

Ashok Kumar Sharma & Ors

v.

Union of India

(Writ Petition (Civil) No. 551 of 2024)

09 September 2024

**[Dr. Dhananjaya Y Chandrachud, CJI, J.B. Pardiwala
and Manoj Misra, JJ.]**

Issue for Consideration

Whether the Court under Article 32 can issue a writ to the Union Government to cancel existing licences and halt the issuance of new licences for the export of arms and military equipments to Israel.

Headnotes[†]

Constitution of India – Art. 32 – The petition seeks directions to the Union Government to cancel existing licences/permissions and to halt the grant of new licences to companies in India for the export of arms and military equipment to Israel during the ongoing conflict in Gaza:

Held: First, the conduct of an independent sovereign nation namely, Israel is not and cannot be made amenable to the jurisdiction of this Court – To consider the grant of the reliefs as sought, it would inevitably become necessary to enter a finding in regard to the allegations which have been leveled by the petitioners against the State of Israel – Absent jurisdiction over a sovereign State, it would be impermissible for this Court to entertain the grant of reliefs of this nature – The second aspect of the matter which requires to be noticed is that the petition seeks a cancellation of the existing licences and prohibition on the issuance of new licences for the export of arms and military equipments by Indian companies – Some of these licenses may be governed by contracts with international entities, including within the State of Israel – The grant of injunctive relief by this Court would necessarily implicate a judicial direction for breach of international contracts and agreements – The fall out of such breaches cannot be appropriately assessed by this Court and would lay open Indian companies which have firm commitments to proceedings for damages which may affect their own financial viability – Third, the statutory provisions of our law confer sufficient power on the Union Government if it decides to

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act in such cases – For instance, prohibitions can be imposed by the Union of India under the Foreign Trade (Regulation and Development Act) as well as under the provisions of the Customs Act, 1962 – Whether in a given case, any such action is warranted is a matter which has to be decided by the Union Government bearing in mind economic, geo-political and other interests of the nation in the conduct of international relations – The self-imposed restraint on Courts entering into areas of foreign policy is, thus, grounded in sound rationale which has been applied across time – For the above reasons, the reliefs which have been sought in these proceedings are not amenable to the exercise of judicial remedies under Article 32 of the Constitution. [Paras 7, 8, 9, 10, 11]

List of Acts

Constitution of India; Foreign Trade (Regulation and Development Act); Customs Act, 1962.

List of Keywords

Article 32 of the Constitution of India; Sovereign nation; Licenses for export of arms and military equipment; Permissions; Conflict in Gaza; International law obligations; International contracts and agreements; International relations; Self-imposed restraints on Courts; Foreign Policy.

Case Arising From

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 551 of 2024
(Under Article 32 of The Constitution of India)

Appearances for Parties

Prashant Bhushan, Ms. Cheryl Dsouza, Ms. Ria Yadav, Luma Kanta Bhandari, Ms. Sulekha Agarwal, Prasanna S, Advs. for the Petitioners.

Barun Kumar Sinha, Mrs. Pratibha Sinha, Sneha Vardhan, Abhishek, Advs. for the Respondent.

Judgment / Order of the Supreme Court**Judgment**

1. The petition, invoking Article 32 of the Constitution, has been instituted by former civil servants, scholars, activists and experts in fields such as International Relations, Human Rights and Policy Analysis.

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2. The petition seeks directions to the Union Government to cancel existing licences/permissions and to halt the grant of new licences to companies in India for the export of arms and military equipment to Israel during the ongoing conflict in Gaza. These companies, as the petitioners describe, include a Public Sector Enterprise in the Ministry of Defence and private companies which have allegedly been granted licenses after October 2023. The petitioners claim a violation of India's international law obligations and of Articles 14, 21 and 51(c) of the Constitution.
3. Supporting the submissions of the petitioners, Mr Prashant Bhushan, counsel has relied on the rulings of the International Court of Justice allegedly into the conduct of Israel in Palestinian territories. The submission is that India is bound by international treaties which disallow the supply of military weapons to states who have engaged in war crimes/genocide.
4. In other words, the submission is that the continuation of the export licences would constitute action complicit against the Genocide Convention and other international obligations which India has assumed.
5. The fundamental objection to the maintainability of a petition of the nature that is before the Court lies in the fact that the authority and jurisdiction in relation to the conduct of foreign affairs is vested with the Union Government under Article 73 of the Constitution. Apart from Article 73, the provisions of Article 253 of the Constitution stipulate that Parliament has the power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.
6. There is a presumption that international law is a part and parcel of the law of the nation unless the application of a principle of international law is excluded expressly or by necessary implication by the competent legislature. However, the basic issue which falls for consideration in the present proceedings is whether the Court under Article 32 can issue a writ to the Union Government to cancel existing licences and halt the issuance of new licences for the export of arms and military equipments to Israel. We are affirmatively of the view that the answer to this question must be in the negative for more than one reason.

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7. First any grant of relief in the present proceedings is presaged on the submission of the petitioners in regard to the conduct of an independent sovereign nation namely, Israel in the conduct of its operations in Gaza. The sovereign nation of Israel is not and cannot be made amenable to the jurisdiction of this Court. Hence, for this Court to consider the grant of the reliefs as sought, it would inevitably become necessary to enter a finding in regard to the allegations which have been leveled by the petitioners against the State of Israel. Absent jurisdiction over a sovereign State, it would be impermissible for this Court to entertain the grant of reliefs of this nature.
8. The second aspect of the matter which requires to be noticed is that the petition seeks a cancellation of the existing licences and prohibition on the issuance of new licences for the export of arms and military equipments by Indian companies. Some of these licenses may be governed by contracts with international entities, including within the State of Israel. The grant of injunctive relief by this Court would necessarily implicate a judicial direction for breach of international contracts and agreements. The fall out of such breaches cannot be appropriately assessed by this Court and would lay open Indian companies which have firm commitments to proceedings for damages which may affect their own financial viability.
9. Third, the statutory provisions of our law confer sufficient power on the Union Government if it decides to act in such cases. For instance, prohibitions can be imposed by the Union of India under the Foreign Trade (Regulation and Development Act) as well as under the provisions of the Customs Act, 1962. Whether in a given case, any such action is warranted is a matter which has to be decided by the Union Government bearing in mind economic, geo-political and other interests of the nation in the conduct of international relations. In taking an appropriate decision, the Government bears into account all relevant considerations including the commitments of the nation at the international level.
10. The danger in the Court taking over this function is precisely that it would be led into issuing injunctive reliefs without a full and comprehensive analysis or backdrop of the likely consequences of any such action. The self-imposed restraint on Courts entering into areas of foreign policy is, thus, grounded in sound rationale which has been applied across time.

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11. For the above reasons, we have come to the conclusion that the reliefs which have been sought in these proceedings are not amenable to the exercise of judicial remedies under Article 32 of the Constitution.
12. We clarify that the observations which have been made in the earlier part of this judgment are not intended to reflect any opinion by this Court either in the conduct of foreign policy by the Government of India, or for that matter, by any sovereign nation which is not subject to the jurisdiction of this Court.
13. The Writ Petition shall accordingly stand dismissed for the above reasons.
14. Pending applications, if any, including the application for intervention/impleadment stand disposed of.

Result of the case: Writ petition dismissed.

[†]Headnotes prepared by: Ankit Gyan