

(1979) 01 DEL CK 0007

In the Delhi High Court

Case No : Civil Writ Appeal No. 1221 of 1978

P.V. Mohammad Baramy Sons

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-01-1979

Acts Referred:

Citation : (1979) ILR Delhi 686

Hon'ble Judges : Prakash Narain, J; Leila Seth, J

Bench : Division Bench

Advocate : L.M. Sanghvi, S.P. Singh, K.N. Kataria and B.P. Aggarwal, for the Appellant;

Judgement

Prakash Narain, J.

(1) This judgment will dispose of C.W. No. 1221 of 1978 and C.W. No. 1283 of 1978, in which identical questions of fact and law arise for determination.

(2) In both the petitions under Article 226 of the Constitution of India challenge is directed to the legality and constitutionality of sub-sections (1) and (3) of Section 3 of the Imports and Exports (Control) Act, 1947, Clause 3(1) of the Exports (Control) Order, 1977 and Clause (3) of the Exports (Control) Twenty-Seventh Amendment Order, 1978 and the contention is that the same offend Article 14, 19(1)(f) and (g) and 31 of the Constitution. The Public Notice dated June 5, 1978 issued by the Government of India, Ministry of Commerce, Civil Supplies and Cooperation (Department of Commerce) notifying the Export Policy of wood and timber for 1978-79 is also challenged on the ground of arbitrariness and in violation of Articles 14, 19(i) (f) and (g) and 31 of the Constitution. A mandamus is also sought restraining the respondents from enforcing the aforesaid provisions of the impugned Act, Control Orders and Public Notice with directions to permit export of teak-wood in sawn sizes.

(3) India is one of the biggest producers of various types of timber including teak and rose wood. Apart from home consumption, timber in log form and in sawn

sizes was being exported to various countries of the world and in particular to Arabian Gulf countries. This export is regulated by the provisions of Imports and Exports (Control) Act, 1978 and policy of the Central Government in that behalf declared from time to time. Prior to March 24, 1977 there was no restriction for the export of teak in log form or sawn sizes. On March 24, 1977 export of teak in log form was prohibited but export of teak in sawn sizes was permitted. On December 6, 1977 what is called "on merits" procedure was introduced for sawn sizes. The export Policy for the financial year 1978-79 in respect of timber including teak was announced by the Central Government on April 3, 1978. According to this policy the ban on export of teak in log form was to continue but teak in sawn sizes was permitted to be exported as announced in the policy of March 24, 1977. On May 19, 1978 the Central Government issued a Public Notice (Annexure I to the petition) indicating some changes in the Export Policy of Wood and Timber. This Public Notice, inter alia, stated that the Export Policy of the hard-wood species of timber was that the export would be allowed freely by the licensing authority by licensing endorsements on presentation of the shipping bills/Land Customs appendices. There was no change in the policy regarding rose-wood in logs and sawn sizes, namely, its export was permitted. Regarding export of sawn timber of teak-wood it was stated in paragraph 4.3 of the said Public Notice that the policy would be announced separately. On June 5, 1978 the Central Government issued the impugned Public Notice with regard to teak-wood. Paragraph 2 of this Notice declared that it had been decided to ban with immediate effect the export of teak-wood in sawn sizes. Thus, export of teak-wood in sawn sizes in addition to its log form, was banned totally. Paragraph 3 of the Notice states that requests for export of teak-wood in sawn sizes were to be considered on the merits of each case prior to May 19, 1978, viz., the date of the announcement of the Export Policy of wood and timber for 1978-79 vide Public Notice dated May 19, 1978. On a review of the situation it had been decided to honour the commitments of those exporters who had submitted their applications prior to May 19, 1978 and had entered into firm contracts backed by irrevocable Letter of Credit opened and accepted by an Indian Bank on or before May 23, 1978. The petitioners who were adversely affected by the total ban on export of teak wood in any form represented to the Central Government to modify its Export Policy as announced on June 5, 1978 but without any success. In the meanwhile the Central Government issued the Exports (Control) Twenty-seventh Amendment Order, 1978, amending Part A, Schedule I of the Exports (Control) Order, 1977 by substituting the words "teak wood (*Tectone grandis*)" in place of the words "Teakwood (*Tectone grandis*) in log form" in entry at S. No. 33(11). The impugned Public Notice dated June 5, 1978 is in consonance with the said amendment in the Exports (Control) Order but gave a concession in paragraph 3 thereof as noticed earlier.

(4) The Imports and Exports (Control) Act, 1947 has been enacted to prohibit or control imports and exports and the legislative policy appears to be, as contained in the preamble of the Act, that it was expedient to prohibit, restrict or otherwise

control exports and imports and Therefore it was necessary to enact such a law. Section 3 of this Act reads as under :

"3.Powers to prohibit or restrict imports and exports. (1) "The Central Government may, by order published in the Official Gazette, make provisions for prohibiting, restricting or otherwise controlling in all cases or in specified classes, of cases and subject to such exceptions, if any, as may be made by or "under the order :

(A)the import, export carriage coastwise or shipment as ships stores of goods of any specified description;

(B)the bringing into any port or place in India of goods of any specified description intended to be taken out of India without being removed from the ship or conveyance in which they are being carried.

(2)All goods to which any order under sub-section (1) applies shall be deemed to be goods of which the import or export has been prohibited u/s 11 of the Customs Act, 1962 (52 of 1962), all the provisions of that Act shall have effect accordingly.

(3)Notwithstanding anything contained in the aforesaid Act, the Central Government may, by order published in the Official Gazette, prohibit restrict or impose conditions on the clearance, whether for home consumption or for shipment abroad of any goods or class of goods importer into India."

THIS section gives power to the Central Government not only to declare import and export policy but to issue statutory orders to implement that policy. In order to enforce the policy powers are given by various other sections which it is not necessary to notice for the purpose of this case. Section 8, however, confers on the Central Government by notification in Official Gazette to make rules for carrying out the provisions of the Act. The Rules so framed are required to be laid before each; House of Parliament. It is the common case of the parties that no rules have been framed u/s 8 but Control Orders have been issued from time to time. The impugned order in respect of export is the Exports (Control) Order, 1977, as amended by the Twenty-seventh Amendment Order, 1978.

(5) Clause (2) sets out definitions of certain words and terms used in the Exports (Control) Order. Sub-clause (d) of clause (2) defines "license". According to this sub-clause "license" includes a licensing endorsement on a shipping bill under the Order. By virtue of clause (3) save as otherwise provided in the Order, no person is to export any goods of the description specified in Schedule I of the Order, except under and in accordance with a license granted by the Central Government or by an officer specified in Schedule II. The conditions under which a license may be refused are set out in clause (5) of the Order. Sub-clause (q) lays down that Licensing Authority may refuse to grant a license if the applicant fails to produce any document that is called for by the Chief Controller of Imports and Exports or the Licensing Authority. As already noticed earlier, in the entry in

respect of wood and timber for teak-wood there is an amendment in the entry Serial No. 33(11) by virtue of which teak-wood, whether in log form or in sawn sizes, can no longer be exported and there is a complete ban imposed except to the extent mentioned in the Public Notice dated June 5, 1978 according to which application moved till May 19, 1978 could be honoured in given conditions.

(6) The Central Government has issued an official publication known as "Hand Book of Import-Export Procedures". This is dated May 4, 1978. This Hand Book deals with various aspects of import and export of commodities and goods into and from India. It also lays down the procedures which various authorities follow and are required to follow in permitting or not permitting import or export of goods and commodities. Chapter Xiii of this Hand Book deals with Export Licensing Procedures. It first sets out the categories of exporters and then deals with the various types of licenses. It also deals with situations where exports were permitted of a particular commodity but banned later and what is to happen in case of pre-ban commitments. Paragraph 316 deals with this contingency. It lays down that unless otherwise provided, the pre-ban (including pre-control) commitments will be ordinarily honoured for export control purposes. This includes a situation where against the specific export order either an irrevocable Letter of Credit had been opened and accepted by a scheduled Indian Bank or an advance payment had been received through an authorised dealer in foreign exchange, covering the full f.o.b. value of the consignment, prior to the date of the ban. Paragraph 323 lays down that unless otherwise stated applications for the export of items which are not normally allowed or whose export is allowed on merits should be addressed to the Chief Controller of imports and exports. New Delhi. Applications for the export of all other controlled items, should be addressed to one of the regional licensing authorities mentioned in Appendix 8 depending on the port from which export is to be made. Paragraph 314 lays down that those items of which export is freely allowed but which are not covered by an Open General license, the intending exporters are required to secure licensing endorsements on the connected shipping bills from the licensing authorities concerned. These are to be done on prescribed forms.

(7) The petitioners in C.W.No. 1221 of 1978 contend that petitioner No. 1 is a registered firm which has been carrying on the business of import and export for more than 20 years. Petitioner No. 2 is the Managing Partner of the firm and petitioner No. 3 is a representative of the interests of the exporters to Middle East countries and of operators of transport vessels including sailing vessels to and from Middle East countries. It is contended that petitioners 1 and 2 function as exporters and operators of cargo in their capacity as vessel owners plying the same for the purposes of foreign trade. Their export business extends to all the countries of Arabian and Persian Gulf. The bulk of their exports consists of timber, including teak sawn sizes and various other items such as mango wood, planks, jackwood crooks. It is the case of the petitioners that petitioners 1 and 2 also manufacture wooden ocean going sailing vessels (ships and crafts), using teak wood of capacity ranging from 100 tons to 600 tons. These vessels are sold

to Arab buyers who ply the same in Arab water for the purposes of trade between West Coast of India and Gulf countries. Petitioners I and 2 claim to have manufactured and sold by export dozens of such wooden vessels. A large number of such vessels are plying in the Gulf waters. A substantial part of the petitioners' export of sawn teak wood, it is claimed, is utilised for repairs of these teak wood vessels and crafts. A sizeable portion of the teak wood planks are over 25 feet in length which are required for replacement of the wooden section damaged or to be repaired on the vessels plying on the high seas. In order to effectuate replacement and repairs it is not possible to bring these vessels to the Indian Coast in a state of disrepair. It is claimed that the ancient trade flourishing in the State of Kerala from time immemorial would be adversely affected by the impugned ban. It is further submitted that whereas on the one hand it is the Government policy to encourage manufacture and export of wooden ships and crafts and yet on the other the spare items for repairs and replacements are being banned which amounts to a policy which cannot be called intelligible. The petitioners state that unlike rose wood, teakwood is not an exclusive product of India as good quality of teak is available in neighbouring countries like Burma, Malaysia, Thailand, and Indonesia etc. Singapore is stated to be a thriving market for many of the eastern countries dealing in teak. In case, it is submitted, teak wood is not made available for export from India, the trade which has been flourishing in India for a long time would be diverted to other countries as the Arab countries would then turn to those countries. This submission is made in the context of the policy spelt out by the impugned ban being formulated not in the interest of national trade but on some other unknown considerations. It is the petitioners' contention that teak wood required for internal consumption in India is much less than the plantation of teak wood and the teak wood available even in Government depots for sale. Teak plantations 696 are said to be planned on the basis of future and growing demands of export trade. It takes between 60 to 80 years for a teak plantation to give a commercial yield and historically the plantations which have been planted in southern India and in particular the Malabar Coast have been developed with the export possibilities in view. The petitioners claim that the shipping season by their vessels or similar vessels for export of teak in sawn sizes is from September of a year to May next year. Between December, 1977 to May, 1978 petitioners claim to have exported teak in sawn sizes worth Rs. 19 lakhs to Various buyers in the Gulf countries. They have valid specific orders in hand with advance payments received amounting to Rs. 15,30,215 for supply of teak in sawn sizes to six Arab buyers in Dubai, Kuwait and Sharjah. The entire advance payment was received by petitioners I and 2 on various dates commencing from February 2, 1978 to April 29, 1978 through Indian Banks who are authorised dealers of foreign exchange. The petitioners are bound by contract to honour these commitments but are now prevented from doing so on account of the impugned ban. It is further contended by the petitioners that for the export of teak in sawn sizes worth Rs. 19 lakh up to May, 1978 they had been getting export licenses by getting an endorsement on their shipping bills as postulated by clause 2(d) of the

Export (Control) Order, 1977. Aggrieved by the ban, the petitioner have approached this court for the reliefs mentioned earlier.

(8) In C.W. No. 1283 of 1978 the first petitioner is a registered firm carrying on business of export and import for more than seven years and is a successor to the proprietorship firm of Haji P. 1. Ahamed Koya, which is carrying on the same trade for over 50 years. Petitioner No. 2 is a Managing Partner while petitioner No. 3 is the representative of the interests of the exporters to Middle East countries and of operators of transport vessels including sailing vessels to and from Middle East countries. The case of the petitioners in this case is identical to the case of petitioners in C.W. No. 1221 of 1978. The petitioners in this case claim that between October, 1977 and May 1978 they exported teak in sawn sizes of the value of Rs. 17.65 lakhs to various buyers in the Gulf region. They have received advance payments against valid and specific orders to the extent of Rs. 16,22,632. The firm contracts they have entered into are with Arab buyers in Baharain, Dubai, Qatar and Kuwait. The advance payment is said to have been received prior to June 5, 1978 through Indian Banks who are authorised dealers of foreign exchange. The petitioners further contend that prior to the impugned ban they had purchased at the Kerala Government's auction teak wood worth Rs. 10 lakhs in order to meet their obligations to Arab buyers. The stock of teak wood made ready for export after sawing is lying in various depots and yards of petitioners I and 2, located at South Beach Road, Calicut, exposed to the vagaries of the weather. The petitioners contend that the ban has been imposed without any application of mind and without there being any data or material to warrant bank. In other words the contention is that the impugned ban is arbitrary and unconscionable. The challenge made by the petitioners in this case is identical to the challenge made by the petitioners in C.W. 1221 of 1978 and the reliefs sought are identical. These petitioners have placed on record a letter of Kerala Government dated October 13, 1978 addressed to the Secretary to the Government of India, Ministry of Commerce, Civil Supplies and Cooperation, New Delhi (Annexure 5 to the petition). According to this letter the Government of Kerala had received representations from Chamber of Commerce, teak-wood exporters and others that as the ban on export of teak wood would drastically affect the export trade of the State, it be lifted. The letter goes on to say that Kerala produces a very large quantity of teak wood every year and a total ban on the export of teak wood would certainly affect the State revenue to a considerable extent. Even if the entire requirements of indigenous vendor industry are met, there would still be a sizeable quantity of teak wood which can be disposed of only by export from the State. The letter also gives certain facts and figures which go to show that a bulk of the teak wood would remain unutilised even after Central Government's requirements are met. It ends with the request that the Central Government may reconsider its decision in imposing the total ban on the export of teak. According to the petitioners 50 per cent of the forest revenue of Kerala comes from teak wood sales which would be adversely affected if export was not permitted, at least to the limited extent

permitted by the impugned ban of June 5, 1978.

(9) In reply to the contentions of the petitioners, the respondents, viz., Union of India and the Chief Controller of Imports and Exports have filed the affidavit of Shri R. S. Bansal, Deputy Chief Controller of Imports and Exports, New Delhi. According to the return it is not disputed that the petitioners have been exporting various items of wood in the past. In justification of the ban it has been submitted that the policy of the Government in respect of export depends on many factors, such as domestic demand, industrial demand, need for conservation of the specie etc. It is said that a restriction on the export of teak wood has been placed keeping in view the fact that the export of the teak wood in this sawn form had to be banned in the interest of national economy keeping in view the aforesaid factors and teak wood in processed form only having an added value potential and realisation of foreign exchange may be permitted to be exported. It is said that the Government's emphasis is more and more on promoting export of value added products which results in better earnings of foreign exchange and creation of employment opportunities in the country rather than exporting primary products as such. It is claimed that all these factors were taken into consideration while placing the ban on the export of teak wood, first in log form and then also in sawn sizes. It is claimed that national economy cannot be sacrificed for a few individuals and, Therefore, the historical background relied upon by the petitioners was irrelevant. The affidavit of Shri Bansal admits that petitioners 1 and 2 in both the cases have been exporting teak wood to Gulf countries but Shri Bansal is not able to state whether the figures of export given by the petitioners were as claimed. Shri Bansal also denies for want of knowledge that the petitioners had any firm contracts or had received any advance payments against those contracts. It is pointed out that advance payments claimed to have been received by the petitioners seem to be at variance with the value of the firm contracts, alleged to have been entered into by the petitioners. It is denied that the total ban would adversely affect national economy or the economy of the teak producing State. It is further claimed that the petitioners were not entitled to license for export of timber in sawn sizes as they never moved an application to the Chief Controller of Imports and Exports prior to May 19, 1978, the date on which the policy was changed. It is further claimed that the petitioners could not plead ignorance of the requirement to make application for grant of license from May 19, 1978 as the policy of moving applications for licenses on merits procedure was in force from December 6, 1977 and the petitioner had in fact been making applications under that policy. It is clarified that each application for being processed under the merits procedure is considered on its own merits in consultation with various authorities and decision is taken to permit export or not to permit export after taking into consideration various factors such as availability of the item concerned, its surplus, if any, vis-a-vis domestic demand, industrial demand or the need for conservation of a specie. It is contended that there was reasonable classification between persons who made applications prior to May 19, 1978 and those who

did not make an application for grant of license up to that date. It was conceded that the authorities concerned had no objection to treat advance payment received through Indian Banks equivalent to opening of letter of credits if the vital condition of making an application prior to May 19, 1978 was fulfilled. The application filed by the petitioners subsequent to May 19, 1978 is said to have been rejected on the ground that it was not preferred by the due date. It is denied that either the provisions of the Act or the Control Order or the Public Notice were unconstitutional, illegal or invalid.

(10) The petitioners in both the cases filed rejoinders. By these rejoinders not only was their case in the petition reiterated but certain other facts were brought to light. Regarding discrimination and arbitrariness a Public Notice dated November 10, 1978 was placed on record under which some further 20 types of wood were permitted to be exported, besides rose wood. It was asserted that there was no reasonable criteria vis-a-vis teak wood in sawn sizes. The contention to that there is no intelligible reason and no policy which could warrant such discrimination. It was denied that prior to May 19, 1978 the petitioners had ever applied to the Chief Controller of Imports and Exports for license under the merits procedure. It was asserted that the petitioners had always got their shipping bills endorsed which amounted to license. It is further claimed that neither in the impugned Act or the Control Orders passed from time to time by the respondents or in the Public Notice issued by the respondents is there any definition, criteria, guideline or specific circumstances in the light of which factors like merit, ceiling or conditions for determining exportability of a particular commodity or item may be determined. It is further submitted that consultation with the concerned authorities is very vague as claimed by the respondents for grant of licenses under the merits procedure because those authorities are not specified either by name or by their signatures, leaving it to the arbitrary choice of the Chief Controller of Imports and Exports whom to consult. It is asserted that no material or particulars have been disclosed which could justify the impugned ban and all that has been stated are vague objectives sought to be achieved. It is further claimed that a comprehensive policy having been announced on December 6, 1977 for continuance of ban on export of teak wood in log form and permitting export of teak in sawn sizes, same policy continued till June 5, 1978 and not May 19, 1978, as claimed. It is the petitioners' case that the only verification which was required to be done in endorsement of their shipping bills was an authentication of the source from which timber had been obtained, namely, that it should be from forest authorities of the Government. However, the petitioners have always been ready and willing to satisfy the respondents that their purchase is from Government auction of a Government forest and so, they are entitled to be considered for grant of licenses even under the merits procedure without any further requirement being fulfilled.

(11) Rule nisi was issued by us in C. W. 1221 of 1978 on November 7, 1978 and in C.W. 1283 of 1978 on November 23, 1978. A notice of stay applications or applications for interim relief was issued to the respondents in both the cases. In

C.W. 1283 of 1978 on the application for interim relief (C.M. 2738 of 1978) a Bench of this Court passed a detailed order on December 15, 1978 after hearing the parties and considering the reply put in by the respondents. It was observed, inter alia, that the Government appears to have refused to consider the application of the petitioners on two grounds, namely, the application was not filed prior to May 19, 1978 and the contracts of the petitioners were not backed by irrevocable Letters of Credit. A direction was given that, "it will be proper if the Government reconsider the application on merits irrespective of the fact that the application was filed subsequent to 19th May, 1978. The Authority will consider the application to see whether it satisfies the conditions laid down in para 316 of the Hand Book of the Import and Export Procedures, 1978-79 (page 45) of course with reference to Para 316(4), Government will see whether the petitioners satisfy the alternative requirement, namely, that against a specific export order (pre-ban period) advance payment had been received through an authorised dealer in foreign exchange, covering the full f.o.b. value of the consignment, prior to the date of the ban. When considering this aspect, same considerations will be kept in view when considering the other alternative of irrevocable Letter of Credit having been opened and accepted by scheduled Indian Bank. The authorities would, after considering these aspects pass appropriate orders. We may in this connection mention that the reason why we are asking the authorities to consider the application of the petitioners even though filed after 19th May, 1978 is because the petitioners maintain that prior to the said date no application was necessary to be filed and was not filed for the purpose of exporting sawn teak wood. The department, however, is maintaining in the reply that previously also the petitioner was applying to the C.C.I. & E., New Delhi for license of export of sawn teak wood. The department will examine this aspect and if it found that the petitioners had applied previous to 19th May, 1978 for license for export of sawn teak wood to the C.C.I., New Delhi then obviously the contention of the petitioners that they could not in law have applied to the C.C.I. earlier to 19th May, 1978 would prima facie be not acceptable. In such a case therefore. Dr. Singhvi had very fairly conceded that even if the petitioners fulfilled other conditions permission to export may legitimately be refused by the authorities. Of course, if it is found that no application was filed prior to 19th May, 1978 for export of sawn teak-wood the authorities will after considering the matter in the light of the directions given above pass appropriate order."

(12) In C. W. No. 1221 of 1978 while disposing C. M. 2606 of 1978 a learned Single Judge of this Court ordered that the directions given in C.M. 2738 of 1978 would apply to this application also.

(13) It may be noticed that the applications of the petitioners were rejected by the respondents by an order of December 12, 1978 on two grounds, viz., that the application of the petitioners was not moved before May 19, 1978 on which date "a comprehensive policy of wood and timber was announced" vide Public Notice dated May 19, 1978" and in terms of the provisions laid down in Public

Notice dated June 5, 1978 that request for export of teak wood in sawn sizes could only be considered in favor of exporter applicants who had preferred an application prior to May 19, 1978 to the extent the applicant had entered into firm contract backed by irrevocable Letter of Credit opened and accepted by the Indian Bank on or before May 23, 1978. After this court's directions in the miscellaneous application the petitioners' case was again considered but the applications were rejected by an order dated December 30, 1978 passed by Shri G. S. Grewal, Deputy Chief Controller of Imports and Exports acting for Chief Controller of Imports & Exports. Curiously enough this officer puts his own interpretation on the court's order dated December 15, 1978 in C.M. 2738 of 1978 and thought that he had to consider the applications of the petitioners by taking into account what he delineates as the following aspects/ provisions of the policy of the Hand Book :

"(I)Whether application where advance payments have been received through an authorised dealer in foreign exchange covering the full f.o.b. value of the consignment prior to the date of the ban can be taken into consideration in terms of para 316(4) of Hand Book of Import-Export Procedures, 1978-79 in view of the provision, made in Public Notice No. 37-ETC(PN)/78 dated 5-6-1978 regarding opening and acceptance of irrevocable letters of Credit and by an Indian bank in support of the firm commitment entered into during the pre-ban period ;

(II)Whether in case of items placed "on merits" list, it was obligatory to submit an application for allowing the export of the item placed in that list."

THIS court's directions were clear and specific and were not as slated by Shri Grewal. Indeed, he goes on to hold that moving of an application on or before May 19, 1978 was sine qua non to establish the petitioners' right to export under a license to be issued under the merits procedure. With regard to paragraph 316(4) of the Hand Book he observes that "whether Government would be inclined to treat on per a case where full payment has been received in advance with a case of the type covered by Public Notice No. 37-ETC (PN)/78 which permitted firm commitments covered by irrevocable Letter of Credit opened and accepted by Indian Banks on or before May 23, 1978, it may be mentioned that in a" purely hypothetical sense and without prejudice to the basic ineligibility of the instant case for such consideration, had a bona fide case of that nature come to Government's notice perhaps it could have been considered." A new factor introduced by Shri Grewal in this order was that the petitioners had not got their source authenticated. He concedes in the order that no application was submitted to the office of the Chief Controller of Imports and Exports even prior to May 19, 1978 by the petitioners, though other parties had been approaching the organisation for grant of license prior to May 19, 1978. In other words it stood conceded, despite contrary assertions in the affidavit by way of return, that the petitioners had never applied to the Chief Controller of Imports and Exports for grant of license under the merits procedure at any time

prior to May 19, 1978. We are noticing this aspect in some detail because it throws light on the attitude of the respondents.

(14) On behalf of the petitioners four propositions have been mooted, viz.,

(1) Section 3(1) and (3) of the Act are unconstitutional and are hit by Article 14 of the Constitution inasmuch as there is no guideline or legislative policy contained therein. The said provisions suffer from the vice of excessive delegation, abdication of legislative power, uncanalised and unbridled power granted to the executive without there being any legislative guidelines.

(2)(a) Exercise of powers u/s 3 of the Act is bad in the absence of rules required to be framed u/s 8 of the Act which means exercise of powers in the absence of any control or guideline.

(B) No control is provided by the Act or any rules framed there under either for consultation, representation or rectification before or after making an order as postulated by Section 3. In the sphere of administrative law such controls are necessary specially in the absence of rules which, if made, and if sanctified by being laid before the Houses of Parliament would subject the process to Parliamentary Scrutiny or lay down intelligible guidelines.

(3) Even if Section 3 of the Act is valid or is held to be reasonable, the impugned order of June 5, 1978 imposing total ban on export of teak wood is bad because--

(a) the ban is not based on any relevant consideration or material;

(B) total ban is excessive, disproportionate and irrational;

(C) no reasons have been given in the return for imposition of the ban and the reasons as given are sham; (d) the ban is discriminatory and has been imposed without reference to any valid classification or nexus or reasonable or consistent criteria ; (e) the imposition of ban is hit by the principles of promissory estoppel.

(4)(a) The Public Notice dated June 5, 1978 is void because it is arbitrary, discriminatory and in violation of the provisions of Article 14 of the Constitution.

(B) the said Public Notice is hit by the principles of promissory estoppel keeping in view the declaration of the annual policy and the existing provisions to honour pre-ban commitments.

(15) Dr. Singhvi, learned counsel for the petitioners, submitted that we may first decide the third and fourth propositions formulated by him and go to the other propositions only if we are not in agreement with his contentions on those propositions. In other words he submitted that the validity of Section 30 of the Act or the exercise of powers u/s 3 being bad in the absence of any legislative control or guidelines may not be pronounced upon. Therefore, in considering the validity of the ban imposed by the impugned Twenty-Seven Amendment to the Exports (Control) Order, 1977 and the Public Notice dated June 5, 1978 we shall assume the validity of Section 3 of the Act. We will also assume that despite the fact that there are no rules framed u/s 8 of the Act and even though there is no

machinery provided for consultation, representation or rectification of executive orders the power exercised u/s 3 does not suffer from the vice of uncanalised or unguided power. Regarding the desirability of having rules or procedure for consultation, representation or rectification of an administrative or executive order in the sphere of administrative law, we shall comment later.

(16) Article 19(1)(g) of the Constitution guarantees to every citizen of India the right to practice and do profession or to carry on any occupation, trade or business. This right is absolute and cannot be interfered with except to the extent postulated by clause (6) of Article 19. The State may by virtue of clause (6) make any law imposing, in the interest of the general public, reasonable restrictions on the exercise of the right conferred by clause (6) of Article 19(1) of the Constitution and the existing laws are saved from being unconstitutional if the State law conform to requirements of clause (6) of Article 19. This aspect has been dilated upon by courts times out of number. In plain language it means that reasonable restrictions can be imposed on carrying on a trade, business or profession if the reasonable restrictions sought to be imposed have a nexus with the object to be achieved or are based on intelligible criteria. Whenever a contention is raised that a restriction imposed is unreasonable or has not nexus or is without any intelligible criteria the onus is on the State to show to the contrary. Reasonableness also postulates that the restrictions imposed should not be excessive but only to the extent necessary to secure the public good. It is not necessary to cite a large number of decisions in this behalf. In *Mohammed Faruk Vs. State of Madhya Pradesh and Others*, , it was held that the restriction imposed may be partial or total but the principle remains the same. In case of a total restriction the onus lies heavy on the State to show that such total restriction is in public interest. To quote from the speech of Shah J. (as he then was), "Where the law providing for grant of a license or a permit confers a discretion upon an administrative authority regulated by rules or principles expressed or implied, and exercisable in consonance with rules of natural justice, it will be presumed to impose a reasonable restriction. Where, however, power is entrusted to an administrative agency to grant or withhold a permit or license in its uncontrolled discretion, the law ex facie infringes the fundamental right under Article 19(1). Imposition of restriction on the exercise of a fundamental right may be in the form of control or prohibition, but when the exercise of 3; fundamental right is prohibited, the burden of proving that a total ban on the exercise of the right alone may ensure the maintenance of the general public interest lies heavily upon the State."

(17) In *Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others*, , the Supreme Court reiterated its opinion in *Chintaman Rao Vs. The State of Madhya Pradesh*, and once again laid down that, "the phrase "reasonable restriction" connotes that the limitation imposed upon a person in enjoyment of a right should not be arbitrary or of an excessive nature beyond what is required in the interest of the public. Legislation, which arbitrarily or excessively invades the right, cannot be said to contain the quality of reasonableness and unless it

strikes a proper balance between the freedom guaranteed under Article 19(1)(g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in reasonableness."

(18) In *Mohd. Hanif Quareshi and Others Vs. The State of Bihar*, the Supreme Court was concerned with adjudging the validity of the Bihar, Uttar Pradesh and other States Acts which had, inter alia, put a total ban on the slaughter of all categories of animals of the species, of bovine cattle or on the slaughter of cows and her progeny including bulls, bullocks, heifers and calves. It was held that a total ban on the slaughter of cows of all ages and calves of cows and of she-buffaloes, male and female, was quite reasonable and valid, but a total ban on the slaughter of she-buffaloes or breeding bulls or working bullocks (cattle as well as buffaloes) after they ceased to be capable of yielding milk or of breeding or working as draught animals was not in the interests of the general public and was invalid. These bans had been pressed by the impugned statutes enacted in conformity with the directive principles of policy contained in Article 48 of the Constitution and the challenge to them was of being ultra virus Article 19(1)(g) of the Constitution. The defense of the State was clause (6) of Article 19 of the Constitution and Article 48 of the Constitution. A considerable amount of data was placed before the court. After examining the same and the policy behind the total ban in great detail the Court came to its conclusions noticed earlier. On settled principle it was observed that in determining the question of reasonableness of restrictions imposed on the fundamental rights conferred by Article 19(1)(g) the court cannot proceed on a general notion of what is reasonable in the abstract or even on the consideration of what is reasonable from the point of view of the person or persons on whom the restrictions are imposed. What the Court has to do is to consider whether the restriction imposed are reasonable in the interests of the general public. In other words the moment a restriction is imposed and the same is challenged, it becomes a duty of the court to investigate whether the impugned restriction satisfies the test of reasonableness and is in the interest of what may be called the good of the community. For this necessary data must be placed before the court to enable it to satisfy itself that the restrictions had been placed not arbitrarily but on a consideration of relevant factors of justifiable material.

(19) In *Narendra Kumar and Others Vs. The Union of India (UOI) and Others*, observed. "In applying the test of reasonableness, the Court has to consider the question in the background of the facts and circumstances under which the order was made, taking into account the nature of the evil that was sought to be remedied by such law, the ratio of the harm caused to individual, citizens by the proposed remedy, to the beneficial effect reasonably expected to result to the general public. It was also necessary to consider in that connection whether the restraint caused by the law is more than was necessary in the interests of the general public."

(20) In *Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and*

Others, , the Supreme Court was considering the validity of the various provisions of the Gold (Control) Act, 1968. Dealing with Section 27 thereof which related to licensing of dealers, it was held sub-section (6) of Section 2

(21) In *Rohtas Industries Vs. S.D. Agarwal and Others*, , two principles in the exercise of discretionary power or arriving at subjective satisfaction have been held to be necessary ingredients which must exist if the impugned order is to satisfy the test of reasonableness or in the other words if it is to be held as not being capricious or arbitrary. These two requisites are that the statute or the impugned order must have a perspective and though the decision may be subjective it must be arrived at on the basis of facts and material which objective must be found to exist. It was observed that if it is established that there wano material upon which the authority could form the requisite opinion the court may infer that the authority did not apply its mind to the relevant facts. The requisite opinion is then lacking and the condition precedent to the exercise of the power is not fulfilled.

(22) The disclosure of facts which justify the placing of a reasonable restriction is necessary so that a proper balance is struck between the fundamental right guaranteed by Article 19(l)(g) and the social control postulated by clause (6) of Article 16. As was observed by the Supreme Court in *The Collector of Customs, Madras Vs. Nathella Sampathu Chetty and Another*, , (after noticing with approval the observations of the learned Chief Justice in *State of Madras Vs. V.G. Row*, , "it would be apparent that this is in line with the great principle underlying the structure of the rights guaranteed by Article 19 viz., a balancing of the need for individual liberty in the matter inter alias of the right to hold property or of the right to trade with the need for social control in order that the freedoms guaranteed to the individual subserve the larger needs moral, social, economic and political of the community and thus ensure orderly progress towards the goal indicated by the preamble. It would follow that the reasonableness of the restraint would have to be judged by the magnitude of the evil which it is the purpose of the restraint to curb or eliminate."

(23) The reasonableness of a restriction, as noticed earlier, has to be examined from two points of view. First, whether the restriction is necessary in public interest on disclosed data. Secondly, whether the restriction imposed is necessary to the extent that it has been imposed. If the restriction imposed is disproportionate to the object to be achieved or the evil or mischief to be eradicated, then the restriction must be held to be invalid. In *Badri Prasad and Others, etc. Vs. Collector of Central Excise and Others, etc.*, , the Supreme Court tested the validity of Section 71 of the Gold (Control) Act, 1968 with reference to clauses (5) and (6) of Article 19 of the Constitution. It was held that there was no justification for an order of confiscation of gold u/s 70 of the Act merely because of a failure to comply with Section 16 relating to declaration as the provision of confiscation was harsh and it may be applied indiscriminately resulting in unreasonable restriction on the right of a person to acquire, hold or

dispose of gold articles or gold ornaments.

(24) It is now settled law that the various provisions of Chapter Iii of the Constitution show an integrated scheme and are not to be applied to the extinction of each other. If fundamental rights are guaranteed with provision for social control, then the entire scheme of Chapter Iii has to be seen so as to ensure exercise of individual rights in consonance with and without derogation of public good. The legislature no doubt has the right to enact laws. The executive has to administer those laws but the laws enacted or administered must not unnecessarily and excessively impinge upon individual right and liberty. We may with advantage quote from Chief Settlement Commissioner, Rehabilitation Department, Punjab and Others, etc. Vs. Om Prakash and Others etc., :

"In this context it is essential to emphasise that under our constitutional system the authority to make the law is vested in the Parliament and the State Legislatures and other law-making bodies and whatever legislative power the executive administration possesses must be derived directly from the delegation of the legislature and exercised validly only within the limits prescribed. The notion of inherent or autonomous law-making power in" the executive administration is a notion that must be emphatically rejected. As observed by Jackson, J. in a recent American case. *Youngstown Sheet and Tube Co. v. Sawyer*, (1952) 343 Us 579 "With all its defects, delays and inconveniences men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations.". In our constitutional system, the central and most characteristic feature is the concept of the rule of law, which means, in the present context, the authority of the law courts to test all administrative action by "executive action that does not meet the standard will be set aside if the aggrieved person brings the appropriate action in the competent court. The rule of law rejects the conception of the Dual State in which governmental action is placed in a privileged position of immunity from control by law. Such a notion is foreign to our basic constitutional concept."

APPLYING the above decisions to the matters before us we have no hesitation in holding that the impugned ban brought in by the Exports (Control) Twenty-Seventh Amendment Order, 1978, disallowing export of teak even in sawn sizes must be held to be invalid and unconstitutional. We are assuming the validity of Section 3 of the Imports and Exports (Control) Act, 1947 and the Exports (Control) Order, 1977. The total ban is arbitrary and based on no intelligible criteria. The affidavit filed on behalf of the respondents states, as noticed earlier, that the policy of the Government in respect of export depends on many factors such as domestic demand, industrial demand, need for conservation of the specie etc. It goes on to say that the restriction on the export of the teak wood has been placed keeping in view the fact that the export of teak wood in sawn sizes had to be banned in the interest of national economy, the aforesaid factors and that teak wood in processed form having an added value potential in realisation

of foreign exchange. But no material has been placed before us to show that there was any data available with the respondents to achieve the objectives of national economy, conservation of the specie or domestic and industrial demand. Indeed, the petitioners had moved applications during the hearing on January 9, 1979 for directions to the respondents to produce the relevant record to show the basis or the material on which the satisfaction or opinion was formed to impose a total ban. No formal orders were passed on these applications because learned counsel appearing for the respondents had assured us that the relevant record would be made available at the hearing. Unfortunately, despite repeated requisitions and our observations that it would be necessary to disclose the record, it was not shown to us. We may note that learned counsel for the respondents ultimately even apologised to this court but expressed his helplessness in producing the relevant record. In this view of the matter we have no option but to raise an adverse presumption against the respondents. The objectives to be achieved must be distinguished from the material on which such objectives may be achieved. National economy, conservation of a specie, domestic or industrial demand are objectives to be achieved and may be called social control but these objectives can be achieved provided there is relevant data and material. This not having been disclosed to us, we must hold that the opinion formed was without any basis. When rule nisi is issued in a petition under Article 226 of the Constitution and the writ prayed for is one in the nature of certiorari, mandamus or even habeas corpus, the writ issues against the record. In such a case it is incumbent, subject to any claim of privilege, that the State places the record before the court. It has been held repeatedly to be the law and we may only mention the decision of a bench of this Court in *Smt. Manekben v. Union of India*, ILR 1975 (2) Del 820. That was a case in which a writ of habeas corpus was claimed by the petitioner and one of the questions which arose for consideration was whether any material existed on the basis of which the appropriate authority was given to the State of place relevant material before the Court filed with the affidavit filed by way of return to the rule nisi an opportunity was given to the State to place relevant material before the Court to enable it to judge whether in fact the report of the customs official relied upon was in existence since a particular date and was looked into by the detaining authority. The record was not placed before the court. After referring to the decision in *Jaichand Lall Sethia Vs. State of West Bengal and Others*, , it was observed that in the absence of a claim of privilege validly made the State could not keep back documents from the court preventing it from even carrying out the limited scrutiny permissible. Indeed, the production of record to satisfy the court about the existence of the material is distinguished from the sufficiency thereof was desirable. If the record was not made available, it could legitimately reach an adverse inference. This rule applies with greater force when the writ prayed for is in the nature of certiorari or mandamus. In the present cases we were not satisfied with the State's affidavit that the factors mentioned above were all taken into consideration and, Therefore, we had given liberty to the State and indeed the State counsel had agreed initially to place material before us to show

that it did exist and it was considered. As noticed earlier, respondents failed to place the record despite repeated opportunities. We, therefore, hold that the impugned total ban was imposed without there being any relevant material justifying its imposition or its imposition to the extent that it has been imposed.

(25) In coming to the above conclusion we are fortified by the material that has been placed by the petitioners before us to show that if export was not permitted there would be glut of teak, at least in Kerala. Furthermore, the State of Kerala itself has requested the Central Government to reconsider the total ban imposed and has given cogent reasons why the policy should be reviewed. Teak wood forests take 60 to 80 years from becoming commercially exploited. The plantations started some 60 or 80 years ago would have been an effort in futility if teak is to become so excessive in supply that its market and exploitability are adversely affected. We are also not satisfied that the policy to earn foreign exchange by exporting only processed timber has been legitimately applied to teak wood in view of various other kinds of timber being allowed to be exported in unprocessed form. The objective of value added products may be desirable but there must be material to show that such objective is sought to be achieved on relevant data. That has not been placed before us and so, the objective cannot be said to be capable of fulfillment in the present case. Rose wood, as is well-known, is a specie which is becoming extinct and yet the respondents are permitting export of this specie. There is clear discrimination and an unintelligible attitude that a specie which is likely to become extinct is allowed extinction by unrestricted export whereas a specie which is in abundant supply is not to be exported. There is another interesting document which has been placed on record by the petitioners. This is a copy of a letter dated September 20, 1978 from the office of the Officer-in-Charge, Forest Economics Branch, Dehra Dun to the Hony. Secretary, West Asia Exports Association, Calicut. According to this letter the latest figures available of production of teak in various States in India are available only up to the year 1969-70. Copy of this letter has been filed as Annexure Iv to the petition (C.W. 1283 of 1978). The contention is that the Central Government had no latest data available with it regarding the total production of teak in various States and Union Territories and the total ban has been imposed without making any effort to find out what was the position regarding production and consumption. Nothing has been said in the affidavit which was filed on behalf of the respondents on this aspect. It is indeed strange that the objective of conservation of the specie or banning export in the interest of domestic or industrial demand should have been sought to be achieved without latest data as to production and consumption.

(26) The impugned Control Order of 1978 must also be held to be excessive and disproportionate in the absence of any material placed before us. It is discriminatory for reasons already stated. The principles of law have already been dialed upon and no justification is shown to exist why a total ban should have been imposed.

(27) Coming now to be impugned Public Notice of June 5, 1978, it has to be struck down, first, because we have held the Exports (Control) Twenty-seventh Amendment Order, 1978 to be bad. Secondly, it has to be struck down because the date of May 19, 1978 fixed by it has no intelligible basis. The Public Notice of May 19, 1978 clearly stated that the policy regarding teak would be announced later. The impugned Public Notice of June 5, 1978 could not rationally fix May 19, 1978 retrospectively as the date from which it was to operate. On May 19, 1978 persons exporting teak in Sawn sizes could have no idea that by that date they must make applications to the Chief Controller of Imports and Exports or that Letters of Credit or contracts entered into prior to this date would only hold good for future licenses to be granted under the merits procedure. There also seems to be no logic in fixing May 23, 1978 as the date by which Letters of Credit opened prior to May 19, 1978 were required to be accepted by an Indian Bank. Furthermore, the impugned Public Notice without any intelligible criteria differentiated between Letters of Credit and advance payments received ignoring the settled procedures postulated by paragraph 316(4) given in the official publication. There was no basis for this sort of discrimination and indeed the order of December 30, 1978 concedes this.

THERE is one other aspect on which we may dilate. It has been contended that the principle of promissory estoppel is fully attracted in the present case. The law regarding promissory estoppel is of comparatively recent origin. The convention is that even the sovereign authority must be held bound by its representations and cannot be allowed to change its announced policy or modify an administrative decision if on the basis of the earlier representation the citizen has been made to act not necessarily to his detriment or prejudice but has been made to change his position. Traditionally, the doctrine of promissory estoppel was not available against the State. There were cases in which the defense of executive necessity was upheld where state action was challenged even though among private parties estoppel was a well-settled rule. It was by the celebrated decision of Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., that the doctrine of promissory estoppel was most eloquently enunciated vis-a-vis State action. The words of Denning, J. (as he then was), in *Robertson v. Minister of Pensions* (1949) 1 K.B. 227 that "the Crown cannot escape by praying in aid the doctrine of executive necessity, that is the doctrine that the Crown cannot bind itself so as to better its future executive action..... the defense of executive necessity is of limited scope. It only avails the Crown where there is an implied term to that effect or that is the true meaning of the contract" were noticed with approval by Shah, J. (as he then was), who observed :

"WE are unable to accede to the contention that the executive necessity releases the Government from honouring its solemn promises relying on which citizens have acted to their detriment;. Under our constitutional set-up no person may deprive a citizen off his right or liberty otherwise than in exercise of power derived from the law common or statute the Courts will be competent to and indeed would be bound to, protect the rights of the aggrieved citizen."

THE Supreme Court thus clearly negated the defense of executive necessity and pointed out that it did not release the Government from its obligation to honour the promise made by it, if the citizen, acting in reliance on the promise, had altered his position. This rule of law has been re-enunciated by the Supreme Court in a recent decision in Civil Appeal No. 1597 of 1972, *M/s. Motilal Padampat Sugar Mills Co. Private Ltd. v. The State of U.P. and others* (16), Indeed in this decision Bhagwati, J. after a review of the entire case law on the doctrine of promissory estoppel has gone on to hold that this doctrine which was previously available only "as a shield" can in appropriate case be also used "as a sword". This doctrine in the country of its origin has been somewhat watered down on account of judicial controversy and is not available as a sword in England but in India the law has made further advancement in this behalf. This has been noticed by a bench decision of this court in C.W. No. 802 of 1977, *M/s. Jain Shudh Vanaspati Ltd. and another v. Union of India and.. another* (17). In the judgment dated August 11, 1977 what has been held is, "It is true that the doctrine, applied by the Supreme Court in the case of *Anglo Afghan Agencies* has since been considerably watered down in the country of its origin on account of the judicial controversy following the decision in the case of *Robertson* and it has been recognised in England that the doctrine was not available "as a sword" of attack though it may still be used "as a shield" of defense and there is a considerable judicial thinking which concedes to the sovereign authority the power to change the policy or modify the administrative action even if on the basis of any representation made earlier a citizen may have acted to his prejudice, a view which is shared by juristic opinion in India. The doctrine would nevertheless be still available in India because in spite of the controversy, the decision of the Supreme Court in the case of *Anglo Afghan Agencies* still holds the field." Reverting to the decision in *Motilal Padampat Sugar Mills Co. Private Ltd.*, there is yet one other aspect on which the law is now settled and that would have relevance to the relief that is to be granted. It is no longer good law that the doctrine of promissory estoppel would be attracted only where the citizen has suffered any detriment by acting on the representation made by the Government. It has been laid down by the Supreme Court in the decision referred to above, that in order to attract the applicability of the doctrine of promissory estoppel the promisee, acting in reliance on the terms, should suffer any detriment is not a necessary ingredient. "What is necessary is only that the promise should have altered his position in reliance on the promise. This position was impliedly accepted by Denning, J. in the *High Trees* case when the learned Judge pointed out that the promise must be one "which was intended to create legal relations and which, to the knowledge of the person to whom it was made and which was in fact acted on". If a promise is "acted on", "such action" in law as in physics, must necessarily result in an alteration of position..... We do not think that in order to invoke the doctrine of promissory estoppel it is necessary for the promisee to show that he suffered detriment as a result of acting in reliance on the promise. But we may make it clear that if by detriment we mean injustice to the promisee which would result if the promisor were to recede from

his promise, then detriment would certainly come in as a necessary ingredient. The detriment in such a case is not some prejudice suffered by the promisee by acting on the promise but the prejudice which would be caused to the promisee, if the promisor were allowed to back out of the promise..... If this is the kind of detriment contemplated, it would necessarily be present in every case of promissory estoppel because it is on account of such detriment which the promisee would suffer if the promisor were to act differently from his promise, that the Court would consider it inequitable to allow the promisor to go back upon his promise. It would, Therefore, be correct to say that in order to invoke the doctrine of promissory estoppel it is enough to show that the promisee has acted in reliance on the promise, altered his position and it is not necessary for him to further show that he has acted to his detriment....."

(28) In the present case the export policy in respect of teak for the year 1978-79 was announced in March, 1977. The petitioners on the basis of that policy entered into firm contracts and even received advance payments. The change of the policy by imposition of the impugned total ban in, these circumstances would clearly attract the principles of promissory estoppel. The total ban, Therefore, has to be struck down.

(29) In the view that we have taken it is not necessary to decide whether Section 3 of the Act by itself is unconstitutional or whether the exercise of power u/s 3 in the absence of at least rules framed u/s 8 amounts to exercise of power in the absence of any control or guidelines. Suffice it to say that Section 3 of the Act by itself does not appear to lay down any legislative policy or guideline specially in the absence of rules framed u/s 8. It would perhaps be advisable for the Central Government to at least frame rules u/s 8 of the Act so that some guideline is available for exercise of power u/s 3. The preamble to the Act also does not give any guidelines but this lacuna can, perhaps, be filled by rules which once laid before the Houses of Parliament, may be regarded as sufficient legislative control for the exercise of executive power. It should not be left to the arbitrary whim or caprice of the executive to ban export fully or partially in any commodity without there being any test available to see whether the power has been exercised reasonably and in the interest of the public. These guidelines could be provided by the Rules. We leave it at that.

(30) Coming now to relief, as we have already observed the impugned Control Order, 1978 is held to be invalid, illegal, unconstitutional and arbitrary. The same applies to the Public Notice dated June 5, 1978. We would have stopped at this but in view of the attitude disclosed by the order of Shri Grewal dated December 30, 1978 and the rule enunciated by this Court in *M/s. Jain Sudh Vanaspati Ltd. and another v. Union of India* and another, C.W. 802 of 1977 and the Supreme Court in *M/s. Motilal Padampat Sugar Mills Co. Private Ltd. v. The State of U.P. and others*. Civil Appeal No. 1597 of 1972 we issue a mandamus to the respondents to issue necessary export licenses to the petitioners to export teak in sawn sizes. against firm contracts entered into by them in which advance

payment has been received prior to June 5, 1978 on the petitioners submitting fresh applications, proof of firm contracts, proof of advance payment received and identification of the source of procurement of the teak in sawn sizes sought to be exported. The petitioners" may put in the fresh applications within a week from today and the licenses should be issued within 10 days of the receipt of the applications.

(31) The petitioners will also be entitled to their costs in each case. Counsel's fee Rs. 1600/- in each case.