(1992) 09 BOM CK 0032

In the Bombay High Court

Case No : Writ Petition No. 76 of 1990

Rajaram Bandekar (Sirigao) Mines Pvt. Ltd. and others — APPELLANT

Vs

Export Credit And. — RESPONDENT

Date of Decision : 14-09-1992

Acts Referred:
Constitution of India, 1950 — Article 14, 19, 226, 32

Citation : (1993) 2 BomCR 526 : (1995) 82 CompCas 470 : (1993) 1 MhLj 91

Hon'ble Judges : G.D. Kamat, J;E.S. Da Silva, J

Bench : Division Bench

Advocate : S.K. Kakodkar, for the Appellant; V. Trivedi, B. Menezes, U.R. Timble, S.V. Kamat and M. A. Redkar, for the Respondent

Judgement

Dr. E.S. Da Silva, J.—In this petition field under article 226 of the Constitution, the petitioners are challenging the communication dated October 24, 1985, sent by the first respondents to respondents Nos. 2 to 4 and all other nationalised, scheduled or other banks directing the latter to obtain the prior approval of the said respondents for the continuation of export packing credit facility granted by respondents Nos. 2, 3 and 4 to the petitioners and/or for the grant of any fresh export credit facilities by respondents Nos. 2 to 4 and/or other nationalised, scheduled or other banks in India to the said petitioners or any of them.

2. The first petitioners are a private limited company carrying on business of extraction of iron ore from mines situated in Goa and export of such to foreign. The seventh and the eighth petitioners are the managing director and the joint managing director, respectively, of the first petitioners and hold 60.17 per cent. of the paid-up share capital of the petitioners. The second petitioners are a private limited company carrying on business, inter alia, of export of manganese ore from Goa to foreign countries. The seventh and the eighth petitioners are the managing director and the joint managing director, respectively, of the second petitioners and hold 95 per cent. of the shares of the paid-up share capital of the second petitioners. The third petitioners are a partnership firm and are carrying

on the business of export of ore from Goa to foreign countries. The seventh petitioner is partner in the firm of the third petitioners. The sixth petitioners are a private limited company carrying on business, inter alia, of processing and refrigeration of sea foods and export thereof to foreign countries. The seventh and the eighth petitioners are the directors of the sixth petitioners and hold 92.88 per cent. of the paid-up share capital of the sixth petitioners. The first respondents are incorporated under the Companies Act, 1956, fully owned by and an undertaking of the fifth respondents carrying on the business of guaranteeing payment of the amounts which may be advanced by nationalised banks, scheduled or other banks by way of packing credit or otherwise to individuals, firms or companies carrying on business of export of commodities from India to foreign countries. Respondents Nos. 2, 3 and 4 are nationalised banks and undertakings fully owned by the fifth respondents.

3. In or about the month of December, 1982, the fourth respondents extended export packing credit facilities to the fifth petitioners to the extent of Rs. 5,00,000 for export of bauxite ore from Goa to the United Arab Emirates with interest thereon of 2.5 per cent. per annum above the bank rate subject to a minimum of 12.5 per cent. with quarterly rests or at such other rate or rates as may be notified by the fourth respondents to the fifth petitioners from time to time. The said packing credit facility of Rs. 5,00,000 was enhanced by the fourth respondents at the request of the fifth petitioners to Rs. 10.00,000 on or about April 28, 1983, on the execution of similar documents by the fifth petitioners and the seventh and the eighth petitioners as directors of the fifth petitioners in favour of the fourth respondents. The fourth respondents had advanced to the fifth petitioners an aggregate sum of about Rs. 10,00,000 in respect of the said packing credit account up to about the end of the year 1983. There upon, the petitioners entered into a contract with Agencies Company Limited of the United Arab Emirates for export of bauxite ore from Goa, but on account of certain difficulties which arose, some litigation had to be filed by them against the master of the ship, the the ship owners and its agents as well as against the company which was supposed to carry on the loading of ore, as a result whereof the fifth petitioners could not receive any amount in respect of the value or price of 13,500 tonnes of ore loaded in the said ship and consequently the balance amount of the said export packing credit extended by the fourth respondents to the fifth petitioners remained outstanding. As a result, the fifth petitioners were disabled from making any payment in respect of the said packing credit facility extended by the fourth respondents by reason of wrongful and illegal conduct of the company, the ship and the ship owners and its agents. As its consequence the fourth respondents had filed a Special Civil Suit No. 34 of 1988 in the court of the C.J.S.D., Vasco-da-Gama, against the fifth petitioners and the seventh and the eighth petitioners for a decree of Rs. 18,77,662.66 and interest for the sale of stocks of bauxite purported to be hypothecated to the fourth respondents and for costs of the suit which is pending in the said court.

4. Similarly the sixth petitioners had been extended by the fourth respondents

export packing credit facility from about the month of October, 1982, initially to the extent of Rs. 25,00,000 in connection with their business export of marine products including sea foods and for various reasons namely the sudden slump in the international market on account of substantial fall in the demand for shrimps timely repayment of that loan could not be made and the fourth respondents filed Special Civil Suit No. 35 of 1988 against the sixth petitioners, the second petitioners, the seventh petitioners and others in the court of the C.J.S.D., Vasco-da-Gama, for a decree of Rs. 60,03,929.60 and interest.

5. All this risk of export packing credit facilities extended by the fourth respondents to the fifth and the sixth petitioners was insured by the fourth respondents with the first respondent. By reason of disability of the fifth petitioners as well as the sixth petitioners to pay the amounts advanced to them by the fourth respondents the said fourth respondents submitted their claims to the first respondents for payment of the amounts due to them in respect thereof.

6. The first respondents thereupon sent communications to respondent Nos. 2, 3 and 4 and all other nationalised and scheduled banks to the effect that the entire Bandekar group of companies including petitioners Nos. 1, 2, 3 and 4 has been placed in the "prior approval list" or "caution list" maintained by the first respondents and directed them all, including respondents Nos. 2, 3 and 4, to discontinue export packing credit facilities which were being enjoyed, inter alia, by petitioners Nos. 1 to 4 relating to their respective businesses and particularly export of iron ore and bauxite ore carried on by petitioners Nos. 1 to 4 and further not to extend any fresh export packing credit facilities to the entire Bandekar group of companies, including petitioners Nos. 1 to 4, without the prior approval of the first respondents. As a result of the said communication respondents Nos. 2 to 4 discontinued the export packing credit facilities which existed in favour of petitioners Nos. 1 to 4 from about the month of March, 1986, and the outstanding amounts in the said export packing credit accounts of petitioners Nos. 1 to 4 were converted into overdue cash credit accounts. In addition, the rate of interest was progressively reduced from about 12.5 per cent. per annum which prevailed in or about the year 1983 to about 7.5 per cent. per annum up to about the year 1986 by the Reserve Bank of India by several by several notifications issued in that behalf. As such that interest has been purported to be debited to be debited in the said several accounts of petitioners Nos. 1 to 4 with respondents Nos. 2 to 4 from about the month of March, 1986, at the rate of about 16.5 per cent. per annum with quarterly rests instead of the rate chargeable in said export packing credit accounts in accordance with the Rules and Regulations and/or notifications issued by the Reserve Bank of India in that behalf. As a consequence of that communication respondents Nos. 2, 3 and 4 and/or other nationalised banks are threatening to discontinue granting any further credit facility to the petitioners or to any one of them and further to appropriate amounts which may be realised by respondents Nos. 2, 3 and 4 on account of the petitioners towards their existing liabilities and not to permit them to utilise the said funds for the continuation of their business activities. This

illegal conduct of business of respondents Nos. 2 to 4 has brought the operation of the business of the petitioners to a complete standstill.

7. The petitioners stated that the aforesaid policy or instructions of the first respondents of placing the associate concerns of a defaulting party on the "prior approval list" thereby preventing all the banks from extending any export packing credit facilities to any such associate business concerns and further compelling them to convert the same into overdrafts or cash credit accounts are wholly irrational, arbitrary, capricious and perverse in their nature amounting thus to unreasonable restriction on the fundamental rights of the petitioners of carrying on business guaranteed under article 19(1)(g) of the Constitution. In any event, their fundamental right of equality under article 14 of the Constitution has also been violated by the first respondents in issuing such instructions or by acting upon such policy in so far as such associate business concerns are thereby adversely affected.

8. No notice or communication was sent by the first respondents to petitioners Nos. 1 to 4 or 7 and 8 for placing or including them in the "prior approval list" or in the "caution list" of the respondents or before giving instructions or sending communication to respondents Nos. 2 to 4 or any other nationalised, scheduled or other banks directing them to discontinue the existing export packing credit facilities extended to petitioners Nos. 1 to 4, 7 and/or 8 and/or directing them not to grant any fresh export packing credit facilities to the petitioners to the petitioners or any of them without the prior approval of the first respondents. No opportunity was also afforded by the first respondents or by respondents Nos. 2 to 4 to the petitioners to show cause why the petitioners should not be placed in the said "prior approval list" or "caution list". The first respondents have thereby in gross breach or violation of the principles of natural justice.

9. Finally, it was stated by the petitioners that the petition is filed after making all efforts to persuade the first respondents to withdraw or cancel the said instructions given by the first respondents Nos. 2 to 4 as well as to other nationalised, scheduled and other banks to discontinue extending export packing credit facilities to the petitioners. Thus the petition is filed without any avoidable delay. But in any event a prayer was made that the delay, if any in filing the petition be condoned.

10. Respondents Nos. 2 and 4 in their affidavits have denied that any communication or instructions were issued to them by respondent No. 1 to discontinue the export packing credit facilities which they were giving to the petitioners consequent upon the said communication. It was averred by the said respondents that it is true that in or about January, 1986, a communication was received from respondent No. 1 about petitioners Nos. 1 to 4 being placed in the "prior approval lost" or "caution list" maintained by the first respondent. But no directions had been sent to discontinue the facilities enjoyed by the petitioners or any of them. It was further stated by the said respondents that whenever a party is placed on the "prior approval list" by respondent No. 1 any advances to be

made to the said party should be with the prior approval of respondent No. 1 if the banks making such advances are desirous of availing of insurance coverage from respondent No. 1. The respondents also denied that any amounts in the export packing credit accounts of petitioners Nos. 1 to 4 or any of them were converted into overdue cash credit accounts by the said respondents. It was also denied that from about March 1986, consequent upon the impugned communication the respondents charged an interest at the rate of 16.5 per cent. per annum on any export packing credit granted to the petitioners. The respondents stated that the interest charged by them in respect of all the credit facilities granted to the petitioners were in accordance with the rules and regulations of the Reserve Bank of India in that behalf.

11. It was further averred that when the said communication of respondent No. 1 was received export packing credit facilities were continued and the said accounts were continued as export packing credit accounts and interest was charged thereon accordingly at concessional rates as per the Reserve Bank Rules till the same were closed on the dates respectively set out against them in the respective annexures by the payments received in the said accounts thereby liquidating the said outstanding dues. Even thereafter and despite the said communication some of the respondents advanced export packing credit facilities to petitioner No. 1 and further similar facilities to petitioner No. 3 and the interest charged on all these accounts was also at the concessional rate chargeable on such export packing credit accounts as per the Reserve Bank directives and at no time was any higher rate of interest charged. It was, however, clarified that one of the usual conditions of the export packing credit facility advance is that if such credit granted is not liquidated within a reasonable time, i.e., within about 180 days, then the same is to be converted into an overdue cash credit account wherein the interest charged is at the rate of 16.5 per cent. per annum and a further penal interest at the rate of 2 per cent. per annum on compounding basis with quarterly rests.

12. Shri S. K. Kakodkar, learned counsel for the petitioners, after submitting that respondent No. 1 is running a monopolistic business with regard to insurance cover of export packing credit facilities made available to them by the respondent banks, has made grievance that by the aforesaid communication dated October 24, 1985, which was known to the banks only in 1986, the banks were made bound to the judgment of respondent No. 1 regarding all the petitioners'' solvency. It was submitted by Shri Kakodkar that the banks are public bodies and masters of their own destiny but the communication addressed to them by respondent No. 1 was like a condemnation of the petitioners issued to them by practically placing the petitioners in the black list with disastrous consequences for their business. It was further submitted by learned counsel that the said communication was circulated without the petitioners having been heard on the matter of default of certain petitioners which ex facie could not be held as deliberate. It was, therefore, the manner in which the whole exercise was conducted by the respondents that the petitioners were assailing in the present

petition. Shri Kakodkar argued that there was no compulsion when a party is default with regard to the payment of their loans that he should be immediately blacklisted. Companies are different from the shareholders and each has its own identity. Therefore, petitioners Nos. 1 to 6 could not be confused with petitioners Nos. 7 and 8. They were different and thus the question of mixing both would not arise. Besides there was a fundamental right of the petitioners to carry on their business and blacklisting was violative of this right. Reliance was placed by learned counsel on the case of Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, , wherein it was held that in matters of contracts with the Government placing the name of a person on a black list creates a disability which has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gain. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist. A citizen has a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling. Where the blacklisting order involves civil consequences it casts a slur. The blacklists are instruments of coercion. Hence, a person must be given an opportunity of hearing before his name is pit on the blacklist.

13. It was further urged by Shri Kakodkar that the type of communication sent by respondent No. 1 to the other respondents is likely to impress upon the banks and to that extent affect their willingness to supply the export packing credit facilities. Besides although the communication was issued in March, 1986, the petition was filed 1990 only when its effect was felt by them at the time the banks refused to supply to them the facilities which they were availing of before the said communication. Further, there appears to be also some sort of over-reaction of respondent No. 1 and as such the communication had to be viewed as a disproportionate, irrational and illegal action on their part leading to arbitrariness which would by itself entitle interference on the part of this court in the exercise of its exercise of its extraordinary powers under article 226 of the Constitution. This is part from the fact that the alleged inter-relationship between the carious petitioners'' concerns has to be understood within the context of the separate entity of each of the companies.

14. In his turn Mr. Trivedi, learned counsel appearing for respondent No. 1, has forcefully advanced several submissions, namely, the fact of the petitioners being guilty of gross laches and delay, disputing their locus standi to file the present petition, the fact of the petitioners'' claim for damages being impermissible, the circumstance of the petition raising several disputed questions of fact, as well as the conduct of the petitioners and nature of the alleged communication which is under challenge in this petition. Elaborating these submissions it has been urged by learned counsel that the purported circular dated October 24, 1985, under dispute appeals to have become known to respondents Nos. 2 to 4 somewhere in

1986. However, the petition had been filed only in March, 1990. Besides the petitioners do not appear to have any locus standi to challenge by the present petition what according to Mr. Trivedi amounts ultimately to the terms and conditions on which respondent No. 1 grant insurance cover to the banks. In the same manner, the claim for damages made by the petitioners being of the nature alleged by them cannot obviously be pursued in the exercise of writ jurisdiction by this court. Similarly, it could be seen that the petition is filed raising several disputed questions of fact and policies concerning the terms on which an insurance company should carry on its business, the financial condition of the petitioners and an assessment of their financial position by respondent No. 1 as well as the proper rate of interest chargeable on advances to the petitioners. Learned counsel has also referred to the conduct of the petitioners prior to the issue of the circular by mentioning that various credit facilities enjoyed by them from different banks, namely, respondent Nos. 2 to 4, have come to the tune of crores of rupees. He also spoke about the inter-relationship of the petitioners against some of whom suits had been filed by the banks due to their non-compliance with the terms of the agreement entered into with the said banks and their defaults in making repayments of the said loans which defaults had been otherwise admitted by the petitioners in the very petition. Lastly, learned counsel has contended that the communication sent by respondent No. 1 to the banks contained only a request to obtain their prior approval before granting any advances under respondent No. 1 guarantee to the exporters and also any other firms or companies in which the partners or the directors or the proprietors noted therein are interested.

15. It was vehemently argued by Shri Trivedi that the aforesaid communication neither prevents the banks from granting facilities and/or continuing the existing facilities to the petitioners nor the said communication states that the first respondents will not consider a proposal of the said parties in the future. Attention was drawn by learned counsel that respondent No. 2, Canara Bank, has granted facilities to the petitioners in spite of the said communication and this has been stated on oath before this court by respondent No. 2 affidavit sworn by Mr. K. Annayya dated April 11, 1990. It was also brought to our notice by learned counsel that a winding up order has been passed against the first petitioners company somewhere in November, 1990, which has been reported as Deepa Anant Bandekar (Smt.) v. Rajaram Bandekar (Sirigao) Mines Pvt. Ltd. [1992] 74 Comp Cas 42 (Bom) while winding up proceedings are also going on against other company of the petitioners in the case of S. Kantilal and Co. Pvt. Ltd. Vs. Rajaram Bandekar. (Sirigao) Mines Pvt. Ltd., . It was further urged by learned counsel that there was no case of any black listing of the petitioners by the aforesaid circular which is not aimed only against them but against a number of companies which, according to the first respondents'' judgment, are to be viewed and assessed with more care and caution by the said respondents for the purpose of covering their insurance risk in respect of loans granted to them by the respondent banks. For this purpose, Shri Trivedi has placed before us two

volumes containing a specific approval list of exporters as on December 31, 1988, equivalent to the caution list which includes the names of the petitioners'' companies for the aforesaid purpose. Learned counsel has also drawn our attention to the affidavits of respondent No. 2 Canara Bank, and respondent No. 4, Bank of India, in Miscellaneous Civil Application No. 356 of 1991 in which they have reiterated the stand taken by them that the disputed communication is not aimed at stopping the granting of any credit facilities to the petitioners and instead was seeking only to suggest to the bankers to obtain the respondents'' prior approval in case they were willing to obtain the insurance cover from them in respect of the loans to be disbursed to the exporters included in the "caution list". We were also reminded by learned counsel that at present facilities to the tune of Rs. 1.72 crore have been granted by respondents Nos. 2 to 4 petitioners Nos. 1 to 4 wherein petitioners Nos. 7 and 8 are the guarantors of the loans and in respect whereof recovery proceedings are still pending.

16. Finally, Shri Trivedi has placed reliance in the case of Life Insurance Corporation of India Vs. Escorts Ltd. and Others, , wherein it was held that while it cannot be doubted that every action of the State or an instrumentality of the State must be informed by reason and that in appropriate cases actions uninformed by reason may be questioned as arbitrary in proceedings under article 226 or article 32 of the Constitution article 14 cannot be construed as a charted for judicial review of State actions and to call upon the State to account for its action in its manifold activities by stating reasons for such actions. If the action of the State is political or sovereign in character, the court will keep away from it. The court will not debate academic matters or concern itself with the intricacies of trade and commerce. If the action of the State is related to contractual obligations or obligation arising out of tort, the court may not ordinarily examine it unless the action has some public law character attached to it. In short, the court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field.

17. On behalf of respondent No. 2, learned counsel, Shri Timble, has also urged that apart from the fact that the communication does not prohibit them to supply credit facilities to the petitioners and in fact such credit facility gad been made available to them after the said communication, facilities at concessional rates referred only to export packing credit facilities while other facilities for loading and unloading goods are not covered by the aforesaid communication. Besides, the petitioners have been defaulters towards them in respect of the pervious loans and, therefore, they had filed recovery proceedings against them in respect of amounts which go over six crores of rupees.

18. Similarly, Mr. S. V. Kamat, learned counsel for respondent No. 3, while adopting the arguments of the other learned counsel, has disputed the right of the petitioners to seek a relief in the nature of write against the banks or the purpose of directing them to grant credit facilities to the said petitioners. He has

also urged that as far as the interest charged by the banks is concerned they were bound by the detectives of the Reserve Bank of India by pointing out that the export packing credit facilities were also granted as a matter of course for limited period of time. It was contended by learned counsel that they are still granting finance to the petitioners even without the cover if respondent No. 1 and in this connection he refers to a loan made available to the petitioners on January 6, 1987, after the issue if the disputed circular. Shri Kamat argued that this fact by itself show that they have not been influenced by the aforesaid circular and that they are taking respondent No. 1''s cover only when they find that the guarantees supplied to the respondent banks are not sufficient to secure their loans. Lastly, learned counsel has drawn our attention to para 10 of the agreement which implies some sort of contractual obligation acknowledged by the petitioners in respect of the loans granted by them and which are to be discharged by them within 90 days. Hence, it was urged that there was no case for the petitioners to approach the courts for any directions either against respondent No. 1 or any of the remaining respondents, namely, respondents Nos. 2 to 4 as well as in respect of the aforesaid circular.

19. There is no doubt a lot of substance in the submissions made by the respondents'' learned counsel and we are therefore unable to accede to the propositions advanced by Shri Kakodkar on behalf of the petitioners which otherwise do not appear to be based in any sound foundation either in facts or in law.

20. At the very outset it is pertinent to record the facts admitted by the petitioners themselves in their petition and the disclosures made therein regarding the credit position of the said petitioners not only amongst themselves but also vis-a-vis all the respondent banks.

21. First of all in the face of the petition it is seen that the petitioners have acknowledged that they had been granted substantial advances and credit facilities by the various nationalised commercial banks, namely, respondents Nos. 2 to 4 in connection with their business which according to their own estimation ate exceeding the huge amount of mire than Rs. 1.72 crore. This by it self suggests that such amounts correspond to a heavy investment and the financial involvement made by the public sector bands in favour of the petitioners'' group of companies which are mainly represented by petitioners Nos. 7 and 8.

22. It has also been represented by the very petitioners that all these companies and firms mainly controlled and directed by petitioners Nos. 7 and 8 who happen to be husband and wife are closely inter-related and being so it seems reasonable to infer that in such a situation charge in the financial condition of one of the inter-related concerns is likely to affect the financial condition of the other inter-related companies. Thus and consequent upon the heavy financial involvement of the banks with the petitioners it is only proper to conclude that the financial condition of the petitioners or of any or some of them is liable to have a serious consequence on the recovery of monies owing to the banks and

other financial institutions.

23. Further, the records shows that from the disclosures made by the petitioners themselves the group of companies owned, controlled and managed by petitioners Nos. 7 and 8 are involved in litigation with regard to their export business thus facing serious difficulties in the smooth running of the aforesaid business. As a result of this litigation the petitioners had been unable to regularly pay their liabilities towards the banks and have failed to cleat their outstanding dues owed respondents Nos. 2 to 4. Consequent upon this situation suits had been instituted by the banks which are still pending for recovery of the loan amounts on account of defaults committed by the petitioners. The petitioners have admitted these defaults although have sought to explain and justify the nonpayment of the amounts due to the banks. On the other hand, admittedly, respondent No. 1 is Government company carrying on manly the business of guaranteeing insurance in the export trade. Being so and as an insurance company doing business in export trade it is in the fitness of things that they should necessarily assess in every case the risk which may be involved in loaning funds to a particular or against particular transaction in which they are directly concerned. It is thus indisputable that respondent No. 1 is bound as a business organisation to consider carefully the risk which may be involved in the process and exercise proper care and caution in its business dealings. It is in this context that the communication addressed by the said respondent No. 1 to the nationalised and other scheduled banks, namely, respondents Nos. 2 to 4, informing them that the facilities provided by the said banks to the group of companies, firms and individuals represented by the petitioners will be insured in future by them only if a specific approval for the grant of facilities sought for is obtained from the said first respondent cannot be faulted and should be viewed bearing in mind the actual and present financial conditions of the petitioners and disclosed by them in their petition. It is therefore, reasonable to accept that the object and purpose of this communication aims to minimise the risk that if the first respondent is to be required by the banks to provide them any insurance cover against such advances made to the petitioners it should be necessary that due and proper care of the concerned facilities and transactions be strictly assessed. And as it was already averred by the concerned banks the aforesaid communication has in no way prohibited the banks from than by respondent No. 1 is to obtain their prior and specific approval if the said banks required the said first respondent to furnish any insurance cover against the credit facilities involving the petitioners.

24. This being the position, it is clear that the petitioners have no right to prevent the first respondents to take whatever steps they should feel like devising so as to safeguard, and minimise the risk in, then business as a measure prudence and proper planning in the discharge of their commercial dealings involving public funds. Thus, the fact of the first respondents having addressed their disputed communication cannot or should not be reasonably defaulted in the context of the circumstances which appeal to have motivated

and/or promoted them to ensure the safety of their business and for the specific purpose of streamlining the risk which they are covering in relation to the loans, transactions and facilities granted by respondents Nos. 2 to 4 to the petitioners'' companies and other also in similar position.

25. This right of respondent No. 1 to exercise proper care and caution had been otherwise unmistakably acknowledged in the decision of the Kerala High Court in an unreported case of Seema Cashew Traders v. Manager, Export Trade Corporation of India Ltd., dared September 29, 1989, in Writ Appeal No. 767 of 1989, which has held that the purpose of including the names of persons in the caution list is to include the names of persons about whom extreme care and caution has to be taken for a variety of reasons and that inclusion in the list is for the purpose of the corporation itself in the exercise of its dictation which its is called upon to exercise. Therefore, the prayer for quashing the name of the appellant from the said list falls outside the scope of writ jurisdiction of the court as it is neither for enforcement of the statutory right nor any fundamental right. The court also observed when such list is only meant for the guidance of the corporation itself it is difficult to understand as to how a person can complin about the cautious conduct of the corporation in deciding beforehand that whenever any such case comes up for consideration it should exercise greater care and caution. Therefore, no relief to prevent the corporation from exercising greater care and caution is admissible.

26. Besides, as it was rightly pointed out by Shri Trivedi, it seems that by challenging the impugned communication the petitioners seem to dispute the terms and conditions on which the first respondents are granting insurance cover to the banks which manifestly they are not entitled to do for lack of proper locus standi. The submission of Shri Kakodkar that the petitioners are not throwing such challenge and that in terms of the agreement entered into by their with respondents Nos. 2 to 4, the petitioners'' final conditions and/or the first respondents'' assessment of these conditions are irrelevant to the issue in question is not convincing to the extent that by expressly seeking relief of mandamus from the court to withdraw, cancel or revoke the said communication direction the banks to obtain prior approval of the first respondents for the continuation of the export packing credit facilities granted by them to petitioners Nos. 1 to 4 and to forbear respondents Nos. 2 to 4 from enforcing the policy of the first respondents on their behalf against the petitioners with a further direction for respondents Nos. 2 to 5 to extend export packing credit facilities to the petitioners notwithstanding the default if any committed by them in fulfilling their obligations in respect of the facilities already extended by respondent No. 4 to petitioners Nos. 5 and 6, the petitions are practically trying to circumvent the terms and conditions of the agreement purportedly entered into by respondent No. 1 with respondents Nos. 2, 3 and 4.

27. To be noted also that in the affidavit of respondents Nos. 2 and 4 as will as in the oral submissions made before us learned counsel for respondents Nos. 2 and

3 have contended that the petitioners have been defaulters towards them and therefore they were compelled to file recovery proceedings against them for the amounts due which are worth many crores of rupees and that in spite of the communication respondent No. 1, they had still granted finance even without cover which fact revels that they had not been least influenced by the aforesaid communication of the said first respondent because cover is taken from them only when they find that the guarantees offered by the petitioners'' companies for the purpose of granting them credit facilities are not sufficient. The aforesaid submissions also show that there has been no stoppage of such facilities made available to the petitioners even after the impugned communication. It is, therefore, obvious that in the circumstances it cannot be said that the said communication had actually influenced the bankers/respondents to discontinue the flow of the credit facilities sought for by the petitioners as alleged by them.

28. This being the position, it is only proper that we should see no merit in the various submissions advanced by Shri Kakodkar on behalf of the petitioners while assailing the impugned communication dated October 24, 1985.

29. As it stands the right of the first respondents to issue instructions to respondents Nos. 2 to 4 as well as to the other banks cannot be disputed and therefore the petitioners should make also no grievance that principles of natural justice has been violated by the said respondent No. 1 while issuing the said communication, so much so, there is also no case of any blacklisting of the petitioners'' companies which otherwise have been not the only ones to be covered or contemplated by the first respondents by the same communication. The authority cited by the petitioners in this regard in the case of Life Insurance Corporation of India Vs. Escorts Ltd. and Others, , is manifestly no attracted to the circumstances of the present case besides being give on the facts. In the case of Chemiequip Ltd. and Another Vs. Bank of Baroda and Others, , a single Bench of this court has held that it is not possible for the court to determine the question as to whether a particular unit is viable or otherwise because the determination of such question would require examination of many facets including the financial implication and the courts are not in a position and are not equipped to undertake such detailed exercise. It is necessary for the court to leave some discretion in favour of the financial institutions to determine whether a unit is viable or otherwise and the court should be extremely slow in forcing the financial to advance public funds to a private party on an assumption that the unit would be viable. The desecration exercised by financial institutions is not to be interfered with unless it is made with oblique motives or for extraneous purpose or upon extraneous considerations.

30. We are satisfied that maintaining "caution list" is a policy matter of the first respondents. We have seen two books where innumerable parties have been also put on "caution lists" and this is not a case where the petitioners have been singled out. On the facts we also find that the "caution list" or "prior approval lost" cannot be equated with blacklisting and, therefore, the ratio laid down by

Supreme Court in Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, , is not applicable. The question in the case cited supra was that the tenderer was put in the blacklist with the result that there was no question of accepting his tender. The case at hand is entirely different where the request for cover of insurance was to be decided on the merits of the application.

31. In this view of the matter we find that it is a mere fallacy on the part of learned counsel for the petitioners to contend in the light of the various prayers and relief sought for by the petitioners in their petition that the petitioners are not asking for a direction from this court that the banks should consider them as viable and that the inter-relationship between the various petitioners'' companies is to understood only within the context of their being separate entities different from each other. We are unable to accept the petitioners'' argument that the communication dated October 24, 1985, has ultimately stopped the banks namely, respondents Nos. 2 to 4, from granting them the export packing credit facilities on account of the detections given by the first respondents to obtain from them prior approval and, therefore, this direction is a fiat or a command which has ultimately dried up the flow of credit which respondents Nos. 2 to 4 were making available to them prior to the issue of the communication.

32. In the result we are of the view that nothing survives in this petition which thus seems to us totally misconceived and devoid of any substance. Hence, we hereby dismiss the same and discharge the rule made with no order as to costs.

