(1997) 09 CAL CK 0023

Calcutta High Court

Case No: Writ Petition No. 2980 (W) of 1997

Eva Seth		APPELLANT
	Vs	
Union of India and Others		RESPONDENT

Date of Decision: Sept. 4, 1997

Acts Referred:

- Banking Regulation Act, 1949 - Section 21, 21(2), 21A, 46(4)
- Constitution of India, 1950 - Article 12
- Recovery of Debts Due to Banks and Financial Institutions Act, 1993 - Section 19, 35

Citation: 1 CWN 181

Hon'ble Judges: Satyabrata Sinha, J

Bench: Single Bench

Advocate: D. Pal and D.K. Sen, for the Appellant;Pratap Chatterjee and A. Mitra, for the Respondent

Judgement

Satyabrata Sinha, J.
The petitioner in this writ application has, inter alia, prayed for the following reliefs :

"a) A Writ in the nature of Mandamus commanding the respondents to cancel and/or rescind the letters dated 7th February, 1996 and 17th May, 1996 respectively issued by the Branch Manager, Bank of Maharashtra, Rash Behari Branch and Deputy General Manager (Credit), Bank of Maharashtra, Central Office, Pune addressed to the petitioner;

b) A Writ of Mandamus commanding the respondents to act according to law and to charge interest to the petitioner''s account only in accordance with the guidelines issued by the Reserve Bank of India as referred to in the petition and directing to refund all or any amount charged in excess of the rate of interest allowed by the guidelines of the RBI in respect of the PCFC Scheme;

c) A Writ in the nature of Mandamus commanding the respondents to issue necessary ''No Objection Certificate'' in favour of the petitioner allowing the petitioner to open its Packing Credit A/c. with any other Bank;

d) Writ in the nature of Mandamus do issue commanding the respondent Union Bank of India to show-cause as to why the letters dated 10th October, 1996 and dated 12th November, 1996 issued by Branch Manager, of Union Bank of India, Manicktola Branch, should not be cancelled and/or set aside;

e) Writ in the nature of Mandamus do issue commanding the respondent Bank of Maharashtra, to cancel and/or rescind the letter dated 5th December, 1996 issued by Branch Manager of Bank of Maharashtra, being Annexure ''Q'' to the Writ Petition.

f) Writ in the nature of Certiorari do issue commanding the respondents to produce, all relevant orders circulars and records in the matter before this Hon''ble Court."

The fact of the matter is not much in dispute.

2. In the year 1986 the petitioner applied for grant of Packing Credit Loan before the respondent Bank against confirmed orders from foreign buyers. During the period 1986-87 to 1995-96, the value of goods exported to different buyers through the said bank for which it actually received the bill amount worth Rs. 4.60 crores. The balance in the said P.C.F.C. A/c. was nil in the name of the petitioner. It has further been stated that from April, 1993 to September, 1996 the respondent bank realised and appropriated an aggregate sum of Rs. 87,95,000/- by way of adjustment against F.D.I.R.E.E.F.C. A/c. and bill payment A/c. On 25th June, 1993 a sum of Rs. 25 lacs was sanctioned by way of Packing Credit which was subsequently enhanced to Rs. 35 lacs.

3. Council for leather export by a circular letter as contained in Annexure ''C'' to the writ application stated that interest rate structure for d.c.f.c. as announced by the Reserve Bank of India in November, 1993 is @ 6.5% in respect of the financial, assistance is made by the banks for the domestic and imported inputs of goods to be exported. By a letter dated 14.1L1995 as contained in Annexure ''E'' to the writ application the Reserve Bank of India informed the Deputy Director of Industries, West Bengal about the scheme of P.C.F.C. and the rate of interest prescribed therefore, which according to the petitioner is applicable to the domestic products also. Allegedly on 3.11.1993 the Reserve Bank of India prescribed that preshipment credit is available in Indian Money and further the said scheme covers domestic inputs exported goods. The copy of the preshipment credit was also forwarded by way of memorandum which is contained in Annexure ''F'' to the writ application. The petitioner was informed by the Deputy Director of Industries, West Bengal that in terms of the aforementioned R.B.I. Circular dated 8.11.1993, she can utilise the sanctioned Packing Credit under the P.C.F.C. Scheme to procure domestic as well as imported inputs. The petitioner in terms of her letter dated 27.1.1996 sought for

information as regard the interest charged from the petitioner''s bank to which a reply dated 7.2.96 was issued, showing that the interest was being Charged as per the banks own guideline and the petitioner was not entitled to the said facility as the same was available to exporters needing import of raw material.

4. The petitioner contends that the respondent bank had been charging interest @ 13-14% being 6 1/2% over the bank rate in violation of the said scheme which is binding upon them In terms of the provisions of Section 21 of the Banking Regulation Act. It has further been contended by another circular dated 29th February, 1996 the respondent bank reiterated that export credit to foreign currency is available to exporters also in Rupee and by reason of the said circular all Nationalised Banks were instructed to look into the need of small exporters. It was further instructed by R.B.I. that steps should be taken by the Nationalised Bank so that no separate sanction is needed from P.C.F.C.. once the Packing Credit limit has been sanctioned; as regard whereto the petitioner sought for informations by her letter dated 31.3.1996. On 17th May, 1996 the respondent bank intimated that minimum amount of P.C.F.C. should be Rs. 15 lacs and the maximum amount of P.C. was Rs. 12.50 lacs. The sanction relating to Packing Credit as against the confirmed order placed by the buyer of United States worth US $165444 was cancelled by the respondent bank on 4th July, 1996. By a letter dated 31.7.96 the petitioner in writing requested the bank to grant P.C.F.C. against another confirmed order worth Rs. 3,76,630/- which was turned down. Yet again the petitioner by her letter dated 14.8.1996 requested the respondent bank to grant the PCFC against another confirmed order placed by another foreign buyer, but the same was not sanctioned.
5. The petitioner had another account in the Union Bank of India Maniktola Branch and the said bank in terms of its letter dated 10th October, 1986 informed the petitioner that in view of her default in making payment to the Bank of Maharashtra, she would not be allowed to operate the Current A/c. The petitioner''s Advocate served a notice upon the said bank on 29th October, 1996 to which a reply dated 12th November, 1996 was sent to the petitioner.

6. The petitioner filed a writ application in this court and by an order dated 2.12.1996 the respondent bank was directed to pass a speaking order as regard the prayer of the petitioner as to why a No Objection Certificate should not be granted. The petitioner''s application for grant of No Objection Certificate was rejected by an order dated 5.12.1996 as contained in Annexure ''R'' to the writ application.

7. An affidavit in-opposition has been filed on behalf of the respondent bank wherein, inter alia, it has been contended that as the petitioner''s representation in terms of this court''s order dated 2.12.1996 has already (sic)en rejected, the petitioner must be deemed to have abandoned the question as regard the rate of interest. It has been submitted that the petitioner has already filed an application u/s 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 claiming, inter alia, a sum of Rs. 54,46.63,843/-, All the points agitated in the writ

application are by way of defence of the petitioner in the said stilt and, thus, this writ application should not be entertained as there may be a likelihood of conflict of decisions. It is stated that the dispute raised in the writ application is purely a private dispute. As regard the merit of the matter, it was stated that despite the fact that the petitioner upon grant of sanction of credit facilities agreed that all amounts received by her, shall be deposited, her account became irregular. Apart from the fact that she also started diverting money received by her on account of duty draw back to the Union Bank of India, Manicktola Branch instead of depositing the same with the bank. The Account was, therefore, declared as non-performing assets. By a notice dated 22nd July, 196 the bank called up all the loans and as the petitioner failed to pay the amount, the aforementioned suit had to be filed. As regard the policy of the Reserve Bank of India it is stated in Paragraph 5 of the Affidavit-in-Opposition that a clarification has been issued by the Reserve Bank of India date 28.2.1994, which reads thus:

"As regards the minimum IOTS of transaction, no amount has been stipulated in the Memorandum of Procedure, it is left to the operational convenience of the banks to stipulate the minimum lots taking into account the availability of their own resources. However, while fixing the minimum lot banks may take into account the needs of their small customers also."

8. The respondent bank has formulated a policy procedure for implementation of the Scheme. It is stated that the petitioner had applied for the PCFC facilities only after her account became a non-performing asset. It is stated that the petitioner in her letter imposed certain pre-conditions, the respondent bank did not agree to the said offer of the petitioner. By a letter dated 5thJune, 1996 a copy whereof as contained in Annexure ''E'' to the Affidavit in-Opposition, it was stated that despite the same, one time facility to the extent of US $1,41.450 was sanctioned but the petitioner did not avail the same, and infact acted contrary to the terms thereof; as a result whereof the sanction was cancelled by the respondent bank in terms of its letter dated 4th July, 1996. It is also denied that PCFC Scheme has been extended by the Reserve Bank of India to domestic sales. The other allegations have also been denied.

9. Inview of rival submissions, as noticed hereinbefore, the following questions arise for consideration :

1) Whether the preshipment credit in foreign currency scheme (commonly known as PCFC Scheme) announced by the Reserve Bank of India is applicable in the case of the petitioner who manufactures domestic inputs of exported goods (leather goods) which are exported outside India?

2) What is the rate of interest which the Bank of Maharashtra is entitled to charge in respect of preshipment packing credit scheme in foreign currency (commonly known as PCFC Scheme) in view of the Memorandum and the Circular issued by the

Reserve Bank of India from time to time ?

3) If the Bank of Maharash a is obliged to charge only the rate of interest announced by the Reserve Bank of India in respect of P.C.F.C. Scheme, whether the Bank of Maharashtra was acting in violation of the directives of the Reserve Bank of India by charging a higher rate of interest ranging between 13% to 23.25% in the case of the petitioner?

4) In the event of such charging of interest in excess of the race of interest announced by the Reserve Bank of India in regard of the P.C.F.C. Scheme, whether the petitioner is entitled to claim the relief by way of a declaration that the Bank of Maharashtra is obliged to charge only the rate of interest announced by the Reserve Bank of India in respect of the PCFC Schemes and the liability of the petitioner to the Bank is to be determined on that basis?

5) Whether on the facts and in the circumstances of the case, the Bank is obliged to issue a "No Objection Certificate" to the petitioner for opening an account with any other bank under the P.C.F.C. Scheme?

6) Whether the petition is entertainable when the Bank has filed an application before the Debt Recovery Tribunal when the application of the petitioner is pending before this Hon''ble High Court?

7) Whether the petition is barred by the principles of res judicata ?"

10. Before proceeding to decide the questions on merit the contentions No. 6 and 7 which have been raised by Mr. Chatterjee appearing on behalf of the respondents may be considered first. Admittedly, the petitioner filed a writ application earlier seeking the self-same relief. Keeping in view the fact that the respondent is a bank and is ''State'' within the meaning of Article 12 of the Constitution of India and as a public duty to function this court directed the matter to be considered at the first instance by the bank itself and for that purpose in CO. No. 16553(W) of 1996 this court disposed of the writ application on 2.12.96 in the following terms:

"having heard the learned counsel for the parties it appears that the only question which arises for consideration in this writ application at this juncture is as to whether the respondent, Bank of Maharashtra, is justified in not issuing no objection certificate in favour of the petitioner.

Mr. Chatterjee, learned counsel appearing on behalf of the Bank of Maharashtra, stated before this court that such ''no objection certificate''s is granted in terms of the directive issued by the Reserve Bank of India.

There cannot be any doubt whatsoever that if there is any such directive, the Bank would be bound thereby. Keeping in view the facts and circumstances of this case, this writ application is disposed of with a direction upon the circumstances of this case, this writ application is disposed of with a direction upon the respondent No. 4

to pass a speaking order as to why despite the application, "No Objection Certificate" is not being issued.

Such order should be passed within a week from the date of communication of this order for which the petitioner need riot file any separate application, inasmuch as, the writ application itself should be treated as representation on the part of the petitioner, copy whereof has been served upon the respondent No. 4.

It is made clear that this court has not applied its mind as regards the other allegations of the petitioner and in the event any adverse order is passed as against the petitioner, it would be open to the petitions to raise all contentions including the contentions which have been raised in the writ application by filing a separate writ application.

The writ application is disposed of with the aforementioned observations.''

(emphasis is mine)

11. A bare perusal of the aforementioned order of this court would show that it did not adjudicate upon with the lis between the parties and, thus, the contention of Mr. Chatterjee that this application is barred under the principles of res judicata must be held to be totally misconceived. This aspect of the matter is fully covered by a decision of mine in Pradip Kumar Chatterjee vs. State of West Bengal, reported in Cal. L.T. 1997(2) HC 4. Further submission of Mr. Chatterjee to the effect that keeping in view of the fact that apart from passing of an order by the respondent bank refusing to grant a no objection certificate in favour of the petitioner and filing of a suit by the bank before the Debts Recovery Tribunal bearing O. A. No. 37 of 1997 nothing has happened and, therefore, this court should not be exercised to raise their respective contentions herein cannot also be accepted. Admittedly the disposal of the petitioner''s representation by the respondent bank in terms whereof it had negatived the claim of the petitioner is itself sufficient for maintaining a fresh writ application as a fresh cause of action has arisen. Furthermore it is an admitted fact that the writ application filed by the petitioner was earlier in time whereas the suit filed by the respondent bank is later in time. In the said suit the Debts Recovery Tribunal is concerned with the recovery or debts from the petitioner and no other question and particularly the question as to whether the respondent bank in the facts and circumstances of this case was under a statutory obligation to issue a no objection certificate and whether by reason of the action on the part of the respondent bank, the petitioner''s right as conferred upon in terms of the circular issued by the Reserve Bank of India has been followed or not cannot be gone into. Moreover in this case the respondent at the time of the preliminary hearing did not raise any such question. The parries have exchanged their affidavits and the matter has been heard before this court at great length. In short there is no scope of the petitioner''s grievance being readdressed in the said proceeding does not arise. It is, therefore, not a case where this court should refuse

to exercise its jurisdiction only on the ground of availability of the alternative remedy.

12. This aspect of the matter has been considered in Swapan Ray vs. Indian Airlines Limited & Ors., reported in 1996(1) CHN 147. in the following terms :

This submission of Mr. Mazumder to the effect that the petitioner should have taken recourse to the provisions of the Industrial Dispute Act cannot be accepted. There cannot be any doubt that in a case of this nature the delinquent employee should normally take recourse to the provisions of the Industrial Disputes Act. However, that does not mean that only because there exists alternative remedy, this court will refuse to exercise its discretionary jurisdiction. Alternative remedy, as is well known, is a self-imposed restriction. Rule was issued in this writ application on 21.4.1987. The matter has been pending in this court for more than 8 years now. To ask the petitioner to avail alternative remedy at this juncture, in my opinion, would be wholly improper.

In Miss Maneek Custodji Suranji vs. Sarafazali Nawabali Mirza. reported in AIR 1976 SC 2446 the Apex Court had held :

It is true that this principle is not rigid and inflexible and there can be extraordinary circumstances where despite the existence of an alternative legal remedy, the High Court may interfere in favour of an applicant, but this was certainly not one of such extraordinary cases.

In L. Hirday Narain Vs. Income Tax Officer, Bareilly, the Apex Court has held:

But Hirday Narain moved a petition in the High Court of Allahabad and the High Court entertained that petition. If the High Court had not entertained his petition. Hirday Narain could have moved the Commissioner in revision, because at the date which the petition was moved the period prescribed by Section 33A of the Act had not expired. We are unable to hold that because a revision application could have been moved for an order correcting the order of the income tax Officer u/s 35, but was not moved, the High Court would be justified in dismissing as not maintainable the petition, which was entertained and was heard on the merits.

Reference in this connection may also be made to Dr. Dal Krishna Agarwal vs. State of U.P & Ors., reported in 1995 Lab. IC 1396 wherein it has been held :

Having regard to the aforesaid facts and circumstances we are of the view that the High Court was not right in dismissing the writ petition of the appellant on the ground of availability of an alternative remedy u/s 68 of the Act especially when the writ petition that was filed in 1988 had already been admitted and was pending in the High Court for the past more than five years. Since the question that is raised involves a pure question of law and even if the matter is referred to the Chancellor u/s 68 of the Act it is bound to be agitated in the court by the party aggrieved by the order of the Chancellor. We are of the view that this was not a case where the High

Court should have non-suited the appellant on the ground of availability of an alternative remedy.

It is further well known that when a Tribunal has acted ultra vires or where the order has been passed in violation of the principles of natural justice the High Court may entertain a writ application in its discretion: see Babu Ram vs. Zillah Parishad, reported in AIR 1969 SC page 556."

13. In the instant case, even the impugned order cannot be sustained as the respondents have failed to show that a no objection certificate cannot be granted in view of directions issued by the Reserve Bank of India as was submitted by Mr. Chatterjee in the earlier writ petition.

14. It is not a case where the dispute between the parties involves disputed question of fact. The dispute between the parties in this case can be resolved on the basis of the interpretation of documents. The suit filed by the respondent bank would not become infructuous even if the dispute raised in this application is resolved. Furthermore, although the question as to whether the respondent bank filed the said suit having come to learn about the filing of the writ petition by the petitioner may not be wholly relevant. It is admitted that the writ petition is prior in time. The writ petition, therefore, cannot be made infructuous, only because the respondent bank chose to file a suit during pendency of this writ application. It was the duty of the respondent bank to wait for the outcome of the writ application before filing the suit inasmuch as keeping in view the order passed by this court, in the earlier writ application as quoted hereinbefore there cannot be any doubt whatsoever that the respondent bank would have reasonably anticipated and that the petitioner would file a second application after her representation was rejected.

15. It is further to be borne in mind that the jurisdiction of the Debts recovery Tribunal is very limited. The Debts Recovery Tribunal cannot adjudicate upon any grievance made by the petitioner. For the reasons aforementioned, the aforementioned two questions have to be answered in favour of the petitioner and against the respondents. So far as the other contentions raised in the application are concerned, the same being inter-related, may be taken up together.''

16. The business of, the petitioner is 100% export oriented. The Reserve Bank of India formulated the pre-shipment credit in foreign currency scheme commonly known as the PCFC scheme which was n(sic)nt for the purpose of exporting goods to foreign countries which is a national necessity, keeping in view the gloablisation of Indian Market and the deficiency of foreign currency. With a view to achieve the said purpose the Reserve Bank of India formulated a policy decision on 8th November, 1993 in terms whereof the pre-shipment export credit in foreign currency scheme would cover both the domestic as well as the imported inputs of exported goods and the rate of interest not exceeding 2% over ''Libor'' of 180 days. There cannot be any doubt whatsoever that the said policy covers domestic inputs also; although at

one point of time the Respondent Bank had adopted a different stand.

17. In the said policy it is stated :

"In case of cancellation of export order the PCFC may be liquidated by selling equivalent amount of foreign exchange (Principal plus interest) at TT selling rate prevailing on the date of liquidation. On such cases interest will be payable on the rupee equivalent of principal amount at the rate of ''Export Credit Not otherwise Specified" plus a penal rate of 2% from the date of advance after adjustment of interest of PCFC already recovered. Banks may also extend PCFC to such exporters subsequently after ensuring that the earlier cancellation of PCFC was due to genuine reasons and not for speculative purposes."

It may also be noticed that the council for Leather Exports in Its 11th Annual Reports (1994-95) Informed its members about the scheme in the following terms :

"Scheme of Exports Finance and Interest rates : The interest rate structures for Advances including export credit as announced by RBI vide their Circular No. DBOD:BC: 132/13.07.93 dated 23rd June, 1993. were continued to be in vogue during the year under review. The scheme of post shipment Export Credit denominated in US dollars (PSCFC) was also continuing @ 6.5%. Similarly Pre-shipment Export Credit in Foreign Currency (PCFC), as announced by RBI in November, 1993 for financing both the domestic and imported inputs of the goods to be exported continued with the rate of interest not exceeding one percent over six months LIBOR."

18. In another letter dated 19th January, 1996, the Director of Industries informed the petitioner with reference to a query on interest on packing credit, the relevant portion whereof is as follows :

"Against firm export order vide confirmed LC/DP in convertible currency you may apply to your banker for packing credit under PCFC Scheme."

You can utilise the sanctioned packing credit under PCFC Scheme to procure domestic as well as imported inputs.

In case of utilisation of PCFC to procure domestic inputs only for the export products, your banker shall apply appropriate spot rate of the convertible currency as on the date of sanction.

The landing rate of PCFC offered by the banker should not exceed 2% over LIBOR upto 180 days. Any extension over 180 days will bear additional interest of 2%."

19. It also appears that the Reserve Bank of India again in a circular letter issued to all scheduled commercial banks clearly stated :

"As you are aware, in terms of AD(OP series) circular No. 23 dated 9th November, 1991. PCFC can be made available by EXIM Bank and the Ads to meet the cost of the

imported inputs of the exported goods. The present scheme will cover both domestic as well as imported inputs of exported goods. The scheme has been discussed with bankers. ECOC. PCDAL, EXIM Bank etc. and (sic)rational instructions in this regard are given in the enclosed Memorandum."

20. The broad aspects of the proposed scheme as spelt out in the said Memorandum are given below :

(a) The scheme will be an additional window for providing preshipment credit to Indian exporters at internationally competitive rates of interest from the Ads'' in India. The other existing method of financing in Indian rupees will continue.

(b)The sources of fund could be the foreign currency balances available in Exchange Earners Foreign Currency (EFFC) Accounts, Resident Foreign Currency Accounts (RFC) and Foreign Currency (Non-Resident) Accounts (Banks) scheme.

In addition, banks in India may arrange for fines of credit from abroad. Prior approval of RBI (Exchange Control Department) will be necessary only if the rate of interest on such foreign currency borrowings exceeds the spread as stated on paragraph 5 of this Memorandum.

(c) The facility may be extended in one of the convertible currencies.

(d) The applicable benefit to the exporters will accrue only after the realisation of the export bills when the resultant export bills are rediscounted --without recourse-- basis.

(e) The borrowings under the scheme will be subject to compliance with all the existing credit disciplines.

(f) ECOC cover will be available in rupees only."

21. There cannot be any doubt whatsoever that the Reserve Bank of India in terms of its aforementioned circular letter dated 8th November, 1993 had granted coverage of both domestic as well as the imported inputs of exported goods under the PCFC Scheme. Not only this, the Reserve Bank of India by a letter dated 29th February, 1996 addressed to the Chairmen/Chief Executives of All Commercial banks which is contained in Annexure ''N'' to the writ application stated:

"As you are aware, in terms of paragraph 1(a) of Circular No. CPC. BC 154/07.01.279/95-96 dated 7th February, 1996, the Scheme of Post-shipment Export Credit denominated in U.S. Dollars (PSCFC) has been terminated effective from 8 February, 1996. With the withdrawal of PSCFC Scheme, the exporter will now have the option of availing of export credit at the post-shipment stage either in rupee or in foreign currency under the Rediscounting of Export Bills Abroad Scheme (EDR) at LIBOR linked interest rates (vide circular IECD. No. EFD 14/04.02.11/93.94 dated 7 October 1993).

Likewise, export credit facility in foreign currency under the Preshipment Credit in Foreign Currency Scheme (PCFC) (vide circular IECD. No. EFD. 21/04.02.15/93-94 dated 8 November 1993) or in rupee is available to exporters at the pre-shipment stage.

We have been receiving representations from exporters/exporters'' organisations regarding non-availability of foreign currency export credit under PCFC and EBR Scheme for small customers because of minimum lot stipulation imposed by banks for transactions under the schemes.

In this connection, it is advised that although it has been left to banks to stipulate the minimum lot taking into account the availability of their own resources and the operational convenience. We have also reiterated that while fixing the minimum lot the needs of small customers should be kept in view [paragraph(o) of circular IECD. No. EFD. 30/04/02.15/93-94 dated 28 February, 1994J. We trust that the needs of small exporters are being taken care of.

We have, also been receiving representations from exporters'' oganisations that there is delay in the disbursement of PCFC credit especially by branches dealing in foreign exchange business but not specially authorised for the purpose. We shall be glad if you will please take steps to streamline the procedure so that no separate sanction is needed for PCFC once the packing credit limit has been authorised and the disbursement is also not delayed at the branches.

As regards charging of interest on foreign currency export credit banks are advised to strictly ensure that ultimate leaning rate to the exporters does not exceed the spread stipulations indicated by the Reserve Bank. These are given below for ready reference :

Export Credit in Foreign Currency	Ultimate Pending rate excluding withholding tax
I. PCFC Scheme	(LIBOR + spread not exceeding)
(a) Banks not having	--
overseas branches	2.5%
(b) Other banks	2%
II. EBR Scheme	
(a) Banks not having	--
overseas branches	(i) 2.5 (with recourse basis)
	(ii) 3.0% (without recourse basis)
(b) Other banks	(i) 2.0% (with recourse basis)

--	(ii) 2.5% (without recourse basis)

It is needless for us to emphasise that the viability of the external payments position is crucially dependent on a strong and substantial growth of exports. In the above context, the main objective of our policy has been to ensure timely and adequate credit to the export sector and no worthwhile export order suffers for want of bank finance. In order to ensure that the increasing credit requirements of export sector are fully met, banks should extend adequate and timely credit to exporters including small exporters".

22. The petitioner is admittedly using domestic inputs. It is interesting to note that although the effect of this scheme and its coverage to domestic inputs had not been disputed before this court, the respondent bank took a different stand earlier by a letter dated 7.2.1996 as contained in Annexure ''N'' to the writ application where from it appears that the respondents bank stated as follows :

"In your letters you refer to PCFC (Packing Credit in Foreign Currency) which is available to exporters needing export of raw materials as import substitution.

Your finances are packing credit (rupee) finance governed by separate structure of rate of interest. The rate of interest for PCFC and export packing credit are different.

You are not eligible for PCFC.

The circular of D. P. Patra Director of Industries enclosed therewith refers to P.C.F.C.

We are charging rate of interest as per our guidelines."

23. It further appears that on 17.5.1996 the respondent bank in a letter addressed to the petitioner, in answer to the fax message dated 9.5.96 stated:

"Granting of export credit under PCFC Scheme - we have been informed by our field office that in July 94, Asstt. General Manager. Calcutta, had explained the scheme to you in detail and thereafter you do not appear to have applied/requested for PCFC except for the last occasion in January, 1996.

As per our Bank''s guidelines, the minimum amount under PCFC should be $US 50.000 i.e. Rs. 15.00 lakhs approx. (at the then prevailing rate) which was then explained to you. However, the maximum amount of PC requested by you based on the export order was Rs. 12.50 lacs approx i.e. each time less than US$50,000.

Hence you were not eligible for availing export financing under PCFC Scheme."

24. Mr. Chatterjee, the learned Counsel appearing on behalf of the respondent submitted that in terms of the aforementioned directives the respondents were entitled to fortunate a guideline in terms whereof it fixed US $ 50,000 i.e. Rs. 15.00 lakhs approximately and one time offer was granted to the petitioner which she did

not accept.

25. The guidelines issued by the respondent bank clearly suggests that the scheme is that of self-liquidating scheme. In any event, the petitioner''s credit limit was admittedly raised to Rs. 40 lakhs ultimately and therefore, she squarely came within the purview of the scheme. The petitioner merely asked for loan under the PCFC Scheme to the extent of Rs. 12.50 lakhs which would be evident from her letter dated 17.5.1996. It is, therefore, evident that the respondent bank has been taking inconsistent stand from time to time, in so far as at first it stated that the petitioner was not entitled to the benefit of the said scheme as the same does not relate to domestic inputs which is contrary to the Reserve Bank of India circular. Realising its mistake, the bank took a different stand at a later stage i.e. on 17th May, 1996. As regard its stand of minimum amount under the PCFC Scheme, it appears that the petitioner has fulfilled the said criteria. In any event, the said stand is also contrary to the direction of the Reserve Bank of India and in so far as noticed hereinbefore is also contrary to the factual position. The contention of the hank it its letter dated 17th May, 1996 also does not appear to be correct.

26. Furthermore, the Reserve Bank of India in its aforementioned circular letter dated 29th February, 1996 categorically laid down:

"As you are aware, in terms of paragraph 1(a) of circular No. CPC.BC. 154/07.01.279/95-96 dated 7 February, 1996, the Scheme of Post-shipment Export Credit denominated in U.S. Dollars (PECFC) has been terminated effective from 8 February, 1996. With the withdrawal of PSCFC Scheme, the exporter will now have the option of availing of export credit at the post-shipment stage either in rupee or in foreign currency under the Rediscounting of Export Bills Abroad Scheme (EBR) at LIBOR linked interest rates (vide circular IECD. No. EFD. 14/04.02.11/93-94 dated 6 October 1993). Likewise, export credit facility in foreign currency under the pre-shipment Credit in Foreign Currency Scheme (PCFC) (vide Circular IECD. No. EFD 21/02.15/93-94 dated 8 November 1993) or in rupee is available to exporters at the pre-shipment stage.

We have been receiving representations from exporters/ exporters'' organisations regarding non-availability of foreign currency export credit under PCFC and EBR Schemes for small customers because of minimum lot stipulation imposed by banks for transactions under the Schemes".

27. It has to be borne in mind that a beneficent step taken by the Reserve Bank of India to promote export must be considered in its proper prospective.

28. The bankers cannot be permitted to treat such a scheme at par with the cash credit schemes which relate to grant of advances to a businessman for setting up of an industry. Even the said policy has been liberalished by the R.B.I. As the packing credit scheme in view of the facts and circumstances of this case must be held to be a separate scheme, the special guidelines issued by the Reserve Bank of India must

be given full effect to and general guidelines governing other schemes upon which a strong reliance has been placed by the respondents being exhibit-I to the affidavit-in-opposition cannot be given effect to. The said guideline was issued on 26.3.1995 whereas as noticed hereinbefore the PCFC Scheme and the relevant circulars came much later. The guidelines issued later on by the Reserve Bank of India in such a situation shall prevail over the former. It is true as has been submitted by Mr. Chatterjee that it is not a case of transfer of borrowal account from one bank to the other. But keeping in view the admitted fact that the respondent bank had its own policy which did not sub-serve the requirements of the petitioner, the respondent bank shall have considered the matter in a more pragmatic manner. The petitioner in her writ application had categorically stated that because of the unreasonable and uncooperative attitude of the respondent bank she not only lost many export orders but also lost her reputation.

29. It is no doubt true that the petitioner has a cash credit account and was bound to repay the debts. No court shall encourage a defaulter to take advantage of his/her own wrong in not paying the dues in time. But one cannot lose sight of the fact that normally the circular issued by the Reserve Bank of India are not available with the general public as such they have to act as they are asked to do by the bank which has an upper hand in all such transactions.

30. It was therefore, obligatory on the part of the respondent bank to explain in details the benefits conferred upon a customer by reason of the circular issued by the Reserve Bank of India. The respondent bank thus, could not have issued only a one time offer to the petitioner and imposed certain conditions which were contrary to or inconsistent with the circulars issued by the Reserve Bank of India. In such matters, the Banks should not use rule of thumb. In a matter of this nature, the court should take recourse to Public Law Interpretation. The power of Judicial Review is a basic feature of the Constitution of India. Its scope is expanding and the hand of law is long enough to reach in-justice wherever found. Social and Economic Justice are being read as fundamental rights. Benevolent legislation must be liberally construed. See Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], .

31. The respondent bank, therefore, is directed to act accordingly,

32. So far as the question of rate of interest is concerned there cannot be any doubt whatsoever that in terms of the Reserve Bank of India Act respondents are bound thereby u/s 21(2) of the Banking Regulations Act reads thus :

"Without prejudice to the generality of the power vested in the Reserve Bank under sub-section (1). the Reserve Bank may give (sic)tions to banking companies, either generally or to any banking company or group of companies in particular, (as to--

(a) the purposes for which advances nay or may not be made,

(b) the margins to be maintained in respect of secured advances.

(c) the maximum amount of advances or other financial accommodation which, having regard to the paid-up capital, reserves and deposits of a banking company and other relevant considerations, may be made by that banking company to any one company, firm, association of persons or individual.

(d) the maximum amount up to which, having regard to the considerations referred to in clause (c). guarantees may be given by a banking company on behalf of any one company, firms, association of persons or individual and

(e) the rate of interest and other terms and conditions on which advances or other financial accommodation may made or guarantees may be given."

The respondents are, therefore, bound by the rate of interest proclaimed by the Reserve Bank of India.

33. This aspect of the matter is clearly covered by the decisions of different High Courts. In H. P. Krishna Reddy v. Canara Bank, Bangalore, reported in AIR 1985 Kar 228, K. Jagannatha Shetty, J. has His Lordship then was speaking for the Division Bench stated thus :

"The mandate of this section is that courts cannot re-open the account relating to a transaction between a Banking Company and its customer on the ground that the rate of interest changed, in the opinion of courts, is excessive of unreasonable. The courts, in other words cannot exercise jurisdiction under the Usurious Loans Act or any other law relating to indebtedness for the purpose of giving relief to any party. This appears to be the intent of the legislature in enacting the Banking Laws (Amendment) Act, 1983.

Section 21A has. however, no bearing on the jurisdiction of courts to give relief to an aggrieved party when it is established that the Bank in a particular case has charged interest in excess of the limit prescribed by the Reserve Bank of India. The Reserve Bank has enormous power to control advances to be made by Commercial Banks. The Reserve Bank has power to prescribe or regulate the interest rate structure on advances or other financial accommodation to be made by Commercial Banks. Section 46(4) of the Banking Regulation Act confers power on the Reserve Bank to impose penalty for contravention of its order, rule or direction. The interest charged by banks on transactions should therefore be in conformity with the rate prescribed by the Reserve Bank. Banks are bound to follow the direction or circular issued by the Reserve Bank in that behalf. If, in any case, it is proved that the Banks has charged interest in violation of the direction of the Reserve Bank, the court could give relief to the aggrieved party notwithstanding Section 21A of the Banking Regulation Act. The interest charged beyond the rate prescribed by the Reserve Bank would be illegal and void. We cannot, therefore, allow the claim of the bank on quarterly rests on agricultural loans."

34. Similar view has been taken in Bishop of Kottayam and Others Vs. Union of India (UOI) and Others, .

35. The circulars issued by the Reserve Bank of India are ordinarily binding on the respondent bank. However, it is not necessary to decide this question finally, but there cannot be any doubt that once it is held that the transactions entered into by and between the petitioner and respondent bank was in terms of the PCFC Scheme, the respondent bank cannot charge interest at a rate higher than that prescribed by the Reserve Bank of India.

36. So far as the question relating to grant of "no objection certificate" is concerned, admittedly the respondent bank has formulated its own guidelines which do not fulfill the requirements of the petitioner. The petitioner herself was asked by the respondent bank to mobilise resources, either by herself or through other sources. The petitioner in terms of the aforementioned letter opened an account with the Union Bank of India but she was not allowed to operate the same in view of non-grant of the "no objection" certificate. Issuance of no objection certificate by the respondent bank had to be considered keeping in view the fact that if in terms of the scheme framed by the respondent bank, it cannot itself grant facilities for the purpose of export in respect of domestic inputs, it has no business to stop the petitioner from carrying of her business only on the ground that according to it, some amount is due to it although -according to the petitioner a bona fide dispute raised by her to the effect that she had paid all the amount and only In relation to the rate of interest there exists a dispute. It has not been disputed that even the respondent bank had credited the export duty draw backs to which it was not entitled to. The entire export bills to the extent of Rs. 6 crores 40 lakhs had been paid back.

37. It appears from the records that despite. various correspondences the respondent bank had not given full amounts payable to the petitioner.

38. Admittedly the scheme in question was made by the Reserve Bank of India in terms of its circular dated 8th November, 1993. On 28.2.1994 a clarification was issued which reads thus :

"As regards the minimum LOTS of transactions, no amount has been stipulated in the Memorandum of Procedure. It is left to the operational convenience of the banks to stipulate the minimum lots taking into account the availability of their own resources. However, while fixing the minimum lots banks may take into account the needs of their small customers also." Allegedly on the aforementioned basis a policy was formulated.

39. The entire submission of the respondent appears to be on a wrong premises inasmuch as in the circular letter dated 8.11.1993 the Reserve Bank of India specifically stated that PCFC scheme is self-liquidative in nature which would be liquidated by submission of export documents for discounting/rediscounting under

the scheme on 6th October, 1993. It is stated that the said statement should not be construed in the light of a right to acquire foreign exchange from other sources. If. the respondent bank was not in a position, in view of its own policy decision, to advance amount which was required by the petitioner, it ought to have issued a ''no objection certificate'' subject to its right to recover its dues on cash credit account of the writ petitioner, if any.

40. It has been noticed from the letter dated 29.2.1996 (Annexure ''N'' to the writ petition) that no separate sanction was needed for PCFC Scheme, once the Packing Credit Limit has been authorised.

41. As indicated hereinbefore, in that situation the respondent bank asked the petitioner to raise funds from own source and any other sources which in business parlance must mean also by taking packing credit loan from any other bank. The submission of Mr. Chatterjee to the effect that in terms of the agreement the petitioner could not have opened any account with another bank, in this situation cannot be accepted, inasmuch as noticed hereinbefore, the PCFC Scheme was absolutely separate being an additional facility and the same has got nothing to do with the cash credit account. In this view of the matter this application is disposed of with the observations made hereinbefore and with a direction upon the respondent to grant a no-objection certificate at an early date and not later than four weeks from date and so as to allow her to carry her export business without prejudice to the right of the respondent bank to recover itsr own dues in the Debt Recovery Tribunal.

In the facts and circumstances of the case, there will be no order as to costs.