

v.

## STATE OF BIHAR AND OTHERS

(P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, J. C. SHAH, N. RAJAGOPALA AYYANGAR AND S. M. SIKRI JJ.)

*Corporation—Position of—Whether citizen—Whether petition under Art. 32 by Corporation claiming a fundamental right guaranteed under Art. 19 competent—Doctrine of piercing the corporate veil—Exceptions to rule that Corporation has a separate legal entity—Levy of Sales Tax challenged—Constitution of India, Arts. 19, 32 and 286(1) (a).*

The petitioners were ordered to pay sales-tax on account of certain transactions made by them in the State of Bihar. Their contention was that the sales in question took place outside the state and hence they were entitled to the protection of Art. 286(1)(a). Their plea was rejected by the Sales-tax authorities and it was held that Art. 286(1)(a) did not apply to them. The petitioners challenged the orders of the sales-tax authorities by writ petitions filed by them under Art. 32 of the Constitution.

A preliminary objection was taken on behalf of respondents that the petitions were not competent as those were filed by corporations or companies and the provisions of Art. 19 did not apply to them as corporations were not citizens. Dismissing the writ petitions,

*Held*.—The petitions under Art. 32 were incompetent although in each of them one or two of the share-holders of the petitioning companies or corporations had also joined. Article 19 guarantees rights to citizens as such and associations cannot lay claim to the fundamental rights guaranteed by that Article solely on the basis of their being an aggregation of citizens. Once a company or a corporation is formed, the business which is carried on by the said company or corporation is the business of the company or corporation and is not the business of the citizens who got the company or corporation formed or incorporated and the rights of the incorporated body must be judged on that footing and cannot be judged on the assumption that they are the rights attributable to the business of individual citizens. The petitioners cannot be heard to say that their share-holders should be allowed to file the present petitions on the ground that in substance, the corporations and companies are nothing more than association of share-holders and members thereof. If their contention is accepted, it would really mean that what the corporations or companies cannot achieve directly, they can achieve indirectly by relying upon the doctrine of lifting the veil. If the corporations and companies are not citizens, it means that the Constitution intended that they should not get the benefit of Art. 19.

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The position of a corporation is that it is in law equal to a natural person and has a legal entity of its own. That entity is entirely separate from that of its shareholders. It bears its own name and has a seal of its own. Its assets are separate and distinct from those of its members. It can sue and be sued exclusively for its own purpose. Its creditors cannot obtain satisfaction from the assets of its members. The liability of the members or share holders is limited to the capital invested by them. The creditors of the members have no right to the assets of the corporation. However, there are some exceptions to the rule that the corporation or a company has a juristic or legal entity and the doctrine of lifting the veil of a corporation and examining its face in substance has been applied in many cases but the same does not apply in the present case.

*State of Trading Corporation of India Ltd. v. The Commercial Tax Officer & Ors.* A.I.R. 1963 S.C. 1811, *Smt. Ujjam Bai v. State of Uttar Pradesh.* [1963] 1 S.C.R. 778, *Indo-China Steam Navigation Co. Ltd. v. Additional Collector of Customs.* [1964] 6 S.C.R. 594, *Kailash Nath v. State of U.P.* A.I.R. 1957 S.C. 790, *Thakur Amar Singhji v. State of Rajasthan,* [1955] 2 S.C.R. 303, *M/s. Mohanlal Hargovind v. State of Madhya Pradesh.* [1955] 2 S.C.R. 509, *Y. Mahaboob Sheriff v. Mysore State Transport Authority.* [1960] 2 S.C.R. 146, *J. V. Gokar & Co. (P) Ltd. v. Assistant Collector of Sales-tax (inspection),* [1960] 2 S.C.R. 852, *Universal Imports Agency v. Chief Controller of Imports & Exports* [1960] 1 S.C.R. 305, *State Trading Corporation of India Ltd. v. State of Mysore,* 14 S.T.C. 188, *State Trading Corporation of India Ltd. v. State of Mysore.* 14 S.T.C. 416, *Salomon v. Salomon & Co.* [1897] A.C. 22, H.L. *The English & Scottish Joint Co-operative Wholesale Society Ltd. v. Commissioner of Agricultural Income-tax Assam.* 1948 I.T.R. 270, *Daimler Company Ltd. v. Continental Tyre and Rubber Co. (Great Britain) Ltd.* [1916] A. C. 307 and *All India Bank Employees' Association v. National Industrial Tribunal & Ors.* [1962] 3 S.C.R. 269, referred to.

CRIMINAL JURISDICTION: Writ Petitions Nos. 112 and 113 of 1961 etc.

Petition under Art. 32 of the Constitution of India for enforcement of Fundamental rights.

*N. A. Palkhivala, J. B. Dadachanji, O. C. Mathur and Ravinder Narain,* for the petitioners (in W.P. Nos. 112 and 113 of 61 and 79 to 80 of 1962).

*M. C. Setalvad, D. P. Singh, M. K. Ramamurthi, R. K. Garg and S. C. Agarwal,* for the respondents (in W.P. Nos. 112 and 113 of 1961).

*S. V. Gupte, Additional Solicitor-General, N. S. Bindra and R. H. Dhebar*, for the respondents (in W.P. Nos. 79 and 80 of 62).

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*G. S. Pathak, B. Dutta, J. B. Dadachanji, O. C. Mathur and Ravinder Narain*, for the petitioners (in W.P. Nos. 202—204/1961).

*A. Ranganadham Chetty and T. V. R. Tatachari*, for the respondents (in W.P. Nos. 202 and 203 of 1961).

*Lal Narain Sinha, M. K. Ramamurthi, R. K. Garg and S. C. Agarwal*, for the respondent (in W.P. 204 of 1961).

February 25, 1964. The Judgment of the Court was delivered by

GAJENDRAGADKAR, C.J.—These writ petitions have been placed for hearing before us in a group, because they raise a common question of law in regard to the validity of the demand for sales tax which has been made against the respective petitioners by the Sales-tax Officers for different areas. The facts in respect of each one of the writ petitions are not the same and the years for which the demand is made are also different; but the pattern of contention is uniform and the arguments urged in each one of them are exactly the same. Broadly stated, the case for the petitioners is that the appropriate authorities purporting to act under the different Sales Tax Acts are attempting to recover from the petitioners sales-tax in respect of transactions to which the petitioners were parties, though the said transactions are not taxable under Art. 286 of the Constitution. Art. 286(1)(a) provides that no law of a Sales shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place outside the State; and the argument is that the sales in question are all sales which took place outside the State and as such, are entitled to the protection of Art. 286(1)(a). The authorities under the respective Sales Tax Acts have rejected the petitioners' contention that the transactions in question are inter-State sales and have held that Art. 286(1)(a) is not applicable to them. A similar finding has been recorded against the petitioners under Art. 286(2). The petitioners' grievance

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is that by coming to this erroneous conclusion, a tax is being levied against them in respect of transactions protected by Art. 286(1)(a) and that constitutes a breach of their fundamental rights under Art. 31(1). It is this alleged infringement of their fundamental rights that they seek to bring before this Court under Art. 32(1). It has been urged on their behalf that the right to move this Court under Art. 32(1) is itself a fundamental right, and so, under Art. 32(2) an appropriate order should be passed setting aside the directions issued by the Sales-tax Authorities calling upon the petitioners either to pay the sales-tax, or to comply with other directions issued by them in that behalf.

For dealing with the points raised by these writ petitions, it is not necessary to set out the facts in respect of each one of them. For convenience we will refer to the facts set out by the Tata Engineering & Locomotive Co. Ltd., the petitioner in W.Ps. Nos. 112 and 113 of 1961. The petitioner is a company registered under the Indian Companies Act, 1913 and carries on the business of manufacturing, *inter alia*, Diesel Truck and Bus chassis and the spare parts and accessories thereof at Jamshedpur in the State of Bihar. The company sells these products to dealers, State Transport Organisations and others doing business in various States of India. The registered office of the petitioner is in Bombay. In order to promote its trade throughout the country, the petitioner has entered into Dealership Agreements with different persons. The modus adopted by the petitioner in carrying on its business in different parts of India is to sell its products to the dealers by virtue of the relevant provisions of the Dealership Agreements. Accordingly, the petitioner distributes and sells its vehicles to dealers, State Transport Organisations and consumers in the manner set out in the petition. The petitioner contends that the sales in respect of which the present petitions have been filed were effected in the course of inter-State trade and as such, were not liable to be taxed under the relevant provisions of the Sales Tax Act. The Sales-tax Officer, on the other hand, has held that the sales had taken place within the State of Bihar and were intra-State sales and as such, were liable to assessment under the Bihar Sales Tax

Act. In accordance with this conclusion, further steps are threatened against the petitioner in the matter of recovery of the sales-tax calculated by the appropriate authorities. The petitioner is a company and a majority of its shareholders are Indian citizens, two of whom have joined the present petitions.

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The petitioners in W.Ps. Nos. 79 and 80/1962 are the Automobile Products of India Ltd. and Another. The majority of the share-holders of this company are also citizens of India and one of them has joined the petitions.

Writ petitions Nos. 202—204/1961 have been filed by the State Trading Corporation of India Ltd. The shareholders of this Corporation are the President of India, and two Additional Secretaries, Ministry of Commerce and Industry, Government of India; one of these Secretaries, has joined the petitions. It may incidentally be stated at this stage that these writ petitions were heard by a Special Bench of this Court on the 26th July, 1963 in order to determine the constitutional question as to whether the State Trading Corporation Ltd. can claim to be a citizen within the meaning of Art. 19 of the Constitution. The majority decision rendered in these writ petitions on the preliminary issue referred to the Special Bench was that the petitioner as a State Trading Corporation is not a citizen under Art. 19, and so, could not claim the protection of the fundamental rights guaranteed by the said Article [*vide State Trading Corporation of India Ltd. v. The Commercial Tax Officer and Others*(<sup>1</sup>)]. That is why this petitioner along with other petitioners have made the petitions in the names of the companies as well as one or two of their shareholders respectively. It is argued on behalf of the petitioners that though the company or the Corporation may not be an Indian citizen under Art. 19, that should not prejudice the petitioners' case, because, in substance, the Corporation is no more than an instrument or agent appointed by its Indian shareholders and as such, it should be open to the petitioners either acting themselves as companies or acting through

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their shareholders to claim the relief for which the present petitions have been filed under Art. 32.

These petitions are resisted by the respective States on the ground that the petitions are not competent under Art. 32. The respondents contend that the main attack of the petitioners is against the findings of the Sales-tax Officers in regard to the character of the impugned sale transactions and they urge that even if the said findings are wrong, that cannot attract the provisions of Art. 32. The validity of the respective Sales-tax Acts is not challenged and if purporting to exercise their powers under the relevant provisions of the said Acts, the appropriate authorities have, during the course of the assessment proceedings, come to the conclusion that the impugned transactions are intra-State sales and do not fall under Art. 286(1)(a), that is a decision which is quasi-judicial in character and even an erroneous decision rendered in such assessment proceedings cannot be said to contravene the fundamental rights of a citizen which would justify recourse to Art. 32. In other words, the alleged breach of the petitioners' fundamental rights being referable to a quasi-judicial order made by a Tribunal appointed under a valid Sales-tax Act, does not bring the case within Art. 32. That is the first preliminary ground on which the competence of the writ petitions is challenged. In support of this plea, reliance is placed by the respondents on a recent decision of a Special Bench of this Court in *Smt. Ujjam Bai v. State of Uttar Pradesh*<sup>(1)</sup>.

There is another preliminary objection raised by the respondents against the competence of the writ petitions, and that is based upon the decision of this Court in the case of the *State Trading Corporation of India Ltd.*<sup>(2)</sup>. It is urged that the decision of this Court that the State Trading Corporation is not a citizen, necessarily means that the fundamental rights guaranteed by Art. 19 which can be claimed only by citizens cannot be claimed by such a Corporation, and so, there can be no scope for looking at the substance of the matter and giving to the shareholders indirectly the right which the Corporation as a separate

(1) [1963] 1 S.C.R. 778.

(2) A.I.R. 1963 S.C. 1811.

legal entity is not directly entitled to claim. The respondents have urged that in dealing with the plea of the petitioners that the veil worn by the Corporation as a separate legal entity should be lifted and the substantial character of the Corporation should be determined without reference to the technical position that the Corporation is a separate entity, we ought to bear in mind the decision of this Court in the case of the *State Trading Corporation of India Ltd.*(<sup>1</sup>). Basing themselves on this contention, the respondents have also argued that if the fundamental rights guaranteed by Art. 19 are not available to the petitioners, then their plea that the sales-tax is being collected from them contrary to Art. 31(1) must fail and in support of this contention reliance is placed upon a recent decision of this Court in the case of *Indo-China Steam Navigation Co. Ltd. v. The Additional Collector of Customs and Others*(<sup>2</sup>).

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Logically, the second preliminary objection would come first, because if the petitioners cannot claim the status of citizens and are not, therefore, entitled to base their petitions on the allegation that their fundamental rights under Art. 19 have been contravened, that would be the end of the petitions. It has been conceded before us by all the learned counsel appearing for the petitioners that it is only if both the preliminary objections raised by the respondents are over-ruled that the hearing of the writ petitions would reach the stage of considering the merits of their pleas that the sales which are sought to be taxed fall under Art. 286(1)(a) of the Constitution. If the respondents succeed in either of the two preliminary objections raised by them, the writ petitions would fail and there would be no occasion to consider the merits of the pleas raised by them. Since we have come to the conclusion that the second preliminary objection raised by the respondents must be upheld, we do not propose to pronounce any decision on the first preliminary objection. However, as the point covered by the said objection has been elaborately argued before us, we would prefer to indicate briefly the broad arguments urged by both the parties in that behalf.

(1) A.I.R. 1963 S.C. 1811.

(2) [1964] 6 S.C.R. 594.

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The controversy between the parties as to the scope and effect of the provisions contained in Art. 32 on which the validity of the first preliminary objection rests, substantially centres round the question as to what is the effect of the decision of this Court in *Smt. Ujjam Bai's* case<sup>(1)</sup>. The petitioners argue that though the majority view in that case was that the writ petition filed by Ujjam Bai was incompetent, it would appear that the reasons given in most of the judgments support the petitioners' case that where the fundamental rights of a citizen are contravened, may be by a quasi-judicial order, in pursuance of which a tax is attempted to be recovered from a citizen, the erroneous conclusion in regard to the nature of the transaction must be held to contravene the fundamental right of the citizen, and as such, would justify the petitioners in moving this Court under Art. 32.

On the other hand, the respondents urge that the effect of the decision in *Ujjam Bai's* case plainly tends to show that if a quasi-judicial decision has determined a matter in regard to the taxability of a given transaction, there can be no question about the breach of fundamental rights which would justify an application under Art. 32. The argument is that the intervention of a quasi-judicial order changes the complexion of the dispute between the parties, and in cases of that character, the only remedy available to an aggrieved citizen is to take recourse to the appeals and other proceedings prescribed by the taxing statute in question. Art. 32 is not intended to confer appellate jurisdiction on this Court so as to review or examine the propriety of quasi-judicial orders passed by appropriate authorities purporting to exercise their powers and jurisdictions under the several taxing statutes. It may be that after exhausting the remedies by way of appeals and revisions prescribed by the statute, the party may come to this Court under Art. 136, but Art. 32 is inapplicable in such cases.

In *Ujjam Bai's* case<sup>(1)</sup>, the first issue which was referred to the Special Bench was whether an order of assessment made by an authority under a taxing statute which is *intra vires* is open to challenge as repugnant to

(1) [1963] 1 S.C.R. 778.



Art. 19(1)(g), on the sole ground that it was based on a misconstruction of a provision of the Act or of a notification issued thereunder; and the second question was, can the validity of such an order be questioned in a petition under Art. 32 of the Constitution? The majority view expressed in this case was against the petitioner. S. K. Das J. who delivered the main judgment on behalf of the majority view observed that where a quasi-judicial authority makes an order in the undoubted exercise of its jurisdiction in pursuance of a provision of law which is *intra vires*, an error of law or fact committed by that authority cannot be impeached otherwise than on appeal, unless the erroneous determination relates to a matter on which the jurisdiction of that body depends; and so, he held that if the impugned order of assessment is made by an authority under a valid taxing statute in the undoubted exercise of its jurisdiction, it cannot be challenged under Art. 32 on the sole ground that it is passed on a misconstruction of a provision of the Act or of a notification issued thereunder.

Subba Rao J., on the other hand, took the view that Art. 32 confers wide jurisdiction on this Court to enforce the fundamental rights, and he held that it is the duty of this Court to entertain a writ petition wherever a fundamental right of a citizen is alleged to have been contravened, irrespective of whether the question raised involves a question of jurisdiction, law, or fact; this is the minority view pronounced in *Ujjam Bai's* case.

Hidayatullah J., who agreed broadly with the majority view, expressed the opinion that if a quasi-judicial tribunal embarks upon an action wholly outside the pale of the law he is enforcing, a question of jurisdiction would be involved and that would justify an application under Art. 32.

Ayyangar J. held that if it appeared that the impugned order of assessment was based upon a plain and patent misconstruction of the provisions of the taxing statute, that itself would give rise to a plea that the authority was acting beyond its jurisdiction and in such a case, a petition under Art. 32 may be justified. Proceeding on this view, the learned Judge held that the construction placed by the taxing authority was not shown to be patently erroneous.

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and so, he was not prepared to grant any relief to Ujjam Bai. That is how the learned Judge agreed with the majority decision.

Mudholkar J., who also agreed with the majority decision, was disposed to make an exception in cases where an erroneous construction of the law would lead to the recovery of a tax which is beyond the competence of the legislature, or is violative of the provisions of Part III or of any other provisions of the Constitution.

It would, thus, be seen that though the majority decision was that Ujjam Bai's petition should be dismissed, the reasons given in the judgments pronounced by the learned Judges who agreed with the majority decision are not all uniform and do not disclose an identity of approach or of reasons, and that naturally has given rise to the arguments in the present writ petitions, both parties suggesting that the majority decision in the case of *Ujjam Bai* supports the rival views for which they contend.

Mr. Setalvad has strongly urged that if a misconstruction of the notification on which Ujjam Bai rested her case, was not held to justify a petition under Art. 32, that would necessarily mean that the misconstruction of the nature of the transaction would be no better, even though in this latter case, the wrong decision on the question as to the character of the sale transaction may involve taxing a transaction which is protected by Art. 286(1)(a). One can understand the argument, said Mr. Setalvad, that a breach of the fundamental rights, however it is caused would justify recourse to Art. 32; that would be consistent and logical; but once it is held that a breach of the fundamental rights alleged to have been caused by a misconstruction of a notification or a statute placed by an appropriate authority acting under the provisions of a valid taxing law does not attract Art. 32, it is not logically possible to urge that another kind of breach alleged to have been caused by a misappreciation of the nature of the transaction and an erroneous conclusion as to its taxable character would make any difference. In the first case, the erroneous construction of the notification violates the provisions of Art. 265 of the Constitution and thereby brings in the breach of Art.

31(1); in the other case, the misconstruction as to the taxable character of the transaction violates Art. 286(1)(a) and thereby brings in Art. 31(1). Therefore, it is urged that the necessary consequence of the decision in *Ujjam Bai* is that even if the Sales-tax Officer has held wrongly that the impugned transactions are not inter-State transactions, the remedy of petition under Art. 32 is not open to the aggrieved citizen.

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On the other hand, Mr. Palkhivala has strenuously urged that the decision in *Ujjam Bai* rested on the basis that the misinterpretation of the notification did not involve the violation of any constitutional limitations or prohibitions and he has referred us to some passages in the judgments of Das, Kapur and Mudholkar JJ. In support of his argument that where an erroneous decision of a sales-tax officer results in the violation of a constitutional prohibition or limitation, different considerations would arise and an aggrieved citizen would be entitled to move this Court under Art. 32, Mr. Palkhivala has emphasised the fact that whereas Das J. expressly held that the view taken in *Kailash Nath v. State of U.P.*<sup>(1)</sup> was not right, he approved of the other decisions which were cited at the Bar and exhaustively discussed on the ground that those decisions "fall under the category in which an executive authority acts without authority of law, or a quasi-judicial authority acts in transgression of a constitutional prohibition and without jurisdiction"<sup>(2)</sup>. These decisions are: *Thakur Amar Singhji v. State of Rajasthan*<sup>(3)</sup>; *M/s. Mohanlal Hargovind Dass v. The State of Madhya Pradesh*<sup>(4)</sup>; *Y. Mahaboob Sheriff v. Mysore State Transport Authority*<sup>(5)</sup>; *J. V. Gokar & Co. (Private) Ltd. v. The Assistant Collector of Sales-tax (Inspection)*<sup>(6)</sup>; and *Universal Imports Agency v. Chief Controller of Imports and Exports*<sup>(7)</sup>. To the same effect is the observation made by Kapur J. when the learned Judge stated that in the case of *M/s. Mohanlal Hargovind Dass*<sup>(4)</sup> the dispute did not turn upon a misconstruction of any statute by any quasi-judicial authority, but that was a case

(1) A.I.R. 1957 S.C. 790.

(3) [1955] 8 S.C.R. 303.

(5) [1960] 2 S.C.R. 146.

(2) [1963] 1 S.C.R. at 842.

(4) [1955] 2 S.C.R. 509.

(6) [1960] 2 S.C.R. 852.

(7) [1961] 1 S.C.R. 305.

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in which the very transaction was outside the taxing powers of the State and any action taken by the taxing authorities was one without authority of law.

In support of the same argument, both Mr. Pathak and Mr. Palkhivala strongly relied upon the two subsequent decisions of this Court where writ petitions filed under Art. 32 were entertained on grounds somewhat similar to those on which the present writ petitions are founded, *The State Trading Corporation of India Ltd. and Another v. The State of Mysore and Another*<sup>(1)</sup> and *The State Trading Corporation of India Ltd. and Others v. The State of Mysore and Another*<sup>(2)</sup>.

Basing himself on these decisions, Mr. Pathak has argued that the question as to whether a particular transaction of sale attracts the protection of Art. 286(1)(a) is a collateral fact the decision of which confers jurisdiction on the Sales-tax Officer; and he contends that the decision of the Sales-tax Officer, who is a Tribunal of limited jurisdiction, on a collateral jurisdictional point can always be challenged under Art. 32 of the Constitution if the said decision impinges upon the citizen's right protected by Art. 286(1)(a).

Mr. Palkhivala urged the argument of jurisdiction in a slightly different way. He contended that the concept of jurisdiction on which he relied was not based on the view that jurisdiction means authority to decide. According to him, the concept of jurisdiction was of a different category and was of a vital character when constitutional limitations or prohibitions were involved in the decision of any case brought before a Sales-tax Officer.

On the other hand, Mr. Setalvad has urged that the Sales-tax Officer is not a Tribunal of limited jurisdiction and the charging sections in the respective Sales-tax Acts leave it to the Sales-tax Officer and the hierarchy of officers contemplated by them to decide the question about the taxability of any given transaction and impose a tax on it in accordance with the provisions of the Acts. Where a tribunal is entitled to deal with transactions which fall

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(1) 14 S.T.C. 188.

(2) 14 S.T.C. 416.

under the charging sections of the statute, it would be erroneous to contend that the decision of the Tribunal on the said question about the taxability of the transaction is the decision on a collateral jurisdictional fact. If the said argument is accepted, logically, it may mean that all questions the decision of which inevitably precedes the imposition of the tax, would be collateral jurisdictional fact; and that clearly cannot be the effect of the charging sections of the different Acts.

In regard to the point of constitutional limitations and prohibitions raised by Mr. Palkhivala, Mr. Setalvad contends that if the provisions of Art. 286(1)(a) makes the decision of the Sales-tax Officer on the character of the sale transaction one of jurisdiction, then it is difficult to see why his decision on other points should also not partake of the same character. In that connection, he emphasised the fact that the provisions of Art. 286(1)(a) cannot be distinguished from the provisions of Art. 265. As we have already indicated, having regard to the fact that we have come to the conclusion that the other preliminary objection urged by the respondents must be upheld, we do not propose to express any opinion on this part of the controversy between the parties.

That takes us to the question as to whether the petitioners, some of whom are companies registered under the Indian Companies Act and one of whom is the State Trading Corporation, can claim to file the present writ petitions under Art. 32 having regard to the decision of this Court in the case of the *State Trading Corporation of India Ltd.*<sup>(1)</sup>. The petitioners argue that the said decision merely held that the State Trading Corporation of India Ltd. was not a citizen. The question as to whether the veil of the Corporation can be lifted and the rights of the shareholders of the said Corporation could be recognised under Art. 19 or not, was not decided, and it is on this aspect of the question that arguments have been urged before us in the present writ petitions.

The true legal position in regard to the character of a corporation or a company which owes its incorporation to

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a statutory authority, is not in doubt or dispute. The corporation in law is equal to a natural person and has a legal entity of its own. The entity of the corporation is entirely separate from that of its shareholders; it bears its own name and has a seal of its own; its assets are separate and distinct from those of its members; it can sue and be sued exclusively for its own purpose; its creditors cannot obtain satisfaction from the assets of its members; the liability of the members or shareholders is limited to the capital invested by them; similarly, the creditors of the members have no right to the assets of the corporation. This position has been well-established ever since the decision in the case of *Salomon v. Salomon & Co.*<sup>(1)</sup> was pronounced in 1897; and indeed, it has always been the well-recognised principle of common law. However, in the course of time, the doctrine that the corporation or a company has a legal and separate entity of its own has been subjected to certain exceptions by the application of the fiction that the veil of the corporation can be lifted and its face examined in substance. The doctrine of the lifting of the veil thus marks a change in the attitude that law had originally adopted towards the concept of the separate entity or personality of the corporation. As a result of the impact of the complexity of economic factors, judicial decisions have sometimes recognised exceptions to the rule about the juristic personality of the corporation. It may be that in course of time these exceptions may grow in number and to meet the requirements of different economic problems, the theory about the personality of the corporation may be confined more and more.

But the question which we have to consider is whether in the circumstances of the present petitions, we would be justified in acceding to the argument that the veil of the petitioning corporations should be lifted and it should be held that their shareholders who are Indian citizens should be permitted to invoke the protection of Art. 19, and on that basis, move this Court under Art. 32 to challenge the validity of the orders passed by the Sales-tax Officers in respect of transactions which, it is alleged, are not taxable.

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(1) [1897] A. C. 22, H.L.

Mr. Palkhivala has very strongly urged before us that having regard to the fact that the controversy between the parties relates to the fundamental rights of citizens, we should not hesitate to look at the substance of the matter and disregard the doctrinaire approach which recognises the existence of companies as separate juristic or legal persons. If all the shareholders of the petitioning companies are Indian citizens, why should not the Court look at the substance of the matter and give the shareholders the right to challenge that the contravention of their fundamental rights should be prevented. He does not dispute that the shareholders cannot claim that the property of the companies is their own and cannot plead that the business of the companies is their business in the strict legal sense. The doctrine of lifting of the veil postulates the existence of dualism between the corporation or company on the one hand and its members or shareholders on the other. So, it is no good emphasising that technical aspect of the matter in dealing with the question as to whether the veil should be lifted or not. In support of his plea, he has invited our attention to the decision of the Privy Council in *The English and Scottish Joint Co-operative Wholesale Society Ltd. v. Commissioner of Agricultural Income-tax, Assam*<sup>(1)</sup>, as well as the decision of the House of Lords in *Daimler Company Ltd. v. Continental Tyre and Rubber Company (Great Britain) Ltd.*<sup>(2)</sup>.

It is unnecessary to refer to the facts in these two cases and the principles enunciated by them, because it is not disputed by the respondents that some exceptions have been recognised to the rule that a corporation or a company has a juristic or legal separate entity. The doctrine of the lifting of the veil has been applied in the words of Palmer in five categories of cases: where companies are in the relationship of holding and subsidiary (or sub-subsidiary) companies; where a shareholder has lost the privilege of limited liability and has become directly liable to certain creditors of the company on the ground that, with his knowledge, the company continued to carry on business six months after the number of its members was reduced

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(1) [1948] I.T.R. 270.

(2) [1916] A.C. 307.

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below the legal minimum; in certain matters pertaining to the law of taxes, death duties and stamps, particularly where the question of the "controlling interest" is in issue; in the law relating to exchange control; and in the law relating to trading with the enemy where the test of control is adopted<sup>(1)</sup>. In some of these cases, judicial decisions have no doubt lifted the veil and considered the substance of the matter.

Gower has similarly summarised this position with the observation that in a number of important respects, the legislature has rent the veil woven by the *Salomon* case. Particularly is this so, says Gower, in the sphere of taxation and in the steps which have been taken towards the recognition of enterprise-entity rather than corporate-entity. It is significant, however, that according to Gower, the courts have only construed statutes as "cracking open the corporate shell" when compelled to do so by the clear words of the statute; indeed they have gone out of their way to avoid this construction whenever possible. Thus, at present, the judicial approach in cracking open the corporate shell is somewhat cautious and circumspect. It is only where the legislative provision justifies the adoption of such a course that the veil has been lifted. In exceptional cases where courts have felt "themselves able to ignore the corporate entity and to treat the individual shareholders as liable for its acts",<sup>(2)</sup> the same course has been adopted. Summarising his conclusions, Gower has classified seven categories of cases where the veil of a corporate body has been lifted. But it would not be possible to evolve a rational, consistent and inflexible principle which can be invoked in determining the question as to whether the veil of the corporation should be lifted or not. Broadly stated, where fraud is intended to be prevented, or trading with an enemy is sought to be defeated, the veil of a corporation is lifted by judicial decisions and the shareholders are held to be the persons who actually work for the corporation.

That being the position with regard to the doctrine of the veil of a corporation and the principle that the said

(1) *Palmer's Company Law* 20th Ed. p. 136.

(2) Gower, *Modern Company Law*, 2nd Ed. pp. 193 & 195.



veil can be lifted in some cases, the question which arises for our decision is; can we lift the veil of the petitioners and say that it is the shareholders who are really moving the Court under Art. 32, and so, the existence of the legal and juristic separate entity of the petitioners as a corporation or as a company should not make the petitions filed by them under Art. 32 incompetent? We do not think we can answer this question in the affirmative. No doubt, the complaint made by the petitioners is that their fundamental rights are infringed and it is a truism to say that this Court as the guardian of the fundamental rights of the citizens will always attempt to safeguard the said fundamental rights; but having regard to the decision of this Court in *State Trading Corporation of India Ltd.*<sup>(1)</sup> we do not see how we can legitimately entertain the petitioners' plea in the present petitions, because if their plea was upheld, it would really mean that what the corporations or the companies cannot achieve directly, can be achieved by them indirectly by relying upon the doctrine of lifting the veil. If the corporations and companies are not citizens, it means that the Constitution intended that they should not get the benefit of Art. 19. It is no doubt suggested by the petitioners that though Art. 19 is confined to citizens, the Constitution-makers may have thought that in dealing with the claims of corporations to invoke the provisions of Art. 19, courts would act upon the doctrine of lifting the veil and would not treat the attempts of the corporations in that behalf as falling outside Art. 19. We do not think this argument is well-founded. The effect of confining Art. 19 to citizens as distinguished from persons to whom other Articles like 14 apply, clearly must be that it is only citizens to whom the rights under Art. 19 are guaranteed. If the legislature intends that the benefit of Art. 19 should be made available to the corporations, it would not be difficult for it to adopt a proper measure in that behalf by enlarging the definition of 'citizen' prescribed by the Citizenship Act passed by the Parliament by virtue of the powers conferred on it by Articles 10 and 11. On the other hand, the fact that the Parliament has not chosen to make any such provision indicates that it was not the intention of the

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Parliament to treat corporations as citizens. Therefore, it seems to us that in view of the decision of this Court in the case of the *State Trading Corporation of India Ltd.*<sup>(1)</sup> the petitioners cannot be heard to say that their shareholders should be allowed to file the present petitions on the ground that, in substance, the corporations and companies are nothing more than associations of shareholders and members thereof. In our opinion, therefore, the argument that in the present petitions we would be justified in lifting the veil cannot be sustained.

Mr. Palkhivala sought to draw a distinction between the right of a citizen to carry on trade or business which is contemplated by Art. 19(1)(g) from his right to form associations or unions contemplated by Art. 19(1)(c). He argued that Art. 19(1)(c) enables the citizens to choose their instruments or agents for carrying on the business which it is their fundamental right to carry on. If citizens decide to set up a corporation or a company as their agent for the purpose of carrying on trade or business, that is a right which is guaranteed to them under Art. 19(1)(c). Basing himself on this distinction between the two rights guaranteed by Art. 19(1)(g) and (c) respectively, Mr. Palkhivala somewhat ingeniously contended that we should not hesitate to lift the veil, because by looking at the substance of the matter, we would really be giving effect to the two fundamental rights guaranteed by Art. 19(1). We are not impressed by this argument either. The fundamental right to form an association cannot in this manner be coupled with the fundamental right to carry on any trade or business. As has been held by this Court in *All India Bank Employees' Association v. National Industrial Tribunal and Others*<sup>(2)</sup>, the argument which is thus attractively presented before us overlooks the fact that Art. 19, as contrasted with certain other articles like Arts. 26, 29 and 30, guarantees rights to the citizens as such, and associations cannot lay claim to the fundamental rights guaranteed by that Article solely on the basis of their being an aggregation of citizens, that is to say, the right of the citizens composing the body. The respective rights guaranteed by Art. 19(1)

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(1) A.I.R. 1963 S.C. 1811.

(2) [1962] 3 S.C.R. 269.

cannot be combined as suggested by Mr. Palkhivala, but must be asserted each in its own way and within its own limits; the sweep of the several rights is no doubt wide, but the combination of any of those two rights would not justify a claim such as is made by Mr. Palkhivala in the present petitions. As soon as citizens form a company, the right guaranteed to them by Art. 19(1)(c) has been exercised and no restraint has been placed on that right and no infringement of that right is made. Once a company or a corporation is formed, the business which is carried on by the said company or corporation is the business of the company or corporation and is not the business of the citizens who get the company or corporation formed or incorporated, and the rights of the incorporated body must be judged on that footing and cannot be judged on the assumption that they are the rights attributable to the business of individual citizens. Therefore, we are satisfied that the argument based on the distinction between the two rights guaranteed by Art. 19(1)(c) and (g) and the effect of their combination cannot take the petitioners' case very far when they seek to invoke the doctrine that the veil of the corporation should be lifted. That is why we have come to the conclusion that the petitions filed by the petitioners are incompetent under Art. 32, even though in each of these petitions one or two of the shareholders of the petitioning companies or corporation have joined.

The result is, the second preliminary objection raised by the respondents is upheld and the writ petitions are dismissed as being incompetent under Art. 32 of the Constitution. There would be no order as to costs.

*Petitions dismissed.*

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v.

## MUKANCHAND AND OTHERS

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N. RAJAGOPALA AYYANGAR AND S. M. SIKRI JJ.)

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decree against ex-Jagirdar—Whether executable—ss. 2(e) and 7(2)  
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