

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10256 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

BHARTI CELLULAR LIMITED

Versus

COLLECTOR AND ASSISTANT SUPERINTENDENT OF STAMPS

Appearance:

1. Special Civil Application No. 10256 of 2004
MR SHALIN N MEHTA for Petitioner No. 1-2
MR SN SHELAT, ld. Advocate General for Respondents
-

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 29/04/2005

CAV JUDGEMENT

#. In this petition under Article 226 of the
Constitution of India, the petitioners have prayed for

appropriate writ, order or direction quashing and setting aside the notice issued by the respondent no. 1 Collector and Assistant Superintendent of Stamps dated 26.07.2004, inter alia, alleging that enrolment forms accepted by the petitioner company from its customers are not properly stamped and considering the ingredients of writing / agreement / enrolment and conditions stipulated in the same, the same prima facie appears to be agreement and /or indemnity bond and therefore it is liable to be stamped at Rs.50/- under Article 5 (h) and at Rs.100/under Article 29 of Schedule I to the Bombay Stamp Act, 1958 ("the Act" for short) and therefore, in all, the stamp duty of Rs.150/- is liable to be levied and therefore the petitioners were called upon to show cause as to why Rs.2,60,00,000/- towards deficit stamp duty should not be recovered and the penalty to the extent of 10 times required to be imposed under Section 39(1)(b) of the Act should not be recovered. Thus, the petitioners have approached this Court at the stage of show cause notice and have challenged the show cause notice.

#. Mr.S.N.Soparkar, learned senior advocate appearing with Mr.Shalin Mehta, learned advocate for the petitioner - company has challenged the show cause notice and initiation of the proceedings mainly on the following grounds :

- (1) The show cause notice itself is without jurisdiction, meaning thereby, under the provisions of the Act, the petitioner company is not liable to make the payment of stamp duty.
- (2) Under Section 30 of the Act, if the document in question is considered to be indemnity bond, then in that case, a person drawing or making such instrument is liable to pay the stamp duty and as the petitioner company has not executed any indemnity, they are not liable to make the payment of the stamp duty.
- (3) The document in question is in favour of the petitioner company which is executed by its customer and not by the company.
- (4) The stamp duty is required to be paid on an instrument and not on the transaction.
- (5) The company has not put any signature and therefore, it is not executed by the petitioner company and, therefore very basis of the notice is wrong and the same is required to be quashed

and set aside.

(6) Assuming without admitting that the petitioner company is liable to make the payment of stamp duty and considering the document either as agreement or indemnity, then in that case also considering Section 6 of the Act, if an instrument so framed is to come within two or more of the descriptions in Schedule I shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties. Therefore, in the show cause notice calling upon the petitioner to pay the stamp duty at Rs.150/- (Rs.50/- considering it as an agreement + Rs.100/- considering it as indemnity) itself is contrary to the provisions of the Act.

(7) So far as other companies are concerned, with regard to the similar and identical instrument / writing, the respondents have levied the stamp duty either considering the same as guarantee or an agreement and not a single company is charged and levied the duty considering the instrument as indemnity and, therefore the action of the respondent is discriminatory and violative of Article 14 of the Constitution of India.

(8) So far as Reliance Company is concerned, with regard to identical and similar instrument, they are charged and levied the stamp duty at Rs.60/- considering the same under Article 32 of the Schedule and, therefore the action of the respondents is discriminatory and violative of Article 14 of the Constitution of India.

#. Mr.Soparkar has relied upon Sections 2 (i), 6, 17 and 30 of the Act. Relying upon Section 30 of the Act, it is submitted that in the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne in case of indemnity bond by the person drawing or making such instrument and in any other case, by the person executing the instrument. Relying upon Section 2 (i) of the Act, it is submitted that the word "executed" and "execution" used with reference to instruments, means "sign" and "signature". Therefore, it is submitted that the petitioner company has neither signed the document and / or there is no signature of the petitioner company. Therefore, it cannot be said that the document is executed by the petitioner company and, therefore the petitioner is not liable to pay any stamp duty and it is for the customer to pay the stamp duty if it is required

to be paid. Therefore, the show cause notice calling upon the petitioner company to pay the stamp duty is without jurisdiction which requires to be quashed and set aside.

#. It is further submitted that in the show cause notice as well as affidavit-in-reply itself, it is so stated that the document is executed by the customer and enrolment forms are accepted by the petitioner company and the petitioner company had entered into an agreement and obtained indemnity from the subscriber and therefore when the petitioner company has not executed any agreement and / or indemnity and it is the customer who has executed the agreement and indemnity bond, the show cause notice calling upon the petitioner to pay the stamp duty is wholly without jurisdiction.

#. Relying upon Section 17 of the Act, it is submitted that all instruments chargeable with duty and executed by any person shall be stamped before or at the time of execution of the document. Thus, it is a person who executes the document and/or in whose favour the document is executed is liable to pay the stamp duty. However, in the present case, though the petitioner company has not executed any document, the petitioner company is called upon to pay the stamp duty considering it as an agreement and indemnity bond and therefore, the same is without any jurisdiction and contrary to the provisions of the Act.

#. Relying upon Section 6 of the Act, it is submitted that assuming without admitting that the petitioner company is liable to make the payment of stamp duty, then in that case also the duty chargeable only with the highest of such duties where the duties chargeable thereunder are different and the instrument comes within two or more of the descriptions in Schedule I and therefore the petitioner company can be made liable to pay the stamp duty at Rs.100/- only and not at Rs.150/as alleged in the show cause notice and therefore, it is submitted that even the show cause notice is contrary to Section 6 of the Act. Relying upon the judgment of the Bombay High Court in the case of Superintendent of Stamps, Bombay V/s Breul and Company, reported in AIR (31) 1944 Bombay 325, it is submitted that the stamp duty is on instrument and not on transaction and therefore requested to quash and set aside the show cause notice.

#. Mr.Soparkar has also submitted that even the action of respondent no. 1 calling upon the petitioner company to pay the stamp duty considering the instrument as an agreement and indemnity bond is discriminatory and

violative of Article 14 of the Constitution of India. It is submitted that so far as other cellular companies are concerned with regard to the similar type of instruments, they are charged with the duties considering the same as an agreement and so far as the reliance company is concerned with regard to the identical and similar type of instrument, they are charged with the duty at Rs.60/chargeable under Article 32 of the Schedule and so far as the petitioner company is concerned, the petitioner company is called upon to pay the stamp duty considering the instrument as an agreement and indemnity bond and therefore the same is discriminatory and violative of Article 14 of the Constitution of India.

#. With regard to the maintainability of the petition against the show cause notice and at the stage of show cause notice, Mr.Soparkar has relied upon the following judgments :

1. AIR 1961 SC 372 (para 28).
2. (1998) 8 SCC 1 (paras 14, 19 and 20)
3. 2004 (173) ELT 337 (Allahabad High Court) (para7)

Relying upon the judgment of the Hon'ble Supreme Court in the case of Calcutta Discount Co. Ltd. V/s Income Tax Officer, reported in AIR 1961 SC 372, it is submitted that when the Constitution confers on the High Courts the power to give relief, it becomes the duty of the Courts to give such relief in fit cases and the Courts would be failing to perform their duty if relief is refused without adequate reasons. It is further submitted relying upon the said judgment, that existence of alternative remedy is not however, always a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action. Relying upon the judgment of the Hon'ble Supreme Court in the case of Whirlpool Corporation V/s Registrar of Trade Marks, Mumbai and others, reported in (1998) 8 SCC 1 and relying upon paras 14, 19 and 20, it is submitted that power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. Under Article 226 of the Constitution of India, the High Court can entertain the writ petition and exercise its jurisdiction where there has been violation of principles of natural justice or where the order or proceedings are wholly without jurisdiction or the virus of an Act is challenged. Relying upon para 19 of the said judgment,

it is submitted that wherever it is found that executing authority is acting without jurisdiction or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Court would be justified in issuing appropriate order or direction to prevent such consequences.

#. Relying upon the decision of the Allahabad High Court in the case of Shahnaz Ayurvedics V/s Commissioner of Central Excise, Noida, reported in 2004 (173) ELT 337, more particularly, para 7 of the said judgment, it is submitted that the High Court in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision could not be adopted. Thus, relying upon the aforesaid three decisions, Mr.Soparkar has requested to entertain the present petition against the show cause notice and at the stage of show cause notice and requested to quash and set aside the same.

##. Mr.Soparkar has further submitted that in the present case, affidavit-in-reply is already filed by respondent no. 1 i.e. the authority before whom the petitioner company has to appear and the said authority had already opined that this is an agreement and indemnity bond and therefore to appear before the said authority now would be useless and no purpose would be served.

##. Per contra, Mr.S.N.Shelat, learned Advocate General, who appears on behalf of the respondent State, has submitted that the present petition is, at present, at the show cause notice stage and yet no action is taken and only the show cause notice is given calling upon the petitioner company to show cause and there is no question of violation of Article 14 of the Constitution of India at this stage. It is submitted that the petitioner company, in response to the show cause notice, had appeared before the authority on 19.7.2004 and made their oral submissions and by application dated 19.7.2004 (P.156 - Annexure 'O') sought three days time to submit detailed reply in the matter based on their oral submissions and not they are required to submit the reply to the show cause notice and point out the objections and/or is required to make its submissions which are pointed out and/or submitted in the present Special Civil Application. Relying upon the document / instrument and Clauses 18, 21, 22, 25 and 26 of the said document / instrument, it is submitted that there are certain rights in favour of the petitioner company, and, therefore, it

is submitted that whether the instrument is an agreement or guarantee or indemnity bond is required to be considered by the appropriate authority on further investigation and inquiry and after hearing the petitioner company and considering the instrument as a whole and therefore it is requested not to entertain the present special civil application at the show cause notice stage, as, ample opportunity will be given to the petitioner company to make its submissions. It is further submitted that it cannot be said that the notice, which is issued by the competent authority, is wholly without jurisdiction. It is submitted that it is a matter of interpretation of an agreement / instrument and therefore requested not to entertain the present petition at this stage.

##. Relying upon the decision of the Hon'ble Supreme Court in the case of the Special Director and another V/s Mohd.Ghulam Ghouse and another, reported in JT 2004 (1) SC 206, more particularly, para 5 of the said judgment it is submitted that unless the High Court is satisfied that the show cause notice was totally non est in the eye of law for absolute want of jurisdiction of the authority to even investigate into the facts, writ petitions should not be entertained. Mr.Shelat has also relied upon the judgment of the Hon'ble Supreme Court in the case of Air India Ltd. V/s M.Yogeshwar Raj, reported in AIR 2000 SC 1681 and has submitted that as held by the Hon'ble Supreme Court, the High Court should not have preempted a factual decision of the disciplinary authority on the issues. Nor should the High Court have stayed the proceedings on a prima facie finding on the subject matter of enquiry particularly, when the competence of the disciplinary authority was not in doubt. Mr.Shelat has also relied upon the decision of the Hon'ble Supreme Court in the case of Chanan Singh V/s Registrar, Cooperative Societies, Punjab and others, reported in AIR 1976 SC 1821 and has submitted that the petition challenging the show cause notice is premature. It is submitted that as held by the Hon'ble Supreme Court in the said decision even the question of jurisdiction will and must be considered by the Managing Director at the time of enquiry. Therefore, it is submitted that even the question of jurisdiction is also required to be considered and is required to be submitted before the concerned authority who has issued the show cause notice. Relying upon the judgment of this Court in the case of Sachin Udyog Nagar Sahakari Mandli Ltd.and another V/s State of Gujarat and others, reported in 1997 (4) GCD 63 (Guj.) it is submitted that even in case where the final order was passed and the special civil application under

Article 226 of the Constitution was filed, this Court has not entertained the petition on the ground that the petitioner has statutory alternative remedy by way of appeal is available. Therefore, it is requested not to entertain the petition which is at the show cause notice stage only.

##. So far as the contention with regard to the action of the respondents being discriminatory and violative of Article 14 of the Constitution of India is concerned, it is submitted that as such there is no decision and / or the action taken by the respondent authorities. Therefore, there is no question of any action being discriminatory and /or violative of Article 14 of the Constitution of India. It is submitted that as such it is open for the petitioner company to make submissions before the respondent authorities and to point out with regard to the action and the duties charged against other companies treating it as either agreement, guarantee and /or indemnity bond and it will be open for the petitioner company to rely upon the orders passed in other companies. It is therefore submitted that when it is yet to be investigated and inquired upon by respondent no. 1 that the document / instrument is guarantee, agreement and / or indemnity bond and it is a matter of interpretation of an agreement and the clauses mentioned in the agreement / instrument are required to be interpreted and considered for arriving at the conclusion, whether the same is an agreement, guarantee and / or indemnity bond and therefore it is requested to dismiss the present petition.

##. It is further submitted that even if there are some orders in favour of some other companies, even in that case on interpreting the document and instrument, if it is found that it is either an agreement and / or guarantee and / or indemnity bond and some benefit is wrongly given to some other companies, then in that case, the respondent authority is not precluded from recovering the stamp duty on the said instrument and / or document. Therefore, it is submitted that the wrong orders or benefit in favour of any party cannot give cause to other party to claim the same benefit.

##. Now dealing with the submission on behalf of the petitioners to the effect that respondent no. 1 by filing the affidavit-in-reply has already opined that the document / instrument is chargeable to stamp duty treating it as an agreement and indemnity bond and therefore no purpose will be served in appearing before the said authority, Mr.Shelat has submitted that there

are only prima facie observations made dealing with the special civil application and it is the petitioner company who invited the respondents to file affidavit-in-reply and if the affidavit-in-reply is not filed and the same is not dealt with, in that case it will be argued that the same is not dealt with by the respondents in the affidavit-in-reply and therefore it is submitted that apprehension on the part of the petitioners is not well founded. It is submitted that it is ultimately for the appropriate authority to take final decision after considering the submissions to be made on behalf of the petitioners and the authority has to take the decision objectively.

##. In reply to the submissions made on behalf of the respondents, Mr. Soparkar has submitted that the aforesaid decisions, which are relied upon by the respondents, are not applicable in the facts and circumstances of the case. It is submitted that as such no investigation is required, as, it is the case of the very respondents in the show cause notice that the document is executed by the customer and not by the company and therefore considering the provisions of the Act, the petitioner company cannot be held to be liable to pay the stamp duty and therefore, it is requested to entertain the present petition and to quash and set aside the show cause notice.

##. Heard the learned counsel for the parties.

##. It is not in dispute that the present special civil application is for quashing and setting aside the show cause notice and is at the show cause notice stage. On the basis of the aforesaid show cause notice, the petitioner company is called upon to show cause as to why the petitioner company should not be made liable to pay the stamp duty considering the document / instrument as an agreement treating it under Article 5(4) of the Schedule-I and treating it as indemnity bond under Article 29 of the Schedule-I of the Act inter alia, alleging that considering the ingredients and clauses, it prima facie appears to be agreement and indemnity bond. On going through the document / instrument and the terms and conditions for providing service which require interpretation and close scrutiny and to consider it as an agreement or indemnity bond or guarantee, prima facie, it appears that there are certain rights which have been crystallized in the agreement in favour of both the parties. Few clauses, which are mentioned in the document / instrument, i.e. terms and conditions which are stipulated in the said document, are required to be

considered which are reproduced as under.:

"18. The SIM Card and the mobile number are and shall always be the sole property of BCL and the SIM Card shall be returned by the subscriber upon termination and / or deactivation or temporary suspension of services. The subscriber shall have no right to the same. At any point of time, for any reason whatsoever. As the SIM Card is the sole property of BCL the subscriber/s is not entitled to assign / transfer / resell / lease / rent or create any charge / lien on the Air Tel Magic Prepaid Card in any manner whatsoever.

20. The subscriber shall not use the service for any improper, immoral, unlawful or abusive purpose, or for sending obscene, indecent, threatening, harassing, unsolicited messages, or messages affecting / infringing upon national or social interests, not create any damage or risk to BCL or its network for subscribers or any other person natural or legal whomsoever. Any such infringement or misuse shall under no circumstances be attributed to BCL and the Subscriber shall be solely responsible for all such acts. The Subscriber hereby agrees to indemnify and hold harmless BCL and its official / agents from all suits, costs, damages or claims of any kind arising out of any act or omission or misuse of the service by the Subscriber or any other person with or without consent of the Subscriber.

21. The Subscriber hereby agrees to indemnify and hold BCL harmless against any claim against BCL for libel or slander arising out of communications sent or received by Subscriber on BCL's Network. The subscriber shall also indemnify BCL for any claim against BCL arising out of any infringement or violation of copyright by the Subscriber or by anyone else using the mobile connection of the Subscriber.

22. BCL shall not be responsible for any civil or criminal liability incurred by the Subscriber due to its misuse of the Service Provided by BCL i.e. any acts of commission or omission by the Subscriber.

25. BCL reserves the right to terminate the

subscription of any subscriber who is not competent to enter into any contract under the Indian Contract Act, 1972.

26. Any increase / addition / introduction of taxes and / or levy of any taxes, duties or any other statutory charges etc. (present / future) shall be to the subscriber's account without any notice to him and shall at all times be deemed to be part of tariff.

40. The parties have fully read / have been explained in vernacular, verbatim the contents of this AMEF and understood the contents thereof and has signed in token of its consent, with the clear understanding that it is valid and binding document on both parties and can be enforced by them in according with law."

##. It is the contention on behalf of the respondents that the aforesaid conditions and clauses mentioned in the document / instrument are required to be considered and interpreted while coming to the conclusion that the said document is an agreement and indemnity bond or not, as, it is found prima facie by the respondent authorities that the said document / instrument is an agreement and indemnity bond, the show cause notice has been issued and the petitioner company is called upon to show cause. It is a question of interpretation and to read the document / instrument as a whole and the competent authority has yet to take a decision on inquiry, whether the document is indemnity bond, guarantee or agreement. All the submissions, which are raised by the petitioners in the present petition and which are stated hereinabove, are required to be dealt with and considered by the appropriate authority while deciding the show cause notice. It cannot be said that the show cause notice is wholly without jurisdiction and / or respondent no.1 has no jurisdiction at all to issue the show cause notice and/or to hold any investigation and/or inquiry and/or to look into the document / instrument. In para 5 of the judgment in the case of the Special Director and another (supra), the Honourable Supreme Court has held as under.:

"This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless, the High

Court is satisfied that the show cause notice was totally non est in the eye of law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show cause notice and take all stands highlighted in the writ petition. Whether the show cause notice was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court."

The Honourable Supreme Court in the case of Chanan Singh (supra) has held that even the question with regard to the jurisdiction can also be considered by the authority who has issued the show cause notice. Dealing with and considering the order passed by the High Court in quashing the show cause notice which actually called upon the respondent to file its counter and reply to the show cause notice, so that adjudicating proceedings may take place, the Hon'ble Supreme Court in the decision in the case of Union of India V/s Hindustan Development Corporation Ltd., reported in JT 1998 (8) SC 526 has held that the High Court should not have undertaken the onerous duty of adjudicating upon these questions which were required to be decided on merits by the authorities themselves. Considering the judgment of the Hon'ble Supreme Court, as stated hereinabove, and considering the facts and circumstances of the case, more particularly, the document is required to be interpreted and the conditions which are stipulated in the document are required to be closely scrutinized and on further enquiry and after hearing the petitioner company, it is yet to be decided by the concerned appropriate authority whether the document / instrument is an agreement and / or guarantee and / or indemnity bond or not, the present special civil application, which is at the show cause notice stage, is not required to be entertained. The petitioner company will be given ample opportunity by respondent no. 1 to present its case and make all submissions which are raised before this Court in the present petition and the same are required to be dealt with by respondent no. 1 authority. When the opportunity is given to the petitioner - company by way of show cause notice, it cannot be said that it is against the principles of natural justice. By issuance of the show cause notice itself, the petitioner company

is called upon to represent its case. Therefore, this is not a case where there is a breach of principles of natural justice.

##. Now, considering the decisions and the judgments cited at the bar on behalf of the petitioners which are stated hereinabove, there is no dispute with regard to the propositions of law that in appropriate case the High Court can entertain the petition and issue a writ even the alternative remedy is available where prima facie it is found that the action is wholly without jurisdiction for which even further investigation and / or enquiry is not permitted under the statute. The Hon'ble Supreme Court in the case of Union of India V/s T.R.Varma, reported in AIR 1957 SC 882, has observed as under :

"It is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the court to issue a writ : but ... "the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs..." And when such remedy exists, it will be sound exercise of discretion to refuse to interfere in a petition under Article 226, unless there are good grounds therefor."

In another decision the Hon'ble Supreme Court in the case of Thansingh Vs. Supt. of Taxes, reported in AIR 1964 SC 1419, has observed as under :

"The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary; it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative

remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not, therefore, act as a court of appeal against the decision of court or tribunal to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."

Now, considering the aforesaid observations of the Hon'ble Supreme Court as well as the judgments cited at the bar on behalf of the respondents and considering the fact that the document / instrument is required to be interpreted and on enquiry the authority is required to come to the conclusion, whether the document in question is an agreement and / or guarantee and / or indemnity bond or not and the petitioner company will be given ample opportunity to make its submissions, the present special civil application, which is for quashing and setting aside the show cause notice which is at the show cause notice stage, is not required to be entertained.

##. There is another reason also, why present petition is not required to be entertained. It is required to be noted that by show cause notice dated 3.7.2004, the petitioner company was directed to remain present in the office of the Collector and Additional Superintendent of Stamps to show cause as to why the petitioner company should not be directed to pay the amount of Rs.21,29,60,000/- treating the document / instrument in question as document as envisaged under Articles 32 and 5(2) of the Bombay Stamps Act, 1958 and the petitioner company did appear before the said authority on 19.7.2004 and made oral submissions and prayed for further three days time for submission of detailed reply in the matter based on their oral submissions. It appears that before any detailed reply should be submitted on behalf of the petitioner company, the petitioner company came to be

served with one another fresh show cause notice dated 26.7.2004 treating the earlier show cause notice dated 3.7.2004 as cancelled, by which, the petitioner company was directed to show cause as to why the order should not be passed for recovery of Rs.2,64,00,000/- treating the document / instrument as either indemnity and/or agreement and at that stage, the petitioner company has preferred the present special civil application challenging the show cause notice dated 26.7.2004. Thus, considering the aforesaid fact situation once the petitioner company has surrendered to the jurisdiction of the authority, it is now not open to the petitioner company to challenge the show cause notice, as, in fact, the petitioner did make oral submissions on 19.7.2004 by appearing before the authority. The contention on behalf of the petitioner company that after 19.7.2004, there was fresh show cause notice dated 26.7.2004 which is the subject matter of the present special civil application, and, therefore, even if the petitioner company had appeared before the authority on 19.7.2004 is neither here nor there. Once the petitioner company even at the earlier show cause notice stage has surrendered to the jurisdiction of the authority and has appeared before the authority and made oral submissions at the time of fresh show cause notice, the petitioner company cannot be permitted to challenge the same.

##. So far as submission and contention on behalf of the petitioners with regard to the discriminatory treatment and the action in breach of Article 14 of the Constitution of India is concerned, at present, there is no action which is being taken by the respondent no. 1 and petitioner company is only called upon to show cause and therefore, there is no question of violation of Article 14 of the Constitution at this stage. Only after conclusion of the enquiry and the proceedings and the show cause notice any final order is passed, at that stage, breach of Article 14 of the Constitution can be complained of. Even at the stage of show cause notice and in the said proceedings, it will be open for the petitioners to contend and make submissions with regard to other companies also and considering the document / instrument of other companies along with that of the document / instrument of the petitioner company, appropriate decision can be taken by respondent no. 1. Whether clauses / conditions, which are stipulated in the document / instrument of the petitioner company are similar or not, are also required to be considered by respondent no. 1 on producing the same before the appropriate authority. Under the circumstances, the contention of the petitioners with regard to

discriminatory treatment and / or breach of Article 14 of the Constitution is not required to be accepted at this stage.

##. Next submission which is made on behalf of the petitioners is to the effect that respondent no.1, while filing the affidavit-in-reply, has already made up his mind and has already submitted that the document in question is an agreement and / or indemnity bond, and, therefore, to appear before the same authority is mere formality is concerned, it is required to be noted that these are all prima facie observations made by respondent no.1 dealing with the petition and it is the petitioners who invited respondent no.1 to file the affidavit-in-reply. If in the affidavit-in-reply, it is not dealt with even prima facie, then also it can be argued on behalf of the petitioners that it is admitted by respondent no.1 and/or it is not dealt with by respondent no.1. The inquiry and investigation by respondent no.1 authority is yet to take place and the petitioners are given opportunity to represent their case and the same is required to be dealt with by respondent no.1 objectively and if any adverse order is passed, even in that case, there is further remedy of appeal before the appellate authority and thereafter to prefer the special civil application before this Court under Article 226 of the Constitution of India. Under the circumstances, apprehension on the part of the petitioners is not well founded.

##. For the reasons stated above, and more particularly in view of the fact that the present petition is at the show cause notice stage and the petitioner company is called upon to make its submissions and had, in fact, made oral submissions before the authority on 19.7.2004 and that whether the document / instrument is an agreement and/or guarantee and/or indemnity bond or not, is required to be considered by respondent no.1 on inquiry and it is a question of interpretation of document, the present petition against the show cause notice is not entertained and is hereby dismissed. Notice is discharged. No costs.

(M.R.Shah,J)

(pathan)