(1978) 11 BOM CK 0003

Bombay High Court

Case No: Appeal No. 122 of 1978 in Miscellaneous Petition No. 1290 of 1977

State Bank of India		APPELLANT
	Vs	
Kalpaka Transport Company P. Ltd. and Another		RESPONDENT

Date of Decision: Nov. 17, 1978

Acts Referred:

- Constitution of India, 1950 - Article 12

Citation: (1980) 50 CompCas 740

Hon'ble Judges: B.N. Deshmukh, C.J; S.C. Pratap, J

Bench: Division Bench

Advocate: Soli Sorabjee, for the Appellant; A.B. Divan and K.S. Cooper, for the Respondent

Judgement

B.N. Deshmukh, C.J.
This appeal was expeditiously heard at the instance of the counsel for the State Bank of India. According to him, it raises an important question of all India importance and an earlier decision will enable the bank to adjust its business dealings in the matter of discounting of bills.

2. The facts are not much in dispute. The appellants are the State Bank of India. They have branches all over India and all the former Indian States'' banks have been taken over by them as subsidiary banks. The State Bank has been created under the State Bank of India Act of 1955 (No. 23 of 1955), and all the former Indian States'' banks and Government associated banks were taken over by the State Bank of India (Subsidiary Banks) Act, 1959. Various kinds of banking business are being carried on by the State Bank of India, which include the discounting of bills or the business of bill-purchase.

3. The State Bank of Mysore is the subsidiary of the State Bank of India. It has a branch at Tiptur in Karnataka. Respondent No. 1, the original petitioner, is the Kalpaka Transport Company Private Ltd., incorporated under the Indian Companies

Act, and carries on business as a public carrier all over India. Respondent No. 2, the original petitioner No. 2, is a director of the first petitioner-company.

4. This company was floated in the year 1973 and became a private limited company on 17th February, 1973. When goods are loaded by their customers, the respondents issue, what are known as lorry receipts and undertake to carry the goods to the destination and deliver them as per instructions of the customers.

5. At Tiptur there are three different firms named D. S. Mallappa & Sons, D. S. Mallappa & Company, and Deshmukh & Company, dealing in kopra. All the firms are practically owned by the same persons. They had dealings in kopra, and had an account with the State bank of Mysore, at Tiptur, for the purpose of discounting their bills. These bills were always accompanied by lorry receipts, and, according to the usual banking practice, to the extent of the limit allowed, these bills were being discounted.

6. As it appears, before the Indian Bank Association was formed, and a scheme was framed by them for recommending transport operators to member banks, each branch dealt with the firms directly, to whom bill discounting facility was permitted. The transport operator, who issued the lorry receipts, was hardly in the picture.

7. In that manner, the three firms were discounting their bills with the State Bank of Mysore, Tiptur branch, for a number of years, and had a large credit with that bank.

8. Some time in June of 1974, the Indian Bank Association prepared a Scheme for recommending transport operators to member banks. Under this scheme, the Indian Bank Association (hereinafter referred to as "IBA") was formed, consisting of several banking institutions as its members. This association floated a scheme, under which transport operators, who wanted their lorry receipts to be accepted for the purpose of discounting the bills of the bank''s clients, had to apply to the IBA. They have to establish their credibility and worth in the market. If the IBA finds that the transport operator is of the requisite type, it would accept him and put him on the approved list of the IBA. One of the important conditions, which a transport operator had to agree to, was to issue the lorry receipts in a certain special form. If that was done, the transport operator had to bear full responsibility for loss caused to the bank by the goods not reaching the destination for any reason whatsoever. In other words, they had to agree to the bank being treated as the owners of the goods and for any loss caused for any reason to the bank (sic). In other words, in addition to the normal responsibility cast on the transport operator, full security was available to the banks in the form of an undertaking given by the transport operator by agreeing to certain terms and conditions of the contract. The IBA was to act in that behalf as an agent of such member banks, who had agreed to accept such transport operators. The list prepared by the IBA was purely recommendatory, and the member banks were not bound to act on them, and they can make their own additional enquiries, reject some names and accept others. However, when a

member bank accepted the name of a particular transport operator, such transport operator was supposed to sign a contract in favour of the IBA, as the agent of the member banks. Even this did not create immediate contractual relationship between the said transport operator and the bank. As and when a client of the bank presented a bill for discounting accompanied by a lorry receipt, the bill was in fact discounted and if the transport operator was on the approved list of the bank, as per the above-mentioned procedure, the standing contract or the specimen contract now became operative and represented the contract between the member bank and the transport operator at that point of time. This, in brief, is the IBA scheme.

9. Under this scheme, respondent-Kalpaka Transport Company Private Ltd., applied to the IBA for inclusion of its name in the approved list. In that application filed in April, 1975, it disclosed that the Kerala Transport Company, which was a partnership firm was an associated company of Kalpaka Transport Company Private Ltd. This disclosure was necessary in view of the form of application required to be made to the IBA. Two of the partners of the Kerala Transport were directors in Kalpaka, and the wife of the third partner of the Kerala Transport was also a director of the Kalpaka Transport. This application was immediately granted in April, 1975, and Kalpaka lorry receipts were thereafter accepted by the State Bank of Mysore, while discounting the bills presented by their own clients.

10. While the business of discounting the bills was continuing in this fashion, a huge fraud amounting to Rs. 22 lakhs was discovered in March, 1976, D. S. Mallappa & Company had discounted bills with the State Bank of Mysore, Tiptur branch, on a large scale by presenting bills accompanied by the lorry receipts issued by the Kerala Transport Company. They were all fake or bogus lorry receipts. The receipts were issued without actually loading the goods on the trucks. On the strength of such fake receipts, D. S. Mallappa & Sons became indebted to the bank to the extent of Rs. 22 lakhs. When the fraud was detected, business was suspended with all the three firms of Mallappa, and in addition the State Bank of Mysore ceased to accepted for discounting the bills of any other client which were accompanied by the lorry receipts of the Kerala Transport Company. Later, instructions were issued to all the local officers of the State Bank of India and all the subsidiary banks not to accept any lorry receipts issued by the Kerala Transport Company for the purpose of discounting any bill of any customer of the bank. The Madras local head office brought to the notice of the Bombay head office the fact that the Kalpaka Transport Company, the respondents in this case, were an associate of the Kerala Transport Company, and it was not desirable to accept the lorry receipts issued by Kalpaka as well. Accordingly, instructions were issued and the name of Kalpaka was removed from the list of the approved transport operators. The fact of the removal of the removal of the firm''s name from the list is described as blacklisting. Instructions were then issued not to deal with any bills, which were accompanied by the lorry receipts issued by the respondents-company.

11. The respondents made representations, and perhaps satisfied the State Bank of India at one stage that they could not be blamed for what had happened between Mallappa & Sons on the one hand and some of the servants of the servants of the Kerala Transport and also the bank officials of the Mysore State Bank on the other. Dealing, however, with the further information supplied by the Madras branch of the State Bank of India to the head office of the State Bank of India, Bombay about the connection between the Kerala Transport Company and the Kalpaka Transport Company, the Kalpaka, as transport operators, had been blacklisted by the State Bank of India. On the second occasion, this was restricted to the branches of the State Bank of India only, but the same instructions were in due course issued to all subsidiaries as well. In this manner, so far as the State Bank of India and all its branches as well as its subsidiaries were concerned, there was a wholesale ban on dealing with the Kalpaka Transport Company.

12. In these circumstances, the two respondents filed a writ petition in this court before the learned single judge. They alleged that the State Bank of India is a "State" or "other authority" under art. 12 of the Constitution of India. That being so, it was a constitutional obligation on them to treat all customers equally and fairly. Every citizen has a right to expect that he can enter into a contract with the State and in doing so he would be given an equal opportunity. By blacklisting the respondents, or by removing their names from the list of transport operators, a blanket ban has been placed upon their dealings with the "Start". It is conceded that the respondents do not have any positive right against the Government. However, they have a right to entertain a reasonable expectation of being able to deal with the State, and for that purpose should have an equal opportunity with every contending transport operator in the field. Before they are so deprived of that opportunity, it was further an obligation of the State Bank of India to hear them and consider their defences objectively, and if in spite of such opportunity being afforded their claims were still rejected, they could have no grievance. Therefore, the grievance raised is that without following the principles of natural justice the respondents are deprived of the opportunity to deal with the State Bank of India.

13. The defence raised was two-fold. In the first instance, it was sought to contend that the State Bank of India or its subsidiaries are not a "State" or "other authority" within the meaning of that expression used in art. 12 of the Constitution. If this is so, then the bank was free to decide with whom it would deal. The alternate defence is that even if the State Bank of India happens to be a "State", it is not obligatory on it to follow the rules of natural justice when a purely business deal is being undertaken. In other words, discounting of bills and accommodating parties by bill-purchase is a purely commercial transaction. If the bank entertains the slightest doubt about the safety of its security, it can refuse to deal. The deal or the investment not being safe, can be due to some conduct on the part of the bank''s own client or the transport operator, whose lorry receipts accompanied the bill for discounting. In either case, it is the absolute right of the bank to decide whether to

deal with a particular party or not. This being a commercial deal, where no governmental or quasi-governmental business was being transacted, the obligation to follow the principles of natural justice does not arise.

14. On these pleadings and after hearing the parties, the learned trial judge came to the conclusion that the State Bank of India is "State" or "other authority" within the meaning of that expression used in art. 12 of the Constitution of India. He further held that the respondents were already on the approved list of the bank. To remove them from the list amounts to blacklisting. The wholesale ban to deal with the Kalpaka Transport Company amounted to blacklisting of the said company. It affected the reputation of the respondents and also their business, and such a decision by the State Bank of India was not valid without following the principles of natural justice and without giving a reasonable opportunity to the respondents to present their case before the bank authorities. In this view, the learned single judge allowed the petition and issued a direction to the appellant-bank to give a reasonable hearing to the respondents before desisting them from the approved list of transport operators.

15. Being aggrieved, the State Bank has filed this appeal. From the summary of facts given above, it is clear that two points arise for determination. The first is whether the State Bank of India is a "State" or "other authority" within the meaning of art. 12 of the Constitution, and the second point is, if so, whether the principles of natural justice applying even in the matters of discounting bills, where the acceptance of a transport operator''s lorry receipt is a relevant factor.

16. Both these points seem to be fully covered by now by the various decided authorities. Considerable emphasis was placed on the Division Bench judgment of this court in the trial court and also before us, viz., Ramesh Krishna Rao Vs. State Bank of India, . That was a service matter, but the question which directly arose for consideration before this court was whether the State Bank of India was a "State". Though the Division Bench relied upon certain other judgments, the main judgment that fell for consideration was the judgment of the Supreme Court in the case of Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, . The main passage that was sought to be construed was contained in para. 5 of the report. The passage is as follows (p. 1862) :

"The meaning of the word ''authority'' given in Webster''s Third New International Dictionary, which can be applicable is ''a public administrative agency or corporation having quasi-government powers and authorised to administer a revenue-producing public enterprise''. This dictionary meaning of the word ''authority'' is clearly wide enough to include all bodies created by a statute on which powers are conferred to carry out governmental or quasi-governmental functions. The expression ''other authorities'' is wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of the Government of India and we do not see any reason to narrow

down this meaning in the context in which the words ''other authorities'' are used in Art. 12 of the Constitution."

17. It may be remembered that the Electricity (Supply) Act, 1948, under which the Rajasthan Electricity Board was created, did vest certain Governmental or quasi-governmental functions in the Electricity Board. In addition, it was also vested with certain activities which can be described as purely commercial. The question, therefore, that arose was whether such a Board, having partly governmental and quasi-governmental functions and partly commercial functions, could be deemed to be "other authority" within the meaning of that expression used under art. 12.

18. After having carefully analysed the provisions of the Electricity (Supply) Act, 1948, their Lordships drew the conclusion as stated above. While construing this conclusion, the Division Bench of this court in Ramesh Krishna Rao Vs. State Bank of India, said that the last sentence in that paragraph cannot be severed from the earlier discussion. It was true that the Supreme Court in that judgment had rejected the ejusdem generis theory in construing the expression "other authority", as they were unable to find any common genus running throughout the various normal bodies nor could they place the body on some rational position, and they rejected the ejusdem generis theory out of hand. If the expression "other authority" is to be then construed, apart from the doctrine of ejusdem generis, should an authority created under a statute and vested with powers but performing the functions which are purely commercial be styled as "other authority" ? Since the facts of that case included powers, both quasi-governmental as well as purely commercial, the Division Bench of this court did think that the passage quoted above required the vesting of some governmental or quasi-governmental functions in a statutory body or authority without which it could not become other authority under art. 12. It may be that such a body is also entrusted with purely commercial functions, in addition to the governmental or quasi-governmental functions. However, the vesting of quasi-governmental functions, or the authority to command obedience at the pain of penalty, or the right to enforce the provisions of some statute, are the sine qua non of styling a corporation or a statutory authority either "State" or "other authority" under art. 12.

19. What is being argued before us is that the Supreme Court never meant to lay down such a law. It has itself explained in a subsequent judgment that the meaning attributed to the judgment in Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, , by the Division Bench of this court was not in the mind of the Supreme Court. For this purpose, reliance is placed upon the judgment of the Supreme Court in the case of Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, .

20. Before we go to that judgment, let us point out that the judgment in Rajasthan State Electricity Board, itself has indicated as to how the meaning attributed to it by

the Division Bench of this court was not in the mind of the Supreme Court. As they have already pointed out, the facts before the Supreme Court in that case show that the Rajasthan Electricity Board was vested to some extent with governmental and quasi-governmental functions, as also commercial functions. A question never directly arose in that case for decision as to whether a statutory authority or corporation which is not vested with any governmental or quasi-governmental function could still become "other authority", under art. 12 provided it transacted business of public importance, or which is fundamental to the life of the people, and which is under the full control of the Government. Since an argument was raised before them in Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, that the Board could not be described as "other authority" as it was performing purely commercial functions in respect of certain items which were relevant in that case. In order to reply to that argument, their Lordships observed that the expression "other authority" was wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of the Govt. of India, and they did not see any reason to narrow down this meaning in the context in which the words "other authority" were used in art. 12 of the Constitution. Though the facts of that case did not require the Supreme Court to so pronounce, they did in fact pronounce that such an authority would still be "other authority" under art. 12, even though governmental or quasi-governmental functions were not vested in it. This appears to be plain from the fact that Shah J. (as he then was), agreed with the final order proposed by the court, but gave his dissenting judgment on one point. Paras. 10 and 12 are pertinent in that behalf. Though Shah J. agreed with the proposition that the Electricity Board, Rajasthan, was a "State" or "other authority", he was not agreeable to the proposition that every constitutional or statutory authority on whom powers are conferred by law would become "other authority" within the meaning of art. 12. The learned judge, therefore, made the following observations Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others,

"10. I am unable, however, to agree that every constitutional or statutory authority on whom powers are conferred by law is ''other authority'' within the meaning of art. 12. The expression ''authority'' in its etymological sense means a body invested with power to command or give ultimate decision, or enforce obedience, or having a legal right to command and be obeyed ....

"12. In my judgment, authorities constitutional or statutory invested with power by law not sharing the sovereign power do not fall within the expression ''State'' as defined in art. 12. Those authorities which are invested with sovereign power, i.e., power to make rules or regulations and to administer or enforce them to the detriment of citizens and others, fall within the definition of ''State'' in art. 12, and constitutional or statutory bodies which do not share that sovereign power of the State are not, in my judgment, ''State'' within the meaning of art. 12 of the Constitution."

21. It is, therefore, clear that Shah J. agreed with the conclusion that the Electricity Board, Rajasthan, was "other authority" under art. 12 only because, besides commercial activities, it was also invested with some sovereign powers. The learned judge was not agreeable to the approach that every constitutional or statutory authority on whom powers are conferred by law could automatically become "other authority" within the meaning of art. 12. In our view, therefore, the judgment of the Supreme Court in Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, had itself laid down that any constitutional authority or statutory body vested with powers and carrying on business of public importance and which is fundamental to the life of the people could be considered as "State" within the meaning of art. 12.

22. However, after the judgment of the Supreme Court in the case of Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, , hardly any doubt now survives in that behalf. This is a judgment where three judgments have been delivered. The majority takes the view that the three Corporations, viz., the Life Insurance Corporation of India, the Oil and Natural Gas Commission and the Industrial Finance Corporation, are all "State" or "other authorities" within the meaning of art. 12, Alagiriswami J., alone takes a contrary view. However, the majority view is expressed in two different judgments, both leading to the same conclusion. However, out of them, Mathew J., who wrote a separate judgment, makes the position slightly more explicit or clear. In this judgment, the Supreme Court analyses in detail the various provisions of the three Acts, which created the Life Insurance Corporation of India, the Industrial Finance Corporation and the Oil and Natural Gas Commission. So far as the Oil and Natural Gas Commission is concerned, undoubtedly, it performs certain functions which appear in the nature of quasi-governmental or governmental functions, but no such functions are performed in the case of the Life Insurance Corporation of India, as also the Industrial Finance Corporation. They are more or less purely commercial undertakings, but are created by statutes to carry on business of public importance, or which is fundamental to the life of the people. It is because of this feature that they also fall within the expression "other authorities" under art. 12 of the Constitution. In the case of the last two mentioned Corporations, their employees are not given the status of public servants, nor have they any powers to enforce obedience on pain of penalty. However, the Life Insurance Corporation has a distinctive feature of having the monopoly of running the business of life insurance. Even that distinctive feature is not available to the Industrial Finance Corporation. There are several financing agencies in the field and this Corporation is one of them. However, both of them play a vital role in the economic life of the country and are agencies of the Government in that behalf, but the structure of all these three Corporations shows the hand of the Government in a large way, and the control of the Government is felt at every stage. Whenever, therefore, there is a statutory body or authority, the constitution of which shows

that it is the voice and hand of the Government which is felt in a large measure and which Corporation deals with business of public importance or vital to the life of the community, it will be safe to infer that such a Corporation would fall within the expression "other authority" under art. 12 of the Constitution. This is what the majority judgment holds, but this part of the reasoning is more explicit in the separate judgment of the learned judge, Mathew J.

23. This being the legal position, we find that the State Bank of India and its subsidiaries are statutory Corporations. In making several appointments forming the structure of these Corporations, the Government''s role is quite clear. Even in the matter of laying down of policy involving public interest, the State Bank shall be guided by the directions given by the Central Govt. in consultation with the Governor of the Reserve Bank, and the Chairman of the State Bank of India. All such directions are to be given through the Reserve Bank, and if any question arises whether a direction relates to a matter of policy involving public interest, the decision of the Central Govt. thereon shall be final.

24. It may now be noted how the State Bank of India came to be created. A committee appointed by the Reserve Bank in 1951 submitted a report. One of the important recommendations, and an integral part of the solution of the rural credit problem, propounded by the committee was the setting up of a State Bank of India as one strong integrated State-partnered commercial banking institution with an effective machinery or branches spread over the whole country for stimulating banking development by providing vastly extended remittance facilities for co-operative and other banks and following a policy which could be in effective consonance with national policies adopted by the Government without departing from the canons of sound business. Such a State Bank of India is envisaged as coming into being by the amalgamation of the Imperial Bank of India with certain "State-associated banks". It would, therefore, be clear that the entire Imperial Bank of India was taken over with a view to effect more centralised control over the rural credit and to facilitate larger remittance facility, as also to implement the financial policies of the Govt. of India without losing sight of the sound commercial principles. It may also be noted that fourteen major banks of this country were nationalised with a view to control "the financial heights". The entire picture, therefore, that emerges from this activity of the Government is its extent and its control in a large way in the financial and commercial world with a view to implement its policies through the agencies created under the statute. The corporate bodies, viz., the banks, therefore, are the agencies of the Government, which have a large hand in controlling the policies. It is the Government which is laying down the economic policies and controlling the financial heights on the basis of sound commercial principles in doing business; it cannot be forgotten that it is voice and the hand of the State that is effectively felt in all the activities. Banking undoubtedly is an activity vital to the life of the community, and it is undoubtedly a business of great public importance. This being the nature of the institution and also its powers, we have

hardly any doubt that the State Bank of India is either "State" or "other authority" within the meaning of that expression in art. 12.

25. We are apprised of the facts that several High Courts in this country have declared from time to time that the nationalised banks as well as the State Bank of India are "other authorities" within the meaning of art. 12 of the Constitution. In A. R. Joshi v. State Bank of India, Delhi [1978] 1 LLJ 48, a learned single judge of the Delhi High Court declared the State Bank of India to be "other authority" within the meaning of art. 12. The Andhra Pradesh High Court in Miss. P. S. Geeta v. Central Bank of India, [1978] LIC 1271, held that the Central Bank, after nationalisation, is "other authority" under art. 12. In the same way, a Division Bench of the Calcutta High Court declared the United Commercial Bank to be "other authority" in [1977] Lab IC 1030. The last judgment was not available to us. However, we have gone through the two earlier judgments, and the learned judges have taken for granted (sic) as concluded by the Supreme Court judgment in Sukhdeo Singh''s case AIR [1975] CC 285. We are, therefore, in agreement with the learned judge that the State Bank of India, though not specifically called upon to perform governmental or quasi-governmental functions and though does not possess powers to enforce obedience at the pain of penalty, is still "other authority" within the meaning of that expression under art. 12 for the reason already detailed above.

26. This takes us to the second question as to whether the State Bank was bound to hear the respondents before discontinuing them from the list of approved operators. This question also does not admit of much argument. We will indicate a little later as to how the proposition of blacklisting appears to us on further analysis, even if there were no such approved list, as we find in the present case. However, as there is already a list, let us see how it operates and what would be the consequence of removing the name of the respondent from that list. We have very briefly summarised the IBA scheme for recommending transport operators to the member banks. Let us, therefore, point out how that scheme works in actual practice. Since the member banks are following the scheme, they maintain a list of their own regarding the transport operators. Under the normal manner in which bill discounting business was being conducted before the present scheme, the transport operator''s liability was confined to that of a public carrier. It was the credit of the bank''s own customer which mainly gave the bill discounting facility to him. While sanctioning an account of a customer, the bank rarely looked to the transport operator. The goods could be loaded on any truck or lorry and it was felt irrelevant whether the transport operator was an owner of a single vehicle or a fleet. However, it was mainly the credit-worthiness of the bank''s own customer that made the bill discounting facility available to him. However, the IBA devised the scheme by which additional responsibility was being placed upon the shoulders of the transport operators. Only such of them as were found to be sound operators in the estimate of the IBA and were further willing to give the undertaking and enter into a contract as proposed by schedule A to the scheme, were alone listed in the

approved list of the IBA. This list again was merely a recommendatory list, and the member banks were not bound to follow the list and may deal with others who may not have been indicated as approved transport operators on their own list. In practice, however, it appears that the recommendation of the IBA is accepted by all the member banks. We may, therefore, take it that so far as the State Bank of India was concerned, its approved list was more or less the same as was recommended by the IBA.

27. How does this scheme now operate ? If a client of the bank has a sanctioned limit for bill discounting, he would first look up to the bank''s list of approved transport operators. He either knows or is apprised of the scheme. He would then look to the list of transport operators, and entrust the goods to one of them. His choice of selecting is controlled by the bank''s approved list. If he chooses a different transport operator, it is possible that the manager in his discretion may discount the bill if he knows the customer too well and was satisfied that the customer''s own obligation was sufficient to cover up the bank''s loss, if any. However, the bank manager would be within his rights in refusing to accept a bill for discounting which is not accompanied by lorry receipts of one of the approved transport operators.

28. We would presently point out as to how the transport operator can have a grievance against the bank. But the bank''s reply would be that they do not accept the lorry receipts of the transport operators in whose business integrity they have no faith. The IBA devised a scheme by which an operator may approach the bank through the IBA and get himself placed upon the approved list, when his lorry receipt would always be accepted for discounting bills.

29. This scheme has two effects : One is that the bank''s own client must hand over their goods to one of the transport operators on the approved list. To that extent, their volition is controlled. The other effect is that in the commercial world of transport operators, a word goes round that one has to be on the approved list of the bank, if the lorry receipts issued by the operator are to be accepted by the bank while discounting bills of its own clients. The transport operators, therefore, make enquiries as to who are the clients of the bank, and approach them for entrusting the goods to them by representing to them that the operator is on the approved list of the bank. The client, on the other hand, sees the approval list and is free to make a choice of any operator within that list. This being the nature of the scheme, the moment a name on the list is removed, the effect is that any bill of any customer of the bank, however credit-worthy he may be, would normally not be discounted if it is accompanied by lorry receipts of transport operators whose names have been removed from the list. In other words, a blacklisted transport operator has no chance to do business of transporting the goods of the bank''s clients for the purpose of making gains in his own business where the bank''s client is discounting the bills. Even if that client has faith in the transport operator and is willing to entrust the goods to him, he would still refuse to hand over the same to such

operator and would prefer some other operator on the bank''s approved list, so that he could obtain advance from the bank. In other words, the transport operator''s business is adversely affected by the removal of his name from the list.

30. Before actually going further with the discussion of the banking business of discounting bills, let us understand the development of the law in the matter of blacklisting. To state very briefly the history of this branch of thinking, one could commence with the Full Bench decision of the Kerala High Court in the case of V. Punnen Thomas Vs. State of Kerala, . In that case, the petitioner was one of the several forest contractors. It was the say of the Government that in one of the contracts entered into by him with the Government, considerable loss was caused to the Government. The Government also decide not to deal with him and directed blacklisting him along with others, thereby debarring him from taking any Government work for the next ten years. He challenged this order before the Kerala High Court, and the only question that he raised was that he was not heard before the adverse order was passed against him. While negativing this right, the majority judgment says that although every citizen has a fundamental right to carry on a trade or business, he has no right, fundamental or otherwise, to insist upon the Government entering into business with him. The Government, like a private individual, has got the right to enter or not to enter into a contract with a particular person. In case, there is a law regulating the conduct of business by the Government, such law might imply a right in others to insist on their transactions with the Government being dealt with in accordance with that law, and consequently a right to complain against a breach of the law. But when a person is excluded or rejected from entering into business with the Government in accordance with the law, there is no question of an invasion of his civil rights and the rules of natural justice or art. 14 cannot, therefore, be invoked. A mere refusal to afford a man the prospect of doing profitable business with the Government, i.e. of entering into advantageous relationship with the Government entails no civil consequences, however serious the blow that might be to the person concerned. Even assuming that the reason given for debarring a person casts a stigma on him, the principles of natural justice are not attracted. The question whether the impugned act involves a stigma or not is relevant only for the purpose of determining whether the act sounds only in the region of the contract, or involves a punishment attracting the rules of natural justice, or statutory provisions, such as art. 311 embodying such rules. The majority, therefore, held that where the Government, not bound by any law to call tenders before entering into a contract, puts a person on the blacklist and debars him from submitting tenders, after coming to its own conclusion that he had previously committed irregularities resulting in loss to Government, there is no infringement of any of his civil rights. The Government has a right to refuse to deal with any person without assigning any reason or for any reason that it thinks fit. Therefore, he cannot seek to set aside such refusal under art. 226 on grounds of violation of art. 14 or the rules of natural

justice thereby.

31. With this majority judgment, Mr. Justice Mathew, of the Kerala High Court, as he then was, did not agree. The learned judge accepted the proposition that a contractual relationship presupposes a consensus of two minds. If the Government is not prepared to enter into a contract with a person, it is difficult to presume that the Government can be forced to do so. However, it is one thing to say that Government, like any other private citizen, can enter into a contract with any person it pleases, but a totally different thing to say that Government can unreasonably put a person''s name on the blacklist and debar him from entering into any contractual relation ship with the Government for years to come. In the former case, it might be that the Government is exercising its right, like any other private citizen, but no democratic Government should with impunity pass a proceeding which will have civil consequences to a citizen without notice and an opportunity of being heard. The learned judge merely put the case of blacklisted citizen at this. He may not have an absolute right of making a contract with Government, but he has undoubtedly the right not to be discriminated against without a relevant reason. It is not canvassed that in spite of default being committed, or the Government being defrauded, it is bound to deal with the same person over again. However, if the allegation is that a person has defaulted or has caused loss to Government, and that conclusion is being drawn ex parte on the basis of a petty officer''s report, fair play requires that a notice be issued be issued and the say of the person be heard. If that hearing, such as the circumstances might require, does not satisfy an independent high officer of Government in objectively considering the explanation, it would not be possible to push forward the case of the citizen any further. At the threshold of the contract that the Government enters a business, like the selling and buying of timber or any other commodity, in that matter a person interested in buying of timber or any other commodity, in that matter a person interested in buying from Government or selling to Government certain commodities is obviously intending to do so for a profit. It would be a gainful employment for him. None of them has a right to compel the Government to enter into a contract with him, but all the contenders in the field have a right to be treated fairly, and all must be offered equal opportunities. According to the learned judge, the principle of art. 14 of the Constitution operates in a situation like this, where the State has an obligation to treat citizens equally and to afford them equal opportunity of entering into gainful contract with the Government. When an ex parte blacklisting order is made, which is to hold the field for a number of years of permanently, it debars the citizen from that opportunity of entering into a gainful contract with Government. At one side it is the loss of expectation of a citizen, and on the other it amounts to breach of a constitutional obligation. The learned judge canvassed this proposition, but the case was disposed of in accordance with the majority view.

32. Similar proposition arose before this court in the case of The Union of India (UOI) Vs. A.K. Mathiborwala, . Respondents, Mithiborwala, were registered as suppliers of

timber with the Director-General of Supplies and Disposals of New Delhi, which is the purchase organization of the Central Government since 1944. Due to certain events, the name of the respondents was struck off from the list, which amounted to blacklisting. When Mithiborwala took out a writ petition before a learned single judge of this court, he succeeded, and the Union of India took the matter in appeal before a Division Bench of this court. The Division Bench followed the minority opinion in the above mentioned Kerala case, and did not follow the majority view. According to them, a blacklisting order passed by the Government entails serious civil consequences to the party blacklisted, and when passed without giving an opportunity to the party to be heard violates the principles of natural justice and is null and void. Such an order is also discriminatory and arbitrary, as, after the impugned order is passed, the tender for supply of goods by the blacklisted firm will not even be considered by the Government or quasi-Government agencies on merits. It violates the principle of equality of opportunity enshrined in the Preamble to the Constitution and embodied in art. 14 of the Constitution. This judgment was carried in appeal by the Union of India to the Supreme Court, and was heard along with Writ Petitions Nos. 34 of 1974 and 959 of 1973, in the case of Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, . The Supreme Court upheld the minority view of the Kerala High Court, and confirmed the Division Bench decision of this court. Their Lordships observed that undoubtedly the State has a right to trade. Article 298 of the Constitution expressly expressly provides in that behalf. However, the State even while entering into the activity of trade and commerce cannot forget the obligations. Observance of this has not been confined to the activities of the Government which can described as purely quasi-governmental or governmental. It is an obligation of the State as a State. The State may not undertake any business activity at all, but if it chooses to do so, it cannot exclude a person by discriminating. The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contracts. A person, who was not on the approved list, is unable to enter into advantageous relationship with the Government because of the order of blacklisting. A person, who has been dealing with the Government in the matter of said and purchase of materials, has a legitimate interest or expectation. When the State acts to the prejudices of a person, it has to be supported by legality.

33. The State can enter into contract with any person it chooses. No person has a fundamental right to insist that the Government must enter into a contract with him. A citizen has a right to claim equal treatment to enter into claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling. A black listing order involves civil consequences, it casts a slur and it creates a barrier between the person blacklisted and the Government in the matter of transaction. The blacklist are "instruments of correction". The activities of the Government have a public element, and, therefore, there should be fairness and equality. The State need not enter into any contract with any one, but if it does so, it

must do so fairly without discrimination and without unfair procedure. Reputation is a part of a person''s character and personality. Blacklisting tarnishes one''s reputation. In para. 17 of the report, their Lordships observed Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another,

"The Government is a government of laws and not of men. It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purchase of the goods. This privilege arises because it is the Government which is trading with the public and the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions."

34. Their Lordships point out that Hohfeld treats privileges as a form of liberty as opposed to duty. It seems to have been now firmly established, at least so far as where lists are kept by Government for dealing with the citizens in respect of certain businesses and trade that a blacklisting order leads to civil consequences, and should not be passed without a reasonable opportunity of being heard. The principles of natural justice are thus attracted in case a party has any rights as such to enter into a contract, or the party has a reasonable expectation of making a gainful contract with the Government and the Government even while trading is under a constitutional obligation not to discriminate and treat citizens unfairly.

35. It may be incidentally pointed out that in the case of Joseph Vilangandan Vs. The Executive Engineer, (Pwd), Ernakulam and Others, , the Full Bench judgment of the V. Punnen Thomas Vs. State of Kerala, , was expressly overruled.

36. Mr. Sorabjee for the appellant-bank referred us to the latest judgment of the Supreme Court in the case of Radhakrishna Agarwal and Others Vs. State of Bihar and Others, . He emphasises the fact that at the threshold, or at the time of entire into the filed of consideration of persons with whom the Government could contract at all, the State, no doubt, acts purely in its executive capacity and is bound by the obligations which dealings of the State with the individual citizens import into every transaction entered into in exercise of its constitutional powers. But, after the State or its agents have entered into the field of ordinary contract, the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines rights and obligations of the parties inter se. No question arises of violation of art. 14 or of any other constitutional provision when the State or its agents, purposing to act within this field, perform any act. In this sphere, they can only claim rights conferred upon them by contract and are bound by the terms of the contract only, unless some statue steps in and confers some special statutory power or obligation on the State in the contractual field, which is apart from contract. We fail to understand how this judgment could be of any assistance to the appellant. This judgment does lay down law which is not at all different from what was already pronounced by the Supreme Court in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation

Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, . In fact, this judgment clearly points out that art. 14 of the Constitution imparts a limitation or imposes an obligation on the State''s executive power under art. 298 of the Constitution. All constitutional powers carry corresponding obligations with them. This is the true rule of law, which regulates the operation of organs of Government functioning under a Constitution.

37. So far as the present case is concerned, it is impossible to construe that there has been any contract at all between the transport operator and the bank by the mere fact of the transport operator having signed any agreement in terms of schedule "A" of the scheme of the IBA. A clear analysis of the scheme shows that unless a bill of the bank''s client is discounted and the bill is accompanied by a lorry receipt of the transport operator on the list of the bank and that too in a special form, the contract between the transport operator and the bank does not take place at all. Every time a bill is encashed and it is accompanied by a lorry receipt of the transport operator in the special form, the standing contract comes into force and begins to operate in respect of that transaction. In order to effect the execution of contract at every stage, a unique method has been found out by making a standing contract and making it applicable as and when a bill accompanied by a lorry receipt is encashed or purchased by the bank. Each transaction of discounting the bill, therefore, represents the threshold for the entry of the transport operator into a contract with the bank. If that is so, them constitutional obligation at once arises and has to be honoured by the State or any other authority under art. 12.

38. Mr. Sorabjee argues that any such view would lead to embarrassment in the conduct of business of banking. He admitted that advancing any loan to parties was undoubtedly conducting "business" of banking. However, this business has to be treated on a different level from the business of buying and selling goods by Government. When Government sells goods either by private negotiation or by public auction, it first recovers the price and then deliver the goods. In the same way, when goods are purchased by the Government if first receives the goods, examines its quality as per specification has then pays its price. In either of these cases, there is no question of causing any loss to the Government. However, advancing loans may be business. It may also be business for the purpose of gains. The banks do make profits on the commission and interest earned. However, one of the relevant factors in the business of advancing loans is the integrity and capability of the party to whom the money is advanced. The being so, an absolute discretion is left to the bank''s managers whether to advance or not to advances loans. Where they have the slightest suspicion, it would not be wise to compel them to make advances. If such advances result it in loss, it will be detrimental to the banking business as such.

39. We quite see the force of the argument, but we are unable to appreciate that the special character of the business of advancing money requires a complete go-by to

be given to the sound constitutional principles. Nobody says that the banks must advance loans. What is being said is that if it entertains some doubt and about the integrity of the party and had disclosed the reasons to the party, and the explanation offered satisfies the bank, then its doubt was without foundation. The party concerned gets a normal opportunity of satisfying and entering into a gainful contract with the Government for the purpose of gain. How much hearing should be give and what circumstances should be enough to reject a party from permitting a contract to be made with the bank is a matter not before us to day. That occasion has not yet arisen. So far as that question is concerned, as the when the occasion arises, the court would evolve sound principles which would safeguard the business of banking against citizens who are really not creditworthy.

40. As the horizon of the States'' activities is expanding in the modern welfare State, judicial concepts are being remodeled to suit new situations. It the States'' organ is vested with powers, the concept of contract is being replaced by constitutional obligations. If at the threshold of a deal, a citizen is to be discriminated against, aid of the principles of natural justice is invited to safeguard the legitimate expectation of the citizen. Before entering into a contract, if the State wants to make a choice between the contending parties, it may choose any one or the best one of them, but must be done on a fair treatment to all and not by discriminating one against the other. It is clear that once a contract is entered into, the rights of parties are determined by the terms thereof. However, at the very threshold constitutional obligation requires the state agency to act fairly and make a choice of the contracting party by affording equal opportunity to all the contenders by examining the claims fairly. Once that is done, the State agency doing business has fulfilled its initial obligation. What then follows is a contract and the terms thereof take care of the future relationship. It is this approach which is being violated by the appellant in removing the name of the respondents from the list of transport operators. If only they were heard, and the hearing is commensurate with the requirements of a particular situation, the State a agency would be deemed to have fulfilled its constitutional obligation. This is precisely not being done in the present case, and, therefore, the learned single judge was right in giving the direction that the respondents be heard.

41. Mr. Sorabjee tried to argue before us that a huge fraud of Rs. 22 lakhs is committed by the Kerala Transport. Two of the partners of the Kerala Transport were the directors of the respondents-transport operators. The third partner, who is a director, is the wife of the third partner of the Kerala Transport. He further says the D. S. Mallappa & Company, which committed the fraud requested Kalpaka Transport to give advance of Rs. 8 lakhs to tide over their economic difficulties. Another company in which Smt. Cherian, the wife of the third partner of the Kerala Transport is interested, has made an advance of Rs. 5 lakhs to D. S. Mallappa & Company. This advance was made on the express understanding that the whole of it would be paid to the Bank of Mysore towards the loss caused in the discounting of

bills. However, only Rs. 77,000 have been paid to the bank and nothing more. He also pointed out that the other transport operators whose clients were involved in similar transactions and have contracts in form "A" of the schedule to the scheme, accepted their liability, but it is only the Kerala Transport which is denying the liability. Two of the partners of the Kerala Transport were directors of the respondents company, when the liability arose. Simply because they involve the manager of the State Bank of Mysore, the bank could not continence such a defence. If the two directors of the present respondents are parties to such defence, the mere fact that they subsequently resigned from the directorship to the respondent-company, or their interest in the company was terminated, is not enough to absolve the respondent-associate-company from its liability to make good the entire loss of Rs. 22 lakhs. They have no right to seek a direction to the State Bank to consider their claims for being restored to the list.

42. We think such an argument at this state is premature. We have already indicated that making an advance is a delicate business. The success of banking business depends upon the rotation of money. If money is locked up in disputes and over long periods, in course of time, the bank''s business will be adversely affected. Circulation of money and repayment to the clients in time is the very essence of sound banking business. That being so, desecration must be primarily left with the banks to select their clients. It is enough if the discloses his minds to the clients and hears their defence objectively. We wonder whether it would be advisable for a court to direct a bank to advance loan to a particular individual. We do not think that the court will assume the role of a supers bank manager and direct the bank to accept a particular client. However, all this discussion at this state is premature, and it will have to be deferred until a suitable occasion arises for considering the same.

43. This being out view, we think that the order passed by the learned trial judge is correct and must be upheld wholly. We, however, extends the time for hearing the respondents by two months from the date of this judgment.

44. The appeal thus fails and is dismissed with costs, which are quantified at Rs. 3,000 (three thousand).

45. In view of this judgment no separate orders are necessary on the notice of motion and no order as to costs of the notice of motion.

46. As soon as the judgment was declared, the learned counsel for the appellants asked for leave to appeal to the Supreme Court. The leave was opposed. However, as the case involves a substantial question of law of general public importance which, in our opinion, needs to be decided by the Supreme Court, we grant the leave asked for.

47. We also suspend the operation of the judgment for a period of two months.