

(1996) 09 BOM CK 0036
In the Bombay High Court
Case No : Writ Petition No. 347 of 1996

Minhas Steels Ltd. and another	Vs	APPELLANT
Punjab and Sind Bank and others		RESPONDENT

Date of Decision : 21-09-1996

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226
State Financial Corporations Act, 1951 — Section 29, 3

Citation : (1997) 4 ALLMR 350 : (1997) 3 BomCR 522 : (1998) 94 CompCas 21 : (1997) 2 MhLj 480

Hon'ble Judges : A.P. Shah, J

Bench : Single Bench

Judgement

A.P. Shah J.

1. By this petition under article 226 of the Constitution, the petitioners are seeking a writ of mandamus directing the Punjab and Sind Bank, respondent No. 1 to withdraw its letters dated October 20, 1995, and January 6, 1996, and to release the working capital of Rs. 2.05 crores in phases in favour of petitioner No. 1-company. The factual antecedents in which the controversy leading to this petition has arisen may be stated first. The first petitioner is a company incorporated under the Companies Act, 1956, and the second petitioner is the managing director of the company. Petitioner No. 1 was initially incorporated as a private limited company and was converted into a public limited company on April 21, 1992. The company is established to manufacture ingots and alloy steels. The project of petitioner No. 1 was initially appraised by the Maharashtra State Financial Corporation (MSFC), respondent No. 2, and accepted by the Canara Bank, wherein term loan was to be granted by respondent No. 2 and the working capital for the project was to be granted by the Canara Bank. Accordingly, respondent No. 2 released the term loan to the extent of Rs. 42.87 lakhs. As regards the working capital, the Canara Bank though initially agreed to grant working capital, later on withdrew from the project. Thereafter, the petitioners approached respondent No. 1, the Punjab and Sind Bank, and

requested for grant of working capital by letter dated August 9, 1988. It seems that although some correspondence was exchanged between the parties, finally by its letter dated May 20, 1991, respondent No. 1 conveyed its inability to grant the working capital as there was complete ceiling on advances at that time.

2. Some time in 1992, in view of the liberalised economy and decontrol of the steel industry, at the request of petitioner No. 1, respondent No. 1 again took up the case of petitioner No. 1 for considering the grant of working capital. A fresh project report was submitted by petitioner No. 1 on September 15, 1992, which included expansion/modernisation of the project by increasing the capacity of production from 3,000 tonnes to 30,000 tonnes per annum. The proposal was appraised by the officers of respondent No. 1 and a report was submitted to respondent No. 1 that the project is viable. Some time in December, 1992, petitioner No. 1 proposed a public issue in view of the favourable appraisal of its project by respondent No. 1. Respondent No. 1 agreed to be a lead-manager to the public issue. Thereafter, at the instance of respondent No. 1, PNB Capital Services Ltd., a wholly owned subsidiary of the Punjab National Bank, was engaged as second lead-manager to the said public issue.

3. At this stage, it will be useful to refer to certain letters exchanged between the petitioners and the bank which have got a material bearing on the issues raised in the present petition. We have noted that the project of the petitioners was approved by the officers of respondent No. 1 and recommendation was made to sanction the working capital. By a letter dated January 14, 1993, respondent No. 1 bank wrote to the managing director of petitioner No. 1 that he has not given the property papers to be taken as additional collateral security in spite of a number of verbal requests. The managing director was asked to do the needful as early as possible so that the proposal can be finalised for submission to the higher authorities. The managing director of petitioner No. 1 company however, by his reply letter dated January 15, 1993, stated that the company is ready to give a personal guarantee of the directors and a second charge of fixed mortgaged assets as per the norms prescribed.

4. By letter dated April 2, 1993, respondent No. 1 agreed in principle for sanction of working capital facility up to Rs. 2.05 crores subject to various conditions. One of the conditions was that the company complies with all the terms and conditions as required by the branch manager and the regional and zonal managers. It is also made clear that "in principle sanction" is subject to complete appraisal of the case by the head office to the entire satisfaction of and sanction of the competent authority and subject to availability of funds at the time of sanction. It transpires that the managing director by his letter dated April 6, 1993, agreed to comply with all other conditions as per letter of the bank dated April 2, 1993, but as regards the condition relating to furnishing collateral security he submitted that there is no need to provide such collateral security when personal guarantees of the directors are given and MSFC is also ready to accede to the second charge.

5. It seems that respondent No. 1-bank by letter dated August 4, 1993, again pressed for additional security as according to the bank the security of second charge on the company's fixed assets was inadequate. It was stated that the directors of the company are holding sufficient properties in their name and the same be offered as security. On August 8, 1993, a letter was written by the bank to the managing director to the same effect stating that the company must offer additional security of the bungalow or some other property. However, the managing director of petitioner No. 1-company maintained that such additional collateral security is not required to be given as the bank is sufficiently protected by the charge on movables and the second charge on the fixed assets as well as the personal guarantees of directors.

6. Finally, by a letter dated December 30, 1994, the bank informed the company that as the company has failed to comply with the requisition under letters dated August 4, 1993, and August 25, 1993, i.e., furnishing of additional security, the "in-principle sanction" by the head office of the bank stands withdrawn. The managing director of petitioner No. 1 company immediately replied by letter dated January 3, 1995. He categorically agreed to comply with all the conditions. It is worthwhile to reproduce the relevant portion of the said letter :

"We reiterate that we will submit each and every paper before the final sanction of working capital as per the terms of original principle consent given to us by the P.S.B. Juhu Branch on April 2, 1993, pending that the principle sanction said to be elapsed, may please be revalidated in order to ensure the successful floatation of our proposed public issue.

We further assure that we will try every alternate to tie up W.C. at appropriate time in case the bank so desire."

7. It is averred by the petitioners in the petition that immediately thereafter petitioner No. 2 had issued another letter dated January 9, 1995, wherein it was stated that the earlier letter of January 3, 1995, was taken by misrepresentation and fraud and, therefore, it should not be used against the petitioners. It is required to be stated that a serious dispute has been raised by the bank about the authenticity of this letter. According to the bank this letter was not received by them at all. I shall discuss this aspect later but for the present to continue with the narration of facts it may be stated that in view of the assurance given by the managing director's letter of January 3, 1996, the bank by its letter dated January 12, 1995, revoked its decision to withdraw "in-principle sanction" and allowed revalidation of the said sanction.

8. It is required to be noted that the public issue taken out by petitioner No. 1 was fully subscribed. The company raised Rs. 505 lakhs by share capital through the public issue. As per the prospectus the entire project was to cost Rs. 864.06 lakhs, out of which the equity to be brought by the promoters was Rs. 218.51 lakhs, Rs. 520 lakhs were raised by public issue and the balance of Rs. 125.55 lakhs was to be provided by respondent No. 2. After the public issue, again there

arose disputes between the petitioners and the bank mainly on the issue of furnishing collateral security. The bank refused to release the working capital without the furnishing of a collateral security as per its earlier letters. The bank also complained that the CMA data and the other relevant papers as per the RBI guidelines were not received by the bank in spite of the categorical assurance given by the company. In reply the company wrote to the bank that it is deliberately protracting the matter and is trying to back out from its commitment to the project.

9. On July 4, 1995, the petitioners lodged a complaint with the Banking Ombudsman under the Banking Ombudsman Scheme, 1995. By an order dated September 12, 1995, the Banking Ombudsman rejected the complaint under rule 21 of the Scheme, inter alia, on the ground that the petitioners have not complied with the conditions precedent suggested by the bank. The Banking Ombudsman, however, criticised the bank for not taking a final decision in the matter and keeping the same lingering for unduly long time. Thereafter, the bank by issuing the impugned letters dated October 20, 1995, and January 6, 1996, revoked the in-principle sanction granted to the petitioners. This action of the bank is now sought to be challenged in this petition under article 226 of the Constitution of India.

10. Mr. Deodhar, learned counsel for the petitioners, strenuously contended that a nationalised bank is an instrumentality of the State and it must function honestly to serve its customers. If the bank has entered into a solemn contract in discharge and performance of its statutory duty and the petitioners have acted upon it, the bank cannot be allowed to act arbitrarily so as to cause harm and injury, flowing from its unreasonable conduct to the petitioners. Mr. Deodhar urged that the refusal of the bank to release the working capital to the petitioners is totally arbitrary and unreasonable, causing infringement of the petitioner's fundamental right under article 14 of the Constitution. The project was appraised by respondent No. 1-bank itself and the bank has found the project to be economical, viable and creditworthy, and the promoter director though not obliged to do so has agreed to give personal guarantee in addition to the second charge on the fixed assets of the company. Under these circumstances, the bank cannot refuse to release the working capital for want of collateral security which is neither contemplated by the Reserve Bank of India nor by respondent No. 1-bank itself. On the other hand, such insistence on collateral security is contrary to the circular issued by the Reserve Bank of India and established banking practice. Respondent No. 1-bank being a merchant banker to the public issue, after being satisfied about the viability and creditworthiness of the project, had prepared the prospectus, issued due diligence certificate and filed the prospectus with the SEBI. As desired by the bank, the petitioners have brought in their equity amount of Rs. 218.51 lakhs and the public issue was fully subscribed. Under these circumstances, the bank has no right to arbitrarily deny the working capital to the petitioners on false and imaginary grounds. Mr. Deodhar urged that respondent No. 1-bank is a business

and service-oriented nationalised organisation and is supposed to act in a fair, just and reasonable manner and not in an arbitrary and whimsical manner. Mr. Deodhar brought to my notice that the bank had never complained about the alleged non-supply of CMA data at any time before the public issue to which respondent No. 1-bank itself had acted as lead managers, was fully subscribed. Mr. Deodhar also made a serious grievance about the discriminatory attitude of the bank in giving a favoured treatment to certain other companies by sanctioning working capital without insisting on collateral security. Mr. Deodhar drew my attention to at least three cases where the bank has sanctioned working capital without collateral security. Lastly, Mr. Deodhar contended that acting on the solemn assurances given by the bank, the petitioners proceeded with their project. The company has raised Rs. 505 lakhs by share capital through the public issue, the promoters have brought in their contribution of Rs. 218.51 lakhs, respondent No. 2, MSFC, has already granted and rescheduled the term loan as stated in the prospectus. Since all the parties have acted on the assurance of respondent No. 1-bank, the principle of promissory estoppel would certainly estop the bank from backing out from the solemn promise made to the petitioners. Counsel contended that in such a situation the court is not powerless from holding the bank to its promise and it can be enforced by a writ of mandamus directing it to perform its statutory duties.

11. Mr. Tulzapurkar, learned counsel for respondent No. 1-bank, strongly refuted the charge that refusal to release the working capital was arbitrary and unreasonable. Mr. Tulzapurkar submitted that the bank had valid reasons for insisting on adequate security considering the overall assessment of the project. It was found by the bank that the second charge of fixed assets of the company was not adequate security and, therefore, it was decided to ask for collateral security of the properties of the promoters. The bank deals with public funds and has to take adequate safeguards to secure the advance in public interest. The petitioners were, therefore, duty-bound to satisfy the bank about commercial and economic viability of the project and if the bank had bona fide come to the conclusion that for such a project adequate was necessary in order to protect the interest of the bank, no fault can be found with the decision of the bank to revoke the in-principle sanction. Counsel also drew the attention of the court to the fact that the Canara Bank had already filed a suit against petitioner No. 1-company for recovery of money. It was also pointed out that in an affidavit filed in the court by petitioner No. 2, he stated that he had no assets and that he is an indigent person. It is, therefore, submitted that the bank is fully justified in insisting on additional security. Learned counsel contended that the decision of the bank not to release the working capital without adequate security was a discretionary decision of the bank which cannot be interfered with in writ jurisdiction under article 226. Learned counsel also vehemently denied the charge that the bank had given favourable treatment to certain other borrowers. He pointed out that in the cases of the other projects referred to in the writ petition, respondent No. 1-bank was fully satisfied about the viability of the

project as well as the sufficiency of the security. Therefore, the question of violation of article 14 does not arise. Counsel also pointed out that the conditions relating to additional security was pressed by the bank right from the beginning. In fact the petitioners by their letter dated January 3, 1995, had agreed to comply with the terms and conditions and it was only due to this assurance that the bank revalidated the "in-principle sanction". However, the petitioners failed to furnish the additional security despite the fact that sufficient time and opportunity was given to them for furnishing such security, and, therefore, the bank was constrained to withdraw the in-principle sanction. Counsel also pointed out that the Banking Ombudsman has come to the conclusion that the petitioners have failed to comply with the conditions precedent laid down by the bank. The Banking Ombudsman is an experienced person having high standing in legal, banking and financial matters. Once the petitioners had approached the Banking Ombudsman under the Scheme and had failed to obtain any relief, even after being given full opportunities, it is not open to the petitioners to approach this court under article 226. As regards the argument of Mr. Deodhar based upon promissory estoppel, Mr. Tulzapurkar submitted that the promise given by the bank was conditional subject to compliance with the requirements mentioned by the bank in its letters issued from time to time. If the conditions laid down by the bank are not complied with, then there is no question of application of the doctrine of promissory estoppel.

12. Mr. Bharucha for respondent No. 2, MSFC, submitted that respondent No. 1-bank has given a solemn undertaking to the petitioners and to respondent No. 2 that it will sanction the working capital facility of Rs. 2.05 crore to the petitioners. Based on the said undertaking, respondent No. 2 has rescheduled the loans which had been granted to the petitioners. It is pointed out that the petitioners had committed defaults in the payment of the loan given by respondent No. 2. Respondent No. 2, therefore, had issued a notice u/s 29 of the State Financial Corporations Act, 1951. However, the petitioners approached respondent No. 2 with a request to withdraw the notice u/s 29 since respondent No. 1-bank had done the appraisal for the public issue and approved the viability of expansion programme. It is only in the light of the promise given by respondent No. 1 to sanction the working capital, that the corporation permitted petitioner No. 1-company to pay the overdue interest calculated up to September 30, 1995, by installment from January, 1996. The corporation also allowed additional moratorium for payment of the principal amount by eight years. Mr. Bharucha, therefore, urged that it is necessary to issue appropriate directions to the bank to release the working capital.

13. Before examining the rival contentions it is necessary to bear in mind the limits of the writ jurisdiction under article 226, particularly, in the context of the contractual powers of the financial institutions and banks. It cannot be gainsaid that respondent No. 1-bank is essentially a business establishment that safeguards public money and uses it for advancing loans to people. Whether in a particular case loan should or should not be advanced, or to what extent such

loan should be granted and how such loan should be secured are essentially matters within the discretion of the bank and it is not possible for the court to determine such question because such determination would require examination of various facets involving financial implications. Apart from the fact that the court is hardly equipped to do so, it would not be desirable either. Where the decision of the bank is mala fide or arbitrary, the court would certainly interfere. But it is not the function of the court to act as a super board or an appellate authority substituting its judgment for that of the bank. It is necessary for the courts to leave some discretion in favour of the bank or other financial institutions in taking decisions which are essentially commercial decisions based on intricate financial considerations. The court should be extremely slow in forcing banks and other financial institutions to advance public funds to private parties. The discretion exercised by them is not to be lightly interfered with unless such exercise of discretion is made with an oblique motive or for extraneous purposes. In this behalf, it will be useful to make a reference to certain decisions of the Supreme Court. In *Chingleput Bottlers Vs. Majestic Bottling Company*, , the Supreme Court held that where the statute vests a discretionary power upon an administrative authority, the court would not interfere with the exercise of such discretion unless it is made with oblique motive or for extraneous purposes or upon extraneous considerations. In paragraph 13 of the judgment, the Supreme Court observed (headnote) :

"In order that a writ of mandamus may issue to compel commissioner to grant the licence, it must be shown that under the Act and the Rules framed thereunder there was a legal duty imposed on the Commissioner to issue a licence under rule 7 of the said Rules without the prior approval of the State Government and that the applicant had a corresponding legal right for its enforcement. No mandamus will lie where the duty sought to be enforced is of a discretionary nature nor will a mandamus issue to compel the performance by such public body or authority of an act contrary to law. The Commissioner of Prohibition and Excise was under no legal duty to grant a licence to the applicant till it received the prior approval of the State Government under rule 7. Even assuming that the Commissioner recommended the grant of a licence to them under rule 7, the State Government were under no compulsion to grant such prior approval. The grant or refusal of such licence was entirely in the discretion of the State Government. Thus, the High Court had no jurisdiction to issue a writ of mandamus to the Commissioners to grant a licence to the applicant contrary to the provisions of the rule 7."

14. In a later decision of the Supreme Court in *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, , Chief Justice P. N. Bhagwati, while examining the claim for grant of licence for manufacture and sale of liquor in the State of M.P., held that the grant of licence would essentially be a matter of economic policy where the court would hesitate to intervene and strike down what had been done unless it appears to be plainly arbitrary, irrational or mala fide. The chief Justice observed (headnote) :

"What can be said in regard to legislation relating to economic matters must apply equally in regard to executive action in the field of economic activities though the executive decision may not be placed on as high a pedestal as legislative judgment in so far as judicial deference is concerned. The court must not forget that in complex economic matters every decision is necessarily empiric and it is based on experimentation or what one may call "trial and error method" and, therefore, its validity cannot be tested on any rigid "a priori" considerations or on the application of any strait-jacked formula. The court must while adjudging the constitutional validity of an executive decision relating to economic matters grant a certain measure of freedom or "play" in the joints to the executive"

15. It will also useful to make a reference to the decision of the Supreme Court in U.P. Financial Corporation v. Gem Cap (India) Pvt. Ltd. [1993] 78 Comp Cas 408: AIR 1993 SC 1435. While holding that the financial corporation is not like an ordinary money lender - it has to act fairly, the Supreme Court also laid down that in the case of administrative decisions, the High Court cannot sit over it as an appellate authority. Speaking for the Bench, Justice B. P. Jeevan Reddy observed (headnote of AIR) :

"In a matter between the corporation and its debtor, a writ court has no say except in two situations : (1) Where there is a statutory violation on the part of the corporation, or (2) where the corporation acts unfairly, i.e., unreasonably. Acting unfairly or unreasonably does not mean that the High Court exercising its jurisdiction under article 226 of the Constitution can sit as an appellate authority over the acts and deeds of the corporation and seek to correct them. That is not the function of the High Court under article 226. The doctrine of fairness, evolved in administrative law was not supposed to convert the writ courts into appellate authorities over administrative authorities. The constraints - self-imposed undoubtedly - of writ jurisdiction still remain. Ignore them would lead to confusion and uncertainty. The jurisdiction may become rudderless."

16. In Tata Cellular Vs. Union of India, , the Supreme Court exhaustively considered the principles of judicial review in the exercise of contractual powers of the Government bodies. It was observed that the principles of judicial review would apply to the exercise of contractual powers by the Government bodies in order to prevent arbitrariness or favouritism. However, there are inherent limitations in exercise of that power of judicial review. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision making process itself. It is thus different from an appeal. When hearing an appeal, the court is concerned with the merits of the decision under appeal. Since the power of judicial review is not an appeal from the decision, the Court cannot substitute its own decision. The duty of the court is thus to confine itself to the question of legality. Its concern should be : (i) whether a decision-making authority exceeded its powers ? (ii) committed an error of law, (iii) committed a breach of the rules of

natural justice, (iv) reached a decision which no reasonable Tribunal would have reached or, (v) abused its powers. Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken.

17. Finally, the Supreme Court observed that the judicial quest for administrative matters has been to find the right balance between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy; thus they are not essentially justiciable and it is only when there is need to remedy any unfairness that such an unfairness is set right by judicial review.

18. Now, turning to the facts of the case in hand, we have that the bank has sought to deny the working capital mainly on two grounds, namely, (a) the petitioners have not furnished the additional security by way of property papers of the promoters, and (b) CMA data has not been furnished by the petitioners. As regards ground (a), the argument of Mr. Deodhar is that there is no provision either under the guidelines prescribed by the Reserve Bank of India or respondent No. 1-bank itself to seek additional security by way of property papers of the directors. Mr. Deodhar brought to my notice, in particular, the letter dated June 9, 1986, issued by the Reserve Bank of India wherein it is stated that where the bank objectively appraise the project, the banks may in their discretion obtain guarantees from the directors in their individual capacity. Wherever considered necessary Mr. Deodhar argued that from the said letter it is evident that even the Reserve Bank of India attaches great value to the personal guarantees of the directors. Counsel argued that when the petitioners have agreed to offer the second charge on the fixed assets and the directors of the company have agreed to give their personal guarantees, the insistence on the additional security is totally arbitrary and irrational. It is not possible to accede to the arguments of Mr. Deodhar. In its affidavit-in-reply, the bank has explained the reason why the second charge offered by the petitioners was not sufficient security. It has been pointed out that the balance-sheet of petitioner No. 1 as on March 31, 1992, shows the value of the fixed assets at Rs. 135 lakhs as against the loan of Rs. 102 lakhs shown as outstanding and payable to respondent No. 2-corporation. Therefore, the bank is right in saying that the second charge of the fixed assets was not adequate to cover the advance intended to be sanctioned by the bank. As a public institution, the bank is expected to safeguard and secure the public funds and cannot advance the loans without adequate security. I have carefully gone through the guidelines of the Reserve Bank of India relied upon by the petitioners. In my opinion, these guidelines serve as a broad indicator and do not restrict or take away the rights of the lending banks to impose any additional conditions as the lending bank may deem fit in the facts and circumstances of each case. In this behalf, the revised guidelines issued by the Reserve Bank of India under the circular dated October 28, 1993, are extremely material. Under the revised guidelines, the banks are given authority and discretion to make independent assessment and credit requirement of the borrowers based on the

total state of borrowers" business operations and make independent appraisal about the working capital requirement of the borrower. If the bank had bona fide come to the conclusion that for the project of petitioner No. 1-company additional security was necessary in order to protect the interest of the bank, it will not be proper for the writ court to interfere with the decision of the bank.

19. On a careful examination of the correspondence between the bank and the petitioners, it is seen that right from the beginning the bank was insisting upon additional security. This is clear from the letter dated January 14, 1993, written by the bank to petitioner No. 1-company. The bank reiterated its demand for additional security by a letter dated August 4, 1993, since, according to the bank, the second charge of the company's fixed assets was inadequate. The stand taken by the company was that additional security was unnecessary as the bank would be having the first charge over the raw material and movables and the second charge on the fixed assets. In addition, the directors of the company were willing to give their personal guarantee. Naturally, the position taken by the company was unacceptable to the bank and, therefore, the bank withdrew the "in-principle sanction" by letter dated December 30, 1994. By reply letter dated January 3, 1995, petitioner No. 2 specifically agreed to comply with all the terms and conditions set out in the bank's letter. It is only due to the unconditional acceptance of the terms and conditions of the bank that it had agreed to revoke its decision and allowed revalidation of the "in-principle sanction". In these circumstances, it is difficult to accept the argument of Mr. Deodhar that the insistence of the bank on additional security was arbitrary and irrational. On the other hand, it is clearly seen that the petitioners are now trying to wriggle out of their contractual obligations by refusing to furnish the collateral security. It is only with a view to gain support to their changed stance, the petitioners are now contending that the letter of January 3, 1995, was obtained under duress. It is alleged that this was communicated to the bank by the letter dated January 9, 1995. The bank has disputed the receipt of the said letter dated January 9, 1995. It is the case of the bank that no such letter was ever received by the the bank. It is not necessary to deal with this factual controversy, but suffice it to say that the in principle sanction was subject to compliance with certain terms and conditions and since there was failure to comply with those terms and conditions, the bank was fully justified in refusing to release the working capital. The contentions of the petitioners based on article 14 are also without any merit. In their affidavit-in-reply, the bank has explained that in the cases of other projects referred to in the petition, the bank was satisfied about the viability as well as sufficiency of the security. Needless to mention that it is necessary for the bank to assess each case separately having regard to the relevant considerations. There is hardly any scope for invoking article 14.

20. Mr. Deodhar contended that the project is appraised by the bank itself and the bank has found the project to be economical, viable and credit worthy. Relying upon the in-principle sanction given by the bank, the petitioners have brought in their equity amount of Rs. 218.51 lakhs and the public issue was fully

subscribed. The bank acting as a lead manager to the public issue had declared to the general public that investment in the company is very sound and the company will commence commercial production with the existing plant by February/March, 1995, and that the company will operate it on a profitable basis barring unforeseen circumstances and will be in a position to earn cash profit and the net profit in the first year of the operation will be able to declare the dividends within a reasonable period after commencement of commercial production. The company has raised Rs. 505 lakhs share capital from the public issue, the promoters have brought in their contribution of Rs. 218.51 lakhs, respondent No. 2-corporation has rescheduled the term loan as stated in the prospectus. Since all the parties have acted on the assurance of the bank, it is not open to the bank to arbitrarily withdraw the in-principle sanction. The principle of promissory estoppel would certainly stop the bank from backing out from the solemn promise made to the petitioners. Counsel contended that the promise given by the bank can be enforced by a writ of mandamus directing it to perform its statutory duties. Mr. Deodhar placed strong reliance on the judgment of the Supreme Court in Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., . Mr. Deodhar strenuously contended that the facts in the decision of the Supreme Court are almost identical with the facts of the present case and, therefore, the ratio laid down by the Supreme Court will be squarely applicable to the present case.

21. In Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., , the facts were that the respondents, Lotus Hotels Pvt. Ltd., before the Supreme Court had proposed to set up a 4-star hotel. The company approached the appellant, the Gujarat State Financial Corporation, for a loan of Rs. 30 lakhs. The corporation sanctioned the loan of Rs. 29.93 lakhs on certain terms and conditions. As a part of the deal, the company had to create an equitable mortgage in favour of the corporation for securing the loan. The trouble erupted when pseudonymous letters were received making serious allegations against the chief promoter about his character and creditworthiness and also pointing out that he was facing several prosecutions in various courts on account of his nefarious activities. Presumably, acting on these letters, the IDBI informed the corporation that the application for refinancing made to the IDBI be treated as closed leaving an option to the corporation to re-submit the application on receipt of a satisfactory report from the concerned authorities in regard to the pending enquiry against the main promoter. By that time, the promised equitable mortgage by the company was created in favour of the corporation. All other documents required to be executed by the company in favour of the corporation enabling it to receive the loan were also executed. The corporation, however, refused to sanction the loan mainly on the ground that the IDBI has refused to refinance the company. The company then approached the Gujarat High Court by way of writ petition. The writ petition came to be allowed by the High Court of Gujarat. Against that order, the corporation went before the Supreme Court. The Supreme Court found that the obligation undertaken by the corporation to sanction the loan was

independent of a refinancing of the loan available from the IDBI. It was contended before the Supreme Court that dispute between the parties is in the realm of contract, and, therefore, even if there was a concluded contract between the parties about the grant and acceptance of loan, the failure of the corporation to carry out its part of the obligation may amount to breach of the contract for which a remedy lies elsewhere but a writ of mandamus cannot be issued compelling the corporation to specifically perform the contract. The Supreme Court rejected the corporation's contention with the following observations (page 851) :

"It is too late in the day to contend that the instrumentality of the State which would be "other authority" under article 12 of the Constitution can commit breach of a solemn undertaking on which the other side has acted and then contend that the party suffering by the breach of contract may sue for damages but cannot compel specific performance of the contract. It was not disputed and in fairness to Mr. Bhatt, it must be said that he did not dispute that the corporation which is set up u/s 3 of the State Financial Corporations Act, 1951, is an instrumentality of the State and would be "other authority" under article 12 of the Constitution. By its letter of offer dated July 24, 1978, and the subsequent agreement dated February 1, 1979, the appellant entered into a solemn agreement in performance of its statutory duty to advance the loan of rupees 30 lakhs to the respondent. Acting on the solemn undertaking, the respondent proceeded to undertake and execute the project of setting up a 4-star hotel at Baroda. The agreement to advance the loan was entered into in performance of the statutory duty cast on the corporation by the statute under which it was created and set up. On its solemn promise evidenced by the aforementioned two documents, the respondent incurred expenses, suffered liabilities to set up a hotel. Presumably, if the loan was not forthcoming, the respondent may not have undertaken such a huge project. Acting on the promise of the appellant evidenced by documents, the respondent proceeded to suffer further liabilities to implement and execute the project. In the back-drop of this incontrovertible fact situation, the principle of promissory estoppel would come into play."

22. In my opinion, the aforesaid decision in Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., , has no application to the present case. In that case the court found that the company had fully complied with the conditions for sanctioning the loan. It was held that the corporation's obligation to sanction the loan was independent of a refinancing of the loan by the IDBI. However, the present case stands on a different footing. We have seen that the condition to furnish solvent security was a condition precedent. Thus, the in-principle sanction granted by the bank was subject to the compliance with the condition of furnishing collateral security. Admittedly, the petitioners have failed to furnish the collateral security. Therefore, the bank was constrained to withdraw the sanction. The promise to release the working capital was conditional inasmuch as it was subject to the compliance with the requirements mentioned by the bank including the condition relating to furnishing of additional security. If the pre-

conditions are not satisfied, the question of the doctrine of promissory estoppel does not arise at all. It may be recalled that the banking Ombudsman had dismissed the complaint mainly on the ground that the petitioners have not complied with the conditions laid down by the bank. The Banking Ombudsman elaborately considered the contentions of both the parties and came to the conclusion that it was necessary for the petitioners to comply with the conditions of furnishing collateral security. In these circumstances, no interference is warranted by the court under article 226.

23. In the result, the petition fails and the same is dismissed with no order as to costs.