CALCUTTA HIGH COURT

T.D. Kumar

Vs.

Iron and Steel Controller

Matter No. 151 of 1958

(D.N. Sinha, J.)

26.08.1960

JUDGMENT

D.N. Sinha, J.

1. The facts in this case are shortly as follows : The petitioner company carries on business in iron and steel materials. It is a well known business house in Calcutta, and has been carrying on business since 1940, having been incorporated as a company in 1923. Ever since the inception of statutory control of the distribution of Iron and Steel in 1941, the petitioner company has been registered as a stock-holder under the Iron and Steel Control Orders. The petitioner company had also been appointed as a 'Controlled Stockholder', but in this application we are not concerned with that aspect of the matter. In this case we are concerned with events which occurred in 1957. At that time, the Iron and Steel (Control) Order, 1956, promulgated in exercise of powers conferred by the Central Government by Section 3 of the Essential Commodities Act, 1955 was in operation. This order superseded the Iron and Steel (Control of Production and Distribution) Order, 1941 and the Iron and Steel (Scrap Control) Order, 1943. Before I proceed further, it is necessary to consider some of the provisions of the Iron and Steel (Control) Order, 1956 (hereinafter referred to as the 'Control Order'). Under clause 2, the term, 'Controlled source' includes a 'producer' which term means a person carrying on the business of manufacturing iron and steel. The term 'registered producer' means a producer who is registered as such by the Controller. The term 'Controller' means a person appointed as Iron and Steel Controller by the Central Government and includes any person exercising, upon authorization by the Central Government, all or any of the powers of the Iron and Steel Controller. A 'controlled stockholder' means a stockholder appointed by the Controller to hold stocks of iron and steel under such terms and conditions as he may prescribe from time to time. The term, 'stockholder' means a person holding stocks of iron or steel for sale who is registered as a stockholder by the Controller. Clause 4 of the Control Order lays down that no person shall acquire or agree to acquire any iron or steel from a producer or stockholder except under the authority of and in accordance with, the conditions contained in a quota certificate or permit issued by the Controller or under the authority of and in accordance with the conditions contained or incorporated in a general or special written order of the Controller. Clause 5 of the Control Order provides that no person who acquires iron or steel under clause 4, or no producer shall dispose of or agree to dispose of any

iron or steel except in accordance with the conditions contained or incorporated in, a special or general written order of the Controller. Clause 8 of the Control Order is important and must be set out :

> "Surrender of revoked authorities :- Where any quota certificate, permit or written order, referred to in clause 4 or 5 is revoked by the authority which issued it, the person to whom it was issued shall forthwith return it to the authority which issued it."

2. The provisions of clause 13 are important and are set out below :

> "The Controller may, where he is satisfied that such action is necessary in order to co-ordinate the production of iron or steel with the demands for iron or steel which have arisen or are likely to arise under authorizations to acquire duly issued under this part -
> (a) prohibit, with effect from such date as he may specify, the manufacture by any producer of iron or steel of any of the categories specified in the Schedule to this Order, otherwise than in accordance with any general or special directions issued by the Controller;
> (b) require, with effect from such date and with reference to such periods as the Controller may specify, any producer to obtain approval to his programme of manufacture of iron or steel of any of the categories specified in the Schedule to this Order;
> (c) require, with effect from such date as the Controller may specify, any producer to manufacture iron or steel of such categories as he is Capable of manufacturing in accordance with programmes of production approved under sub-clause (b) of this clause or with special instructions issued by the Controller."

3. The last clause in the Control Order to be considered is clause 17, which gives power to the Central Government to give directions as to the procedure to be followed by the authorities issuing quota certificates, permits or written orders, referred to in clauses 4 and 5, as to the maintenance by the Controller of records in connection with the distribution of iron or steel and generally for the purpose of giving effect to the provisions of Part II of the said Order (Part II contains 3 to 17). The procedure that is followed in the manufacture and distribution of iron or steel is as follows : The Iron and Steel Controller collects the demands from Sponsoring Authorities and the State Governments and forwards the same to the Ministry of Steel, Mines and Fuel, Government of India, at New Delhi, along with the statement of availability of Iron and Steel in the country. The Ministry of Steel, Mines and Fuel then allocates quotas of iron or steel to the Sponsoring Authorities and the State Governments. The State Governments distribute their quota through registered stock-holders. The registered stock-holders procure their orders and submit their indents to the Iron and Steel Controller who ultimately plans the same which means that after due scrutiny he gives an order to the producers or registered producers to produce and supply the subject-matter of the indents. This order of the Controller, which is usually stamped on the indents, is taken by the registered stock-holders to the named producer who then proceeds to manufacture and supply the goods. On the 28th March, 1957 the Deputy Iron and Steel Controller issued a notice inter alia to all producers as follows:

> "Sub: Suspension of despatch of steel materials against outstanding orders for 1/56 and

earlier.

You are hereby directed to note that with effect from 1-4-1957 dispatches of materials to all the parties against all the orders outstanding on your books in respect of period 1/56 and earlier periods should be suspended. Dispatches of materials to the parties against orders outstanding on your books in respect of annual allocation made for the year 1956-57 (1-4-56 to 31-3-57) should, however, continue to be made." On the 7th May, 1958 a notice was issued by the Deputy Iron and Steel Controller inter alia to all registered producers to the following effect :

> "Sub : Cancellation of all orders outstanding on you prior to 1-4-56 against State Quota of West Bengal.

You are hereby directed to cancel with immediate effect all the outstanding orders on account of the Registered Stock-holders of West Bengal against period 1/1956 and earlier allotments (i.e., prior to 1956-57 annual quota) planned on you with symbols RS/AG/W. Beng., RS/W. Beng. and RS/COT/W.Ben. Please confirm under advice to all concerned.
This may be treated as most urgent."

4. It appears that prior to these letters issued by the Deputy Controller, the petitioner company had obtained planning orders on M/s. Indian Iron and Steel Co., Ltd., for 1125 tons 19 cwt. 3 qrs. 4 lbs. of iron and steel which the producer had accepted and issued work-orders. Further, the petitioner company had obtained planning order in respect of 1026 tons, 12 cwt. 2 qrs. 17 lbs. of Iron and steel of M/s. Tata Iron and Steel Co., Ltd. This order was accepted by the producer who issued work-orders in respect thereof. All these materials were, by reason of the orders of the Deputy Controller mentioned above, suddenly stopped, and the producers have refused to deliver the same. I have already stated that a registered stockholder obtains his order from the members of the public and places his indent before the Controller who makes a planning order on the producer to produce and supply the goods. Naturally, as a result of the Orders aforesaid the petitioner company has been placed in a difficult position with its buyers. There was correspondence between the Controller and the registered stockists as also the Tata-Tisco Dealers' Association, but ultimately it has not resulted in anything. On behalf of the respondents it is stated that the orders mentioned above were made for the following reasons : It Is stated that the producers had in their books, lying outstanding, orders which they could not complete. It was therefore decided that dispatches outstanding against orders prior to 1-4-50 should be suspended, but dispatches against orders booked subsequent to 1-4-56 should continue to be made. It is stated that these orders were given pursuant to the decision of the Central Government. On behalf of the petitioner company, a point is taken that the Controller has no power to stop dispatches of the goods by the producer which were covered by existing planning orders already accepted by the producer. It is said that if it amounts to a revocation of the permits under Clause 8 of the Control Order, then, in the absence of any directions given by the Central Government under Clause 17, the power is arbitrary and naked and is an unreasonable restriction of the fundamental rights of the petitioner company to carry on business, conferred by Article 19(1)(g) of the Constitution. Thus, there are two distinct points to be considered in this case. The first point is as to whether the Control Order itself authorizes the action, and secondly, assuming that it does, whether such provisions are violative of the fundamental rights of the petitioner to carry on its business, as conferred by Article 19(1)(g) of the Constitution. At this stage it would be

appropriate to deal with a preliminary objection which has been taken by the respondents.

5. The point taken is that a company cannot be said to have a fundamental right under the Constitution, particularly a right under Article 19(1)(g), namely the right to carry on trade or business. The way it is formulated is as follows : Article 19(1) starts with the words "All citizens shall have, the right". In other words, it is only citizens that have the fundamental right of carrying on trade or business guaranteed to them under the Constitution. Part II of the Constitution, is entitled "citizenship". But the word "citizen" has not been defined in the Constitution. Article 5 lays down that at the commencement of the Constitution every "person" who has his domicile in the territory of India and who was born in the territory of India; or either of whose parents was born in the territory of India; or 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. Obviously, the first two provisions cannot apply to the case of a company. The third provision may apply, because a company carrying on business in the territory of India may be said to be ordinarily a resident therein. Under the Indian Income Tax Act, a company is often said to be "ordinarily resident" within the territory of India. The first question is as to whether a company can be said to be a "person". Article 366 contains the definition of various words and expressions used in the Constitution. The words, "citizen" or "person" are, however, not defined. Under Article 367, it has been provided that, unless the context otherwise required, the General Clauses Act, 1897 would apply to the interpretation of the Constitution, subject to any adaptation and modification that may be made therein under Article 372. Section 2(39) of the General Clauses Act, 1897 defines the word "person' to include any company or association or body of individuals, whether incorporated or not. According to this definition, the word "person" in Article 5 of the Constitution would include a company incorporated in India. Thus, Article 5 lays down that at the commencement of the Constitution, that is to say, 26th January, 1950, every person who is ordinarily a resident in India for not less than five years immediately preceding such commencement, shall be a citizen. If a company is included within the ambit of this Article, then the petitioner company became a citizen, because it was exclusively carrying on business within the territory of India for a period longer than five years prior to the date above-mentioned. Article 10 lays down that such a person would continue to be such a citizen subject to the provisions of any law that may be made by Parliament. Article 11 gives power to Parliament to make any provision with respect to acquisition or termination of citizenship and all other matters relating to citizenship. Thus, Parliament would have the power of laying down conditions under which, citizenship acquired under Article 5, may continue or be terminated. Under the powers given by Article 11, Parliament has promulgated an Act called the 'Citizenship Act'. This Act has been expressly made inapplicable to companies. The position, therefore, is curious. If a company is at all permitted to come in under Article 5 as a citizen, then the companies which were ordinarily residents in the Indian territory for five years prior to the commencement of the Indian Constitution would, by force of Article 5 itself, become citizens, and will continue to be so in future. But after the commencement of the Constitution, no company can become a citizen, because under the rules and regulations promulgated by Parliament, an individual person can become a citizen but a company cannot. However, this anomaly need not detain us, because for the purpose of this case the petitioner company would come in as a citizen under Article 5 if it applies to companies at all. The fundamental rights guaranteed under Article 19 of the Constitution have been granted to citizens only. There are other articles, for example Article 14, under which a fundamental right, namely a right to equality in the eyes of the law, has been granted to "any person". It is admitted that Article 19 would apply only to citizens and the

petitioner company could only claim such a fundamental right, if it is a citizen. The question as to whether a company, that is to say, an incorporated company can claim a fundamental right under Article 19 has been the subject matter of a number of decisions, including several decisions of the Supreme Court, but the matter has not been conclusively determined. I shall now proceed to examine them.

6. The first case to be considered is a case decided by a Division Bench of the Madras High Court, *Sree Meenakshi Mills Ltd. v. State of Madras*[1], at p. 977. This was a case under the Industrial Disputes Act. In the course of his Judgment Rajamannar, C.J. said as follows :

> "Of the three articles mainly relied on by Mr. Jayarama Aiyar, Article 19 presents an initial difficulty. That Article confers rights only on citizens. Can a limited company incorporated under the provisions of the Indian Companies Act be deemed to be a citizen? Article 5 defines a citizen as a person who has his domicile in the territory of India and who was born or either of whose was born or who has been ordinarily resident for not less than five years immediately preceding the commencement of the Constitution in the territory of India. The definition 'prima facie' does not appear to take in corporate bodies. A company would certainly be a person, but it is difficult to speak of a company having a domicile....."'

7. The next case to be considered is a decision of the Punjab High Court, *Jupiter General Insurance Co. Ltd. v. Rajagopalan*[2]. In this case, Harnam Singh, J. considered this particular point as to whether a company can claim protection under Article 19 of the Constitution. So far as a company is ordinarily resident within the Indian territory, the learned Judge correctly held that a corporation resides where the principal direction of the corporate business is located. The learned Judge proceeded to say as follows :

> "As stated above, the answer to the question whether a corporation is a citizen within the particular statute depends upon the intent to be gathered from the context and general purpose of that statute. Clauses (a) and (b) of Article 5 do not apply to corporations. Articles 6 and 8 of the Constitution which deal with the rights of citizenship of persons who have migrated to India from Pakistan and the rights of citizenship of persons of Indian origin residing outside India, have likewise no application to the corporations. Article 19(1)(a) to (e) cannot possibly apply to corporations. In Article 39 the expression 'citizen' means men and women.

For the foregoing reasons, I think that the corporation is not a citizen within Article 19,

[1] AIR 1951 Mad 974

[2] AIR 1952 Pun 9

Constitution of India. That being so, the company 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."

8. I now come to the decisions of the Supreme Court on this point. The first case cited is *Chiranjit Lal Chowdhuri v. Union of India*[3], This was an application by the holder of one

ordinary share of the Sholapur Spinning and Weaving Co. Ltd. for a writ of mandamus and certain other reliefs under Article 32 of the Constitution. One of the questions raised was whether the Sholapur Spinning and Weaving Company (Emergency Provisions) Act, 28 of 1950, infringed Article 14 of the Constitution. Mukherjea, J. said as follows :

> "Thus anybody who complains of infraction of any of the fundamental rights guaranteed by the Constitution is at liberty to move the Supreme Court for the enforcement of such rights and this Court has been given the power to make orders and issue directions or writ similar in nature to the prerogative writs of English law as might be considered appropriate in particular cases. 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."

9. It will be observed that in this enunciation of the law it has not been specified as to whether an incorporate body could claim fundamental rights under Article 19. I have already pointed out that so far as Article 14 is concerned, there is no doubt about the competency of a corporation to claim a fundamental right. The case involved both articles 14 and 19, but it is not clear whether the observations of the learned Judge were intended to govern the provisions of both.

10. In the *Bengal Immunity Co., Ltd. v. State of Bihar*[4], Das, C.J., states as follows :-

> "It is urged that the appellant being a company is not a citizen and cannot, therefore, claim any fundamental right under Article 19 which is available only to a citizen and, therefore, the decisions of this court referred to above have no application. While it is noteworthy that the second case mentioned above was concerned with the rights of the company, it is, nevertheless, unnecessary for the purpose of this appeal to decide whether the Juristic person like a company is a citizen as defined in Part II of the Constitution and as such entitled to the benefits of Article 19."

11. The case was decided upon the looting that no tax can be levied or collected except by authority of law. Therefore, it was not necessary to find out whether the fundamental rights of the petitioner were affected. It is clear that in this case the issue was avoided and, therefore, the conclusion is of no assistance. The next case in which the point was referred to, but left undecided is, *Sewpujanrai Indrasanrai Ltd. v. Collector of Customs*[5]

[3]1950 SCR 869

[4]1955-2 SCR 603 at p. 618 : AIR 1955 SC 661 at p. 669

[5] AIR 1958 SC 845 at 856

In that case. Das, J. "assumed" that a company could be a citizen as defined by the Constitution. So far as the foreign company was concerned the learned Judge pointed out that admittedly it was not a citizen. With regard to Bharat Bank Ltd., being an Indian company, the learned Judge says that "it may have the rights of a citizen under Article 19". This decision is not, therefore, of much assistance. Mr. Meyer has frankly conceded that so far as the Supreme Court is concerned the position is that in Chiranjit Lal's case, 1950 SCR 869 Mukherjee, J., laid down the law in

general terms, and in at least two subsequent cases the point was dealt with but not decided. In one case the right was assumed, and in another case it was not necessary to deal with it at all. He, however, points out that in a number of cases decided by the Supreme Court, relief has been granted to companies and incorporated bodies on the footing that they were entitled to avail themselves of the fundamental rights granted under Article 19 of the Constitution. In *Raman and Raman Ltd. v. State of Madras*[6], the appellant was a company. It was held that the appellant had a fundamental right to carry on the business of motor transport, subject to the reasonable restrictions imposed upon that right by law. In this case, however, no point was taken that the appellant being a company could not avail itself of the fundamental rights under Article 19(1)(g). It seems to have been assumed that a company could be a citizen within the meaning of that expression, as used in Article 19 of the Constitution. The next case to be considered is *Okara Electric Supply Co. Ltd. v. State of Punjab*[7], The applicant in that case was a company. A certain notification was issued, by which the undertaking of the company was sought to be vested in Government. An application was made inter alia stating that Section 28 of the Indian Electricity Act 9 of 1910 under which the notification was made, was a reasonable restriction imposed in the interests of the general public, within the meaning of Article 19(5) of the Constitution. It was, therefore, held that the vires of Section 28 could not be challenged. Here again, no discussion was made as to whether the fundamental rights conferred by Article 19 were applicable to a company or not. Similarly in *Fedco (India) Ltd. v. S.N. Bilgrami*[8], the petitioner was a company registered under the Indian Companies Act having its registered office in Bombay. It was held that the provision in clause 9(a) of the Imports (Control) Order 1955, to the effect that a licence granted under the order may be cancelled, if it is found, after giving a reasonable opportunity to the licensee to be heard, to have been obtained by a fraud or misrepresentation, is a reasonable restriction in the interests of the general public on the exercise of the fundamental rights of a citizen guaranteed under Article 19(1)(f) and (g) of the Constitution. In this case also, the point as to whether a company can at all be called a "citizen" or whether it can claim fundamental rights conferred by Article 19 was not discussed. It was assumed that the company could maintain the application by claiming such a right.

12. The question, therefore, arises as to whether the Supreme Court should be taken to have decided the point and, if so, in what manner. The judgment of Mukherjee J., was considered by Chagla, C.J. in *State of Bombay v. R.M.D. Chamarbaugwalia*[9], at p. 19. The learned Chief Justice said as follows :-

> "Now, in this case the petitioners No. 2 are a private limited company and all the shareholders are citizens. That fact is not disputed. Therefore, every one of these shareholders, if he was carrying on business, would be protected by Article 19(1)(g). But the contention is that if these individual citizens choose to form a company and get it incorporated, the rights which each one of them had are lost by reason of the incorporation."

[6] AIR 1959 SC 694 [8] AIR 1960 SC 415
[7] AIR 1960 SC 284 [9] AIR 1956 Bom 1

13. The learned Judge then proceeds to refer to the case of (1950) SCR 869 and states as follows :

"It is true that the Supreme Court was not dealing with the question we are considering, but we are unable to accept Mr. Seervai's suggestion that Mukherjea, J., was only thinking of those fundamental rights which are guaranteed to every person and not fundamental rights which are guaranteed to a citizen. What Mukherjea, J., emphasises is that we must look at the content of the fundamental rights and if you find that the nature of that right is such that it is not possible to confine it merely to natural persons, then the Court must come to the conclusion that a corporation is as much entitled to that right as an individual citizen. If that be the true test, as we have already pointed out, the content of the freedom contained in Article 19(1)(f) and (g) far from inducing us to come to the conclusion that this freedom can only be enjoyed by natural persons, leads us to the conclusion that this is a freedom which can be enjoyed as much by a corporation as by a natural person. Therefore, in our opinion, the fundamental right guaranteed to every citizen under Article 19(1)(f) and (g) is guaranteed as much to a citizen as to a corporation. We are conscious of the difficulty to which Mr. Seervai has very rightly drawn our attention as to the constitution of a corporation and under what circumstances and in which cases we would hold that a corporation is a citizen and a corporation is not a citizen. Sufficient unto the day is the constitutional difficulty thereof, and I think it is sufficient to decide this case on the facts before us whether all the shareholders are Indian citizens, and all the directors are Indian citizens. If a case arises where the shareholders are not citizens or the directors are not citizens, then the court may well consider whether the particular corporation is a citizen or not."

14. In this case also, we are not concerned with the difficulties referred to in the judgment of Chagla, C.J., because the company is an Indian company and all shareholders as well as directors are residents within the territory of India. In *Liberty Cinema v. Commissioner of Corporation, Calcutta*[10], I considered the application of 62 petitioners, some of whom were companies and others were firms. Relief was given on the ground that there was infringement of the fundamental rights granted under Article 19(1)(g), although this particular point was not raised or discussed.

15. The learned Standing Counsel has rejected to the American Law on the subject and asks me to hold that although a corporation can be a citizen for the purpose of a particular statute, it cannot, as has been held in the United States, be a citizen under the Constitution. He has drawn my attention to a passage in Corpus Juris, Vol. 18, p. 388. The law in the United States has been thus summarized :

"A corporation is a 'citizen' within the meaning of a statute conferring rights, defining the jurisdiction of courts, or otherwise relating to citizens, if the purpose

[10] AIR 1959 Cal 45

and intent of the statute renders it applicable, and for such purpose it is, as a general rule, a citizen of the State or country by or under the laws of which it was created and exists without regard to the citizenship of its stockholders or members.

Whether a corporation is a citizen or subject within a particular statute depends upon the intent,

to be gathered from the context and general purpose of the whole legislation in which it occurs. In the Federal Courts it has been said that a corporation itself cannot be a citizen of any State in the sense in which the word 'citizen' is used in the Constitution of the United States, but for the purpose of determining the jurisdiction of the Federal Courts on the ground of diverse citizenship, when an action is brought by or against a Corporation, it is conclusively presumed that all stockholders of the corporations are citizens of the State of its creation, and thus a corporation is in effect, for the purpose of Federal jurisdiction held to be a citizen of that State."

16. In my opinion, it would be dangerous to base our decision on excerpts from the American Law. The law on this point in America has been adapted to her own peculiar conditions and the constitutional relationship between the Federal Government and the constituent States. These peculiarities are not the same as under the Indian Constitution. Many of the provisions in the Indian Constitution, including fundamental rights, may have drawn their inspiration from the American Bill of Rights, but they are not identical and are adapted to our peculiar needs.

17. In my opinion, the enunciation of the law made by Mukherjea, J., in Chiranjit Lal's case, 1950 SCR 869 (supra), although in general terms, is the correct view. I would formulate it in this way : Under Article 5, every person who has his domicile in the territory of India and who has been ordinarily resident in the territory of India for not less than 5 years immediately preceding such commencement, shall be a citizen of India. The word 'person' has not been defined in the Constitution and under Article 367, the definition in the General Clauses Act, 1897 would apply. Thus, a company incorporated in India would come within the definition of 'person' and as such within the provisions of Article 5(c) of the Constitution. A company is a distinct entity from its shareholders. It is said to be domiciled or ordinarily resident at a place where it has its head office or from where it can be said to be controlled. There is, therefore, no difficulty in satisfying the provisions in the said Article for being domiciled or 'ordinarily resident' in Indian territory. It follows, therefore, that under Article 5 the petitioner company is a citizen. While Article 5 lays down as to who should be considered as a citizen at the commencement of the Constitution, Article 10 merely continues that status until provision is made by any law that may be made by Parliament. Under Article 11, power has been granted to Parliament to make laws providing for the acquisition and termination of citizenship and all other laws relating to citizenship. Parliament has promulgated a law namely the 'Citizenship Act'. In. that Act, however, companies and corporations have been excluded. The position therefore, is somewhat anomalous. A company which has been ordinarily resident in India for 5 years preceding the commencement of the Constitution, namely, 26th January, 1950 would be a citizen, and would continue to be a citizen. But there is no means provided, whereby a company may acquire citizenship after that date. This is an anomaly which can only be remedied by legislation. The petitioner Company being a citizen, is entitled to all the fundamental rights granted under Article 19, or at least those which can be reasonably applied to a corporation or a company. This preliminary point, therefore, fails, as I hold that the petitioner company can claim the privileges granted by Article 19(1)(g) of the Constitution.

18. We have therefore to consider the question as to whether the power of revocation of a permit, if it does exist under the Control Order, is constitutionally permissible. But first of all it will have to be determined as to whether the Control Order, at all contains any provisions for the revocation of a permit or whether the Steel Controller is vested with any power to direct the suppliers or manufacturers to stop the dispatch of further supplies. It is admitted on behalf of the

respondents that apart from clause 8 there is no power given to the Controller to revoke an authorization already given. It is argued that the matter comes within clause 8 because the two orders amount to revocation of the authorizations, by the authority which issued the planning orders. It is further stated that the action of the authority is saved by the provisions of clause 13. I have already set out clause 13 above. It will be remembered that in the two letters of the Deputy Controller, one asked the producer not to dispatch the material and the other is a direction to cancel the outstanding orders of the registered stockholders. The order dated 7-5-1958 purports to cancel the permits or written orders given to the registered stockholders to obtain materials from the producer in respect of authorizations prior to 1-4-1956, although curiously enough it is not addressed to the petitioner. If this to be taken as revocation of the permit, the question arises whether the power contained in clause 8, namely the power of revocation is naked and arbitrary and should be struck down, and whether it is saved by the provisions in clause 13. I think it will be convenient to deal with clause 13 first and see what it means. The basic factor in clause 13 is the co-ordination by the Controller of the production of iron or steel with the demands for iron of steel which have arisen or are likely to arise under authorizations to acquire, duly issued under Part II of the Order. We start with the proposition that the demand for iron or steel is more than can be produced, otherwise, there would be no sense in promulgating the Control Order at all. We have already seen how this authorization is effected. Firstly, the Controller informs the Ministry of Steel, Mine and Fuel, Government of India, of the total quantity of iron and steel required in the whole country and the amount available. Thereupon the Central Government allocates to each State and/or sponsoring Authority, a quota. All supplies and demands for supplies within a particular area must go through registered stockholders who are appointed upon approval of Government. A registered stockholder accepts orders and makes out an indent and this is sent to the Controller who does his planning. That means that he has to co-ordinate the demand and the capacity of the producers to meet the demand. All indents made by registered stockholders may not be met in full. In practice, what happens is that the total available material is distributed proportionately between the registered stockholders. Clause 13 enables the controller to do certain things without which he would be unable to make this co-ordination. It is from this point of view that we must examine the three headings of powers that are conferred upon him. The first heading namely, sub-clause (a) enables him to order a producer not to manufacture any of the categories of iron and steel specified in the schedule to the order, except in accordance with his general or special direction. In other words, the power is given to link the manufacture with the authorizations. The Controller may direct the producer not to manufacture any item except in accordance with his general or special direction. This can only mean that the general or special directions are to be given with a view to see that the authorizations that have been given or are likely to be given, should be met.

19. The second heading namely sub-clause (b) gives power to the Controller to require a producer to obtain approval of his programme to manufacture in iron and steel of any of the categories specified in the schedule to the order.

20. The third heading, namely, sub-clause (c) of clause 13 gives power to the Controller to direct the producer to manufacture iron or steel of such categories as he is capable of manufacturing, in accordance either with the programmes of production approved under sub-clause (b) or under any special instructions issued by the Controller.

21. In the facts and circumstances of this case, we are not concerned with sub-clauses (b) and (c). We are left with sub-clause (a), which therefore has to be considered more closely. First of all, let

us look at it from the angle of the producer. A 'producer' means a person carrying on business of manufacturing iron or steel. When he gets himself registered by the Controller he becomes a registered producer. With regard to the producer, clause 5 provides that a producer shall not dispose of or agree to dispose of or export etc., any iron and steel except in accordance with the conditions contained Or incorporated in a special or general written order of the Controller, Clause 11 enables the Controller to order any producer not to remove or permit the removal of, any iron or steel from his stockyard etc., except with his written permission. Clause 14(3) prohibits the producer from refusing to sell any iron or steel which he is authorized to sell and clause 15(3) prohibits the producer from selling any iron or steel at a price exceeding maximum price fixed under sub-clauses (1) and (2) of clause 15. Clause 16 gives power to the Controller to control the creation of new productive capacity. Therefore, it is clear that apart from clause 13 there is no provision to control the manufacture or production by a producer. The condition precedent in the exercise of any power under this clause is that the Controller should be satisfied that action was necessary in order to co-ordinate production with demand, which has arisen or is likely to arise under authorizations to acquire iron or steel issued by the Controller. First of all, it would be observed that the power is confined to the categories of iron and steel which are set out in the schedule to the order, which is comprehensive enough and it is admitted that the items we are concerned with, are contained in the schedule. Under sub-clause (a) the Controller can prohibit the producer from manufacturing iron or steel of any of the categories specified in the schedule, otherwise than in accordance with any general or special direction. Let us now come to the facts of the present case, it is stated that the reason for making the impugned order was the discovery that a large number of orders placed prior to 1st of April, 1956 could not be implemented by the producer. So far as the order dated 28th March, 1957 is concerned, it can scarcely be said to be an order under clause 13. It merely gives a direction not to dispatch certain materials against outstanding orders. Clause 13 does not speak of dispatch at all, it deals with manufacture. The order dated 7th May, 1958 is, however, a cancellation of all outstanding orders in respect of categories of materials included in the schedule, against the period prior to 1st of April, 1956. The question is whether this relates to manufacture or not. It is obvious that it may or may not be. The orders in the present case ranged from 1954 to 1956. If the goods had been manufactured already then it would certainly not come under the ambit of clause 13 which, as already pointed out, merely deals with manufacture. It is from this point of view that I asked the respondents as to whether these goods had already been manufactured by the two producers with whom we are concerned in this case. An affidavit has now been filed stating that these producers are unable to state as to whether the goods had been manufactured or not. The order dated 7th May, 1958, merely states that the producer was directed to cancel all outstanding orders. This notice was given to all registered producers, registered re-rollers and controlled stockholders, but not upon the petitioner. The result is that the producer is being told to cancel the order of the registered stockholders prior to 1st April, 1956 and not to dispatch the goods. Sub-clause (a) of clause 13 does not in terms give any authority to cancel permits or authorizations. It gives no power to prohibit a producer from delivering goods under existing authorizations. Simply put, sub-clause (a) grants power to the Controller to say to the producer that you must not manufacture all or any of the items in the schedule, after a certain date, except under a general or special direction of the Controller. The question is whether the Controller can be said to have acted under sub-clause (a) of clause 13 in issuing these letters. All that he has stated is that certain orders placed by the registered stock-holder prior to 1st of April, 1956 should be cancelled and not dispatched. He has not stated that these goods should not be manufactured except in accordance with any general or special directions issued by him. Nor has he issued any

such direction. Assuming that the goods have not been manufactured, then the order does not say that you are to manufacture such goods only in such and such manner, but there is a direction to 'cancel' the orders, and stop dispatch of the goods. The matter may be looked at from another point of view. Sub-clause (a) of clause 13 grants power to the Controller to prohibit a producer from producing certain categories of iron and steel except in accordance with any general or special direction issued by him. No such direction has been issued. At least none has been brought to my notice. It is stated that this letter dated 7th May, 1958, is itself a direction. I do not see how it can possibly be. There is no prohibition here that any category of goods should not be manufactured otherwise than in accordance with any direction given. It merely directs the cancellation of certain orders already placed, against which goods may have already been manufactured. If the producer has already manufactured the goods, the result of the cancellation will be that he will divert the goods to some other order and this is certainly not authorized by sub-clause (a) of clause 13. This reasoning is fortified by what is stated in paragraph 9 of the affidavit of Siddharta Banerjee affirmed on the 18th of December, 1958. It is stated there that the producers had in their books long outstanding orders which they could not complete: The first step taken was, therefore, to suspend dispatches. This obviously refers to the circular dated 28th March, 1957 whereby dispatches of goods against orders prior to 1-4-1956 were suspended. Speaking of the circular dated 7-5-58 it is stated as follows :

> "The said Circular was issued in pursuance of a decision taken by the Government of India as far back as March, 1956. The decision was that the deliveries in 1956-57 will be partly against old indents and partly against fresh-indents, as per priority to be indicated by the indentor and the total quantity supplied at subsidised prices during the year will not in any case exceed the allotment of 1956-57 annual quota. Accordingly all indentors, including. State Governments were asked to adjust supplies-against pre-56-57 orders, against 1956-57 and subsequent quotas. But most of them did not take any action in this respect and consequently there were excess supplies to the indentors."

22. The position, therefore, seems to be as follows : Orders were placed with the producers prior to 1st April, 1956 which they could not complete. Government was unwilling to allow further planning orders to be made without the previous orders being completed. At the same time, they could not completely stop further orders. So a plan was introduced by which it was expected that the planning orders during the two periods could be adjusted. This presupposes that the manufacture of goods prior to 1-4-1956 was not stopped, but what was attempted to be done was to adjust goods so manufactured against planning orders issued prior to 1-4-56 as also for the period 1956-57. The complaint is that the stockholders did not make these adjustments but continued to draw freely against the 1956-57 quota and so in effect they attempted to get more than Government was willing to supply. If these are the facts then I must conclude that the order dated 7-5-58 was an order not to supply and not an order stopping manufacture or imposing conditions upon it. Consequently, it does not come under sub-clause (a) of clause 13, but might amount to revocation of authorizations under clause 8. In other words, the order dated 7-5-1958 did not direct the producer not to manufacture any goods or manufacture any goods subject to any direction of the Controller, but merely not to supply the manufactured goods against outstanding orders placed by the stockholders prior to 1-4-1956. I do not see how such an order comes within the ambit of sub-clause (a) of clause 13. So far as the order dated 28-3-57 is

concerned, I do not see any provision of the Control Order which enables the Controller to permanently stop dispatches against authorizations already made. It will be observed that neither of these two orders were addressed to the stock-holders. The position therefore is that the Controller had authorized the stockholders including the petitioner to obtain goods from the producers and then without any reference to it asked the producers to cancel the orders and not to dispatch the goods. I have already held that the matter does not come within clause 13, the question is whether it comes under clause 8. It is strange that an authorization given to a stockholder should be revoked without any reference to him. Under clause 8, upon revocation the written order or permit is to be returned to the authority issuing it. How can the stockholder do so if the order is not communicated to him? However, giving the most liberal construction to the two orders, it can at best be said that they amounted to revocation of the permit or written order given by the Controller under clause 4. The power of revocation has not been expressly granted anywhere in the Control Order. It is argued, however, that it is to be implied from the provisions of clause 8. It is necessary, therefore, to consider the constitutionality of clause 8. It is argued that in the absence of any direction given in that behalf under the powers conferred by clause 17 upon the Central Government, the power to revoke given under clause 8 is naked and arbitrary and is an unreasonable restriction on the fundamental right of the petitioner to carry on business conferred by Article 19(1)(g) of the Constitution. It is admitted that no directions have been given by the Central Government under clause 17.

> 'Therefore, there is, no procedure laid down for the revocation of permits or orders, nor any condition imposed. There is no provision for giving notice or hearing stockholders whose authorisations are being cancelled or revoked. No circumstances are indicated to guide the Controller in making such orders of revocation. There is no provision for any appeal against such an order or for taking any proceedings to challenge the same. The petitioner relies on the Supreme Court decision, *Dwarka Prasad V. State of Uttar Pradesh*[11], In that case, clause 4(3) of the Uttar Pradesh Coal Control Order (1953) was successfully challenged. Under that control order, the 'Licensing Authority' meant the District Magistrate or any other officer authorized by him to perform his function. No person could stock or

[11] AIR 1954 SC 224

> sell coal except under a license granted by the Licensing Authority and the Licensing Authority was empowered to grant, refuse to grant, renew or refuse to renew a license and was further authorized to suspend, cancel, revoke or modify any license for reasons to be recorded. This power was challenged as naked and arbitrary. Mukherjea, J., relied on a previous decision of the Supreme Court - *Chintamanrao v. State of Madhya Pradesh*[12], and held that the phrase 'reasonable restriction' connotes that the limitation imposed upon a person in enjoyment of a right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. Legislation, which arbitrarily or excessively invades the right, cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed under Article 19(1)(g) and the special control permitted by clause 6 of Article 19, it must be held to be wanting in reasonableness. The Uttar Pradesh Coal Control Order was also promulgated in exercise of the power conferred by Section 3(2) of the essential Supplies Act, 1946 read with the

notified order of the Government of India issued under Section 4 of the Act empowering the State of Uttar Pradesh to promulgate such an order. The learned Judge said as follows :

"The more formidable objection has been taken on behalf of the petitioner against Clause 4(3) of the Control Order which relates to the granting and refusing of license. The Licensing Authority has been given absolute power to grant or refuse to grant, renew or refuse to renew, suspend, revoke, cancel or modify any license under this order and the only thing he has to do is to record reasons for the action he takes. Not only so, the power could be exercised by any person to whom the State Coal Controller may choose to delegate the same and the choice can be made in favour of any and every person. It seems to us that such a provision cannot be held to be reasonable.

No rules have been framed and no directions given on these matters to regulate or guide the discretion of the Licensing Officer. Practically the order commits to the unrestrained will of a single individual the power to grant, withhold or cancel licenses in any way he chooses and there is nothing in the Order which could ensure a proper execution of the power or operate as a check upon injustice that might result from improper execution of the same. Mr. Umrigar contends that a sufficient safeguard has been provided against any abuse of power by reason of the fact that the licensing authority has got to record reasons for what he has done. The safeguard, in our opinion, is hardly effective; for there is no higher authority prescribed in the Order who could examine the propriety of these reasons and revise or review the decision of the subordinate officer. The reasons, therefore, which are required to be recorded are only for the personal or subjective satisfaction of the licensing authority and not for furnishing any remedy to the aggrieved person."

23. Section 4(3) of the impugned order was held to be void. On behalf of the respondents, reliance has been placed on a subsequent decision of the Supreme Court, *Harishankar Bagla v. State of Madhya Pradesh*[13], In that case, the provisions of the Cotton Textile (Control of Movement) Order, 1948 passed by the State of Madhya Pradesh was considered. The petitioner there was prosecuted for contravention of Section 7 of the Essential Supplies (Temporary Powers) Act, 1946 read with clause 3 of the Cotton

[12] AIR 1951 SC 118
[13](1955) 1 SCR 380

Textile (Control of Movement) Order, 1948, having been found in possession of 'new cotton cloth' weighing Over 6 mds. without any permit. It was urged that Sections 3 and 4 of the Essential Supplies (Temporary Powers) Act, 1946 and the Cloth Control Order, were ultra vires as contravening the fundamental rights of the petitioner to carry on business. This was negatived. In that case, the previous decision of AIR 1954 Supreme Court 324 (Supra) was relied on. It was however distinguished on several grounds. The first ground was that unlike Dwarkadas's case, AIR 1954 Supreme Court 224, the petitioner had never applied for it permit and made no efforts to obtain one and, therefore, there was no question of the exercise of any arbitrary and unregulated power by the Textile Commissioner. Secondly, there was no provision in the Textile Control Order equivalent to Section 4(3) of the Uttar Pradesh Coal Control Order. Mahajan, C.J. said as follows :

"In the present Control Order there is no such provision as existed in the Uttar Pradesh Coal Control Order. The provisions of that Control Order beat no analogy to the provisions of the present Control Order. The policy underlying the order is to regulate the transport of cotton textile in a manner that will ensure an equal distribution of the commodity in all the countries and make it available at a fair price to all. The grant or refusal of a permit is thus to be governed by this policy and the discretion given to the Textile Commissioner is to be exercised in such a manner as to effectuate this policy. The conferment of such a discretion cannot be called invalid and if there is an abuse of power there is ample power in the courts to undo the mischief. Presumably, as appears from the different forms published in the manual, there are directions and rules laid down by the Central Government for the grant or refusal of permit."

24. In my opinion, the facts and circumstances of this case are more like the case of AIR 1954 Supreme Court 224 (Supra) than that of 1955-1 SCR 380 (Supra). Just as under the Coal Control Order, the power to carry on business in iron or steel is completely taken away and made subject to the provisions of the Iron and Steel (Control) Order, and the Controller is given absolute power. Without a permit from him or a written order nobody can either manufacture iron or steel or deal with the same. A stockholder has to obtain a written authorization before the producer will entertain a proposal to manufacture the required goods. Except under such authorization no goods can be acquired. Assuming that there is an implied power to revoke or cancel the authorization under clause 8, the power is absolute and unfettered and without any direction given by the Central Government under clause 17 is naked and arbitrary. In the absence of such direction, no restriction is put upon the absolute power of the Controller to cancel an authorization. There is no provision for giving notice, and indeed, in respect of the impugned orders, no notice has been given to any stockholder. It is not indicated as to under what circumstances the revocation can be made. Once the revocation is made, there is no appeal provided and no recourse is given to the courts. The grounds upon which Harishankar Bagla's case, 1955-1 SCR 380 (Supra) was distinguished from that of Dwarka Prosad's case, AIR 1954 Supreme Court 224 (Supra) do not exist here. In this case, the stockholder had to get a permit and did in fact obtain written permits which have been revoked ex parte. No directions have been given by Government as to how such a revocation should be made; nor the circumstances under which such an order would be justified. If the matter came within the scope of clause 13, it could be said that the circumstances were indicated, namely the necessity of co-ordination between production and demand. Since the matter is not within the-ambit of clause 13, there is no such limitation. Other restrictions imposed by the Control Order are not challenged. By reason of the paucity of supply of iron and steel, it is not disputed that some kind of control is necessary in the greater interest of the public. But what is challenged is this named and arbitrary power of revocation. The stockholders including the petitioner had taken orders from their customers and have made themselves responsible financially upon a big scale. Quite suddenly, and without any reference to them, the permits are cancelled. No notice is given to them and they are not heard in the matter and have no right to appeal against the arbitrary decision of the Controller. It is said that the decision was really made by the Central Government. If so, the matter becomes worse and not better. The Central Government has got power to give directions under clause 17. By framing such directions it could have given itself power to revoke or cancel authorizations or override the orders Of the Controller or constitute forums of appeal against the orders of the

Controller and in this way might have made the restrictions reasonable. As I have paid however, it is admitted that no such directions have been issued.

25. For the reasons stated I am of the opinion that the power to revoke or cancel written orders or permits under clause 8, without any restriction imposed by directions given, under clause 17, is a naked and arbitrary power, and constitutes an unreasonable restriction on the fundamental right of the petitioner to carry on its business under Article 19(1)(g) of the Constitution and is therefore void.

26. For the reasons aforesaid, tins Rule must be made absolute in part and there will be issued a writ in the nature of certiorari quashing and/or setting aside the orders dated 28th March, 1957 and 7th May, 1958 mentioned above, so far as the petitioner is concerned. In this application no relief can be granted to others who are not parties. There will also be issued a writ in the nature of mandamus directing the respondents not to give effect to the same. This will be without prejudice to the respondents acting in future in accordance with law. There will be no order as to costs. The operation of this order will be stayed until a week after the re-opening.
Rule made absolute in part.