent was subject to the condition that with the acquisition of one second-hand imported vessel, the petitioner shall place order simultaneously with the Indian Shipyard for construction of one deep sea fishing

vessel by depositing 10 per cont of the cost of the vessel within four weeks of the date of the issue of the said letter.

(15) The petitioner, in response to the aforesaid letter dated 4th January, 1984, then wrote a letter dated 28th January, 1984. The respondent was informed that M/s. Singapore Union Line Pvt. Ltd. had offered to sell to the petitioner a pair of second hand fishing trawlers and the foreign party was unwilling to sell only one second-hand trawler. It was, inter alia, stated that the petitioner was willing to consider the purchase of one second-hand trawler from Indian Ship Yard but it requested that this condition may be enforced at the time when it bad to buy the second pair of trawlers scheduled after 24 months of the charter operations and not at the initial stages.. In this connection it was contended by the petitioner that it was impossible to locate and have a competitive buy from an Indian Shipyard in a hurry without a competitive study of any proven designs or any reliable data of practical performances. It also requested that permission be granted for a joint venture collaboration between the petitioner and the Singapore Party.

(16) The petitioner then wrote a letter dated 14th February. 1984 to the Commissioner, Fisheries Department, Ministry of Agricultural, New Delhi. Reference was made, in this letter, to the meeting held by the petitioner''s representative with the officers of the Ministry of Agricultural on 7th February, 1984. It was then said in the letter that "in the light of the discussions held in the conference, we hereby agree to the Ministry''s suggestion for purchase of one pair (2 numbers) of imported trawlers as well as a pair of indigenous trawlers, when it falls due, towards our Company''s purchase obligation". On 24th March, 1984 two actions were takes by the respondents which are impugned in this petition. Firstly, an order No. 300181 7/83-Fy (T1), dated 24th March, 1984 was issued by the respondents whereby the permits of the petitioner dated 5th June, 1982, 9th December, 1982 and 24th December, 1982 in respect of the two chartered vessels, namely, Chien Shang No. 1 and Chien Shang No. 3, were cancelled. This order was purported to be passed u/s 6(2) of the said Act. The reason for passing this order was that the petitioner was required to make irrevocable arrangement for purchasing one pair of vessels on br before 15th June, 1982 and the petitioner had failed to make such arrangement thereby the terms and conditions of the permit allowing chartering of the foreign vessels had been contravened by the petitioner.

(17) The second action which was taken by the respondents was that on 24th March, 1984 it wrote to the Manager, State Bank of India, Nirman Bhawan, New Delhi seeking to invoke bank guarantee of rupees two lacs which had been furnished -by the petitioner. In the said letter it was stated that according to the terms and conditions of the letter of intent the petitioner had given a bank guarantee of rupees two lacs undertaking to fulfill the stipulation of making irrevocable arrangements for the purchase of fishing vessels at the end of 12 months from the beginning of the charter operations. This bank guarantee issued

on 7th April, 1982 had been extended up to 30th November, 1984. It was further stated that the petitioner had started the charter operations on 15th June, 1982 and, Therefore, had to make the aforesaid irrevocable arrangements for acquisition of the first pair of vessels before 14th June, 1983. According to the respondents, "The Government has not so far taken any steps to make irrevocable arrangement? for the acquisition of a vessel as per the terms of the letter of intent. Thus, M, Bottle Glass (P) Ltd. has violated the said condition of-making irrevocable arrangements for purchase of fishing vessels at the end of 12 months of the charter operations". For the aforesaid reasons the respondents invoked the bank guarantee and required the State Bank of India to remit to the Government of India the aforesaid sum of two lacs rupees.

(18) The petitioner thereafter filed the present writ petition. On 18th April, 1984 the operation of the aforesaid impugned order and letter dated 24th March, 1984 was stayed.

(19) Reference may now be made to some of the events which occurred after the admission of the'' writ petition and which have bearing on the present case.

(20) As would be evident from the facts narrated herein-above, the representation of the petitioner dated 28th January, 1984, for permission to import a pair of trawlers, was still pending before the Government. The petitioner received a letter dated 18th April, 1984 from the respondents wherein reference was made to the petitioner''s letter dated 19th June, 1983 and representation dated 28th January, 1984. After referring to the said letters, the petitioner was informed that the Government intended to allow the acquisition of two second-hand vessels by the petitioner from M/s. Singapore Union Line Private Limited. The names of the vessels which were permitted to be imported were Chilung No. 1 and Jeo Oman No. 1 One of the conditions of this letter of intent was that with the acquisition of the aforesaid two second-hand imported vessels, the petitioner shall place order simultaneously with the Indian Shipyard for the construction of two similar deep sea fishing vessels by depositing 5 per cent of the cost of vessels within 3 weeks from the date of receipt of the letter.

(21) In the return which has been filed on behalf of the respondents, it is stated that after interim orders were obtained, the respondents were intimated by the Coast Guard that the two of the fishing vessels chartered by the petitioner, including the pair for which an ex parte slay had been obtained, had fled from the territorial waters without obtaining customs clearance from the Port of Operation. It is alleged that the respondents have suffered heavily by a loss of large amount of foreign exchange because the said vessels did not declare the catch to the Customs Authorities. With regard to the question as to whether joint venture operations should be allowed to the petitioner or not, it is stated in the return that the said question is within the purview of the Ministry of Industry. It may here be noted that the learned counsel for the petitioner contended that the petitioner''s application for approval of the joint venture is pending before the Ministry of Industry and, Therefore, the petitioner is not pressing this plea of

promissory estoppel and it reserves the right to raise this plea later on, if necessary.

(22) On the merits of the case, the respondents have not denied the correspondence which has been exchanged between the parties. It is contended by at the respondents that since the petitioner had not come up with an irrevocable arrangement for the acquisition of one pair of fishing vessels, the respondents could cancel the permit of the petitioner and or could have invoked the bank guarantee. It is admitted by the respondents that no formal show cause notice was issued prior to the passing of the order dated 24th March, 1984 under Rule 8-C and Section 6 of the Act cancelling the permit of the petitioner. The justification for not giving any formal show cause notice was that no steps had been taken by the petitioner to fulfill its obligation of purchasing the first set of vessels. With regard to the enforcement of the bank guarantee, the main submission of the respondents in the return was that they were only enforcing the contractual rights and-if the petitioner had a grievance it could raise it in appropriate proceedings and not by way of a petition under Article 226 of the Constitution.

(23) The petitioner, in the rejoinder field by it. denied that it was responsible for the vessels not declaring the catch of fish to the Customs Authorities and for their not obtaining clearance. According to the petitioner the said vessels were illegally detained with the help of Customs and Coast Guard Authorities at Okha. It is further stated that the owners of the vessels have lodged a claim for damages of U.S. Dollars 16,000 for each of the two vessels on account of its illegal detention. It is further contended that the foreign vessel owners unilaterally decided to withdraw from the fishing operations and their absconding from high seas has also resulted in loss to the Indian parties. On merits of the case;, the petitioner reiterated the submissions made in the writ petition.

(24) The learned counsel for the petitioner strenuously contended that the order dated 24th March, 1984 is clearly illegal because no show cause notice was issued prior to the cancellation of the permit. It is not disputed, and in fact Shri Gujral conceded, that prior to the issuance of the order dated 24th March, 1984 no show cause notice had been issued to the petitioner. Shri Gujral, however, contended that as the vessels had already fled, no useful purpose would be served in quashing the said order.

(25) In our opinion, there can be no doubt that the order cancelling the permit was bad in law. Section 6(2) of the said Act gives power to the Central Government, inter alia, to cancel a permit or a license after making such enquiry as it considers necessary. When a permit has been given to a party, like in the present case, certain rights and benefits accrue in his favor. The cancellation of a permit is certainly to his detriment. It is now well established that no decision or order to the detriment of a party will be taken by the Government without complying with the principles of natural justice. Section 6(2) requires the Central Government to be satisfied after making such enquiry as it thinks necessary that

the permit should be cancelled. Such satisfaction, in our opinion. cannot be arrived at without affording an opportunity to the affected party to be heard. Any ex parte decision taken whereby the permit or license is cancelled would cause civil consequences to the permit holder. Before any action is taken, Therefore, it was necessary for the respondents to have issued a show cause notice to the petitioner. This not having been done, the impugned order has been passed in violation of the principles of natural justice and also contravenes the provisions of Section 6(2) of the said Act.

(26) It is true that the vessels which had been chartered have left the high seas. That to our mind, would be no ground for refusing the relief asked for by the petitioner. If the order dated 24th March, 1984 is quashed, the effect would be that the permit of the petitioner stands revised. Whether the petitioner is able to utilise the permit or not is a different question. At the time of hearing it was submitted by the learned counsel for the petitioner that if the impugned order is quashed the petitioner would be in a position to exploit the said permit. The allegations of the. respondents that the vessels had fled without obtaining the requisite permission from the Customs Authorities is also irrelevant for the purposes of the present case. If there has been any breach of the Rules and Regulations by the foreign vessels then the Customs Authorities may be within their rights to take action against them in accordance with law. Any wrong allegedly done by the foreign vessels owners cannot prejudice the claim of the petitioner. On the facts as alleged in the petition, we are satisfied that the petitioner does not appear to be responsible for the said vessels fleeing the territorial waters of India. In fact the grievance of the petitioner is that by the said vessels leaving the country, the petitioner has not received its share of the catch and it is the petitioner which has suffered loss. The impugned order, Therefore, being clearly illegal, has to be struck down.

(27) The next challenge was to the action of the respondents in seeking to invoke the Bank Guarantee for rupees two lacs which had been furnished by the petitioner-Company. It is by letter dated 24th March, 1984 that the respondents called upon the Manager, State Bank of India. New Delhi to pay a sum of rupees two lacs to the respondents. In the said letter it was stated that the petitioner had failed to fulfill the stipulation of making arrangements for the purchase of fishing vessels at the end of 12 months from the beginning of charter operations.

(28) The bank guarantee was originally furnished on 23rd February. 1982. It, inter alia, provided that a sum of rupees two lacs will be payable if the petitioner failed in fulfillling the stipulation of making in evocable arrangements for purchase of fishing vessels at the end of-12 months from the beginning of the charter operations: The bank guarantee was valid up to 30th June, 1983. The period of 12 months, during which the irrevocable arrangement for purchase of fishing vessels had to be made, came to an end on 15th June, 1983. Admittedly no such arrangements had been made. A proposal had been furnished on 19th June, 1983 for the purchase of fishing vessels. It may be -reiterated that the

earlier proposal for such a purchase which was made on 21st March, 1983 had been disapproved by the respondents by their letter dated 26th April, 1983. As the proposal dated 19th June, 1983 was under consideration, on 2nd August 1983 respondent No. 1 asked the petitioner to extend the validity of the bank guarantee by another 12 months. By letter dated 28th June, 1983 the bank had already extended the bank guarantee up to 30th June, 1984.

(29) While extending the bank guarantee up to 30th June, 1984, there was no change made in the terms of the bank guarantee. The result was that the bank guarantee which was in operation continued to provide for the petitioner to make irrevocable, arrangements for the purchase of fishing vessels by 15th June, 1983. After 15th June, 1983 the question of the petitioner placing an order for the purchase of fishing vessels within 12 months of the start of charter operations could not arise. The default, if any, had already taken place by 15th June, 1983. The respondents, however, did not choose to call upon the bank to pay the amount of rupees two lacs in terms of the bank guarantee dated 23rd February, 1982. On the contrary, the respondents asked, on 2nd August, 1983, for the extension of the bank guarantee. In order that there could be an effective bank guarantee it was necessary that the terms and conditions of the bank guarantee should have been altered. The extension however, was on the same terms and conditions, the essential term being that if irrevocable arrangement for purchase of fishing vessels had not been made by 15th June, 1:983, then the bank could be called upon to pay rupees two lacs to the respondents. The extension of the bank guarantee with any change of date of 15th June, 1983 was meaningless. In order that there should be a valid bank guarantee after 15th June, 1983, another date within which the arrangement had to be made for the purchase of fishing vessels ought to have been prescribed. This was not done. After 15th June, 1983 the terms of the bank guarantee, namely, that arrangement for purchase had to be made by 15th June, 1983, were incapable of being performed by the petitioner and, Therefore, the issuance of a bank guarantee containing such a term was meaningless and void.

(30) In any case, the decision of the respondents to make a demand on the bank to pay the amount of rupees, two lacs has to be quashed as being arbitrary. While relying upon the decisions of the Supreme Court in the cases of State of Punjab and Others Vs. Ajudhia Nath and Another, and United Commercial Bank Vs. Bank of India and Others, , it was contended by the learned counsel for the respondents that this Court ought not to prevent the respondents from invoking the bank guarantee. It was contended by Shri Gujral that the bank guarantee was a contract between the bank and the respondents and on a valid demand being made in terms of the bank guarantee the Bank was obliged to make the payment and such an obligation ought not to be interfered with by the Court.

(31) There can be little doubt about the proposition that when the bank issues a bank guarantee it accepts an obligation to make payment to the promising terms of the bank guarantee. It is also true that the Courts would not interfere with the

enforcement of the bank guarantee if the demand is made in terms thereof. The challenge in the present case is to the action of the Government requiring the bank to pay the amount of rupees two lacs. In our opinion, when the Government obtains a bank guarantee when it is entering into commercial transaction with another party, then the principles laid down in the aforesaid decisions of the Supreme Court can be invoked and the Court would be hesitant in staying the operation of the bank guarantee. In the case like the present, however, the bank guarantee was demanded by the respondents not as a part of a commercial transaction but in exercise of its statutory or executive power as a Government. If bank guarantee has been furnished by a party on its being required to do so by the Government, exercising its statutory or executive power, then the Court can examine the action of the Government when it seeks to invoke the bank guarantee. A Government is required to act fairly and judiciously. Any action of the Government which is regarded as arbitrary is per-se vocative of Article 14 of the Constitution. If it can be shown, Therefore, that the decision of the Government to invoke the bank guarantee is arbitrary or mala fide then the decision can be challenged.

(32) In the present case, there was no doubt that a default was committed when irrevocable arrangement for purchase of fishing vessels had not been made by the petitioner on 15th June, 1983. This default was, however, condoned by the respondents. On 19th June, 1983 the petitioner had submitted a second application for permission to import a pair of trawlers. If the default already committed had not been condoned the respondents would not have written to the petitioner on 2nd August, 1983 that its proposal was under consideration and that the bank guarantee should be extended. Ultimately, on 18th April, 1984, the respondents did permit the petitioner to import a pair of trawlers which it had applied for on 19th June, 1983. The earlier default of the petitioner, .therefore, stood completely waived and the respondents must be regarded as having abandoned their right to demand the payment of rupees two lacs. On the day when the said demand was made on the bank, namely, on 24th March, 1984. the application of the petitioner for the import of a pair of trawlers, which was filed-on 19th June, 1983, was already pending. The said application was in fact allowed on 18-4-1984. As the respondents had entertained the application dated 19th June, 1983 and had not disposed of the same, it could not on 24th March, 1984 come to the conclusion that there was a default committed by the petitioner. The action of the respondent in asking the bank to pay a sum of rupees two lacs was clearly arbitrary. On this ground also, Therefore, the demand made on the bank by the respondent has to be quashed.

(33) Before parting, we may notice that the petitioner has raised, in the writ petition, a plea that in the present case the principles of promissory estoppel apply and its application for the sanctioning of the joint-venture with foreign collaboration cannot be rejected. Shri Sibal stated that he was not pressing this. plea at the present juncture as his request for joint-venture with foreign collaboration was pending with the Ministry of Industries. This petitioner,

Therefore, reserves its right to raise this plea at a later date, if the need so arises.

(34) FOR. the aforesaid reasons the writ petition is allowed and the impugned order dated 24th March, 1984 cancelling the permit of the petitioner and the letter dated 24th March, 1984 seeking to invoke the bank guarantee arc quashed. The petitioner will be entitled to costs. Counsel''s fee Rs. 500.

