KERALA HIGH COURT

Reserve Bank of India

Vs.

Palai Central Bank Ltd

B.C.P. No. 11 of 1960

(P.T. Raman Nayar, J.)

05.12.1960

JUDGMENT

P.T. Raman Nayar, J.

1. By this application brought under Section 38(3)(b)(iii) of the Banking Companies Act, 1949, the Reserve Bank of India seeks the winding up of a banking company called the Palai Central Bank Ltd. The application is opposed by the company and by sixty-six creditors, some of them contributors, the debts due to whom, it is said, amount to about Rs. 70 lakhs out of a total outside liability of about Rs. 860 lakhs. Five creditors to whom, according to their claims about Rs. 2 lakhs is due have appeared to support, or seemingly to support, the application.

2. The company and some of its creditors have applied under Section 391 of the Companies Act, 1956 for considering schemes of reconstruction and the company has also applied for a stay of the present proceedings pending disposal of these applications. In view of Section 44B of the Banking Companies Act, I have had the schemes examined by the Reserve Bank (in a rather summary way it is true) and it not appearing from the report of the Reserve Bank that any of them is prima facie certifiable under that section, I have not thought it worth while to give further thought to the matter at this stage.

3. The pleadings joined issues of fact as also of law, but, all that now remains, as a result of the clarifications and concessions made in the course of the hearing, are the issues of law. That relieves me of any very elaborate statement of the facts, but it might nevertheless be necessary to state the salient facts for a proper understanding of the case.

4. The Palai Central Bank Ltd. (which I shall hereafter call the company) was incorporated in January 1927 as a public company limited by shares. The incorporation was under the provisions of the Travancore Companies Act. (The company then went by the name of the Central Bank Ltd., and it was only in May 1936 that it assumed its present name). The registered office of the company was at Palai. Its nominal capital was Rs. 40 lakhs, and, of this, roughly Rs. 25 lakhs has been paid up.

5. From small beginnings the company steadily grew till, it is said, judged by the volume of the

deposits it holds, (which is a measure of confidence which the public reposes in it) it has become the foremost banking company in this State and the 15th in the whole of India. Its deposits which in 1928 amounted only to about Rs. 77000/- stood in July 1960 at over Rs. 984 lakhs. It came on the second schedule to the Reserve Bank Act in March 1937, and it has now 25 branches, six of them outside this State in places so far a field as Mangalore. Madras and Delhi.

6. But, there is another side to the picture. For, it would appear that, all this progress notwithstanding, the business of the company was not being conducted on sound lines. With the extension of the Reserve Bank Act to Part B States in 1951, the Reserve Bank assumed supervision over this company as over other banking companies in the country. It undertook an inspection of the company some time in the second half of 1951 in relation to its position as on 30-6-1951 and that inspection revealed, in the words of the Reserve Bank, a very disquieting situation. There were three more inspections as on the 31st December, 1955, the 28th February 1958, and the 31st December 1959, and there were also scrutinies of the company's affairs and meetings of the directors of the company with the officers of the Reserve Bank. According to the Reserve Bank, the position, far from improving, was steadily growing worse, the most unsatisfactory features, giving rise to considerable misgiving being

> (1) that a substantial portion of the company's advances were unsecured and, either irrecoverable or, in banking parlance, "sticky" which, gather, is a short and expressive way of describing an advance which, though perhaps not irrecoverable, has adhered resolutely to its borrower long beyond its appointed term and manifests no signs of disengagement;
> (2) that a considerable portion of these unsatisfactory advances were to the directors of the company or to their relatives or to concerns of which they were in management; and
> (3) that by declaring dividends where no profits really existed, the company was periodically presenting a false picture of its position to the public and, in effect, paying the dividends out of its capital and reserves.

(What the company was doing was to take into account unrealised and, in the opinion of the Reserve Bank, unrealisable interest in the unsatisfactory advances in counting its profits, so that dividends were largely declared on what the Reserve Bank has termed illusory profits).

7. From time lo time the Reserve Bank was giving advice, issuing directions, conveying admonitions and holding out threats (such as prohibition of fresh deposits, exclusion from the schedule and refusal of a licence under the relevant provisions of the Reserve Bank Act and the Banking Companies Act) with a view to reformation, but, not so much as a result of fresh transgressions (although, it is said, that there were some) as of the consequences of the old (mainly the accumulation of interest on bad advances) the position was steadily deteriorating. On the latest assessment made by the Reserve Rank as on the 31st December, 1959 after discussing each difficult advance, with the management of the company, out of a total of about Rs. 529 lakhs advances to the extent of ns much as Rs. 218.51 lakhs were irrecoverable, to the extent of Rs. 17.71 lakhs doubtful of recovery and to the extent of Rs. 111.57 lakhs sticky, leaving only a balance of Rs. 181.21 lakhs which could be described as good. This meant that the realisable assets fell considerably short of what was due to the depositors, in other words, that the company

was unable to pay its debts. And out of the bad advances of Rs. 347-79 lakhs, advances amounting to Rs. 40 lakhs could be directly related to the directors of the company.

8. The company was again and again asking for time to set its house in order and, among the many conditions imposed by the Reserve Bank for allowing it to continue functioning as a banking company were,

> (1) that bad advances, especially to the directors, should be recovered within certain specified periods or at least secured, something which the course of events showed was easier said than done;
>
> (2) that the chief executive officer of the company should be an outsider with sound banking experience instead of one of the company's own men; and
>
> (3) that the balance sheets of the company should present a true picture of its position instead of counting illusory profits.

For reasons that have been explained in Ext. P-14, a note approved by its Governor, but which it is unnecessary to consider (the Reserve Rank is in the unhappy position of being blamed both for not having taken drastic action in the first instance, and for having taken action at all, and that by the same people) the Reserve Bank was unwilling to take any precipitate steps. The first condition was never fulfilled. The third was complied with only on the profit and loss account for the year ending 31-12-1959 when, for the first time, the company left the "illusory profits" out of reckoning with the result that its balance sheet for the year showed a loss of nearly Rs. 14½ lakhs. This balance sheet was passed by the board of directors on the 28th March 1960, and it was published on the 23rd June 1960. So far as the second condition was concerned, it was only on the 1st July 1960 that an independent outsider with experience of sound banking, in the shape of Mr. Sivaraman, an officer of the State Bank released by it at the instance of the Reserve Bank, took charge as General Manager.

9. From about the middle of 1960, there was run on several of the branches of the company, according to the Reserve Bank owing to the publication of the true balance sheet, and according to the company owing to the appointment of Mr. Sivaraman, although it seems to me that the connection between these events and the run was temporal rather than causal and that the real reason for the rim is perhaps elsewhere to seek. However that might be, the total deposits with the company fell by Rs. 123 lakhs between the 24th June and the 8th of August 1960, and it count is taken of the Rs. 15 lakhs added its interest on the 1st July, and of borrowings (in excess of the normal) of about Rs. 20 lakhs on the security of deposits, the sum of Rs. 158 lakhs, coming very nearly to a sixth of the total deposits, would be a true measure of the run.

10. By Ext P8 dated 21st July 1960, the latest of its periodical warnings to the company, the Reserve Bank called for the explanation of the company on its inspection report of the 4th July. It gave the company thirty days' time for the purpose and also offered it a year's time to remedy the several defects. However, on the 8th August, before the expiry of even the thirty days allowed for the explanation, it came forward with the present application, and, the reason if gave for this step was the run, which it apprehended would continue and which, since the company was unable to pay its depositors in full, would necessarily result in those depositors who were able to effect withdrawals getting back their money leaving those less favored with nothing. For the same reason it applied also for the appointment of a provisional liquidator, and an ex parte appointment

was accordingly made.

11. In this connection I might mention that, although it is contended that the run was a transient feature, that it was in fact subsiding and, but for the harsh attitude taken by the Reserve Bank, could have been stemmed in the normal course (statements for which the figures furnished by the company itself in Ext. R 11 and R 13 furnish little support), the directors of the company themselves thought it a matter for alarm, for, at their meeting of the 30th July they considered the decrease in deposits since the 1st July and requested Mr. Sivaraman to proceed to Bombay forthwith and acquaint the Reserve Bank of the developments. Mr. Sivaraman accordingly went to Bombay on the 3rd August and met the officers of the Reserve Bank, and paragraph 24 of the second reply affidavit filed on behalf of the Reserve Bank shows that it was after a full discussion of the position by the Governor, the Deputy Governor and other officers of the Reserve Bank and in consultation with the authorities of the State Bank and the Reserve Bank's Madras Board, that the Reserve Bank came to the conclusion that the continuance of the company would be prejudicial to its depositors and decided to make this application.

12. The company seeks the dismissal of this application on the following grounds :

> (1) that Section 38(3)(b)(iii) of the Banking Companies Act (hereinafter referred to at the impugned provision) is void under Article 13 of the Constitution for offending Article 14 and Article 19(1)(f) and (g), and
> (2) that in bringing this application the reserve Bank has acted mala fide. The second ground was, as we shall presently see, abandoned in the course of the hearing.

13. I shall consider the attack bused on Article 14 and that based on Article 19 together. They necessarily cover common ground, for, as often as not, what makes for a rational classification enabling an allegedly hostitle statute to steer clear of Article 14, invests the hostility with a measure of reasonableness in the interests of the general public sufficient to attract the shelter of clauses (5) and (6) of Article 19.

14. Counsel on both sides, Mr. Suryanarayana Iyer for the Reserve Bank, and Mr. Munshi for the company, have argued the case with admirable clarity and thoroughness. I lose count of the number, but, between them, they must have taken me to close on a hundred books, both text book and judicial decisions. Helpful as they have all been for a true understanding of the position, I shall content myself at this stage with extracting a passage each from two judgments of the Supreme Court. The first, a rather long passage from *Ram Krishna Dalmia v. Justice Tendolkar*[1], tells us all that we need to know of the law governing the matter.

> "(11) The principal ground urged in support of the contention as to the invalidity of the Act and/or the notification is founded on Article 14 of the Constitution. In *Budhan Choudhry v. The State of Bihar*[2], a Constitution Bench of seven Judges of this Court at pages 1048-49 (of SCR) explained the true meaning and scope of Article 14 as follows :
> "The provisions of Article 14 of the Constitution have come up for discussion before this Court in a number of cases, namely, *Chiranjit Lal v. Union of India*[3], *State of Bombay v. F.N. Balsara*[4]. *State of West Bengal v. Anwar Ali Sarkar*[5] *Kathi Raning Rawat v. State of*

Saurashtra[6]*, Lachmandas Kewalnim v. State of Bombay*[7] *Qasim Razvi v. State of Hyderabad*[8]*,* and *Habeeb Mohamad v. State ot Hyderabad*[9] It is, therefore, not necessary to enter upon any lengthy discussion as to the meaning, scope and effect of the article in question. It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not duly by a substantive law but also by a law of procedure".

The principle enunciated above has been consistently adopted and applied in subsequent cases. The decisions of this court further establish –

(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;
(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;
(c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on
adequate grounds;

[1] AIR 1958 SC 538 at pages 547 to 549
[2]1955-1 SCR 1045 : AIR 1955 SC 191
[5]1952 SCR 284 : AIR 1952 SC 75
[6]1953 SCR 435 : AIR 1952 SC 123
[9]1953 SCR 661 : AIR 1953 SC 287
[3]1950 SCR 869 : AIR 1951 SC 41
[4]1951 SCR 682 : AIR 1951 SC 318
[7]1952 SCR 710 : AIR 1952 SC 235
[8]1953 SCR 489 : AIR 1953 SC 156

(d) that the Legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;
(e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and
(f) that while good faith and knowledge of the existing conditions on the part of a Legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification

may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be sonic undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation. The above principles will have to be constantly borne in mind by the Court when it is called upon to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection of the laws.

12. A close perusal of the decisions of this Court in which the above principles have been enunciated and applied by this Court will also show that a statute which may come up for consideration on a question of its validity under Article 14 of the Constitution may be placed in one or other of the following five classes :-

(i) A statute may itself indicate the persons or things to whom its provisions are intended to apply and the basis of the classification of such persons or things may appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to the notice of the Court. In determining the validity or otherwise of such a statute the Court has to examine whether such classification is or can be reasonably regarded as based upon some differentia which distinguishes such persons or things grouped together from, those left out of the group and whether such differentia has a reasonable relation to the object sought to be achieved by the statute no matter whether the provisions of the statute are intended to apply only to a particular person or thing or only to a certain class of persons or things. Where the Court finds that the classification satisfies the tests, the Court will uphold the validity of the law, as it did in 1950 SCR 869 : AIR 1951 SC 41; 1951 SCR 682 : AIR 1951 SC 318; *Kedar Nath v. State of West Bengal*[10]*, V.M. Syed Mohammad and Co. v. State of Andhra*[11]*,*

(ii) A statute may direct its provisions against one individual person or thing or to several individual persons or things but no reasonable basis of classification may appear on the face of it or be deducible from the surrounding circumstances, or matters of common knowledge. In such a case the court will strike down the law as an instance of naked discrimination, as it did in *Ameerunnissa Begum v. Mahboob Begum*[12]*,* and *Ramprasart Narain Sahi v. State of Bihar*[13]*,*

(iii) A statute may not make any classification of the persons or things for the

[10]1954 SCR 30 : AIR 1953 SC 404
[11]1954 SCR 1117 : AIR 1954 SC 314 and 1955-1 SCR 1045 : AIR 1955 SC 191
[12]1953 SCR 404 : AIR 1953 SC 91
[13]1953 SCR 1129 : AIR 1953 SC 215

purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the Court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the

guidance of the, exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the Court will strike down the statute if it does not lay flown any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the discrimination is inherent in the statute itself. In such a case the Court will strike down both the law as well as the executive action taken under such law, as it did in 1952 SCR 284 : AIR 1952 SC 75; *Dwarka Prasad v. State of Uttar Pradesh*[14], *Dhirendra Kumar v. Superintendent and Remembrancer of Legal Affairs*[15],

(iv) A statute may not make a classification of the persons or things for the purpose of applying its provisions and may leave it to the discretion of the Government to select and classify the persons or things to whom its provisions are to apply but may at the same time lay down a policy or principle for the guidance of the exercise of discretion by the Government in the matter of such selection or classification; the Court will uphold the law as constitutional as it did in 1952 SCR 435 : AIR 1952 SC 123.

(v) A statute may not make a classification of the persons or things to whom their provisions are intended to apply and leave it to the discretion of the Government to select or classily the persons or things for applying those, provisions according to the policy or the principle laid down by the statute itself for guidance of the exercise of discretion, by the Government in the matter of such selection or classification. If the Government in making the selection or classification does not proceed on or follow such policy or principle, it has been held by this Court, e.g. in 1952 SCR 435 : AIR 1952 SC 123, that in such a case the executive action but not the statute should be condemned as unconstitutional."

15. The second, from *Kangshari Haldar v. State of West Bengal*[16], states the law very briefly and warns us that here, as in other problems of law as of life in general, the difficulty in the way of solution is not so much to discover and enunciate the true principles to apply as to apply them rightly to the given facts and circumstances :

"(4) The challenge to the vires of the impugned provisions is based on the ground that they violate the fundamental right guaranteed by Article 14 of the Constitution. The scope and effect of the Divisions of Article 14 have been

[14] 1954 SCR 803 : AIR 1954 SC 224 [16] AIR 1960 SC 457 at p. 459

[15] 1955-1 SCR 224 : AIR 1954 SC 424

considered by this Court on several occasions, and the matter has been clarified beyond all doubt. The equality before law which is guaranteed by Article 14 no doubt prohibits class legislation but it does not prohibit the legislature from legislating on the basis of 3 reasonable classification. If the classification is reasonable and is founded on intelligible differentia and the said differentia have a rational relation to the object sought to be achieved by the statute based on such reasonable classification the validity of the statute

cannot be successfully challenged under Article 14. These propositions have been repeated so many times during the past few years that they now sound almost platitudinous. Thus the enunciation, of the principles which flow from the fundamental rights enshrined in Article 14 now presents no difficulty. It is, however, in the application of the said principles that difficulties often arise. In applying the said principles t0 the different sets of facts presented by different cases emphasis may shift and the approach may not always be identical; but it is inevitable that the final decision about the vires of any impugned provision most depend upon the decision which the court reaches having regard to the facts and circumstances of each case, the general scheme of the impugned Act and the nature, and effect of the provisions the vires of winch are under examination. Let us, therefore, first examine the relevant scheme of the Act and ascertain the effect of the provisions under challenge".

16. Thus informed by the highest authority of the true principles to apply and forewarned of the perils that attend their application, I shall proceed to test the validity of the impugned provision, and, if I do so with any degree of assurance, it is only because of the searching analysis to which counsel have subjected the provision in the light of the principles disclosed by decided eases. For, no case considering this, or even a remotely similar, provision has been brought to my notice; and the fact that opposing counsel have often cited the same decision, sometimes, even the same passage, for arriving at opposite conclusions, emphasises the futility of going to other cases for an assessment of the circumstances of this case, or for ascertaining whether it falls on this or on the other side of the line. A case has to be decided on the sum-total of the several elements referred to in the Supreme Court decisions from which I have just quoted, and unless the provisions are very similar in their purpose, scope and effect, it seems to me a profitless task to try and assimilate the facts and circumstances of one case with those of another. There is no litmus paper test provided by any of the decisions; common factors, do not necessarily point to the same conclusion, and I apprehend that, excepting in the clearest of cases, whatever be the conclusion reached, observations can be found in other cases both in support of and against the view taken.

17. Section 38 of the Banking Companies Act runs thus

"38. (1) Notwithstanding anything contained in Section 391, Section 392, Section 433 and Section 583 of the Companies Act, 1956, but without prejudice to its powers under Sub-Section (1) of Section 37 of this Act the High Court shall order the winding up of a banking company :

(a) if the banking company is unable to pay its debts; or

(b) if an application for its winding up has been made by the Reserve Bank under Section 37 or this section.

(2) The Reserve Bank shall make an application under this section for the winding up of a banking company if it is directed so to do by an order under clause (b) of Sub-Section (4) of Section 35.

(3) The Reserve Bank may make an application under this section for the winding up of a

banking company :
(a) if the banking company -
(i) has failed to comply with the requirements specified in Section 11; or
(ii) has by reason of the provisions of Section 22, become disentitled to carry on banking business in India; or
(iii) has been prohibited from receiving fresh deposits by an order under clause (a) of Sub-Section (4) of Section 35 or under Clause (b) of Sub-Section (3A) of Section 42 of the Reserve Bank of India Act, 1934; or
(iv) having failed to comply with any requirement of this Act other than the requirements laid down in Section 11 has continued such failure or having contravened any provision of this Act has continued such contravention beyond such period or periods as may be specified in that behalf by the Reserve Bank from time to time, after notice in writing of such failure or contravention his been conveyed to the banking company; or
(b) if in the opinion of the Reserve Bank.
(i) a compromise or arrangement sanctioned by a Court in respect of the banking company cannot be worked satisfactorily with or without modifications; or
(ii) the returns, statements or information furnished to it under or in pursuance of the provisions of this Act disclose that the banking company is unable to pay its debts; or
(iii) the continuance of the banking company is prejudicial to the interests of its depositors.
(4) x x x x x x
(5) x x x x x x"

On two matters counsel on both sides are agreed. The first is that action under the impugned provision is dictated by the subjective satisfaction of the Reserve Bank, that that satisfaction though of course not to be capriciously entertained is not reached by the judicial process and is not amenable to judicial review. It is well settled that this is what a formula like, "if in the opinion of" means, and I do not think that after what was laid down in *Liversidge v. Anderson*[17], the contrary has ever been urged. (There, there was the complication introduced by the word "reasonable" but that, it was held, made no difference). It seems to me that no purpose is served by importing the notion of a jurisdictional fact, for, that would not import with it any element of the judicial process. The jurisdictional fact here is whether the Reserve Bank does entertain the opinion mentioned, not whether the situation envisaged therein actually obtains. That opinion it is for the Reserve Bank to form on the basis of its own subjective satisfaction, and it is again for the Reserve Bank to say whether it entertains the opinion or not, not for the court to determine whether or not adequate or, in fact, any, grounds exist for entertaining such an opinion.

[17]1942 AC 206

It has been repeatedly laid down by the Court of Appeal in England, that, in such circumstances a refusal by the authority concerned to place before the court the material on which it formed the opinion would be proper and, although this seems to have been originally done in cases where secrecy was required in the interests of security, later decisions like *Point of Ayr Collieries Ltd. v. Lloyed George*[18], show that the principle is by no means confined to such cases and extends to all cases where the legislature has thought fit to empower an authority to act on its subjective satisfaction. Of course, if the Reserve Bank were to say that it entertained the necessary opinion,

whereas in truth it did not (a state of affairs which it is rather difficult to conceive and which, even if it did exist, would be virtually impossible of proof) that would be an entirely different matter. That would make its action bad for mala fides, a ground which, as we have already seen, is not pursued.

18. The second matter on which counsel on both sides are agreed is that, once the Reserve Bank makes an application Sub-Section (1) of Section 38 makes it obligatory on the court to order winding up "The High Court shall order the winding up" of this Sub-Section in avowedly deliberate departure from the, "A company may be wound up by the Court" of Section 433 of the Companies Act (see the non-obstante clause which excludes the discretion vested in the court by Section 433 and other provisions of the Companies Act) puts this beyond doubt. Indications are not wanting, if they were required - see Sub-Sections (2) and (3) of Section 38 and Sub-Section (4) of Section 35, to mention only a law instances - that nowhere in the statute we are now considering has the legislature confused between "may" and "shall". On the contrary it has throughout used the two words in conscious contrast, and the attempt, somewhat belated, made by one of the seeming supporters of this application, to read the "shall" of Section 38(1) as "may" was foredoomed to failure.

19. The position then is to all intents and purposes as if section 38 had empowered the Reserve Bank to make a winding up order if it was of opinion that the conditions required by the impugned provision obtain. And, if the provision were valid, the court would be powerless to interfere except on the ground of mala fides. It is on this basis that the validity of the impugned provision has to be examined. It seems to me that Sub-Section (1) of Section 38 interposes an order by the court so that the actual winding up may proceed as usual as on such an order, although Mr. Munshi would have it that the real purpose of what ho has chosen to cad the judicial rubber stamp of the Sub-Section is to enable what is in truth the arbitrary fiat of a statutory tyrant to masquerade as a judicial verdict.

20. That at once indicates the scope and content of Mr. Munshi's argument. I might say at the outset that he has no quarrel with the substantive law enunciated by the impugned provision. He does not for a moment say that a banking company whose continuance is prejudicial to the interests of its depositors has any right, fundamental or otherwise, to remain in existence or that a law which provides for the most summary winding up of such a company would be unreasonably restrictive, or harsh or discriminatory if its "prejudicial" character could be objectively demonstrated and were not, as he puts it, a matter for somebody's inscrutable satisfaction, however mighty that somebody might be. His quarrel is with the procedural aspect of the

[18](1943) 2 All ER 546

provision, the mode it prescribes for reaching the conclusion that the continuance is prejudicial. That, according to him is bud both from the point of view of arbitrariness under Article 14 and from the point of view of unreasonableness under Article 19. For, according to him, the impugned provision affords no guiding principle, and enables the Reserve Bank to choose between man and man at its own sweet will and pleasure, and accord to them differential treatment although they may be similarly circumstanced. Discrimination is therefore a vice inherent in the provision.

21. Apart from this contention of what I might call inherent wickedness, Mr. Munshi has also been at pains to show that the impugned provision suffers also from what I might characterise as

comparative wickedness. According to him there are provisions in the Reserve Bank Act and in the Banking Companies Act, in particular. Section 35(4) of the latter Act, which provide for less drastic action by more judicial methods under circumstances identical with the circumstances envisaged in the impugned provision. Therefore, the Reserve Bank can, according to its own unfettered and unguided discretion, in other words, wilfully and arbitrarily, subject one institution to the drastic penalty of a winding up while applying to another which might be in a worse case, more lenient provisions like Section 35(4) of the Banking Companies Act or Section 42 of the Reserve Bank Act.

22. Before considering these objections in detail, I might first survey the context and setting of the statute and explore its purpose and intendment. That a legal person like a company stands on a very different footing from a natural person goes without saying. In a company the affairs of many are conducted by a few, and, what is more important from our point of view, is that the device of a corporate personality and of limited liability enables a company to go bankrupt to the prejudice of its creditors, while the owners of the company, namely, its members, might still be very wealthy.

This aspect of the matter is emphasized manifold in the case of a banking company where, unlike in the case of an ordinary company, business is transacted mainly with the unsecured funds of its depositors, ordinarily many times the paid up capital, in the present case nearly forty times. Moreover, a lender normally deals with an ordinary company much in the same manner as he does with a natural person. He takes security whenever he thinks that prudent, and that element of trust reposed in a banking company by its depositors does not enter into the transaction. In fact, it is not disputed that a banking company can justifiably be subjected to classification as against an ordinary company, and that the most stringent of provisions to safeguard the interests of those who have reposed trust in it cannot be assailed on the ground of an arbitrary differentiation. Everyone who has the least experience of how banking companies in several parts of the country, not the least in this part of the country, were (and, I am afraid, to some extent still are) functioning cannot fail to be impressed with the clear necessity of subjecting the operations of such companies to constant invigilation and strict control. It was to secure this object that Chapter XA was added to the Indian Companies Act by XXII of 1936 - that Chapter has now grown into the Banking Companies Act - and it was partly to secure this object that the Reserve Bank Act was enacted. (The report of the Indian Central Banking Enquiry Committee, 1931, gives the background). By these statutes the legislature set up a highly-placed, independent, expert and well-informed body like the Reserve Bank, and provided it (by way of returns and inspections and the like) with the machinery to keep close watch over the conduct of affairs of the several banking companies in the country. Not merely that, the statutes gave the Reserve Bank power to take action, graded in accordance with the degree of harm, in order to safeguard the interests of the depositors and of the general public so that it could act not merely as their watch-dog but also as their protector. As and when experience showed that the provisions made were not adequate for the protection of the depositors, more and more provisions were added by way of amendment and the provision we are now considering is one such provision added to the Banking Companies Act by Act 33 of 1959. A bare perusal of the Banking Companies Act - it is hardly necessary to refer to particular sections - will show that it is throughout informed by this purpose, namely, the protection of the interests of the depositors, and by this Act as well as by the Reserve Bank Act, Parliament has placed the Reserve Bank in the position of the one expert, well-informed and impartial authority charged with the duty and responsibility of carrying out this purpose.

23. I shall first consider the charge of comparative wickedness. I should think that a bare perusal of the impugned provision and of the several provisions of the Reserve Bank Act and the Banking Companies Act against which it is maligned, will suffice to show that, while all the provisions are conceived in the interests of the depositors, each is intended for a slightly different situation so that there is, as I have said, graded action according to the degree of evil, a remedy, as it were, to suit the disease, a punishment to fit the crime. And in the last resort, when things are beyond redress and danger to the depositors imminent, liquidation.

24. What can be done under Section 42 of the Reserve Bank Act is to inflict penalties, take preventive measures or hoist the danger signal, by way of penal interest, prohibition of finish deposits, and removal from the second schedule, it a banking company fails to observe certain conditions conceived in the interests of the depositors or conducts its affairs to the detriment off the interests of its depositors. But the misdemeanour, if I might call it so, contemplated by the section falls far short of what is contemplated by the impugned provision which postulates that the very continuance of the company is prejudicial to the interests of its depositors. There is little point therefore in comparing the procedure for, or the consequences of, action under Section 42 of the Reserve Bank Act with those of the impugned provision.
Although it might be that both are designed for the same disease, in the case of Section 42 of the Reserve Bank Act the disease is still capable of arrest, but the impugned provision contemplates a position beyond cure or arrest, a situation where the company cannot be allowed to function for a moment longer if the interests of its depositors are to be safeguarded, and where, therefore, the liquidation of the company is a matter of urgency. To my mind the words, "the continuance of the banking company" import this sense of urgency.

25. The same result is reached on a comparison of the impugned provision with other provisions of the Banking Companies Act such as Section 22 and Section 35(4). Under Section 22 a banking company like the present company, functioning under the proviso to Sub-Section (2), can be stopped from doing banking business by a notice in writing by the Reserve Bank informing it that a license cannot be granted to it.
And Sub-Section (4) of the section, dealing with the cancellation of a licence already issued, read with Sub-Section (3), indicates that such action is to be taken if the banking company tails to observe conditions imposed in the interests of its depositors or if it is likely to conduct its affairs in a manner detrimental to the interests of its present or future depositors. Here again we notice that the stage has not been reached where the very continuance of the company is bound to prejudice the interests of its depositors so that it becomes incumbent on the Reserve Bank as the guardian of the depositors to see that the banking company does not function a moment longer but is taken to liquidation. The provisions of Section 22 giving the company a locus paenitentiae as also a right of appeal to the Central Government, cannot therefore be a ground for assailing the impugned provision on the score that it affords the company no such benefits.

26. The case of Section 35(4) is much the same. There the Central Government acts on a report made by the Reserve Bank after an inspection conducted of its own accord or on the direction of the Central Government. If, after considering the report, the Central Government is of opinion that the affairs of the banking company are being conducted to the detriment of the interests of its depositors, it may, after giving the banking company an opportunity to make representations, either,, prohibit the company from receiving fresh deposits or take the company to liquidation by

directing the Reserve Bank to apply under Section 38 whereupon the Reserve Bank would be bound by Sub-Section (2) of Section 38 to make the application and the court would be bound by Sub-Section (1) to make a winding up order. But what is to be noticed here is that the Sub-Section does not contemplate a report by the Reserve Bank to the effect that the very continuance of the banking company is prejudicial to the interests of its depositors, though doubtless it contemplates a report disclosing unsatisfactory features. That Section 35(4) uses the words "to the detriment of" while the impugned provision uses the words, "prejudicial to" with reference to the interests of the depositors, of course, makes no difference. Both mean the same thing, but whereas the Reserve Bank is to set under the impugned provision if it comes to the opinion that the very continuance of the banking company is prejudicial to the interests of its depositors, the Central Government is to act under Sub-Section (4) of Section 35 if, after considering the report by the Reserve Bank, it conies to the opinion, not as yet that the very continuance of the company is prejudicial, but that the affairs of the banking company are being conducted in a prejudicial manner.

As I have explained before, the two things are different, though the difference might be one of degree rather than of kind. They are different stages of the same misdemeanour or disease, namely, prejudicial conduct, but the stage reached by the impugned provision is so far advanced that nothing can be done to save the depositors except the winding up of the company and the danger to them is so imminent that no time is to be lost. When the Reserve Bank finds, whether as a result of an inspection or otherwise, that this stage has been reached, it is bound to act under the impugned provision. If it does not but, nevertheless, its report leads the Central Government to think that all is not well with the company and that action is called for to see that it conducts its affairs properly, then the Central Government acts under Sub-Section (4) to Section 35. The degree of evil not being so great, and action for safeguarding the interests of the depositors not being a matter of such emergency, Sub-Section (4) of Section 35 provides for a hearing and provides also in the shape of the proviso thereto for a locus paenitcntiae. If, after this, the Central Government is satisfied that the company should not be allowed to continue and that is more or less the stage contemplated by the impugned provision it can make a prohibition under clause (a) of Sub-Section (4) of Section 35 or take the company into liquidation by a direction under clause (b). It seems to me clear that Sub-Section (4) of Section 35 and the impugned provision do not provide for the same circumstances. The evil in the latter case is greater and more imminent and, naturally, the steps to counter it more drastic and summary.

27. It has been pointed out that the several provisions in Section 38(3) itself make for differentiation. Those in clause (a) of the Sub-Section postulate certain objective requirements regarding which the Reserve Bank must satisfy the court before it can get a winding up order whereas those in clause (b) have no such objective requirements and compel the court to act on the subjective satisfaction of the Reserve Bank. It seems to me that both clauses contemplate a state of affairs where the continuance of the banking company cannot be permitted in the interests of its depositors. In the cases falling under clause (a), if certain circumstances capable of ready proof, such as failure to comply with the requirements specified in Section 11, or the refusal or the cancellation of a licence under Section 22, or a prohibition from receiving fresh deposits, exist, the statute itself draws the presumption that the continuance of the banking company will imperil the interests of its depositors. Clause (b) however provides for cases where, for other reasons, it appears to the Reserve Bank that the banking company should not be allowed to continue. Those reasons are that a banking company which is already in difficulties and has therefore had to work under a compromise or arrangement sanctioned by the court, is

unable to work the arrangement, or where the returns and other information furnished by the banking company show that it is unable to pay its debts, or the continuance of the banking company is prejudicial to the interests of its depositors. These are largely matters for expert opinion after skilled investigation, not so much matters for objective proof, and here, apart from providing guidance by enunciating the principles on which, and the circumstances in which, the Reserve Bank is to come to the opinion, the formation of the opinion is left to the subjective process of the Reserve Bank's mind.

28. The new provisions introduced by Act 37 of 1960 in the shape of Section 45 of the Banking Companies Act for a moratorium accompanied by a prohibition of payments with power to enforce a scheme of reconstruction or amalgamation have been brought to my notice. But while it has been suggested that the Reserve Bank and the Central Government could well act under those provisions - and it would appear there is nothing to prevent them from doing so if they think fit even now - it is not contended that these new provisions provide for the same situation as the impugned provision so that there is no need to inquire whether they are less onerous.

29. The charge of comparative wickedness must fail, and so too must if what I have already said is correct, the charge of inherent wickedness. For, as I have understood it, what the impugned provision contemplates when it says, "the continuance of the banking company is prejudicial to the interests of its depositors" is a state of affairs where the company cannot be allowed to function a moment longer if its depositors are not to suffer, where action, if it is to be effective, has to be swift, perhaps also secret. Such a state of affairs might come about in the natural course of things by the continued conduct of the company's affairs in a manner detrimental to the interests of the depositors, or, its immediate cause might be, as in the present case, a new and unexpected mischief (though possibly springing from the prime cause of unsatisfactory conduct of affairs) like a run which, if allowed to continue, would make it impossible for the company to pay all its depositors from its readily realizable assets with the result that, if its total realizable, assets prove insufficient to meet its liabilities, its less favored depositors will have to go with nothing. The complaint made against the impugned provision is that it vests in an authority like the Reserve Bank, doubtless an impartial and expert body, but, nevertheless, not infallible - the Reserve Bank, I might say, lays no claim to infallibility and probably counts this very case as one of its failures-with the power of taking a running company to liquidation in the exercise oh its own discretion without any of the safeguards inherent in the judicial process. But once the position envisaged by the impugned provision has been reached, once a state of affairs has come about whereunder a company cannot be allowed to function any longer, it seems to me clear that the judicial process with its opportunity to show cause, its review by higher tribunals, its attendant stays and the loss of time that all this involves would be singularly inept if the purpose of the statute is to be served. The Reserve Bank is the one authority which has all the information and all the expert knowledge necessary for swift and effective action. It is a high, independent and impartial body with no master to serve except the public interests, no interest of its own arid no competing claims to reconcile, in fact nothing which can induce bias or cloud or sway its judgment, and, if the legislature has thought fit to repose in such a body the confidence that, in the light of the guidance given by the statute, it would act rightly on its own subjective satisfaction, that is not to invest it with the power to deal differently with persons similarly circumstanced or to act in an arbitrary manner. It is only in the emergency contemplated by the section that the Reserve Bank can act, and such an emergency cannot wait upon the unavoidable delays of the judicial process. To use a homely phrase it would be to lock the stable door after the

steed has been stolen.

30. It might be pertinent to examine what would be the practical outcome if the Reserve Bank were required to decide judicially before making an application for winding up, and its decision were subject to judicial review. The reputation of a banking company is most delicate and, even in a case where a winding up petition is brought by a private party maliciously and without the least foundation, the result might well be such irreparable harm to its reputation as to induce a run making its continuance difficult. But, if an application for winding up is made by an authority like the Reserve Bank on the ground that the continuance of a banking company is prejudicial to the interests of its depositors, by an authority which as I have already said, is not merely impartial and expert but is by law charged with the duty of supervision and with the means of obtaining all relevant information, the company would have little chance of survival. (And this, I apprehend, would be a very probable result of action under what has been called the less drastic provisions of the Reserve Bank Act and the Banking Companies Act against which the impugned provision is blackened, such as the refusal of a license, the prohibition of fresh deposits or even the withdrawal of what was popularly, but, it would appear mistakenly, regarded as the hall mark of scheduling. The very bringing of the application would be its death-knell and judicial review would then partake of the nature of a post-mortem examination. I do not suppose there would be any point in giving the company the posthumous satisfaction of knowing whether it was really necessary to destroy it to keep it out of mischief, whether its illness would, in any case, have proved fatal or could have been cured, whether, as Mr. Munshi put it, what should have been used on it was the surgeon's knife rather than the guillotine. Nor are these matters in which the mourners or the general public would be interested, and the law cannot be blamed if it does not provide for such a profitless investigation. Even if an application brought by the Reserve Bank were to be dismissed by the court, the law enabling this, the company could live but a moment longer - some creditor, or the company itself, would have to seek its liquidation - and in this brief moment, irreparable harm may be done. If some machinery had to be devised for ascertaining whether a banking company had reached a stage where its further continuance would be perilous and some authority empowered to take it to quick liquidation I should think the best authority to choose would be the Reserve Bank, and the best machinery, its subjective satisfaction based on the intimate knowledge with which the law provides it. And considered in the light of the several provisions of the Banking Companies Act and the Reserve Bank Act to which I have drawn attention, and to their general scheme, I should think the words, "the continuance of the banking company is prejudicial, to the interests of its depositors" afford ample guidance to the Reserve Bank in the exercise of its discretion as to whether or not it should take the company to liquidation by making an application. The giant's strength might be there but only to sub-serve the purpose of the statute, namely, the protection of the depositors, and its use, it seems to me, is nicely regulated to that end. I think that the charge leveled against the impugned provision on the strength of Article 14 is groundless.

31. Whether considered from the point of view of inherent or of comparative wickedness I think the impugned provision falls within cases like AIR 1952 SC 123 and *T.K. Musaliar v. Venkatachalam*[19], rather than within AIR 1952 SC 75, *Mohta and Co. v. Viswanatha Sastri*[20], or *Meenakshi Mills v. Viswanatha Sastri*[21], The words that passed muster with the Supreme Court, "prejudicial to public safety or the maintenance of public order" in *Dr. N.B. Khare v. State of Delhi*[22], "to provide for public safety, maintenance of public order and preservation of peace and tranquillity in the State of Saurashtra", in AIR 1952 SC 123; "for maintaining or increasing

supplies of essential commodities or securing their equitable distribution" in *Harishankar Bagla v. M.P. State*[23], "to a substantial extent evaded payment of taxation on income" in AIR 1956 SC 246 (to give but four instances) as affording sufficient guidance to save executive action based on subjective satisfaction from the vice of arbitrariness, do not appear to be more definite or to give greater guidance, having regard to the scope and purpose of the statute concerned, than the words of the impugned provision.

32. A winding up order means that a company goes out of business. It also means as pointed out in. *In re Oriental Inland Steam Company v. Ex parte Scinde Ry. Co*[24]., that although it does not lose legal title to its property (since, unlike in the case of

[19] AIR 1956 SC 246 [21] AIR 1955 SC 13 [23] AIR 1954 SC 465
[20] AIR 1954 SC 545 [22] AIR 1950 SC 211 [24](1874) 9 Ch A 557

bankruptcy there is no vesting in a receiver) the company losesall beneficial interest therein since the liquidator has to hold the property in trust for its creditors and contributories. Therefore, it cannot be doubted that such an order does affect the fundamental rights in sub-clauses (f) and (g) of clause (1) of Article 19 of the Constitution. The enquiry then is whether the impugned provision, which enables the Reserve Bank to take a banking company to liquidation, is saved by clauses 5 and 6 of the Article. From what I have already said in discussing the charge of discrimination, it must follow that the restriction in the impugned provision passes the test of reasonableness in the interests of the general public imposed by those clauses.
As I said at the beginning, it is agreed on all hands that a banking company whose continuance is prejudicial to the interests of the depositors must be stopped from functioning. That is an end dictated by the interests of the general public, and a law which provides for that cannot be assailed on the ground of the fundamental rights in Article 19(1)(f) and (g). The quarrel is with the means; but, consistent with the need for speedy and effective action, I can think of no means more fair or more reasonable than the means adopted by the impugned provision by which a trusted authority charged with the duty and provided with the means of keeping itself informed of the day to day working of the several banking companies in the country, and which has all the expert knowledge required for coming to a proper decision in the matter, is asked to act on being satisfied that the continuance of a banking company is prejudicial to the interests of its depositors and that the banking company should therefore be wound up.

33. I may in this connection observe that, unlike the human, person, respect for whose fife and liberty is the very breach of our Constitution, no sanctity attaches to the personality of a company. There is nothing abhorrent in that personality being destroyed by mere administrative action and certainly no general principle that the winding up of a company should be by an order of court. A company can be wound up voluntarily, and there are several special statutes which provide for the dissolution of a company at the discretion of an administrative authority.

34. Although in the view I have taken that the impugned provision comes within the saving in clauses (5) and (6) of Article 19, this might not be necessary, I may, out of respect for the very elaborate arguments that have been addressed, refer briefly to the contention put forward that a legal person like a corporation cannot claim the fundamental rights in Article 19 which are in terms conferred only on citizens. That, except where the context otherwise requires, a company is a person within the meaning of the Constitution by virtue of Section 3(42) of the General Clauses Act read with Article 367 of the Constitution can scarcely be disputed, but, what is

contended is that a company though a person and therefore eligible for the fundamental rights conferred on all persons, is not a citizen and is therefore ineligible for the rights like those in Article 19 conferred only on citizens. I am not impressed.
Many of the rights in Article 19(1) and, in particular, those in clauses (f) and (g) thereof, are capable of enjoyment by companies. Our Constitution-makers could not have been unaware of the existence of legal persons. By Article 19(1)(c) they gave all citizens the right to form associations and unions, and it could not have been their intention that the corporate bodies so formed by citizens, should be denied the rights guaranteed to the individual citizens, in particular that the agencies through which a substantial portion of their business is conducted by the citizens of this country and a considerable portion of their property held, should not have the protection of clauses (f) and (g). That would mean a denial of the fundamental rights to property and occupation not merely to companies but to all corporate bodies even though they may be Indian in every sense of the term, their members Indian, directors Indian, and capital Indian, a denial which virtually amounts to a denial of those fundamental rights to the citizens who (though, of course, different persons) really constitute those bodies. Such an intention of placing a purely Indian company beyond the pale of protection, is something with which I find it difficult to credit our founding fathers; and the fact that American courts have held that a corporation is not a citizen within the meaning of their Constitution because in 1787, when that Constitution was adopted, the word "citizen" was commonly understood as confined to human beings, can be no reason for thinking that two centuries later, in 1949, our Constitution-makers used the word in the same limited sense and not in its modern sense which is wide enough to include legal persons. For, it is not contended that there is something in the very notion of citizenship that rules out a legal person from its fold; on the contrary it is conceded that the law recognizes that legal persons, and not merely natural persons can be citizens.

35. Nor do I think that there is a casus omissus, for, I think that Article 5 of the Constitution which lays down who shall be citizens at the commencement of the Constitution, can apply both to natural and to legal persons. So far as citizenship after the commencement was concerned, that was a matter left to Parliament under Article 11 read with entry 17 in list 1 of the seventh Schedule, and the fact that, in making law for that purpose in the shape of the Citizenship Act, 1953, Parliament excluded companies and other bodies of individuals from the operation of that law by excluding them from the definition of "person", does not mean that a company cannot be a citizen. The Act does not purport to terminate, of otherwise affect, the citizenship conferred by Article 5 of the Constitution, and if by reason of that Article a company was a citizen at the commencement, it continues to be so - see Article 10. The omission in the Act, deliberate though it be only means that we have as yet no law of citizenship so far as legal persons who came into existence after the commencement of the Constitution are concerned.

36. We need not enter into the controversy, profitless from any practical point of view, as to whether the personality with which the law invests a legal person is real or fictitious, for, the course of decisions in England and in America shows that, though reluctantly to begin with, courts have more and more found it necessary to endow legal person by analogy with the attributes of a natural person if the law is to be worked. And the courts in India have walked in the foot-prints of the English common law. Thus the concepts of residence and domicile in relation to a company are now well accepted - see in this connection Rules 76 and 77 at pages 477 and 478 of Dicy's Conflict of Laws, 7th Edition - and the concept of domicile is itself founded on the fiction of birth at the place of incorporation on the analogy of the domicile of

origin in the case of natural persons. In the Cessna case Huddleston, B. said, "taking the analogy between a natural and artificial person, in the case of corporation you can say that the place of its registration is the place of its birth" and much the same thing was said by Lord Cave, L.C. and Younger, L.J., in *Bradbury v. English Sewing Cotton Co., Ltd*[25]*.,* and by Sargant, L.J., in *Todd v. Egyptian Delta Land and Investment Co. Ltd*[26]*.,* And, although the last mentioned decision was reversed by the House of Lords in (1929) Appeal Cases 1, Lord Sumner in his speech on that occasion accepted the analogy when he said that the incorporation prescribed by the English Companies (Consolidation) Act, 1908 "at the most does no more than bring the embryo company to birth". Salmond on Jurisprudence at page 371 of the 11th Edition speaks of the birth and death of legal persons, and I think it can be regarded as well settled that a company is capable of having a place of birth, a residence, an ordinary residence if you will, and a domicile, that its place of birth is the place of its registration, that that is also its domicile, and that its residence or ordinary residence (we need not go into the vexed question whether plural residence is possible) is "where the central management and control actually abides".

37. Article 5 of the Constitution runs thus :

> "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."

This particular company we are considering was registered in the territory of India in 1927; it has since then had its management and has been conducting its business, within the territory of India. The basic requirement of the Article, of domicile within the territory at the commencement, is therefore satisfied and, so far as the additional qualification demanded by the article is concerned (any one of the three specified will suffice) I find no difficulty in holding that this company has the qualifications in clauses (a) and (c). I see no warrant for the assumption, on which the entire argument is based, namely, that Article 5 can apply only to natural and not to legal persons.
It is true that clause (b) of the Article cannot appropriately be applied to a company - at any rate it would appear that no court has yet found it necessary to invest a company with parentage - but that is only one of three alternative clauses, and I know of no principle of statutory construction which demands that it should lend its colour to the clauses preceding and following it. Nor why because Articles 6, 7 and 8 and Article 39(a) can apply only to natural persons, the application of Article 5 should be similarly circumscribed. Nor again why, because in the case of a corporation, its domicile is in the place where it was born, or because Lord Sumner thought (in (1929) Appeal Cases 1) that the term, "ordinarily resident" was an inappropriate term, to apply to an artificial person who is always and by law immovable resident, we should, in our anxiety to save the Article from a possible charge of redundancy and infelicity, say that the Article does not apply to corporations when its language, adopted with an eye to what is undoubtedly its primary object, namely, human citizens, is capable of such application.

[25](1933) AC 744
[26](1928) 1 K.B. 152

38. In AIR 1951 SC 41 Mukherjea, J., (as he then was) observed thus at page 52 of the report :

> "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."

As I have already shown there is nothing in the of Article 19(1) read with Art 5 to indicate that legal persons are excluded from the scope of that article; on the contrary the nature of the rights conferred by the Article, by clauses, (f) and (g) in particular, are such that they should in reason he available not merely to individual citizens but also to corporate bodies.

39. A number of cases decided by the Supreme Court have proceeded on the assumption that a company can be eligible for the rights conferred, by Article 19. *Bijay Cotton Mills Ltd. v. State of Ajmer*[27], *Bhatnagars and Co. Ltd. v. Union of India*[28], *Bombay Dyeing and Manufacturing Co. Ltd. v. State of Bombay*[29], and *Express Newspaper Ltd. v. Union of India*[30], are some of these cases, and it may well be taken that they decided the question, by implication. No doubt the question was expressly left open in *Bengal Immunity Co. v. State of Bihar*[31], *State of Bombay v. R.M.D. Chamarbaugwala*[32], and *Sewpujanrai Indrasanrai Ltd. v. Collector of Customs*[33], but, I think with a leaning, unmistakable in the last mentioned case, in favour of corporate citizenship.

40. In this view I think it unnecessary to consider the decisions of the several High Courts on the point. Those brought to my notice are *Narasaraopeta Electric Corporation Ltd. v. State of Madras*[34], *Jupiter General Insiirance Co. v. Rajagopalan*[35], and *Cherry Hosiery Mills v. S.K. Chose*[36], in favour of the contention that a company is not a citizen; and *State of Bombay v. R.M.D. Chamarbaugwalia*[37], and the appeal therefrom (reported also in AIR 1956 Bombay 1) and *Maharaja Kishangarh Mills Ltd. v. State of Rajasthan*[38], to the contrary. I shall content myself with observing that whatever might be the position of companies "born" after the Constitution (by reason of the omission by the Citizenship Act, 1955, to provide for their citizenship when it provided for the-citizenship of natural persons), so far as the present case is concerned it is not necessary to muster the courage and boldness commended by Chagla, C.J., in AIR 1956 Bombay 1 and, following the example set by the American Supreme Court in 1809 in *Bank of United States v. Deveaux*[39], tear the corporate veil and look behind it for the purpose of ascertaining whether the share-holders of the company are not citizens and whether the company should not therefore have the fundamental rights which each of its share-holders has, a courage and boldness which, it would appear, has been regretted in that country and by none more than by the very Chief Justice who rendered that judgment. But if that is done, the present company would undoubtedly qualify.

[27] 1955-1 SCR 752 : AIR 1955 SC 33
[28] AIR 1957 SC 478
[29] AIR 1958 SC 328
[30] AIR 1958 SC 578
[31] AIR 1955 SC 661
[32] AIR 1957 SC 699
[33] AIR 1958 SC 845
[34] AIR 1951 Mad 979
[35] AIR 1952 Pun 9
[36] AIR 1959 Cal 397
[37] 57 Bom LR 288 : AIR 1956 Bomb 1
[38] AIR 1953 Raj 188
[39] (1809) 3 Law Ed 38

41. I might perhaps add that I am not sure that Part II of the Constitution and the Citizenship Act, 1955, exhaust between them the law of citizenship leaving nothing of the common law behind. I am not for a moment suggesting that Article 19 uses the word, "citizen" in any sense different from its sense in Part II or entry 17 in list 1, but if there is any residue of the common law left it might be well to remember that since 1869 when Lord Westbury delivered his classic judgment

in *Udny v. Udny*[40], the common law view has been that citizenship is governed by domicile which as we have seen is determined in the case of a company by the place of its registration.

42. It is also said that, although a legal person like a corporation can have some other statute struck down on the score that it is violative of its fundamental rights, it can scarcely be heard to ask that the very statute which gave it life and made it a person should be so struck down. A company is a person only because of the law that makes it one and if that law chooses to limit its personality, then the creature of that very law cannot look to Article 19 for enlarging the rights which the law that brought it into existence thought fit to restrict. This argument presupposes that it is to the Banking Companies Act that banking companies owe their existence, but, assuming that the Banking Companies Act is, as it at one time was only a special chapter of the Companies Act, I do not think it can be said that it was these Acts that made a person of the present company. If was the old Travancore Companies Act that invested this company with personality and that Act had no provision similar to the impugned provision. When the Constitution came into force this company was already a person, and, as I have shown also a citizen in whom vested the fundamental rights in Article 19. Any restrictive law thereafter made, whether by a separate statute, or by way of amendment to the very statute under which the company is incorporated, would, I think, have to satisfy the test of reasonableness laid clown in Clauses 5 and 6 of Article 19 if it is to survive.

43. In my view, the impugned provision need not suffer immolation at the alter of the fundamental rights.

44. There remains only the question of mala fides. Although the counter-affidavits filed on behalf of the company implied, if they did not expressly aver fraud and dishonesty, Mr. Munshi made it quite clear at the very commencement of his argument that he was making no such imputation against the Reserve Bank or suggesting that it acted through some improper or ulterior motive. He was however for some time at pains to make out a special kind of mala fides, not real fraud or dishonesty but a sort of constructive fraud arising out of an entire lack of materials on which the Reserve Bank could found its opinion or a complete misapprehension on its part of the true position. As if mala fides were the converse of "good faith" as defined in Section 52 of the Indian Penal Code.

> "Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention."

But as pointed out in *Subramania Aiyar v. United India Life Insurance Co. Ltd*[41]., the

[40](1869) 1 SC and Div 441

[41]55 MLJ 385 at pp. 407 and 408 : (AIR 1928 Mad 1215 at PP. 1224-25)

proposition of constructive corruption or constructive dishonesty was so ruthlessly repelled by *Lords Watson and Bramwell in Adams v. Great North of Scotland Ry. Co*[42]., that I do not think a doctrine of constructive mala fides can be put forward. And, if "mala fides" embraces all that is left out by "good faith" I think the definition of "'good faith" in Section 3(22) of the General Clauses Act, "a thing shall be deemed to be done in 'good faith' where it is in fact done honestly, whether it is clone negligently or not" would be the proper definition to adopt, in fact, before the close of his argument, Mr. Munshi conceded that, in view of the decisions in *Puranlal Lakhanpal v. Union of India*[43], and *State of Bombay v. K.P. Krishnan*[44], he was not in a position to press his

case of mala fides.

45. In view of the wording of the impugned provision it was, as I have already said, open to the Reserve Bank not to disclose the materials on which it arrived at the opinion that the continuance of the company was prejudicial to the interests of its depositors. It has however chosen to place all the materials before the court, and, in view of the charge of mala fides at one stage levelled against it, I think it only proper to say that it is clear from the several documents filed in the case and the several particulars furnished by the company itself that, ever since 1952, the Reserve Bank was taking grave defects in its working to the notice of the company and was giving it repeated opportunities either to explain away the defects if it could, or remedy them.
Neither was done by the company, and it seems to me that the Reserve Bank far from having acted without adequate material or in a hasty and ill-considered manner was doubtless alive to. the grave responsibility placed upon it to preserve the banking structure of the country, acted with a. degree of care and circumspection which has drawn to it adverse criticism from those who do not share its responsibility. Faced with the rim it would have failed in its duty by the depositors had it not acted as it did.

46. In the result I allow the application and order that the Palai Central Bank Ltd., be wound up.

47. The Reserve Bank will get its costs from those who have appeared to oppose this application, in the last resort from the assets of the company.
Application allowed.

[42] 1891 AC 31

[43] AIR 1958 SC 163

[44] (1960) 2 Lab LJ 592 : AIR 1960 SC 1223