ALLAHABAD HIGH COURT

Amrita Bazar Patrika Ltd.

Vs.

Board of High School

Civil Misc. Writ Appln. No. 512 of 1955

(Upadhya, J.)

17.06.1955

JUDGMENT

Upadhya, J.

1. This is an application by the Amrit Bazar Patrika, Limited, a Private Limited company which owns the Amrita Bazar Patrika Press situate at Allahabad and publishes the English daily newspaper known as the Amrita Bazar Patrika, for the issue of an order, direction or a writ in the nature of a writ of Mandamus commanding the respondent No.1, the Board of High School and Intermediate Education, U.P., to allow the petitioner to have access to the results of the High School and Intermediate Examinations held by the said Board this year after the same have been passed by the Results Committee of the Board with privileges, facilities, conveniences, and opportunities which have been made available by the said Board to the respondent No.2, the Newspaper Limited which publishes the daily Newspaper called the 'Leader'. The petition also prays for the issue of an order, direction, or a writ in the nature of a writ of certiorari to the respondent No.1 to transmit the record of the correspondence and resolutions bearing on the subject or the publication of the aforesaid result of the year 1955 to this Court to the end that the decision of the respondent No.1 embodied in the letter dated 3-5-1955 be quashed. The petition further prays for tile passing of any other order or direction that may be found to be appropriate and suitable in accordance with the exigencies of the case.

2. The petition urges that on several occasions in the past the results of the High School and Intermediate Examinations held by respondent No.1 have been published in the columns of the Amrita Bazar Patrika and that on 18-2-1955, the Board enquired from the petitioner whether it was ready and willing to undertake the publication of the results. The petitioner signified its consent and thereupon on 7-3-1955 the Results Sub-Committee of the Board met to consider the acceptance of the newspapers to publish the results and the representative of the Amrita Bazar Patrika viz., Sri S.N. Chanda was invited to attend the meeting. It is alleged that Sri Chanda

accepted all the terms and conditions proposed by the Board and agreed to publish the results and the Sub-Committee assured the representative that its final decision would be communicated in due course. It is said that with a view to carry out the work of publication with the requisite degree of efficiency and due promptitude the petitioner incurred substantial expenses in making preparation and collecting materials as set out in the affidavit.

The respondent No.1, the Board, failed to communicate its decision for about two weeks and a reminder was sent on or about 25-3-1955 to the Board to which the Board replied that the matter was fully considered at its meeting on 11-4-1955. On 3-5-1955, an intimation was received by the petitioner from the Secretary of the Board to the effect that the Board refused to allow the petitioner to publish the results in the columns of the Amrita Bazar Patrika. The petitioner urges that the Board is under a statutory obligation to make the results available to the public after they have been passed by the Results Committee and after they have been so passed they ceased to be the property of the Board and become the property of the public, that it is not within the competence of the Board to confer the right of monopoly and the exclusive right of publication of the results on any individual newspaper to the exclusion and prejudice of other newspapers and that the petitioner has a fundamental right of having access to the results in order to carry on its business and render service and discharge its duties to its constituents in general and to readers, examinees and their guardians and those who are interested in the results in particular. It is further urged that to confer the exclusive right of publication of the results amounts to discrimination against the petitioner and other newspapers and that conferring of such exclusive right of publication precludes the petitioner from being eligible to perform its duties as a newspaper and is destructive of and incompatible with the democratic principles and public policy and constitutes a gross violation of the petitioner's fundamental right to carry on its business. It is stated that a statutory corporation, it was incumbent on the Respondent No.1 to allow every newspaper to have access to the results with equal facilities and to refrain from discriminating one paper against another and mete out preferential treatment to that particular new-paper. The affidavit further states that near about 1946 the results were published by the Government Press and the newspapers purchased result-sheets from the Government Press and supplied to their readers those result sheets along with their papers. It is urged that this was due to the fact that the newspapers were not in a position to publish the result-sheets because of shortage of newsprint and several other difficulties. In 1947 none of the local papers of Allahabad published the results and these were published by the Hindustan Times, New Delhi. In 1948 the Leader, as a result of discriminatory treatment meted out by the Board, published the results. In 1949 and 1950 the Amrita Bazar Patrika published the results and so did the Leader. The issues of the Amrita Bazar Patrika containing the results of 1949, popularly known as Results Supplement were supplied to the public considerably before the Leader could make the Result supplement available to the public, notwithstanding the fact that the Board had imposed a time lag on the publication of the results. In 1951, 1952 and 1953 neither the Leader nor the Patrika published the results. The Bharati Bhandar, a publication branch of the Leader published the results of 1952. In the months of April and June, 1953, it is stated that the petitioner received certain number of letters including one dated 30-4-1953, on the subject of the publication of

results. This letter mentioned that the exclusive right of publication of results has been abandoned.
Eventually in that year (1953) neither the Leader published the results nor the Amrita Bazar Patrika. In that year the results were published by the Hindustan Times of Delhi and some others papers of Delhi but some of the important details of the results had been omitted, e.g., names of the successful candidates, the division secured by them at the High School Examination except those who had been placed in the first division. These were not to the satisfaction of the persons interested. It is stated that in 1954 both the Leader and the Patrika suggested to the Board that the results may be given to any one of the aforesaid two papers with the exclusive right of publication.
Eventually the Leader published the results but the Result Supplements were available to the public at many centers a bit late after the arrival of the result-sheets supplied by the Board to those centers. It is then stated that in the year 1955 on an invitation from the Board the Patrika had sent its representative and had agreed to publish the results on the terms proposed. It is claimed that in point of efficiency, of prompt and expeditious printing publication, reaching the result-sheets to the far and distant stations, the Amrita Bazar Patrika does not yield superiority to any other paper and the record of its performance in the matter of publication of the results had been good and there was no justification for the preferential treatment meted out to the Leader against the Patrika this year.

3. Notices were issued on 23-5-1955 on the petition by my brother Oak J. and he directed that a date for hearing be fixed in the first week of June 1955.

4. This case was listed for hearing on 6-6-1955 when it was found that counter-affidavit had been filed by the respondent and the petitioner wanted time for filing a rejoinder. The case was therefore postponed and after the rejoinder was filed the case came up for hearing on the 9th instant.

5. At the commencement of the hearing, the learned Advocate General raised preliminary objections. He invited attention to paragraph 24 of the petitioner's affidavit wherein the petitioner had stated that he did not claim any relief as against the Leader and that the petition was filed with the sole object of vindicating its right to have access to the results, after they have been 'announced' by respondent No.1 and to have aqual facilities and equal privileges of publishing the same. It was urged that the relief claimed was only against respondent No.1. The petitioner knew that under an agreement with the Board the respondent No.2 had acquired the exclusive right of publishing the results and was proceeding to act on that basis and yet if no relief was claimed against the Leader it should be construed that the petitioner did not want any modification of the exclusive right so acquired by respondent No.2. In the circumstances the relief claimed against the Board would be meaningless unless it was also intended to effect a modification of the rights of the respondent No.2. In the absence of a claim that the rights of the respondent No.2 be modified, the relief claimed would be in the nature of a mere declaratory

relief for which no mandamus can properly be issued. The second objection raised is that the issue of mandamus is possible only when there is a statutory or legal duty. The petition, it was urged, did not show the existence of any legal right founded on any statute or other law. The learned Advocate General urged that sub-section (7) of Section 7, Intermediate Education Act (Act II of 1921) said that subject to the provisions of the Act the Board shall have the power to publish the results of its examinations. This power conferred on the Board created a corresponding duty to publish the results. The manner in which this was to be done was within the exclusive competence of the Board to decide and no right was created by that Act or by any other Act in favor of the petitioner. It was urged that unless the petition showed the existence of such a right founded on law the petitioner was not entitled to claim the issue of any writ. The third objection raised was that in paragraph 24 of its affidavit the petitioner stated that it wants the vindication of its rights to have access to the results after they have been 'announced'. It was urged that 'announcement' of the results meant nothing else than conveying the results to others. The agency for this 'announcement' appointed by the Board was the Leader and if the petitioner wanted to have access of the results after the 'announcement' the respondent Board could have no objection and the petition itself does not show that at any time the respondent Board expressed any objection to the petitioner having access to the results after such 'announcement' by the Leader. On this ground too it was urged that the petition was not maintainable. The learned Advocate General further argued that the facilities etc., referred to by the petitioner were such as were essential for the timely publication of the results. Having regard to the very large number of candidates appearing at the Intermediate and High School Examinations and the accuracy required in publishing the results, the arrangement was that the rolls of candidates appearing at the examinations were furnished to the newspaper concerned so that the necessary printing might be started and, after the results were passed by the Results Committee, they were to be passed on to the newspaper concerned so that with the necessary modification of the rolls printed by them the results might be published with the least possible delay. The learned Advocate General stated that the results were about to be passed by the Committee and the Leader expected to publish them or at least those of the Intermediate. Examination on or about the 17th instant. He said that having regards to the immensity of the task for the petitioner to publish the results on that date even if they were made available to him simultaneously with the leader, it was not possible now to give the same facilities because facilities had already been given to the Leader and it was not possible to do for the petitioner that which had already been done for the Leader. He said that this part of the prayer was impossible and he said that the Court cannot be requested to grant a relief which by the very nature of things has become in fructuous. The learned Advocate General said that the decision of the Board was communicated to the petitioner on 21-4-1955 and the petitioner did not take action for quite a long time and it has now become impossible to grant the relief as an effective relief because of laches on the part of the petitioner. He therefore urged that on this ground too the petition as moved now was not maintainable and should be rejected without considering it on merits. He further urged that no judicial proceedings were in question and no case had been made out for the issue of a writ of certiorari. The prayer for the issue of that writ was not maintainable at all.

6. Sri A.P. Pandey, learned counsel for the petitioner, in reply said that the objections raised by the learned Advocate General were not preliminary in their nature at all. The questions raised by him involved the determination of the rights of the petitioner and if the examination of the rights could be called preliminary such preliminary objections may be raised in every petition for the issue of a writ. With reference to paragraph 24 of the petitioner's affidavit, learned counsel argued that the petitioner refrained from seeking relief against the Leader because the petitioner's contention is that the Board's action in violation of the petitioner's fundamental rights was illegal and as such the alleged agreement between the Board and the Leader could not be effective in law at all.
The Leader, it was urged, could lay no valid claim to the exclusive right of publishing the results and as such it was not necessary to claim any relief against the Leader and if die relief as prayed for against the respondent No.1 is granted by the Court the petitioner would get all that it wanted. The Leader, it was contended, had not acquired any right at all in the eye of law and as such it was absolutely unnecessary to claim any relief against the Leader. It was urged that the petitioner was opposed to the grant of exclusive right of publishing the results but was not opposed to the Leader also having the right to publish the results in the same manner as was claimed by the petitioner and therefore the petitioner did not claim that the Leader should be ordered not to publish the results. The petition, in consequence, could not be rejected on the first ground urged by the Advocate-General.

7. The second preliminary objection, Sri Pandey contended, necessitated the examination of the very foundation of the petitioner's claim. If the petitioner did not succeed in establishing that it had a constitutional or legal right and failed to show that the respondent No.1 was under a corresponding obligation to perform a duty, the objection must fail. But this should properly be done when the case is heard on merits in full and not as a preliminary matter. Learned counsel urged that in order to obtain a writ of mandamus the applicant must satisfy certain conditions according to well-established principles in English Law. The applicant must show that he has a legal right to the performance of his legal duty by the respondent. The right must be a public right and the duty sought to be enforced must be of a public nature, the right to compel the performance of the public duty should be shown to reside in the applicant and the applicant must have moved the Court in good faith and not on behalf of a third party or for an indirect purpose. Learned counsel said that the duty may not be necessarily created by a statute but should be well-founded in law. He said, Section 7(7) Intermediate Education Act (U.P. Act No. II of 1921) made it a duty of the respondent No.1 to publish the results and the petitioner was both in its capacity as a member of the public and as a newspaper, entitled to the right of having the results published and to get the said duty performed by the respondent Board. Learned counsel contended that regard being had to the interest that a large section of the public has naturally in these results and the fact that the statute empowers the Board to publish the results, it becomes the duty of the Board to perform its duty. It cannot be properly contended that it is open to the Board to exercise that power or not to exercise it at all. Further it is not open to the Board to exercise that power in

the manner it chooses regardless of the inconvenience that it may cause to others or the effect that the choice of the manner may have on the rights, privileges or professional or trading activities of others. The object of the provision made in the statute, the subject-matter concerned and the class and number of persons interested requires that the power conferred by the statute must be exercised and the conferring of the power by the statute creates a duty which the Board is bound to perform.

Learned counsel cited the decision of the House of Lords in - '*Julius v. Lord Bishop of Oxford*[1]' where the Lord Chancellor (Earl Cairns) considering the import of the words "it shall be lawful" observed that while these words in themselves confer a faculty or power only there may be other circumstances making it a duty of that authority or person concerned to exercise that power. The Lord Chancellor said:

> "But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to. be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so."

8. Those observations were quoted with approval by Kania C.J. in the - '*Chief*

[1]1880 5 AC 214

Controlling Revenue Authority v. Maharashtra Sugar Mills Ltd[2]*.',*

The learned Chief Justice was considering the powers of a Revenue Authority to make a reference to the High Court under the Stamp Act and the language of Section 57, Stamp Act, where it says that the Chief Controlling Revenue Authority 'may' state any case referred to it etc. came up for consideration and the learned Chief Justice observed:

> "In our opinion, in the present case the power to make a reference under Section 57 is not only for the benefit of the appellant. It is coupled with a duty cast on him, as a public officer to do the right thing and when an important and intricate question of law in respect of the construction of a document arises, as a public servant it is his duty to make the reference. If he omits to do so it is within the power of the Court to direct him to discharge that duty and make a reference to the Court."

Learned counsel contended that the Intermediate Board having the power was also required to exercise that power as a matter of duty and if the Board was under an obligation to publish the results, those who were entitled to know the results of such publication were also entitled to argue that the power should be required to perform that duty. Learned counsel said that as the manner in which the duty is to be performed may not be arbitrary or unreasonable, the petitioner is competent to move the Court to see that the Board performs this duty in a proper manner.

Learned counsel therefore urged that the duty of the Board having been enacted the petition could not be dismissed on a preliminary ground as raised by the learned Advocate-General.

9. The learned counsel for the petitioner dwelt at some length on the meaning of the word 'publish'. He referred to various dictionaries and tried to show that the word would have different connotations in different circumstances. Referring to Stroud's Judicial Dictionary, Vol. III, learned counsel argued that this dictionary dealt with several objects and publications and there were some of these objects which were similar to the publication of results. He contended that the meaning of 'publication' or 'publishing' should be considered to be similar as that used in clauses (6) and (9) which read as follows:

> "(6) A Sculpture, or bust, is published (Sculpture Copyright Act 1813 (54 Geo.3., c. 56), Section 1) by being publicly exhibited - ('*Turner v. Robinson*[2]*',* See Produced. See further - *'Britain v. Hanks Bros. and Co*[4]*.',*."
> "(9) An award is published, and "ready to be delivered", as soon as it is completed and and executed by the arbitrator - ('*Brooke v. Mitchell*[5]*',* Russell on Arb. (15th ed.), 203); but, semble even where the words used are "ready to be delivered", the award may be parol (See Deliver)."

Shri Pande contended that it is the duty of the Board to publish the results and make them available to the public immediately after they are passed by the Results Committee. He said that in this case the Board had invited several newspapers including the petitioner to take up the work of printing, publishing and distributing the results at the various centres

2 AIR 1950 SC 218
[3](1860) 10 Ir. Ch. B.510
[4](1902) 86 LT 764
[5](1840) 6 M. and W.473

of examination and he contended that the moment the Board invites the representatives of one newspaper to take the results from the office of the Board the results are public and they are no more a secret and they become public property in the sense that they become public news. Learned counsel contended that it was incompetent for the Board to exclude the petitioner from getting the results at that stage, and if the Board which is a body corporate acted in this manner it amounted to discrimination between two newspapers. The making available of the rolls etc., in advance is Shri Pande contended, an integral and inseparable part of the obligations of the Board to publish the results. There is a public obligation resting on the Board and the moment it becomes unnecessary to keep the results a secret there is the duty to publish them and this duty of the Board is a duty to the public or a public duty. Shri Pande urged that every newspaper has a right to go and have access to the news. He says that the right is a fundamental right under he Constitution. In the alternative he says it is a right based on the general law of the land which recognises the right of newspapermen to have access to all sources of news. Learned counsel referred to several books and cases relating to the American Law on the subject and he said that in the United State of America the rights of the press are fairly well recognised in this respect.

Reliance was placed on a quotation from the judgment of Lord Tenterden C.J. in - '*Doe d. Bishop of Rochester v. Bridges*[6]*',* quoted with approval by the Privy Council in - '*Attorney General of Trinidad and Tobago v. Gardon Grant and Co*[7]*.,'*

> "Where an act creates an obligation, and enforces the performance in a specific manner, we take it to be a general rule that performance cannot be enforced in any other manner. If an obligation is created, but no mode of enforcing its performance is ordained, the common law may, in general, find a mode suited to the particular nature of the case."

Learned counsel contended that if the manner in which the results are to be published is not set out in the statute the publication is to be done according to the common law in a mode or manner suited to the particular nature of the case. It was contended that in modern times when the press is so efficient no, better manner of publishing the results could be available than to let the newspapermen have access to the results and without granting to any one newspaper any sort of monopoly over the news the papers generally should be allowed to publish the results. Learned counsel contended that that would be the most efficient and effective manner in which the statutory duty cast on the Board could be discharged. He said, therefore, that the duty had to be discharged in a proper manner and not in a manner which would be arbitrary or unreasonable or even partially affecting the object for which the provision is made creating that duty. Learned counsel contended that the preliminary objection was no preliminary objection at all and the merits of the case would have to be considered in deciding the questions that arose.

10. Reference was made to Article 19(1) (a) and (g) of the Constitution of India. Learned counsel urged that the petitioner had a fundamental right of freedom of expression. Learned counsel relied on - *'Lovell v. Griffin*[8]*',* and - '*Romesh Thappar v. State of Madras*[9]*',* in support of his contention that the freedom of speech and expression includes freedom of publication. The right of expression includes publication, circulation, distribution and dissemination of

[6](1831) 1 B. and Ad. 847 at p.859 [8](1937) 303 U.S.444
[7]1935 A.C. 532 at p.537 [9] AIR 1950 SC 124 at p.126

the news.

Learned counsel urged that if the petitioner had been guaranteed the freedom of right of expression under the Constitution, it was implied that there would be no impediment placed by anybody in the exercise of that right. He contended that it was not possible at all for the petitioner to exercise that right if he was denied access to news. Referring to clause (g) of Article 19 he said that as a newspaper the petitioner could not possibly exercise the profession or carry on the occupation or trade or business of a newspaper if respondent No.1 denied to the petitioner access to the results and allowed such access only to the Newspapers Limited and the Leader. The petitioner was denied the opportunity of exercising his fundamental rights. When the rights were guaranteed, he said, nothing can be done by anybody to impede the effective enjoyment of that right. Learned counsel urged that the matter was not one which could be disposed of on a

preliminary ground and it could not be urged that prima facie the petitioner had no case.

11. Adverting to the objection of the learned Advocate General that fundamental rights under Article 19 were not available to the petitioner as the petitioner was a corporation and not a natural person and therefore not a citizen within the meaning of the Constitution, learned counsel said that though the Advocate General had promised to cite Supreme Court decisions to support his contention the only one case that was mentioned by him was a decision of the Madras High Court in - '*Sree Meenakshi Mills Ltd, Madurai v. State of Madras*[10]*',* Learned counsel said that another case published in - '*Jupiter General Insurance Co., Ltd. v. Rajagopalan*[11]*',* was also being mentioned. No decision of the Supreme Court had been placed before the Court. Shri Pande referred to Article 5 of the Constitution and said that though a corporation did not satisfy the requirements of clauses (a) and (b) of the said Article it could not be said that it did not satisfy the requirements of clause (c). The residence of a corporation in India could be proved as required by that clause and the corporation therefore could be treated as a citizen of India. Learned counsel referred to a decision of the Supreme Court in - '*Charanjit Lal Chowdhrv v. Union of India*[12]*',* and referred to certain passages from the opinions of the learned judges in that case. He also referred to a case reported in - *'Maharaja Kishangarh Mills Ltd. v. State of Rajasthan*[13]*',* which had followed the decision of the Supreme Court. Learned counsel further urged that apart from the fundamental rights of the petitioner it had a legal right to get the news from all sources of public information and it was incompetent for the Board to exclude the petitioner from having access to the results.

12. The fourth preliminary objection raised by the Advocate General relating to laches in moving the Court was, according to Shri Pande not a valid objection. He said that on 18-2-1955 the Board sent a circular letter to several newspapers and the petitioner sent its reply on 28-2-1955 intimating its willingness to substantially accept the terms of the Board. On 7-3-1955 the News-Editor of the Patrika attended a meeting and he said after making certain proposals that he agreed without reservation to the proposals of the Board.
On 11th, 12th and 13th March meetings of the Board were held and on 3rd May the petitioner was sent a letter informing him of the decision taken by the Board to grant the

[10] AIR 1951 Mad 974 [12] AIR 1951 SC 41
[11] AIR 1952 Pun 9 [13] AIR 1953 Raj 188

exclusive right of publishing the results to the Leader. This letter was received by the Secretary of the petitioner on -5th May. Considerable expenses had been incurred in making preparations for publishing the results and the petitioner sought legal advice as to the course to be adopted. Necessary material for preparing the affidavit had to be collected and on 23rd May the petition was moved in this Court. Learned counsel urged that it was hardly fair to brand this petition as bad because of laches and the learned Advocate General was not justified in asking the Court to reject it in limine on that ground.

13. After Shri Pande had submitted his reply to the preliminary objections Shri S.S.Dhawan, counsel for the respondent No.2, raised certain other preliminary objections on behalf of his

client. He said that tire petition was mala fide and because of material misrepresentation in the affidavits, and the petitioner's conduct as revealed by the facts in the affidavit, the petitioner was disentitled to be heard on merits. Learned counsel for respondent No.2 urged that the petitioner had been trying to secure an exclusive right of publication for itself since 1953 and the petitioner had always been in favour of exclusive right of publication of the results. The petitioner, counsel stated, had actually written to the Board that the Board would not get the co-operation of the newspapers unless the Board adopted the principle of exclusive right of publication. Several letters were placed before the Court and learned counsel urged that the petitioner had acted improperly in not placing in full these facts before the Court when asking for the issue of a writ. Fundamental rights could also be waived and if the past conduct of the petitioner in 1953 and 1954 shows that he had been pressing the Board for an exclusive right of publication being granted, it was necessary that the petitioner should have placed before the Court the necessary facts showing such conduct. Learned counsel referred to the affidavits and counter affidavits filed in the case and several Annexures to substantiate his allegations.

14. Shri Dhawan invited my attention to certain allegations against the General Manager of respondent No.2 relating to certain matters under the Factories Act and protested that these allegations were irrelevant and ought not to have been made in this case. He requested that he may be permitted to file an affidavit and prove the similar allegations can be made against the officers of the petitioner as well. I have considered the matter and no useful purpose would be served by unnecessary mudslinging. In my opinion, the petitioner could have avoided making these allegations without any detriment to the case.

15. The petitioner in paragraph 9 of the affidavit accompanying the petition has stated that in the year 1954 both the Leader and the Amrita Bazar Patrika had suggested to the respondent Board that the results might be given to any one of the aforesaid two papers with the exclusive right of publication. It cannot be said that the petitioner had hidden from the Court its attitude towards the exclusive right of publication in the past and though the facts could have been more fully set out it cannot be said that lack of such details was of such a nature as to disentitle the petitioner to a hearing.

16. The preliminary objections were not allowed to prevail. Notice had already been issued in the case and the parties had put in affidavits, counter affidavits and rejoinder affidavit with such annexures as they considered relevant. Having heard the case at some length in the course of the preliminary objections I was of opinion that having regard to the questions raised it would be fair to hear and decide the case on merits.

17. Sri A.P. Pande for the petitioner urged that the petitioner was a private limited company which had been issuing from Calcutta the "Amrita Bazar Patrika", an English daily, for the last 87 years. In 1943 the petitioner started issuing the "Amrita Bazar Patrika" from Allahabad also, calling it the Northern India edition. The petitioner, it was urged, had a large press and that its

efficient organization was perfectly capable of copying with the requirements of publishing the results of the Board examinations.
The petitioner urged that in the years 1943-46 the Board published the results in the Government Gazette. In 1947 the results were published in the "Hindustan Times" of Delhi. In 1948 they were published in the "Leader" and its Hindi version the "Bharat", which belongs to the respondent No.2. In 1949 the results were published in the "Leader", the "Amrita Bazar Patrika", the "Hindusthan Times", the "Indian News Chronical" and the "Aj" of Banaras. In 1950 the results were published in the "Leader", the "Amrita Bazar Patrika", the "Hindusthan Times", and the "Aj". In 1951, they were published in the "New Bharat", the "Hindusthan Times", the "Sansar" and the "Aj". In 1952 the Bharati Bhandar, a department of the Newspapers Ltd. - respondent No.2 - published the results. In 1953 there was some correspondence between the Board and the petitioner, and the petitioner did not publish the results but they were published by the "Hindusthan Times".
In 1954, the exclusive right of publishing the results was given to the "Leader". In the year 1955 the petitioner states, the Board invited newspapers, including the "Amrita Bazar Patrika" and the "Leader", to take up the work of publishing the results and there was some correspondence between the Board and the petitioner. The petitioner urges that though it did make certain proposals requesting a modification of the terms offered by the Board the petitioner ultimately did agree in an unqualified manner to accept the Board's proposal and to publish the results.

18. The petitioner, it is contended, made certain preparations at considerable expense for the purpose and to its surprise it received on 5-5-1955, an intimation from the Board that the exclusive right or publication had been granted to the "Leader". This, the petitioner contends, is in violation of its fundamental rights and its rights under the general law applicable to newspapers to have access to the results which are public news and hence the petition. The petitioner prays for the issue of a writ of mandamus. In the petition there was a prayer, as stated before, for the issue of a writ of certiorari upon the respondent No.1. Learned counsel for the petitioner stated that a writ of mandamus could effectively grant him the relief needed and he did not ask for a writ of certiorari for the purpose.

19. The petition is opposed both by the Board, respondent No.1, and by the Newspapers Ltd., respondent No.2, which runs the newspaper entitled the "Leader".

20. The petitioner has laid claim to a fundamental right of having access to the results of the respondent Board. Learned counsel relies on clauses (a) and (g) of Article 19(1) of the Constitution of India which read as follows:

> "19(1) All citizens shall have the right -
> (a) to freedom of speech and expression;
> * * * *
> (g) to practice any profession, or to carry on any occupation, trade or business."

21. The first question which requires consideration is whether the petitioner is a 'citizen' within the meaning of the Article. Citizenship is dealt with in Part II of the Constitution. Article 5 says:

> "(5) At the commencement of this Constitution, every person who has his domicile in the territory of India and
> (a) who was born in the territory of India, or
> (b) either of whose parents was born in the territory of India; or
> (c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India."

The other Articles 6 and 7 deal with the rights of citizenship of certain persons who have migrated to India from Pakistan and the rights of citizenship of certain migrants to Pakistan. Article 8 deals with the rights of citizenship of certain persons of Indian origin residing outside India. Article 9 lays down that no person shall be a citizen of India by virtue of Article 5, or be deemed to be a citizen of India by virtue of Article 6 or Article 8, if he has voluntarily acquired the citizenship of any foreign State. Article 10 merely says that a person who is or is deemed to be a citizen under the foregoing provisions shall continue to be such citizen subject to the privision of any law that may be made by Parliament. Article 11, which is the last article in this Part, only states that nothing in this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

22. In this particular case learned counsel contended that this company was in existence for more than five years immediately preceding the commencement of the Constitution and it had its registered office at Calcutta in the territory of India all these years and was ordinarily resident in the territory of India and is, therefore, a citizen within the meaning of Article 5(c). Learned counsel conceded that clause (a) required the qualification of birth and obviously was applicable to natural persons. Clause (b) also stated the qualification to be the birth of any of the parents in the territory of India and this also was, according to him, a qualification which could be possible only for a natural person to possess. Coming to clause (c) he said that every person who has his domicile in the territory of India and who has been ordinarily resident in the territory of India for the period mentioned in the clause was a citizen of India. He argued that the petitioner, a corporation, was a juristic person and was a 'person' within the meaning of that word as used in Article 5. The petitioner was resident according to the law relating to companies. The company could be legally held to reside at the place where its registered office was a situate. The word 'ordinarily', counsel submitted, was a word used to distinguish "the residence from occasional or casual residence. He stated that in the case of the petitioner company the registered office had all along been at Calcutta and there was nothing to indicate that that was not the ordinary residence of the petitioner. It was urged that the petitioner, therefore, though not a natural person was entitled to be called a citizen within the meaning of Article 5(c) of the Constitution. Learned counsel for the petitioner relied on a decision of the Supreme Court reported in AIR 1951

Supreme Court 41. In this case an application for a writ of mandamus and certain other reliefs under Article 32 of the Constitution was made by the holder of one ordinary share of the Sholapur Spinning and Weaving Company Ltd. The authorized capital of the company was Rs. 48 lakhs and the paid up capital was Rs. 32 lakhs, half of which was made up of fully paid ordinary shares of Rs. 100 each. On 27-7-1949 the directors of the Sholapur Spinning and Weaving Company Ltd., gave a notice to the workers that the mills would be closed and pursuant to that notice the mills were, in fact, closed on 27th August following. On 9-1-1950, the Governor-General of India promulgated an Ordinance which purported to make special provisions for the proper management and administration of this company. The petitioner in his petition challenged the constitutional validity of both the Ordinance and the Act that was subsequently passed. The main ground put forward was that the pith and substance of the enactments was to take possession of and control over the mills of the company which were its valuable assets and such taking of possession of property was entirely beyond the powers of the Legislature. The petitioner urged that the provisions of the Act amounted to deprivation of property of the share-holders as well as of the company within the meaning of Article 31 of the Constitution, and the restrictions imposed on the rights of the shareholders in respect to the shares held by them constituted an unjustifiable interference with their rights to hold property and as such were void under Article 19(1) (f) of the Constitution. Learned counsel has invited my attention to the following passage from the judgment of Mukherjea, J.

> "The fundamental rights guaranteed by the Constitution are available not merely to individual citizens but to corporate bodies as well except where the language of the provision or the nature of the right compels the inference that they are applicable only to natural persons. An incorporated company, therefore, can come up to this Court for enforcement of its fundamental rights and so may the individual shareholders to enforce their own; but it would not be open to an individual shareholder to complain of an Act which affects the fundamental rights of the Company except to the extent that it constitutes an infraction of his own rights as well."

His Lordship held that the rights that could be enforced under section 32 must ordinarily be the rights of the petitioner himself who complains an infraction of such rights and approaches the Court for relief. His Lordship observed that the properties did not belong to the shareholders but to the company and the company though a party and one of the respondents did not only not ask for any relief but opposed the petition. His Lordship considered certain other matters and held that the petition was incompetent.

23. Learned counsel has also referred to a passage from the judgment of Fazl Ali, J. at p.44 in the same case which runs as follows:

> "The company and the shareholders are in law separate entities and if the allegation is made that any property belonging to the Company has been taken possession of without

compensation or the right enjoyed by the Company under Article 19(1) (f) has been infringed, it would be for the Company to come forward to assert or vindicate its own rights and not for" any individual shareholder to do so.

In this view, the only question which has to be answered is whether the petitioner has succeeded in showing that there has been an infringement of his rights as a shareholder under Articles31 and 19(1) (f) of the Constitution. This question has been so elaborately dealt with by Mukherjea J. that I do not wish to add anything to what he has said in his judgment, and all that is necessary for me to say is that I adopt his conclusions, without committing myself to the acceptance of all his reasoning's."

Learned counsel also drew my attention to the fact that Kania, C.J., expressed agreement with the line of reasoning adopted by Mukherjea, J., and with his conclusions.

24. As the law declared by the Supreme Court is binding on me, I have given most anxious consideration to the weighty pronouncements made in the case cited to find if their Lordships of the Supreme Court have declared the law on the subject and the point now before me. When Mukherjea, J., laid down that fundamental rights guaranteed by the Constitution are available not merely to individual citizens but to corporate bodies as well, his Lordship in all probability was considering the various Articles in Part III of the Constitution which deal with fundamental rights. Among these articles, in Article 14 the right to equality before the law is guaranteed to every 'person'. Article 15 which prohibits discrimination on the grounds of religion, race, caste sex or place of birth, guarantees the right to every 'citizen'. The language used is that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. The further provisions of that Article say that no citizen shall on the grounds enumerated be subject to any disability, liability, restriction or condition as mentioned in that Article.

The next article, i.e., Article 16 also guarantees equality of opportunity in matters of public employment to all 'citizens'. Article 19(1) similarly specifically relates to 'citizens' and states the right of freedom guaranteed to them by that Article. When we come to Article 20, which deals with protection in respect of conviction for offences, we again find the word 'person' used and the Article guarantees protection to all 'persons' and not to 'citizens' only. Article 21 guarantees protection of life and personal liberty of all persons.

Article 31 says that no person shall be deprived of his property save by authority of law; and Article 32 grants the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part III of the Constitution. Their Lordships of the Supreme Court must have considered that the provisions of Part III did not all relate to citizens only and persons other than natural persons were also guaranteed certain rights and granted certain protection as fundamental rights in that Part of the Constitution.

Therefore the observations made by Mukherjea, J., cannot be construed to mean, in my opinion, that each and every fundamental right guaranteed to individual citizens is also guaranteed to

corporate bodies as well. In fact, his Lordship has been pleased to add in that very sentence the clause

> "except where the language of the provision or the nature of the right compels the inference that they are applicable only to natural persons," In my view these pronouncements do not declare the law that a corporation or a company is also a citizen within the meaning of Article 5 of the Constitution.

The observations made by Fazl Ali, J., similarly to my mind do not declare such law. His Lordship states that the company and the shareholders are separate entities, and then proceeds to observe that if the allegation is made that any property belonging to the company has been taken possession or without compensation or the right enjoyed by the company under Article 19(1) (f) has been infringed, it would be for the company to come forward to assert or vindicate its own rights and not for any individual shareholder to do so.
In the case before his Lordship, a shareholder had approached the Court for a writ and the findings was that he had no rights under Article 19(1) (f) as claimed by him. His Lordship observed that the petitioner was not competent to move the Court and if the allegation is made that the property of the company is taken without compensation or the right enjoyed by the company under Article 19(1)(f) has been infringed (as the petitioner stated his rights under Article 19(1) have been infringed), it would be for the company and not for the shareholder to move the Court. This, I submit with very great respect, cannot be considered to amount to a declaration of the law by his Lordship that the company did have any right under Article 19(1)(f) which could be infringed. In fact, his Lordship was merely stating an allegation that may be made by the company similar to the allegation made by the petitioner in that case. His Lordship was not invited to decide as to whether the company had or did not have any right guaranteed under Article 19(1)(f), and the observation, I feel, does not amount to an enunciation or pronouncement of the law by his Lordship. I, therefore, feel that this case cannot be relied on as an authority for the proposition that a corporation is a 'citizen' within the meaning of Article 19 of the Constitution.

25. Sri Pandey also referred to the decision of Supreme Court in - '*Dwarkadas Shrinivas v. Sholapur Spinning and Weaving Co., Ltd*[14]. and contended that the Supreme Court approved of its earlier decision given in AIR 1951 Supreme Court 41. I have studied this case carefully. The suit out of which this appeal to the Supreme Court arose was decided by the High Court of Bombay during the pendency of Chiranjit Lal Chowdhuri's petition in the Supreme Court. The plaintiff in this case held preference shares in the Company and he brought the suit, inter alia, on the allegation that the Ordinance impugned was illegal, ultra vires and invalid. Mahajan J. formulated the principal questions for consideration in the appeal as follows:

> "1. Whether the provisions of the Ordinance for taking over the management and administration of the Company contravene the provisions of Article 31(2) of the

Constitution, and
2. Whether the Ordinance as a whole or any of its provisions infringed Articles 14 and 19 of the Constitution."

After considering the relevant questions relating to the validity of the Ordinance his Lordship observed:

> "For the reasons given above I am of the opinion that the impugned statute has over-stepped the limits of legitimate social control legislation and has infringed the fundamental right of the company guaranteed to it under Article 31 (2) of the Constitution and is therefore unconstitutional."

26. After considering various Articles in Part III of the Constitution his Lordship said:

> "In considering Article 31 it is, significant to note that it deals with private property of 'persons' residing, in the Union of India, while Article 19 only deals with 'citizens' defined in Article 5 of the Constitution. It is thus obvious that the scope of these two Articles cannot be the same as they cover different fields .....

14 AIR 1954 SC 119

> Article 31 deals with the field of eminent domain and the whole boundary of that field is demarcated by this Article. In other words, the State's power to take the property of a person is comprehensively delimited by this article."

Concluding his judgment Mahajan, J. observed:

> "For the reasons given above I would allow this appeal, set aside the judgment of the High Court and decree the plaintiff's suit with costs. It is not necessary to give any decision on issue 2 in view of the decision reached above, viz., whether the law is void because it infringes the fundamental rights under Articles 14 and 19."

It is thus clear that his Lordship gave no decision as to the applicability of Articles 14 and 19 at all. In the same case, Bose, J. agreeing with Mahajan, J. held that the impugned Ordinance and Act did offend Article 31(2) of the Constitution and observed, in the course of his short judgment, as follows:

> "Article 19(1) (f) confers a certain fundamental freedom on all citizens of India, namely the freedom to acquire, hold and dispose of property. Article 31(2) is a sort of corollary, namely that after the property has been acquired it cannot be taken away save by authority of law. Article 31 is wider than Article 19 because it applies to everyone and is not restricted to citizens. But what Article 19(1) (f) means is that whereas a law can be passed to prevent persons who are not citizens of India from acquiring and holding property in

this country no such restrictions can be placed on citizens. But in the absence of such a law non-citizens can also acquire property in India and if they do then they cannot be deprived of it any more than citizens, save by authority of law."

27. These pronouncements clearly show that this case is not an authority for the proposition that a Company incorporated under the Indian Companies Act is a citizen within the meaning of Article 5 or entitled to any right under Article 19 of the Constitution.

28. Learned counsel next cited a case reported in - *'Indian Metal and Metallurgical Corporation v. Industrial Tribunal, Madras*[15]*',* and he urged that in that case the Corporation had been granted the leave claimed on the allegation that its rights under Article 19(1) (g) were infringed. This case has been referred to by a Division Bench of the Rajasthan High Court in - ' AIR 1953 Rajasthan 188. In that case attention of Ranawat, J. was invited to a case reported in - ' AIR 1951 Madras 974', where Rajamanner, C.J. had expressed certain doubts as to whether the rights guaranteed under Article 19 could be claimed by a corporation. Ranawat J. referred to - ' AIR 1953 Madras 98,' and observed as follows:

"....but in - ' AIR 1953 Madras 98', the same court (Madras) on an application of a Company, came to the conclusion that its rights under Article 19 (1) (g) had been infringed. In other words the Corporation was taken to be a citizen in the meaning of Article 19(1) (g) of the Constitution of India."

[15] AIR 1953 Mad 98

29. Learned counsel for the petitioner relied on this reference by Ranawat, J. to show that the Madras High Court had in fact held that Article 19(1) (f) was available to a Corporation also and that a Corporation was thus a citizen. I have gone through the report of the case reported in - ' AIR 1953 Madras 98. This case related to an application made under Article 226 of the Constitution praying for the issue of a writ to the Industrial Tribunal, Madras and to quash the award made in that case. The petitioner - The Indian Metal and Metallurgical Corporation is not a corporation in law, and the judgment clearly says that the petitioner was 'a partnership firm' and it appears that the attention of their Lordships of Rajasthan High Court was not invited to this fact and they were obviously misled by the word "corporation" used by the firm as a part of its name. The Madras case says nothing to support the petitioner's contention.

30. A Division Bench of the Rajasthan High Court in - AIR 1953 Rajasthan 188, has no doubt taken the view that a corporation is a citizen within the meaning of Article 19 of the Constitution. Counsel for the opposite party in that case had raised the question that the petitioner being a corporation was not a citizen and therefore not entitled to any right under Article 19 (1) (g) and therefore not entitled to move the Court for the issue of a writ. The learned Judges referred to certain observations in - ' AIR 1951 Supreme Court 41', and considered that their Lordships of the Supreme Court laid down the law that a corporation was a citizen within the meaning of

Article 19. One of the passages relied upon by the learned judges is from the judgment of Fazl Ali J. already quoted by me earlier in this judgment. Fazl Ali J. had observed that if the allegation is made that any property belongs to the Company had been taken possession of etc., it would be for the Company to come forward to assert or vindicate its own right. This observation as I have already stated cannot be properly construed to mean that his Lordship was considering the question as to whether the Company was a citizen or not, nor did he in any manner indicate that if the allegation was made as stated by him it would be accepted as correct or tenable. The only question that was being considered by his Lordship was as to whether the petitioner in that case, a share-holder, was entitled to relief when not his rights to the property but the rights of the Company were alleged to be affected. His Lordship was not asked to consider as to whether Article 19 would apply to the case of the Company or whether the Company could or could not pray for the necessary relief under Article 31 of the Constitution.

31. Another passage referred to by the learned Judges of the Rajasthan High Court is the passage from the judgment of Mukherjea, J. where his Lordship says that fundamental rights are available to corporate bodies as well. This passage I have already quoted in an earlier part of my judgment and I have tried to show how the observations contained therein do not support the petitioner's contention in this case. I have read carefully the decision given by the Rajasthan High Court in the above case but with great respect I am unable to agree that the Supreme Court laid down the law relating to corporate bodies being citizens as construed by the learned Judges. Nor were the learned Judges correct, if I may say so with great respect, in holding that the Madras High Court was dealing with a Company in - ' AIR 1953 Madras 98'. A case decided by a Division Bench of the Punjab High Court reported in - AIR 1952 Punjab 9', was also placed before the learned Judges of the Rajasthan High Court and that case laid down very clearly that a corporation is not a citizen. The learned Judges of the Rajasthan High Court thought that the observations of the learned Judges of the Supreme Court in - ' AIR 1951 Supreme Court 41', were not brought to the notice of the Punjab High Court when that case was decided.
Referring to the separate judgments given by Harnamsingh and Soni JJ., in the Punjab case I find that the decision of the Supreme Court in - ' AIR 1951 Supreme Court 41', was cited before them and each one of the learned Judges has referred to that decision at several places in his judgment. Obviously the attention of the learned Judges of the Rajasthan High Court was not invited to these references in the judgment of the learned Judges of the Punjab High Court.

32. Counsel for the respondent No.1 has placed before me the decision of the Punjab High Court reported in - ' AIR 1952 Punjab 9'. That case was argued by Mr. P.R. Das of the Patna Bar and by Mr. Amin Advocate General of Bombay and Mr. Choudhry of Calcutta. Various provisions of the Constitution were placed before the learned Judges and a large number of test-books and reported decisions were cited. One of the questions for decision in that case was whether the expression 'citizen' used in Article 19, Constitution of India, include a corporation and Harnamsingh J. after stating his reasons held as follows:

> "I think that a corporation is not a citizen within Article 19, Constitution of India. That being so, the Companies cannot raise the question that the impugned legislation takes away or abridges the rights conferred by Article 19 (1) (f) and (g), Constitution of India."

Sonil,J. observed in that case:

> "I am of the view that Article 5 applies to natural born persons and not to artificial persons and a reading of the next Article of Part II in which Article 5 finds a place makes it abundantly clear that what is intended by the word 'citizen' is a natural born person and not an artificial person."

I am in respectful agreement with the views expressed in the decision by the learned Judges of the Punjab High Court and in my opinion a corporation cannot be held to be a 'citizen' within the meaning of Article 19 of tire Constitution of India.

33. Learned counsel for respondent No.1 cited certain well-known text-books in support of the contention that in the United States of America corporations were not given the status of citizens. Willis in his Constitution Law of the United States at page 849 says:

> "Corporations are not citizens of the United States under the definition of a citizen in Section 1 of the Fourteenth Amendment to the Constitution, and probably for this reason are not protected by the clause relating to the abridgment of privileges or immunities of citizens of the United States."

Corporations are not citizens of any state within the meaning of Section 2, Article IV, of the United States of Constitution so as to be entitled, in states other than that of their creation, to all the privileges and immunities which such states give to their own citizens".

34. To the same effect was the view expressed by Beale in his Conflict of Laws, Vol. II at page 733. Learned counsel referred to Schmitoff on Conflict in English Laws at pages 347 - 354 where the residence of a corporation as understood in English law has been fully dealt with. The learned author has tried to show that the residence of a corporation may be different for (a) purposes of taxation (b) purposes of jurisdiction and (c) purposes of attribution of the character of an enemy alien. In - '*De Beers Consolidated Mines Ltd. v. Howe*[16]*',* Lord Loreburn said:

> "I will merely add that I agree with the Master of the Rolls that residence of a company within the meaning of the Income-Tax Acts is not necessarily the same as residence for the purpose of serving a writ."

It was urged that the fact that the company had its residence within a state did not 'ipso facto'

confer the right of citizenship on the company. In India too under the Indian Income-Tax Act the residence of a company was determined on a certain basis as mentioned in Section 4-A (c) and Section 4-B, Indian Income-tax Act.

35. Learned counsel for respondent No.1 argued that even if it be assumed that the petitioner is a citizen within the meaning of Article 19 (1) (a) of the Constitution other questions would arise in the way of its claim. One of the questions arising, according to him, would be whether a writ may be asked for against a statutory body as the fundamental rights guaranteed in Pt. III are guaranteed against the state only and a state has been defined in Article 12 of the Constitution which reads as follows:

> "In this Part unless the context otherwise requires "The State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."

Learned counsel argued that a corporate body cannot be called 'a State' within the meaning of this Article. The State, according to him is an abstraction in law known to jurisprudence. The Government carries on the administration and the legislature makes the laws for the State and it is these two organs of the State, the Government and the Legislature, that are to be prevented from asking or causing any infringement of the rights guaranteed in Part III of the Constitution. Article 154 of the Constitution states that the executive power of the State shall be vested in the Governor and shall be exercised by him directly or through other officers subordinate to him. The Secretary or other office-holders of the Board passing the order complained of cannot be said to be officers subordinate to the Governor within the meaning of Article 154 and any action taken or order passed by the Board could not be considered in law to be an action taken or order passed by the Governor. Learned counsel for the petitioner, at this stage conceded that it was not his case that the Board which is a statutory body was a State and the Standing Counsel appearing for respondent No.1 said that in view of this concession made on behalf of the petitioner the claims based on the alleged fundamental rights must fail. If the Board is admittedly not a State and the State has made no law and passed no order affecting the alleged fundamental rights of the petitioner no petition for the issue of

[16]1908 A.C. 455

mandamus may lie. Learned counsel for the petitioner relied on - '*P.D. Shamadasani v. Central Bank of India, Ltd*[17]*.',* where Pantanjali Shastri C.J., stated the law as follows:

> "The language and structure of Article 19 and its setting in Part III of the Constitution clearly show that the Article was intended to protect those freedoms against the State's action other than in the legitimate exercise of its power to regulate private rights in the public interest and the violation of rights of property by individuals is not within the purview of the Article."

The learned Standing Counsel urged that the language of Article 14 was quite plain and showed that the State was enjoined not to deny equality before the law and equal protection of the laws to any person. This duty was on the State only and if the State did not act in conformity with Article 14 the relief could be sought only against the State. As it had been conceded that the Board was not the State it was not possible to claim any relief under Article 14 against the Board.

36. In my opinion, this contention of the learned Standing Counsel must prevail for the reasons urged by him.

37. Another question raised in the case is as to whether the Board had any property in the results and could grant the right of publication to one newspaper to the exclusion of others. Learned counsel for the petitioner urged that the results of the examinations held by the Board were not the property of the' Board at all. The examinees, the institutions sending up those examinees, and the guardians of the minor examinees were persons interested in the results and entitled to them. Having regard to the nature of the examinations and the number of candidates and the general interest legitimately taken by the public generally, the result when passed by the Board becomes public news and as a newspaper the petitioner was entitled to have access to the news and to publish them in the course of its business. Attention of the learned counsel for the petitioner was invited to ground (b) of petition which reads as follows:

> "(b) Because the results after they have been passed by Results Committee cease to be the property of respondent No.1 and at once became the property of the public."

38. This ground did show that the petitioner accepted the position that the results were the property of respondent No.1 up to a certain point of time and thereafter became the property of the public. Undoubtedly it is the Board that holds the examinations, appoints examiners, collects the marks as awarded by the examiners, gets the results tabulated and these results are placed before the Results Committee appointed by the Board for being finalized. It is not disputed that up to this stage everything that is done by the Board is within its competence. If the Board selects a particular press for doing confidential printing work the other presses carrying on similar trade cannot contend that the Board had offended against the law prohibiting discrimination. When the results were passed by the Results Committee the Board was under a statutory duty to publish them under Section 7, sub-section (7) of the Intermediate Education Act. The material question is as to whether the Court has jurisdiction to direct the Board to perform this duty in a particular manner.

There was considerable discussion on this question but I am unable to see how in the circumstances of the case when a statutory duty is to be performed by the Board the discretion as to the manner of performing that duty should not be held as vested in the Board. The Constitution of the Board is given in the Act and the Board consists of responsible officers of the Education Department and other equally responsible persons.

It is hardly fair to assume with such a constitution the Board will not be able to decide properly the manner in which the duty of publishing the results may be performed. The Board has obviously to take into consideration the fact that the results should be published as soon as possible after they are ready and made final. The Board has further to take into consideration that this publication of the results is as accurate as possible and that the results are published in a manner so as to ensure due publicity having regard to the large number of candidates appearing at the examinations and the considerable number of centers and institutions sending up those examinees. It may be mentioned that the Board collects a fee of rupee one from each candidate appearing through an institution and Rs. 2/- from each private candidate as fee for sending the marks obtained by those candidates to them. This is done, I was told, soon after the results are communicated to the centers. Apart from this every year the Board gets published in the Government Gazette the results of its examinations and these results so published in the Gazette are supposed to be the most authentic publication thereof. But as the candidates are naturally anxious to know the results of their examinations as early as possible for several reasons including the desire to secure their admission to colleges etc. for higher education, the Board has always resorted to publishing the results in the newspapers.

39. The question is as to whether this publication of the results in the newspaper at the instance of the Board is on behalf of the Board itself and in compliance with its statutory duty as laid down in Section 7, Sub-section (7) of the Intermediate Education Act or this publication is by the newspaper itself in the course of its own business as a newspaper. Learned counsel for the petitioner says that the Board actually publishes the results as soon as the results are passed on to the representative of the newspaper in which it is to be printed and published. The representative of the newspaper receives the results not as an agent of the Board but as an agent of the newspaper. The results are taken by him not to enable the Board to perform its duty as laid down in the statute but for the purpose of carrying on its own business as a newspaper. Learned counsel therefore says that the Board did not act rightly or legally when it agreed to pass on the results to respondent No.2 alone to the exclusion of the petitioner which runs a very important daily newspaper which published the results of the Board in some earlier years and publishes the results of the various Universities and other examinations in the course of its business.

40. Certain facts were stated to be relevant in this connection. It was urged that when the Board passed on the results to the newspapers of the respondent No.2 the agreement was that till the results were published in the paper its secrecy would be maintained and that the result supplements to be issued by the newspaper would be sold at a price approved by the Board. Learned counsel for the respondent argued that the petitioner was not entitled to question the decision of the Board as to the manner in which the Board would publish the results as required by Section 7(7) of the Intermediate Education Act. Learned counsel urged that while the law was clear that the legal duty may be enforced the manner in which that legal duty is to be performed cannot be prescribed.

41. Learned Standing Counsel further argued that in effect what the petitioner wanted was not only that the respondent Board should be directed to do its duty but also that the Court should be pleased to direct that Board to perform that duty in a particular manner. He relied on the case reported in - *'United States v. Lamont*[18]*',* to support his contention that mandamus may be issued if the duty to do that particular act is clearly and in an unmistakable manner laid down by law. Learned counsel contended that the law has nowhere laid down that the Board should publish the results in a newspaper or newspapers generally or in any particular manner. All that the Board was required by law to do was to publish the results. The petition, therefore, as framed was not maintainable.

42. It was also contended that if respondent No.2 was granted the right of exclusive publication of the results, the position in law of the respondent No.2 so far as the work of publishing the results is concerned was that of an agent of the respondent No.1. So that when the results were actually printed and published by the respondent No.2, it was doing so in the capacity of an agent of the respondent Board. Learned counsel contended that confidentially handing over the results to one representative of the respondent No.2 could not reasonably be called "publishing" of the results by the Board. In fact the publishing takes place when the results are printed and distributed. The learned Standing Counsel further argued that the Court should not by the issue of a mandamus disturb the working of an agreement between the respondents. He said that the petitioner was not entitled to ask the court to exercise its jurisdiction to, issue writs for such a purpose.

43. Learned counsel for the petitioner urged that the work of printing and publishing the results that was to be done by the respondent No.2 was to be done by that respondent in furtherance of its own trade. No remuneration passed from the respondent No.1 to respondent No.2 and the respondent No.2 in fact was gaining in taking up this business of publishing the results. He said that newspapers are the well-known popular organs in modern society of distributing news and if the representative of a newspaper receives the results with the avowed object of giving it wide publicity it is not correct to contend that so far as the Board is concerned it has not made the results public. He said if the Board as a statutory body had a press of its own and had embarked upon the task of printing and publishing the results itself, the press would have been an integral part of the Board and it could not then be contended that when the results were sent to the press for printing they were communicated to any other person. The position, it was contended, is entirely different when negotiations were started with several newspapers and they were invited to take the results and publish them. It was clear that the Board did not want to take upon itself any other mode of publishing the results than that of sending the mark sheets as mentioned above and of printing and publishing the results in the Government gazette. Learned counsel contended that the results when ready were to be given away as news to the newspapers and it is for this purpose that several newspapers were invited by the Board. Having done that and the petitioner having agreed, though after some discussions, to publish the results subject to the terms imposed

by the Board it was not competent for the Board to withhold the news from one newspaper and to release it only to another.

44. Learned counsel for the petitioner raised an important question of law as to the rights of the Press in India to have access to the sources of news. The position in the United

[18](1894) 39 Law Ed.160

States of America is however different and it does not appear safe to follow the authorities cited by learned counsel in support of his contention from American law. Learned counsel also placed before me certain passages from the report of the Press Commission where the important role played by the Press in India has been recognized and the Commission has sympathetically considered the grievance of the Press and the difficulties experienced by the Press in obtaining news. Access to official sources of information has also been discussed but I fear it is not for a Court to express any opinion as to what should be the law. The Court has to accept the law as it is and to apply it. Learned counsel has not been able to place before me any authority in support of the contention that the petitioner has in law a right to have access to the news even if the results passed by the Results Committee were held to be such news. To my mind the publication of the results in the newspaper is not done in performance of the statutory duty imposed on the Board by Section 7, sub-section (7). It appears that this statutory duty is performed by the Board when it publishes the results in the Government Gazette. As the Government Gazette takes a very long time to publish the results I am told in 1954 it took nearly eight months the Board feels that it should let the examinees know the results of their examinations as early as possible. Having regard to the nature of the work the Board agrees to let the newspapers print and publish the results and distribute them in such a manner that all concerned may, if they care, be acquainted therewith. The conduct of the Board in the past several years also shows that this wide publicity of the results as soon as possible after the results were ready was the objective aimed at. In fact in some years the Board requested several papers to publish the results simultaneously. Apparently the Board was not appointing so many agents. The newspapers in the course of their own business and for the purposes of their own trade were called upon to take up this work if they pleased. The difficulty of the task in fact made some papers refuse the offer in some years. In 1953 when the petitioner and respondent No.2 communicated to the Board their agreed opinion that the result should be given for publication exclusively to one paper they obviously considered that unless that was done it would not be worthwhile for a newspaper to take up that job.

45. Besides, when the Board is under a duty to publish the results it may discharge that duty not only by printing and publishing the results itself but by passing on the results to newspapers who may print and publish them as well. The power to 'publish' the results includes the power to get them published, and when the newspapers take up the work of printing and publishing the results, it does not necessarily follow that they do so as the agents of the Board. Some tests may be applied to find the legal position. If the name and roll number of a successful minor examinee is by mistake omitted in the newspaper publication from the list of successful candidates and the minor commits suicide in utter disappointment, is the guardian entided to any remedy against the

Board if he is able to establish that the paper was negligent in publishing the news and had not applied the necessary degree of skill and care essential for the work? The agreement between the Board and the respondent No.2 does not throw any light on this question. If some official of the press discloses the results to some candidates is the Board entitled to take any action against him or to sue him for damages? Is the newspaper liable to render any account to the Board in respect of the publication and is not the newspaper itself entitled to all the gains and liable for all the losses incidental to such publication? Instances could be multiplied and to my mind when the newspaper takes up the work of publishing the results it does so in furtherance of its own trading activities and not as an agent employed by the Board in the course of the performance of its legal duties under Section 7(7).

46. It is not for me to pronounce any judgment on the propriety or otherwise of the decision taken by the Board to confer exclusive right of publication on the respondent No.2. The Board is a responsible body and is expected to act in a responsible manner. It was perfectly competent for the Board to take into consideration the nature of the work involved. Counsel for the Board invited my attention to passages in the affidavits saying that in an earlier year when the work of publishing the results was given both to the Leader and the Amrita Bazar Patrika the arrangement was not found satisfactory.

The Board found that there was unhealthy competition or a sort of race to publish the results early and this caused many mistakes and thousands of telegrams were received by the Board about such mistakes. The Board had before it the immensity of the task. The number of candidates appearing at the High School examination this year, I am told is nearly three lakhs and the number that appeared at the Intermediate examination exceeded 80,000.

There are very large number of centres and with the expansion in educational activities, schools and Intermediate Colleges in the outlying rural places in the districts also have sent up examinees. The Universities and Colleges start admissions in July or even in June and the Board considering all these facts has to choose the arrangement it would consider necessary and proper to have the results published as correctly and as widely as possible.

It was for the Board, therefore, to decide as to the manner in which it should act in this regard. I, therefore, think that it is not possible for me to interfere. No authority has been cited to support the contention that the Board was bound to pass on the results to the newspapers generally or that the petitioner had any legal right to get the results from the Board at any particular point of time.

47. It may be that the Board itself may consider in future the advisability or otherwise of refusing access to the results to a popular newspaper which has such a wide circulation as the Amrita Bazar Patrika. But this is not a matter in which the Court may issue any direction, order or writ.

48. Another point urged by the Standing Counsel and also by the counsel for the respondent No.2 was that the writ prayed for could not possibly be issued having regard to the very short time available. I have considered the correspondence between the Board and the Amrita Bazar Patrika and I am not satisfied that there was any laches on the part of the Amrita Bazar Patrika in coming to Court. The allegation in the affidavit filed on behalf of the petitioner that it had made

preparations at considerable cost in the hope that the negotiations between the petitioner and the Board would materialise and the Board would give the results for publication to the petitioner as well as to the Leader has not been controverted. The reason given by the Board in the affidavit filed on its behalf is that in the light of its past experience of simultaneous publication in several papers the Board did not consider it proper to adopt the same method this year. Perhaps this decision could have been taken by the Board before issuing a general invitation to several newspapers.

In the circumstances I do not uphold the respondents' contention that the petition may be thrown out on the ground of laches. As to the shortness of time the very nature of things was such that it was not possible to have a decision earlier. The affidavits, counter-affidavits and the rejoinders were filed by the parties without delay. The case raised rather important questions of law and it naturally took some time to give a full hearing and it was only yesterday that the hearing was concluded. Last evening I was surprised to get a copy of a special supplement or the Leader publishing the results of the candidates who appeared at the Intermediate Examination from Allahabad. It appears, therefore, that the results are now being published. As I am not disposed to allow the petition on the grounds mentioned above it is not necessary to consider the question as to whether the petition has become in fructuous because of the shortness of time.

49. As stated above I hold that the petitioner is not a citizen within the meaning of Article 19 of the Constitution. The petitioner has not been able to substantiate its allegations that under the general law of the land it has a right to have access to the results of the respondent Board as soon as they are passed by the Results Committee. I also hold that it is not for this Court to prescribe the manner in which the respondent Board is to perform its duties in the exercise of its powers conferred by Section 7(7) of the Intermediate Board Education Act. In view of these findings the petition must fail.

50. Before parting with this case I must express my thanks to learned counsel for the parties for the illuminating arguments addressed by them which have been of considerable assistance to me in deciding this case.

51. Learned counsel for the respondent No.2 claimed special costs I do not think that the circumstances of the case justify the award of special costs.

52. The petition is dismissed with costs. The petitioner will bear his own costs and will pay Rs. 500 as costs to respondent No.1 and another sum of Rs. 500 as costs to respondent No.2.

Petition dismissed.