1950

Dec. 4.

CHIRANJIT LAL CHOWDHURI

v.

THE UNION OF INDIA AND OTHERS.

[SHRI HARILAL KANIA, C.J., SAIYID FAZL ALI, PATANJALI SASTRI, MUKHERJEA and DAS JJ.]

Sholapur Spinning and Weaving Company (Emergency Provisions) Act (XXVIII of 1950)—Act dismissing managing agents of a company, removing its directors, authorising Government to appoint new directors, and curtailing rights of shareholders in the matter of voting, etc.—Validity—Whether infringes fundamental rights—Right not to be deprived of property save by authority of law—Right to acquire, hold and dispose of property—Right to equal protection of law—Constitution of India, Arts. 14, 19 (1) (f), 19(5), 31, 32—"Deprivation of property", "Property", "acquisition", "taking possession", "equal protection", meanings of—Right to apply under Art. 32—Corporation's right to apply—Shareholders' right.

The Governor-General of India, finding that on account of mismanagement and neglect a situation had arisen in the affairs of the Sholapur Spinning and Weaving Company Ltd., which had prejudicially affected the production of an essential commodity and had caused serious unemployment amongst a certain section of the community, and that an emergency had thereby arisen which rendered it necessary to make special provision for the proper management and administration of the said company, promulgated an Ordinance, which was subsequently re-enacted in the form of an Act of the Legislature called the Sholapur Spinning and Weaving Company (Emergency Provisions) Act, 1950, the net result of which was that the Managing Agents of the said company were dismissed, the directors holding office at the time automatically vacated their office, the Government was authorised to appoint new directors, the rights of the shareholders of the company were curtailed in the matters of voting, appointment of directors, passing of resolutions and applying for winding up, and power was also given to the Government to further modify the Indian Companies Act in its application to the company; and in accordance with the provisions of the Ordinance new directors were appointed by the Government. A shareholder of the company made an application under Art. 32 of the Constitution for a declaration that the Act was void and for enforcement of his fundamental rights by a writ of mandamus against the Central Government, the Government of Bombay and the directors, restraining them from exercising any powers under the Act and from interfering with the management of the company, on the ground that the Act was not within the Legislative competence

1950

Chiranjitlal Chowdhuri
v.
The Union of India and Others.

of the Parliament and infringed his fundamental rights guaranteed by Arts. 19 (1) (f), 31 and 14 of the Constitution and was consequently void under Art. 13. The company was made a respondent and opposed the petition.

Held per KANIA C.J., FAZL ALI, MUKHERJEA and DAS JJ.—(i) that the impugned Act did not infringe any fundamental right of the petitioner under Art. 31 (1), as it did not deprive the company or the petitioner of any property save under authority of law;

(ii) that the impugned Act did not infringe any fundamental right guaranteed by Art. 31 (2) inasmuch as it did not authorise the "acquisition" of any property of the company or of the shareholders or "the taking possession" of the property of the petitioner, namely, the shares which he held in the company, though he was disabled from exercising some of the rights which an ordinary shareholder in a company could exercise in respect of his shares, such as the right to vote, to appoint directors, and to apply for winding up; and, if the Act had authorised the "taking possession" of the property of the company, the petitioner was not entitled to any relief on that score under Art. 32;

(iii) that, as the Act did not impose any restrictions on the petitioner's right "to acquire, hold and dispose of" his shares, there was no infringement of Art. 19 (1) (f); and assuming that the restrictions imposed on the right of voting etc. were restrictions on the right to acquire, hold or dispose of property within Art. 19 (1) (f), such restrictions were reasonable restrictions imposed in the interests of the public, namely, to secure the supply of a commodity essential to the community and to prevent serious unemployment amongst a section of the people, and were therefore completely protected by cl. (5) of Art. 19.

Held also per KANIA C.J., FAZL ALI, and MUKHERJEA JJ. (PATANJALI SASTRI AND DAS JJ. *dissenting*).—that though the Legislature had proceeded against one company only and its shareholders, inasmuch as even one corporation or a group of persons can be taken to be a class by itself for the purposes of legislation, provided there is sufficient basis or reason for it and there is a strong presumption in favour of the constitutionality of an enactment, the burden was on the petitioner to prove that there were also other companies similarly situated and this company alone had been discriminated against, and as he had failed to discharge this burden the impugned Act cannot be held to have denied to the petitioner the right to equal protection of the laws referred to in Art. 14 and the petitioner was not therefore entitled to any relief under Art. 32.

Per PATANJALI SASTRI J.—As the impugned Act plainly denied to the shareholders of this particular company the protections of the law relating to incorporated Joint Stock Companies as embodied in the Indian Companies Act, it was *prima facie* within

the inhibition of Art. 14; and, even though when a law is made applicable to a class of persons or things and the classification is based on differentia having a rational relation to the object sought to be attained, it can be no objection to its constitutional validity that its application is found to affect only one person or thing, since the impugned Act selected a particular company and imposed upon it and its shareholders burdens and disabilities on the ground of mismanagement and neglect of duty on the part of those charged with the conduct of its undertaking no question of reasonable classification arose and the Act was plainly discriminatory in character and within the constitutional inhibition of Art. 14. Whilst all reasonable presumptions must undoubtedly be made in favour of the constitutional validity of a law made by a competent legislature, no such presumption could be raised in this case as on the face of it the Act was discriminatory and the petitioner could not be called upon to prove that similar mismanagement existed in other companies. The issue was not whether the impugned Act was ill-advised or not justified by the facts on which it was based but whether it transgressed the explicit constitutional restriction on legislative power imposed by Art. 14.

Per DAS J.—The impugned Act, *ex facie*, is nothing but an arbitrary selection of a particular company and its shareholders for discriminating and hostile treatment, and, read by itself, is palpably an infringement of Art. 14 of the Constitution. Assuming that mismanagement and neglect in conducting the affairs of a company can be a basis of classification and that such a classification would bear a reasonable relation to the conduct of all delinquent companies and shareholders and may therefore create no inequality, a distinction cannot be made between the delinquent companies *inter se* or between shareholders of equally delinquent companies, and one set cannot be punished for its delinquency while another set is permitted to continue, or become, in like manner, delinquent without any punishment unless there be some other apparent difference in their respective obligations and unless there be some cogent reason why prevention of mismanagement is more imperative in one instance than in the other. The argument that the presumption being in favour of the Legislature, the onus is on the petitioner to show that there are other individuals or companies equally guilty of mismanagement prejudicially affecting the production of an essential commodity and causing serious unemployment amongst a certain section of the community does not, in such circumstances, arise, for the simple reason that here there has been no classification at all and, in any case, the basis of classification by its very nature is much wider and cannot, in its application, be limited only to this company and its shareholders; and that being so, there is no reason to throw on the petitioner the almost impossible burden of proving that there are other companies which are in fact precisely and in all particulars similarly situated. In any event, the petitioner,

1950

Chiranjitlal Chowdhuri v. *The Union of India and Others.*

may well claim to have discharged the onus of showing that this company and its shareholders have been singled out for discriminating treatment by showing that the Act, on the face of it, has adopted a basis of classification which, by its very nature, cannot be exclusively applicable to this company and its shareholders but which may be equally applicable to other companies and their shareholders and has penalised this particular company and its shareholders, leaving out other companies and their shareholders who may be equally guilty of the alleged vice of mismanagement and neglect of the type referred to in the preamble in the Ordinance.

Per PATANJALI SASTRI, MUKHERJEA and DAS JJ. (KANIA, C.J., *dubitante*).—In so far as the petitioner's rights as a shareholder were curtailed he was entitled to apply for relief under Art. 32 in his own right on the ground that the Act denied to him the equal protection of the laws and therefore contravened Art. 14 even though the other shareholders did not join him in the application.

Per MUKHERJEA J.—The fundamental rights guaranteed by the Constitution are available not merely to individual citizens but to corporate bodies as well except where the language of the provision or the nature of the right compels the inference that they are applicable only to natural persons. An incorporated company, therefore, can come up to the Supreme Court for enforcement of its fundamental rights and so may the individual shareholders to enforce their own; but as the company and its shareholders are in law separate entities, it would not be open to an individual shareholder to complain of a law which affects the fundamental right of the company except to the extent that it constitutes an infraction of his own rights as well. In order to redress a wrong to the company the action should *prima facie* be brought by the company itself.

Article 32 of the Constitution is not directly concerned with the determination of the constitutional validity of particular enactments, what it aims at is the enforcement of fundamental rights guaranteed by the Constitution and to make out a case under the Article it is incumbent on the petitioner to establish not merely that the law complained of is beyond the competence of the Legislature but that it affects or invades his fundamental rights guaranteed by the Constitution, of which he could seek enforcement by an appropriate writ or order.

Under Art. 32 the Supreme Court has a very wide discretion in the matter of framing writs to suit the exigencies of particular cases and an application under the article cannot be thrown out simply on the ground that the proper writ or direction has not been prayed for.

In the context in which the word "acquisition" is used in Art. 31 (2) it means and implies the acquiring of the entire title of the expropriated owner whatever the nature or extent of that right might be.

The guarantee against the denial of equal protection of the laws does not mean that identically the same rules of law should be made applicable to all persons within the territory of India in spite of differences of circumstances and conditions. It means only that there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is the same.

Quaere: Whether the word "property" in Art. 31 means the totality of the rights which the ownership of the property connotes, and whether clause (1) of Art. 31 contemplates only confiscation or destruction of property in exercise of what are known as police powers in American law for which no compensation is necessary.

DAS J.—The question whether an Act has deprived a person of his "property" must depend on whether it has taken away the substantial bulk of the rights constituting his property. Where the most important rights possessed by the shareholders of a company are still preserved by an Act even though certain privileges incidental to the ownership of the shares have been put in abeyance, the shareholders cannot be said to have been deprived of their "property" in the sense in which that word is used in Art. 19(1) (f) and Art. 31.

If on the face of the law there is no classification at all, or at any rate, none on the basis of any apparent difference specially peculiar to the individual or class affected by the law, it is only an instance of an arbitrary selection of an individual or class for discriminating and hostile legislation and, therefore, no presumption can, in such circumstances, arise at all. Assuming, however, that even in such a case the onus is thrown on the complainant, there can be nothing to prevent him from proving, if he can, from the text of the law itself, that it is actually and palpably unreasonable and arbitrary and thereby discharging the initial onus.

The right to vote, to elect directors, to pass resolutions and to present an application for winding up, are privileges incidental to the ownership of a share, but they are not by themselves, apart from the share, "property" within the meaning of Art. 19 (1) (f) and Art. 31; and even assuming that they are "property" such rights cannot be said to have been acquired or taken possession of by the Government in this case within Art. 31 (2). The language of clause (1) of Art. 31 is wider than that of clause (2), for deprivation of proporty may well be brought about otherwise than by acquiring or taking possession of it and in such a case no question of payment of compensation arises.

FAZL ALI, MUKHERJEA and DAS JJ.—Except in the matter of writs in the nature of *habeas corpus* no one but those whose rights are directly affected by a law can raise the question of the constitutionality of a law and claim relief under Art. 32. A corporation being a different entity from the shareholders, a

1950

Chiranjitlal Chowdhuri v. *The Union of India and Others.*

share-holder cannot complain on the ground that the rights of the company under Arts. 19 (1) (f) or 31 are infringed.

FAZL ALI J.—A classification which is arbitrary and which is made without any basis is no classification and a proper classification must always rest upon some difference and must bear a reasonable and just relation to the things in respect of which it is proposed. But the presumption is always 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 constitutional principles. Though Art. 14 lays down an important fundamental right, which should be closely and vigilantly guarded, a doctrinaire approach which might choke all beneficial legislation should not be adopted, in construing it.

A. K. Gopalan v. *The State* ([1950] S.C.R. 87), *Minister of State for the Army* v. *Dalziel* (68 C.L.R. 261), *Yick Wo* v. *Hopkins* (118 U.S. 356), *Southern Railway Co.* v. *Greene* (216 U.S. 400), *Gulf C. & S. F. Co.* v. *Ellis* (165 U.S. 150), *Middleton* v. *Texas Power and Light & Co.* (249 U.S. 152), *Radice* v. *New York* (264 U.S. 294), *Pennsylvania Coal Co.* v. *Mahon* (260 U.S. 393), *McCabe* v. *Atchison* (235 U.S. 151), *Jeffrey Manufacturing Co.* v. *Blagg* (235 U.S. 571), *Newark Natural Gas and Fuel Co.* v. *City of Newark* (242 U.S. 403), *Truax* v. *Raich* (239 U.S. 33), *Buchanan* v. *Warley* (245 U.S. 60), *Darnell* v. *The State of Indiana* (226 U.S. 388), *Lindely* v. *Natural Carbonic Gas Co.* (220 U.S. 618), and *Barbier* v. *Connolly* (113 U.S. 27) referred to.

ORIGINAL JURISDICTION : Petition No. 72 of 1950.

Petition under article 32 of the Constitution of India for a writ of mandamus.

V. K. T. Chari, J. S. Dawdo, Alladi Kuppuswami, and *C. R. Pattabhi Raman,* for the petitioner.

M. C. Setalvad, Attorney-General for India (*G. N. Joshi* with him) for opposite party Nos. 1 and 2.

G.N. Joshi, for opposite party Nos. 3 to 5 and 7 to 10.

1950. December 4. The Court delivered Judgment as follows.

Kania C. J.

KANIA C.J.—This is an application by the holder of one ordinary share of the Sholapur Spinning and Weaving Company Ltd. for a writ of mandamus and certain other reliefs under article 32 of the Constitution of India. The authorized capital of the company is Rs. 48 lakhs and the paid-up capital is Rs. 32 lakhs, half of which is made up of fully paid ordinary shares of Rs. 1,000 each.

I have read the judgment prepared by Mr. Justice Mukherjea. In respect of the arguments advanced to challenge the validity of the impugned Act under articles 31 and 19 of the Constitution of India, I agree with his line of reasoning and conclusion and have nothing more to add.

On the question whether the impugned Act infringes article 14, two points have to be considered. The first is whether one individual shareholder can, under the circumstances of the case and particularly when one of the respondents is the company which opposes the petition, challenge the validity of the Act on the ground that it is a piece of discriminatory legislation, creates inequality before the law and violates the principle of equal protection of the laws under article 14 of the Constitution of India. The second is whether in fact the petitioner has shown that the Act runs contrary to article 14 of the Constitution. In this case having regard to my conclusion on the second point, I do not think it is necessary to pronounce a definite opinion on the first point. I agree with the line of reasoning and the conclusion of Mr. Justice Mukherjea as regards the second point relating to the invalidity of the Act on the ground that it infringes article 14 of the Constitution and have nothing more to add.

In my opinion therefore this petition fails and is dismissed with costs.

Fazl Ali J.

FAZL ALI J.—I am strongly of the opinion that this petition should be dismissed with costs.

The facts urged in the petition and the points raised on behalf of the petitioner before us are fully set forth in the judgments of my brethren, Sastri, Mukherjea and Das JJ., and I do not wish to repeat them here. It is sufficient to say that the main grounds on which the Sholapur Spinning and Weaving Company (Emergency Provisions) Act, 1950 (Act No. XXVIII of 1950), which will hereinafter be referred to as "the Act", has been assailed, is that it infringes three fundamental rights, these being:—

1950

Chiranjitlal Chowdhuri v. *The Union of India and Others.*

Fazl Ali J.

(1) the right to property secured by article 31 of the Constitution ;

(2) the right to acquire, hold and dispose of property, guaranteed to every citizen by article 19 (1) (f); and

(3) the right to equal protection of the laws, guaranteed by article 14.

It has been held in a number of cases in the United States of America that no one except those whose rights are directly affected by a law can raise the question of the constitutionality of that law. This principle has been very clearly stated by Hughes J. in *McCabe* v. *Atchison*(1), in these words :—"It is an elementary principle that in order to justify the granting of this extraordinary relief, the complainant's need of it and the absence of an adequate remedy at law must clearly appear. The complainant cannot succeed because someone else may be hurt. Nor does it make any difference that other persons who may be injured are persons of the same race or occupation. It is the fact, clearly established, of injury to the complainant —not to others—which justifies judicial interference." On this statement of the law, with which I entirely agree, the scope of the discussion on this petition is greatly restricted at least in regard to the first two fundamental rights. The company and the shareholders are in law separate entities, and if the allegation is made that any property belonging to the company has been taken possession of without compensation or the right enjoyed by the company under article 19 (1) (f) has been infringed, it would be for the company to come forward to assert or vindicate its own rights and not for any individual shareholder to do so. In this view, the only question which has to be answered is whether the petitioner has succeeded in showing that there has been an infringement of his rights as a shareholder under articles 31 and 19 (1) (f) of the Constitution. This question has been so elaborately dealt with by Mukherjea J., that I do not wish to add anything to what he has said in his judgment, and all that is necessary for me to say is that I adopt his conclusions,

(1) 235 U.S. 151.

without committing myself to the acceptance of all his reasonings.

The only serious point, which in my opinion, arises in the case is whether article 14 of the Constitution is in any way infringed by the impugned Act. This article corresponds to the equal protection clause of the Fourteenth Amendment of the Constitution of the United States of America, which declares that "no State shall deny to any person within its jurisdiction the equal protection of the laws". Professor Willis dealing with this clause sums up the law as prevailing in the United States in regard to it in these words:—

"Meaning and effect of the guaranty—The guaranty of the equal protection of the laws means the protection of equal laws. It forbids class legislation, but does not forbid classification which rests upon reasonable grounds of distinction. It does not prohibit legislation, which is limited either in the objects to which it is directed or by the territory within which it is to operate. 'It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions both in the privileges conferred and in the liabilities imposed.' 'The inhibition of the amendment . . . . was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation'. It does not take from the states the power to classify either in the adoption of police laws, or tax laws, or eminent domain laws, but permits to them the exercise of a wide scope of discretion, and nullifies what they do only when it is without any reasonable basis. Mathematical nicety and perfect equality are not required. Similarity, not identity of treatment, is enough. If any state of facts can reasonably be conceived to sustain a classification, the existence of that state of facts must be assumed. One who assails a classification must carry the burden of showing that it does not rest upon any reasonable basis."(1)

Having summed up the law in this way, the same learned author adds :—"Many different classifications

(1) Constitutional Law by Prof. Willis, (1st Edition), p. 579.

1950

Chiranjitlal Chowdhuri v. *The Union of India and Others.*

Fazl Ali J.

of persons have been upheld as constitutional. A law applying to one person or one class of persons is constitutional if there is sufficient basis or reason for it." There can be no doubt that article 14 provides one of the most valuable and important guarantees in the Constitution which should not be allowed to be whittled down, and, while accepting the statement of Professor Willis as a correct exposition of the principles underlying this guarantee, I wish to lay particular emphasis on the principle enunciated by him that any classification which is arbitrary and which is made without any basis is no classification and a proper classification must always rest upon some difference and must bear a reasonable and just relation to the things in respect of which it is proposed.

The petitioner's case is that the shareholders of the Sholapur company have been subjected to discrimination *vis a vis* the shareholders of other companies, inasmuch as section 13 of the Act subjects them to the following disabilities which the shareholders of other companies governed by the Indian Companies Act are not subject to:—

"(a) It shall not be lawful for the shareholders of the company or any other person to nominate or appoint any person to be a director of the company.

(b) No resolution passed at any meeting of the shareholders of the company shall be given effect to unless approved by the Central Government.

(c) No proceeding for the winding up of the company or for the appointment of a receiver in respect thereof shall lie in any court unless by or with the sanction of the Central Government."

Prima facie, the argument appears to be a plausible one, but it requires a careful examination, and, while examining it, two principles have to be borne in mind:—(1) that a law may be constitutional even though it relates to a single individual, in those cases where 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; (2) that it is the accepted doctrine of the American courts, which I consider to be well-founded on principle, that the presumption is always 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. A clear enunciation of this latter doctrine is to be found in *Middleton* v. *Texas Power and Light Company*(1), in which the relevant passage runs as follows:—

"It must be presumed that a 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 upon adequate grounds."

The onus is therefore on the petitioner to show that the legislation which is impugned is arbitrary and unreasonable and there are other companies in the country which should have been subjected to the same disabilities, because the reasons which led the Legislature to impose State control upon the Sholapur company are equally applicable to them. So far as article 14 is concerned, the case of the shareholders is dependent upon the case of the company and if it could be held that the company has been legitimately subjected to such control as the Act provides without violation of the article, that would be a complete answer to the petitioner's complaint.

Now, the petitioner has made no attempt to discharge the burden of proof to which I have referred, and we are merely asked to presume that there must necessarily be other companies also which would be open to the charge of mismanagement and negligence. The question cannot in my opinion be treated so lightly. On the other hand, how important the doctrine of burden of proof is and how much harm can be caused by ignoring it or tinkering with it, will be fully illustrated, by referring to the proceedings in the Parliament in connection with the enactment of the

(1) 248 U.S. 152, 157.

1950

Chiranjitlal Chowdhuri v. *The Union of India and Others.*

Fazl Ali J.

Act, where the circumstances which necessitated it are clearly set out. I am aware that legislative proceedings cannot be referred to for the purpose of construing an Act or any of its provisions, but I believe that they are relevant for the proper understanding of the circumstances under which it was passed and the reasons which necessitated it.

A reference to the Parliamentary proceedings shows that some time ago, a representation was made on behalf of a section of the shareholders of the Sholapur company to the Registrar of Joint Stock Companies in Bombay, against the conduct of the managing agents, and the Government of Bombay was moved to order a special inquiry into the affairs of the company. For the purpose of this inquiry, two special inspectors were appointed by the Bombay Government and their report revealed "certain astounding facts" and showed that the mill had been grossly mismanaged by the Board of Directors and the managing agents. It also revealed that the persons who were responsible for the mismanagement were guilty of certain acts and omissions which brought them under the purview of the law. The Bombay Government accepted the report of the inspectors and instructed the Advocate-General of Bombay to take legal proceedings against certain persons connected with the management of the company. Thereafter, the Government of India was approached by the Provincial Government and requested to take special action in order to secure the early opening of the mill. The Government of India found that they had no power to take over the management of a particular mill, unless its working could be ensured through the existing management acting under the direction of a Controller appointed under the Essential Supplies Act, but they also found that a peculiar situation had been created in this case by the managing agents themselves being unable or unwilling to conduct the affairs of the company in a satisfactory and efficient manner. The Government of India, as a matter of precaution and lest it should be said that they were going to interfere unnecessarily in the affairs

of the company and were not allowing the existing provisions of the law to take their own course, consulted other interests and placed the matter before the Standing Committee of the Industrial Advisory Council where a large number of leading industrialists of the country were present, and ultimately it was realized that this was a case where the Government could rightly and properly intervene and there would be no occasion for any criticism coming from any quarter. It appears from the discussion on the floor of the House that the total number of weaving and spinning mills which were closed down for one reason or other was about 35 in number. Some of them are said to have closed for want of cotton, some due to overstocks, some for want of capital and some on account of mismanagement. The Minister for Industry, who sponsored the Bill, in explaining what distinguished the case of the Sholapur mill from the other mills against whom there might be charges of mismanagement, made it clear in the course of the debate that "certain conditions had to be fulfilled before the Government can and should intervene", and he set out these conditions as follows :—

" (1) The undertaking must relate to an industry which is of national importance. Not each and every undertaking which may have to close down can be taken charge of temporarily by Government.

(2) The undertaking must be an economic unit. If it appears that it is completely uneconomic and cannot be managed at all, there is no sense in Government taking charge of it. If anything, it will mean the Government will have to waste money which belongs to the taxpayer on an uneconomic unit.

(3) There must be a technical report as regards the condition of the plants, machinery, etc. which either as they stand, or after necessary repairs and reconditioning can be properly utilised.

(4) Lastly,—and this is of considerable importance—there must be a proper enquiry held before Government take any action. The enquiry should show that

1950

Chiranjitlal Chowdhuri v. The Union of India and Others.

Fazl Ali J.

managing agents have so misbehaved that they are no longer fit and proper persons to remain in charge of such an important undertaking."(1)

It appears from the same proceedings that the Sholapur mill is one of the largest mills in Asia and employs 13,000 workers. Per shift, it is capable of producing 25 to 30 thousand pounds of yarn, and also one lakh yards of cloth. It was working two shifts when it was closed down on the 29th August, 1949. The closure of the mill meant a loss of 25 lakhs yards of cloth and one and a half lakhs pounds of yarn per month. Prior to 1947, the highest dividend paid by the company was Rs. 525 per share and the lowest Rs. 100, and, in 1948, when the management was taken over by the managing agents who have been removed by the impugned Act, the accounts showed a loss of Rs. 30 lakhs, while other textile companies had been able to show very substantial profits during the same period.

Another fact which is brought out in the proceedings is that the managing agents had acquired control over the majority of the shares of the company and a large number of shareholders who were dissatisfied with the management had been rendered powerless and they could not make their voice heard. By reason of the preponderance of their strength, the managing agents made it impossible for a controller under the Essential Supplies Act to function and they also made it difficult for the company to run smoothly under the normal law.

It was against this background that the Act was passed, and it is evident that the facts which were placed before the Legislature with regard to the Sholapur mill were of an extraordinary character, and fully justified the company being treated as a class by itself. There were undoubtedly other mills which were open to the charge of mismanagement, but the criteria adopted by the Government which, in my opinion, cannot be said to be arbitrary or unreasonable, is not applicable

(1) Parliamentary Debates, Volume III, No. 14; 31st March 1950, pp. 2394-5.

to any of them. As we have seen, one of the criteria was that a mere allegation of mismanagement should not be enough and no drastic step such as is envisaged in the Act should be taken without there being a complete enquiry. In the case of the Sholapur mill, a complete enquiry had been made and the revelations which were made as a result of such enquiry were startling.

We are familiar with the expression "police power" which is in vogue in the United States of America. This expression simply denotes that in special cases the State can step in where its intervention seems necessary and impose special burdens for general benefit. As one of the judges has pointed out, "the regulations may press with more or less weight upon one than upon another, but they are designed not to impose unequal or unnecessary restrictions upon anyone, but to promote, with as little individual inconvenience as possible, the general good."(1) It need not be emphasized that the principles underlying what is known as police power in the United States of America are not peculiar to that country, but are recognized in every modern civilized State. Professor Willis dealing with the question of classification in exercise of police power makes the following observations:

"There is no rule for determining when classification for the police power is reasonable. It is a matter for judicial determination, but in determining the question of reasonableness the Courts must find some economic, political or other social interest to be secured, and some relation of the classification to the objects sought to be accomplished. In doing this the Courts may consider matters of common knowledge, matters of common report, the history of the times, and to sustain it they will assume every state of facts which can be conceived of as existing at the time of legislation. The fact that only one person or one object or one business or one locality is affected is not proof of denial of the equal protection of the laws. For such

(1) Per Field J. in *Barbier* v. *Connolly*, 113 U S. 27.

1950

Chiranjitlal Chowdhuri v. *The Union of India and Others.*

Fazl Ali J.

proof it must be shown that there is no reasonable basis for the classification."(1)

In this particular case, the Government initially took control of the Sholapur Company by means of an Ordinance (Ordinance No. II of 1950), of which the preamble runs as follows :—

"Whereas on account of mismanagement and neglect a situation has arisen in the affairs of the Sholapur Spinning and Weaving Company, Limited, which has prejudicially affected the production of an essential commodity and has caused serious unemployment amongst a certain section of the community ;

And whereas an emergency has arisen which renders it necessary to make special provision for the proper management and administration of the aforesaid Company ;

Now, therefore,....."

In the course of the Parliamentary debate, reference was made to the fact that the country was facing an acute cloth shortage, and one of the reasons which apparently influenced the promulgation of the Ordinance and the passing of the Act was that the mismanagement of the company had gravely affected the production of an essential commodity. The facts relating to the mismanagement of this mill were carefully collected and the mischief caused by the sudden closing of the mill to the shareholders as well as to the general public were fully taken into consideration. Therefore, it seems to me that to say that one particular mill has been arbitrarily and unreasonably selected and subjected to discriminatory treatment, would be an entirely wrong proposition.

Article 14 of the Constitution, as already stated, lays down an important fundamental right, which should be closely and vigilantly guarded, but, in construing it, we should not adopt a doctrinaire approach which might choke all beneficial legislation.

The facts to which I have referred are to be found in a public document, and, though some of them may

(1) Constitutional Law by Prof. Willis (1st Edition) p. 580.

require further investigation forming as they do part of a one-sided version, yet they furnish good *prima facie* grounds for the exercise of the utmost caution in deciding this case and for not departing from the ordinary rule as to the burden of proof. In the last resort, this petition can be disposed of on the simple ground that the petitioner has not discharged the onus which lies upon him, and I am quite prepared to rest my judgment on this ground alone.

I think that the petitioner has failed to make out any case for granting the writs or directions asked for, and the petition should therefore be dismissed with costs.

Patanjali Sastri J.

PATANJALI SASTRI J.—This is an application under article 32 of the Constitution seeking relief against alleged infringement of certain fundamental rights of the petitioner.

The petitioner is a shareholder of the Sholapur Spinning and Weaving Company, Limited, Sholapur, in the State of Bombay, (hereinafter referred to as "the Company"). The authorised share capital of the Company consisted of 1590 fully paid up ordinary shares of Rs. 1,000 each, 20 fully paid up ordinary shares of Rs. 500 each and 32,000 partly paid up redeemable cumulative preference shares of Rs. 100 each, of which Rs. 50 only was paid up. Of these, the petitioner held one ordinary share in his own name and 80 preference shares which, however, having been pledged with the Bank of Baroda Ltd., now stand registered in the Bank's name.

The company was doing flourishing business till disputes arose recently between the management and the employees, and in or about August, 1949, the mills were temporarily closed and the company, which was one of the largest producers of cotton textiles, ceased production. Thereupon, the Governor-General intervened by promulgating on the 9th January, 1950, an Ordinance called the Sholapur Spinning and Weaving Company (Emergency Provisions) Ordinance (No. II of 1950), which empowered the Government of India to

1950

Chiranjitlal Chowdhuri
v.
The Union of India and Others.

Patanjali Sastri J.

take over the control and management of the company and its properties and effects by appointing their own Directors and to delegate all or any of their powers to the Provincial Government. In exercise of the powers thus delegated, the Government of Bombay appointed respondents 3 to 9 as Directors to take charge of the management and administration of the properties and affairs of the company. Subsequently, on 10th April, 1950, the Ordinance was repealed and was replaced by an Act of Parliament containing similar provisions, namely the Sholapur Spinning and Weaving Company (Emergency Provisions) Act (No. XXVIII of 1950) (hereinafter referred to as the "impugned Act").

The petitioner complains that the impugned Act and the action of the Government of Bombay pursuant thereto have infringed the fundamental rights conferred on him by articles 14, 19 and 31 of the Constitution with the result that the enactment is unconstitutional and void, and the interference by the Government in the affairs of the company is unauthorised and illegal. He accordingly seeks relief by way of injunction and mandamus against the Union of India and the State of Bombay impleaded as respondents 1 and 2 respectively in these proceedings and against respondents 3 to 9 who are now in management as already stated. The company is impleaded *pro forma* as the 10th respondent.

Before discussing the issues involved, it is necessary to examine the relevant provisions of the impugned Act in order to see in what manner and to what extent the petitioner's rights have been affected thereby. The preamble to the repealed Ordinance stated that "on account of mismanagement and neglect a situation has arisen in the affairs of the Sholapur Spinning and Weaving Company, Limited, which has prejudicially affected the production of an essential commodity and has caused serious unemployment amongst a certain section of the community and that an emergency has arisen which renders it necessary to make special provision for the proper management and administration of the aforesaid

Company." This preamble was not reproduced in the impugned Act. Section 3 empowers the Central Government to appoint as many persons as it thinks fit to be directors of the company " for the purpose of taking over its management and administration." Section 4 states the effect of the order appointing directors to be that (1) the old directors shall be deemed to have vacated their office, (2) the contract with the managing agents shall be deemed to have been terminated, (3) that the properties and effects of the company shall be deemed to be in the custody of the new directors who are to be " for all purposes " the directors of the company and " shall alone be entitled to exercise all the powers of the directors of the company whether such powers are derived from the Companies Act or from the memorandum or articles of association or otherwise." Section 5 defines the powers of the new directors. They are to manage the business of the company " subject to the control of the Central Government " and shall have the power to raise funds offering such security as they think fit, to carry out necessary repairs to the machinery or other property in their custody and to employ the necessary persons and define the necessary conditions of their service. Section 12 provides for the restoration of the management to directors nominated by the shareholders when the purpose of the Government's intervention has been fulfilled. Section 13 is important and reads thus: " 13. *Application of the Companies Act.*—(1) Notwithstanding anything contained in the Companies Act or in the memorandum or articles of association of the company (a) it shall not be lawful for the shareholders of the company or any other person to nominate or appoint any person to be a director of the company; (b) no resolution passed at any meeting of the shareholders of the company shall be given effect to unless approved by the Central Government; (c) no proceeding for the winding up of the company or for the appointment of a receiver in respect thereof shall lie in any Court unless by or with the sanction of the Central Government. (2) Subject

1950

Chiranjitlal Chowdhuri v. *The Union of India and Others.*

Patanjali Sastri J.

to the provisions contained in sub-section (1) and to the other provisions of this Act, and subject to such exceptions, restrictions and limitations as the Central Government may, by notified order, specify, the Companies Act shall continue to apply to the company in the same manner as it applied thereto before the issue of the notified order under section 3." By section 14 the provisions of the Act are to have effect "notwithstanding anything inconsistent therewith contained in any other law or in any instrument having effect by virtue of any law other than this Act." Section 16 provides for delegation of powers to the Government of Bombay to be exercised subject to the directions of the Central Government, and section 17 bars suits or other proceedings against the Central Government or the Government of Bombay or any director "for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act."

As a result of these provisions all the properties and effects of the company passed into the absolute power and control of the Central Government or its delegate the Government of Bombay, and the normal functioning of the company as a corporate body came to an end. The shareholders have been reduced to the position of interested, if helpless, onlookers while the business is carried on against their will and, may be, to their disadvantage by the Government's nominees. The declared purpose of this arrangement was, according to the Preamble of the repealed Ordinance to keep up the production of an essential commodity and to avert serious unemployment amongst a certain section of the community.

The question accordingly arises whether the impugned Act, which thus affects the petitioner and his co-shareholders, while leaving untouched the shareholders of all other companies, including those engaged in the production of essential commodities, denies to the petitioner the equal protection of the laws under article 14 of the Constitution. The correct approach to

this question is first to see what rights have been conferred or protection extended to persons similarly situated. The relevant protection is to be found in the provisions of the Indian Companies Act which regulates the rights and obligations of the shareholders of incorporated companies in India. Section 21 of the Act assures to the shareholders the protection of the stipulations contained in the memorandum and articles of association by constituting them a binding contract, so that neither the company nor the shareholders have the power of doing anything inconsistent therewith. The basic right of the shareholders to have their undertaking managed and conducted by the directors of their own choice is ensured by section 83B. Their right to exercise control and supervision over the management by the directors by passing resolutions at their general meeting is regulated by various provisions of the Act. The important safeguard of winding up the company in certain unfavourable circumstances either through court or by the shareholders themselves voluntarily is provided for in sections 162 and 203. All these rights and safeguards, on the faith of which the shareholders embark their money in their undertaking, are abrogated by the impugned Act in the case of the shareholders of this company alone. In fact, the Central Government is empowered to exclude, restrict or limit the operation of any of the provisions of the Companies Act in relation to this company. It is thus plain that the impugned Act denies to the shareholders of this particular company the protection of the law relating to incorporated joint stock companies in this country as embodied in the Companies Act and is *prima facie* within the inhibition of article 14.

It is argued, however, that article 14 does not make it incumbent on the Legislature always to make laws applicable to all persons generally, and that it is open to the Legislature to classify persons and things and subject them to the operation of a particular law according to the aims and objects which that law is designed to secure. In the present case, Parliament,

1950

Chiranjitlal Chowdhuri
v.
The Union of India and Others.

Patanjali Sastri J.

it was said, came to the conclusion, on the materials placed before them, that the affairs of the company were being grossly mismanaged so as to result in the cessation of production of an essential commodity and serious unemployment amongst a section of the community. In view of the detriment thus caused to public economy, it was competent for Parliament to enact a measure applicable to this company and its shareholders alone, and Parliament must be the judge as to whether the evil which the impugned Act was designed to remedy prevailed to such an extent in this company as to call for special legislation. Reliance was placed in support of this argument on certain American decisions dealing with the equal protection clause of the Fourteenth Amendment of the Federal Constitution. It is, however, unnecessary to discuss those decisions here, for it is undeniable that equal protection of the laws cannot mean that all laws must be quite general in their character and application. A legislature empowered to make laws on a wide range of subjects must of necessity have the power of making special laws to attain particular objects and must, for that purpose, possess large powers of distinguishing and classifying the persons or things to be brought under the operation of such laws, provided the basis of such classification has a just and reasonable relation to the object which the legislature has in view. While, for instance, a classification in a law regulating labour in mines or factories may be based on age or sex, it may not be based on the colour of one's skin. It is also true that the class of persons to whom a law is made applicable may be large or small, and the degree of harm which has prompted the enactment of a particular law is a matter within the discretion of the law-makers. It is not the province of the court to canvass the legislative judgment in such matters. But the issue here is not whether the impugned Act was ill-advised or not justified by the facts on which it was based, but whether it transgresses the explicit constitutional restriction on legislative power imposed by article 14.

It is obvious that the legislation is directed solely against a particular company and shareholders and not against any class or category of companies and no question, therefore, of reasonable legislative classification arises. If a law is made applicable to a class of persons or things and the classification is based upon differentia having a rational relation to the object sought to be attained, it can be no objection to its constitutional validity that its application is found to affect only one person or thing. For instance, a law may be passed imposing certain restrictions and burdens on joint stock companies with a share capital of, say, Rs. 10 crores and upwards, and it may be found that there is only one such company for the time being to which the law could be applied. If other such companies are brought into existence in future the law would apply to them also, and no discrimination would thus be involved. But the impugned Act, which selects this particular company and imposes upon it and its shareholders burdens and disabilities on the ground of mismanagement and neglect of duty on the part of those charged with the conduct of its undertaking, is plainly discriminatory in character and is, in my judgment, within the constitutional inhibition of article 14. Legislation based upon mismanagement or other misconduct as the differentia and made applicable to a specified individual or corporate body is not far removed from the notorious parliamentary procedure formerly employed in Britain of punishing individual delinquents by passing bills of attainder, and should not, I think, receive judicial encouragement.

It was next urged that the burden of proving that the impugned Act is unconstitutional lay on the petitioner, and that, inasmuch as he has failed to adduce any evidence to show that the selection of this company and its shareholders for special treatment under the impugned Act was arbitrary, the application must fail. Whilst all reasonable presumption must undoubtedly be made in support of the constitutional validity of a law made by a competent legislature, the circumstances of the present case would seem, to my

1950

Chiranjitlal Chowdhuri v. *The Union of India and Others.*

Patanjali Sastri J.

mind to exclude such presumption. Hostile discrimination is writ large over the face of the impugned Act and it discloses no grounds for such legislative intervention. For all that appears no compelling public interests were involved. Even the preamble to the original Ordinance was omitted. Nor did respondents 1 and 2 file any counter-statement in this proceeding explaining the circumstances which led to the enactment of such an extraordinary measure. There is thus nothing in the record even by way of allegation which the petitioner need take steps to rebut. Supposing, however, that the impugned Act was passed on the same grounds as were mentioned in the preamble to the repealed Ordinance, namely, mismanagement and neglect prejudicially affecting the production of an essential commodity and causing serious unemployment amongst a section of the community, the petitioner could hardly be expected to assume the burden of showing, not that the company's affairs were properly managed, for that is not his case, but that there were also other companies similarly mismanaged, for that is what, according to the respondents, he should prove in order to rebut the presumption of constitutionality. In other words, he should be called upon to establish that this company and its shareholders were arbitrarily singled out for the imposition of the statutory disabilities. How could the petitioner discharge such a burden? Was he to ask for an investigation by the Court of the affairs of other industrial concerns in India where also there were strikes and lock outs resulting in unemployment and cessation of production of essential commodities? Would those companies be willing to submit to such an investigation? And even so, how is it possible to prove that the mismanagement and neglect which is said to have prompted the legislation in regard to this company was prevalent in the same degree in other companies? In such circumstances, to cast upon the petitioner a burden of proof which it is as needless for him to assume as it is impracticable to discharge is to lose sight of the realities of the case.

1950

Chiranjitlal Chowdhuri v. The Union of India and Others.

Patanjali Sastri J.

Lastly, it was argued that the constitutionality of a statute could not be impugned under article 32 except by a person whose rights were infringed by the enactment, and that, inasmuch as there was no infringement of the individual right of a shareholder, even assuming that there was an injury to the company as a corporate body, the petitioner was not entitled to apply for relief under that article. Whatever validity the argument may have in relation to the petitioner's claim based on the alleged invasion of his right of property under article 31, there can be little doubt that, so far as his claim based on the contravention of article 14 is concerned, the petitioner is entitled to relief in his own right. As has been pointed out already, the impugned Act deprives the shareholders of the company of important rights and safeguards which are enjoyed by the shareholders of other joint stock companies in India under the Indian Companies Act. The petitioner is thus denied the equal protection of the laws in his capacity as a shareholder, and none the less so because the other shareholders of the company are also similarly affected. The petitioner is therefore entitled to seek relief under article 32 of the Constitution.

In this view it becomes unnecessary to consider the questions raised under articles 19 and 31 of the Constitution.

In the result, I would allow the application.

Mukherjea J.

MUKHERJEA J.—This is an application presented by one Chiranjitlal Chowdhuri, a shareholder of the Sholapur Spinning and Weaving Company Limited (hereinafter referred to as the company), praying for a writ of mandamus and certain other reliefs under article 32 of the Constitution. The company, which has its registered office within the State of Bombay and is governed by the provisions of the Indian Companies Act, was incorporated with an authorised capital of Rs. 48 lakhs divided into 1590, fully paid up ordinary shares of Rs. 100 each, 20 fully paid up ordinary shares of Rs. 500 each and 32,000 partly paid up cumulative preference shares of Rs. 100 each. The

1950

Chiranjitlal Chowdhuri
v.
The Union of India and Others.

Mukherjea J.

present paid up capital of the company is Rs. 32 lakhs half of which is represented by the fully paid up ordinary shares and the other half by the partly paid up cumulative preference shares. The petitioner states in his petition that he holds in his own right three ordinary shares and eighty preference shares in the company, though according to his own admission the preference shares do not stand in his name but have been registered in the name of the Baroda Bank Limited with which the shares are pledged. According to the respondents, the petitioner is the registered holder of one single ordinary share in the company.

It appears that on July 27, 1949, the directors of the company gave a notice to the workers that the mills would be closed, and pursuant to that notice, the mills were in fact closed on the 27th of August following. On January 9, 1950, the Governor-General of India promulgated an Ordinance which purported to make special provisions for the proper management and administration of the company. It was stated in the preamble to the Ordinance that "on account of mismanagement and neglect, a situation has arisen in the affairs of the Sholapur Spinning and Weaving Company Limited which has prejudicially affected the production of an essential commodity and has caused serious unemployment amongst a certain section of the community", and it was on account of the emergency arising from this situation that the promulgation of the Ordinance was necessary. The provisions of the Ordinance, so far as they are material for our present purpose, may be summarised as follows :

Under section 3 of the Ordinance, the Central Government may, at any time, by notified order, appoint as many persons as it thinks fit, to be directors of the company for the purpose of taking over its management and administration and may appoint one of such directors to be the Chairman. Section 4 provides that on the issue of a notified order under section 3 all the directors of the company holding office as such immediately before the issue of the order shall be deemed to have vacated their offices, and any existing

contract of management between the company and any managing agent thereof shall be deemed to have terminated. The directors thus appointed shall be for all purposes the directors of the company duly constituted under the Companies Act and shall alone be entitled to exercise all the powers of the directors of the company. The powers and the duties of the directors are specified in section 5 and this section *inter alia* empowers the directors to vary or cancel, with the previous sanction of the Central Government, any contract or agreement entered into between the company and any other person if they are satisfied that such contract or agreement is detrimental to the interests of the company. Section 10 lays down that no compensation for premature termination of any contract could be claimed by the managing agent or any other contracting party. It is provided by section 12 that so long as the management by the statutory directors continues, the shareholders would be precluded from nominating or appointing any person to be a director of the company and any resolution passed by them will not be effective unless it is approved by the Central Government. This section lays down further that during this period no proceeding for winding up of the company, or for appointment of a receiver in respect thereof could be instituted in any court, unless it is sanctioned by the Central Government, and the Central Government would be competent to impose any restrictions or limitations as regards application of the provisions of the Indian Companies Act to the affairs of the company. The only other material provision is that contained in section 15, under which the Central Government may, by notified order, direct that all or any of the powers exercisable by it under this Ordinance may be exercised by the Government of Bombay.

In accordance with the provisions of section 15 mentioned above, the Central Government, by notification issued on the same day that the Ordinance was promulgated, delegated all its powers exercisable under the Ordinance to the Government of Bombay.

1950

Chiranjitlal Chowdhuri v. *The Union of India and Others.*

Mukherjea J.

On the next day, the Government of Bombay appointed respondents 3 to 7 as directors of the company in terms of section 3 of the Ordinance. On the 2nd of March, 1950, the respondent No. 9 was appointed a director and respondent No. 5 having resigned his office in the meantime, the respondent No. 8 was appointed in his place. On the 7th of April, 1950, the Ordinance was repealed and an Act was passed by the Parliament of India, known as the Sholapur Spinning and Weaving Company (Emergency Provisions) Act which re-enacted almost in identical terms all the provisions of the Ordinance and provided further that all actions taken and orders made under the Ordinance shall be deemed to have been taken or made under the corresponding provisions of the Act. The preamble to the Ordinance was not however reproduced in the Act.

The petitioner in his petition has challenged the constitutional validity of both the Ordinance and the Act. As the Ordinance is no longer in force and all its provisions have been incorporated in the Act, it will not be necessary to deal with or refer to the enactments separately. Both the Ordinance and the Act have been attacked on identical grounds and it is only necessary to enumerate briefly what these grounds are.

The main ground put forward by the petitioner is that the pith and substance of the enactments is to take possession of and control over the mills of the company which are its valuable assets and such taking of possession of property is entirely beyond the powers of the Legislature. The provisions of the Act, it is said, amount to deprivation of property of the shareholders as well as of the company within the meaning of article 31 of the Constitution and the restrictions imposed on the rights of the shareholders in respect to the shares held by them constitute an unjustifiable interference with their rights to hold property and as such are void under article 19 (1) (f). It is urged that there was no public purpose for which the Legislature could authorise the taking possession or acquisition of

property and such acquisition or taking of possession without payment of compensation is in violation of the fundamental rights guaranteed by article 31 (2) of the Constitution. It is said further that the enactment denies to the company and its shareholders equality before the law, and equal protection of laws and thus offends against the provisions of article 14 of the Constitution. The only other material point raised is that the legislation is beyond the legislative competency of the Parliament and is not covered by any of the items in the legislative lists.

On these allegations, the petitioner prays, in the first instance, that it may be declared that both the Act and the Ordinance are *ultra vires* and void and an injunction may be issued restraining the respondents from exercising any of the powers conferred upon them by the enactments. The third and the material prayer is for issuing a writ of mandamus, "restraining the respondents 1 to 9 from exercising or purporting to exercise any powers under the said Ordinance or Act and from in any manner interfering with the management or affairs of the company under colour of or any purported exercise of any powers under the Ordinance or the Act." The other prayers are not material for our purpose.

Before I address myself to the merits of this application it will be necessary to clear up two preliminary matters in respect to which arguments were advanced at some length from the Bar. The first point relates to the scope of our enquiry in the present case and raises the question as to what precisely are the matters that have to be investigated and determined on this application of the petitioner. The second point relates to the form of relief that can be prayed for and granted in a case of this description.

Article 32 (1) of the Constitution guarantees to everybody the right to move this court, by appropriate proceeding, for enforcement of the fundamental rights which are enumerated in Part III of the Constitution. Clause (2) of the article lays down that the

1950

Chiranjitlal Chowdhuri v. *The Union of India and Others.*

Mukherjea J.

Supreme Court shall have the power to issue directions or orders or writs including writs in the nature of *habeas corpus, mandamus, prohibition, quo warranto* and *certiorari* whichever may be appropriate for the enforcement of any of the rights conferred by this part.

Thus anybody who complains of infraction of any of the fundamental rights guaranteed by the Constitution is at liberty to move the Supreme Court for the enforcement of such rights and this court has been given the power to make orders and issue directions or writs similar in nature to the prerogative writs of English law as might be considered appropriate in particular cases. The fundamental rights guaranteed by the Constitution are available not merely to individual citizens but to corporate bodies as well except where the language of the provision or the nature of the right compels the inference that they are applicable only to natural persons. An incorporated company, therefore, can come up to this court for enforcement of its fundamental rights and so may the individual shareholders to enforce their own; but it would not be open to an individual shareholder to complain of an Act which affects the fundamental rights of the company except to the extent that it constitutes an infraction of his own rights as well. This follows logically from the rule of law that a corporation has a distinct legal personality of its own with rights and capacities, duties and obligations separate from those of its individual members. As the rights are different and inhere in different legal entities, it is not competent to one person to seek to enforce the rights of another except where the law permits him to do so. A well known illustration of such exception is furnished by the procedure that is sanctioned in an application for a writ of habeas corpus. Not only the man who is imprisoned or detained in confinement but any person, provided he is not an absolute stranger, can institute proceedings to obtain a writ of habeas corpus for the purpose of liberating another from an illegal imprisonment.

The application before us under article 32 of the Constitution is on behalf of an individual shareholder of the company. Article 32, as its provisions show, is not directly concerned with the determination of constitutional validity of particular legislative enactments. What it aims at is the enforcing of fundamental rights guaranteed by the Constitution, no matter whether the necessity for such enforcement arises out of an action of the executive or of the legislature. To make out a case under this article, it is incumbent upon the petitioner to establish not merely that the law complained of is beyond the competence of the particular legislature as not being covered by any of the items in the legislative lists, but that it affects or invades his fundamental rights guaranteed by the Constitution, of which he could seek enforcement by an appropriate writ or order. The rights that could be enforced under article 32 must ordinarily be the rights of the petitioner himself who complains of infraction of such rights and approaches the court for relief. This being the position, the proper subject of our investigation would be what rights, if any, of the petitioner as a shareholder of the company have been violated by the impugned legislation. A discussion of the fundamental rights of the company as such would be outside the purview of our enquiry. It is settled law that in order to redress a wrong done to the company, the action should *prima facie* be brought by the company itself. It cannot be said that this course is not possible in the circumstances of the present case. As the law is alleged to be unconstitutional, it is open to the old directors of the company who have been ousted from their position by reason of the enactment to maintain that they are directors still in the eye of law, and on that footing the majority of shareholders can also assert the rights of the company as such. None of them, however, have come forward to institute any proceeding on behalf of the company. Neither in form nor in substance does the present application purport to be one made by the company itself. Indeed, the company

1950

Chiranjitlal Chowdhuri v. *The Union of India and Others.*

Mukherjea J.

is one of the respondents, and opposes the petition.

As regards the other point, it would appear from the language of article 32 of the Constitution that the sole object of the article is the enforcement of fundamental rights guaranteed by the Constitution. A proceeding under this article cannot really have any affinity to what is known as a declaratory suit. The first prayer made in the petition seeks relief in the shape of a declaration that the Act is invalid and is apparently inappropriate to an application under article 32; while the second purports to be framed for a relief by way of injunction consequent upon the first. As regards the third prayer, it has been contended by Mr. Joshi, who appears for one of the respondents, that having regard to the nature of the case and the allegations made by the petitioner himself, the prayer for a writ of mandamus, in the form in which it has been made, is not tenable. What is argued is that a writ of mandamus can be prayed for, for enforcement of statutory duties or to compel a person holding a public office to do or forbear from doing something which is incumbent upon him to do or forbear from doing under the provisions of any law. Assuming that the respondents in the present case are public servants, it is said that the statutory duties which it is incumbent upon them to discharge are precisely the duties which are laid down in the impugned Act itself. There is no legal obligation on their part to abstain from exercising the powers conferred upon them by the impeached enactment which the court can be called upon to enforce. There is really not much substance in this argument, for according to the petitioner the impugned Act is not valid at all and consequently the respondents cannot take their stand on this very Act to defeat the application for a writ in the nature of a mandamus. Any way, article 32 of the Constitution gives us very wide discretion in the matter of framing our writs to suit the exigencies of particular cases, and the application of the petitioner cannot be thrown out simply on the

ground that the proper writ or direction has not been prayed for.

Proceeding now to the merits of the case, the first contention that has been pressed before us by the learned Counsel for the petitioner is that the effect of the Sholapur Spinning and Weaving Company Limited (Emergency Provisions) Act, has been to take away from the company and its shareholders, possession of property and other interests in commercial undertaking and vest the same in certain persons who are appointed by the State, and the exercise of whose powers cannot be directed or controlled in any way by the shareholders. As the taking of possession is not for any public purpose and no provision for compensation has been made by the law which authorises it, such law, it is said, violates the fundamental rights guaranteed under article 31 of the Constitution.

To appreciate the contention, it would be convenient first of all to advert to the provisions of the first two clauses of article 31 of the Constitution. The first clause of article 31 lays down that "no person shall be deprived of his property save by authority of law". The second clause provides: "No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possesion of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given."

It is a right inherent in every sovereign to take and appropriate private property belonging to individual citizens for public use. This right, which is described as *eminent domain* in American law, is like the power of taxation, an offspring of political necessity, and it is supposed to be based upon an implied reservation by Government that private property acquired by its

1950

Chiranjitlal Chowdhuri v. The Union of India and Others.

Mukherjea J.

citizens under its protection may be taken or its use controlled for public benefit irrespective of the wishes of the owner. Article 31 (2) of the Constitution prescribes a two-fold limit within which such superior right of the State should be exercised. One limitation imposed upon acquisition or taking possession of private property which is implied in the clause is that such taking must be for public purpose. The other condition is that no property can be taken, unless the law which authorises such appropriation contains a provision for payment of compensation in the manner laid down in the clause. So far as article 31 (2) is concerned, the substantial question for our consideration is whether the impugned legislation authorises any act amounting to acquisition or taking possession of private property within the meaning of the clause.

It cannot be disputed that acquisition means and implies the acquiring of the entire title of the expropriated owner, whatever the nature or extent of that title might be. The entire bundle of rights which were vested in the original holder would pass on acquisition to the acquirer leaving nothing in the former. In taking possession on the other hand, the title to the property admittedly remains in the original holder, though he is excluded from possession or enjoyment of the property. Article 31 (2) of the Constitution itself makes a clear distinction between acquisition of property and taking possession of it for a public purpose, though it places both of them on the same footing in the sense that a legislation authorising either of these acts must make provision for payment of compensation to the displaced or expropriated holder of the property. In the context in which the word "acquisition" appears in article 31 (2), it can only mean and refer to acquisition of the entire interest of the previous holder by transfer of title and I have no hesitation in holding that there is no such acquisition either as regards the property of the company or of the shareholders in the present case. The question, therefore, narrows down to this as to whether the legislation in

question has authorised the taking of possession of any property or interest belonging to the petitioner.

It is argued by the learned Attorney-General that the taking of possession as contemplated by article 31 (2) means the taking of possession of the entire bundle of rights which the previous holder had, by excluding him from every part or item thereof. If the original holder is still left to exercise his possession with regard to some of the rights which were within the folds of his title, it would not amount to taking possession of the property for purposes of article 31 (2) of the Constitution. Having laid down this proposition of law, the learned Attorney-General has taken us through the various provisions of the impugned Act and the contention advanced by him substantially is that neither the company nor the shareholders have been dispossessed from their property by reason of the enactment. As regards the properties of the company, the directors, who have been given the custody of the property, effects and actionable claims of the company, are, it is said, to exercise their powers not in their own right but as agents of the company, whose beneficial interest in all its assets has not been touched or taken away at all. No doubt the affairs of the company are to be managed by a body of directors appointed by the State and not by the company, but this, it is argued, would not amount to taking possession of any property or interest within the meaning of article 31 (2). Mr. Chari, on the other hand, has contended on behalf of the petitioner that after the management is taken over by the statutory directors, it cannot be said that the company still retains possession or control over its property and assets. Assuming that this State management was imposed in the interests of the shareholders themselves and that the statutory directors are acting as the agents of the company, the possession of the statutory directors could not, it is argued, be regarded in law as possession of the company so long as they are bound to act in obedience to the dictates of the Central Government and not of the company itself in the administration of its affairs. Possession of an

1950

Chiranjitlal Chowdhuri v. *The Union of India and Others.*

Mukherjea J.

agent, it is said, cannot juridically be the possession of the principal, if the agent is to act not according to the commands or dictates of the principal, but under the direction of an exterior authority.

There can be no doubt that there is force in this contention, but as I have indicated at the outset, we are not concerned in this case with the larger question as to how far the inter-position of this statutory management and control amounts to taking possession of the property and assets belonging to the company. The point for our consideration is a short one and that is whether by virtue of the impugned legislation any property or interest of the petitioner himself, as a shareholder of the company, has been taken possession of by the State or an authority appointed under it, as contemplated by article 31 (2) of the Constitution.

The petitioner as a shareholder has undoubtedly an interest in the company. His interest is represented by the share he holds and the share is movable property according to the Indian Companies Act with all the incidence of such property attached to it. Ordinarily, he is entitled to enjoy the income arising from the shares in the shape of dividends; the share like any other marketable commodity can be sold or transferred by way of mortgage or pledge. The holding of the share in his name gives him the right to vote at the election of directors and thereby take a part, though indirectly, in the management of the company's affairs. If the majority of shareholders sides with him, he can have a resolution passed which would be binding on the company, and lastly, he can institute proceedings for winding up of the company which may result in a distribution of the net assets among the shareholders.

It cannot be disputed that the petitioner has not been dispossessed in any sense of the term of the shares he holds. Nobody has taken the shares away from him. His legal and beneficial interest in respect to the shares he holds is left intact. If the company declares dividend, he would be entitled to the same. He can sell or otherwise dispose of the shares at any

time at his option. The impugned Act has affected him in this way that his right of voting at the election of directors has been kept in abeyance so long as the management by the statutory director continues; and as a result of that, his right to participate in the management of the company has been abridged to that extent. His rights to pass resolutions or to institute winding up proceedings have also been restricted though they are not wholly gone; these rights can be exercised only with the consent or sanction of the Central Government. In my opinion, from the facts stated above, it cannot be held that the petitioner has been dispossessed from the property owned by him. I may apply the test which Mr. Chari himself formulated. If somebody had taken possession of the petitioner's shares and was clothed with the authority to exercise all the powers which could be exercised by the holder of the shares under law, then even if he purported to act as the petitioner's agent and exercise these powers for his benefit, the possession of such person would not have been the petitioner's possession if he was bound to act not under the directions of the petitioner or in obedience to his commands but under the directions of some other person or authority. There is no doubt whatsoever that that is not the position in the present case. The State has not usurped the shareholders' right to vote or vested it in any other authority. The State appoints directors of its own choice but that it does, not in exercise of the shareholders' right to vote but in exercise of the powers vested in it by the impugned Act. Thus there has been no dispossession of the shareholders from their right of voting at all. The same reasoning applies to the other rights of the shareholders spoken of above, namely, their right of passing resolutions and of presenting winding up petition. These rights have been restricted undoubtedly and may not be capable of being exercised to the fullest extent as long as the management by the State continues. Whether the restrictions are such as would bring the case within

1950

Chiranjitlal Chowdhuri v. *The Union of India and Others.*

Mukherjea J.

the mischief of article 19 (1) (f) of the Constitution, I will examine presently; but I have no hesitation in holding that they do not amount to dispossession of the shareholders from these rights in the sense that the rights have been usurped by other people who are exercising them in place of the displaced shareholders.

In the view that I have taken it is not necessary to discuss whether we can accept as sound the contention put forward by the learned Attorney-General that the word "property" as used in article 31 of the Constitution connotes the entire property, that is to say the totality of the rights which the ownership of the object connotes. According to Mr. Setalvad, if a shareholder is not deprived of the entirety of his rights which he is entitled to exercise by reason of his being the owner or holder of the share and some rights, however insignificant they might be, still remain in him, there cannot be any dispossession as contemplated by article 31(2). It is difficult, in my opinion, to accept the contention formulated in such broad terms. The test would certainly be as to whether the owner has been dispossessed substantially from the rights held by him or the loss is only with regard to some minor ingredients of the proprietory right. It is relevant to refer in this connection to an observation made by Rich J. in a Full Bench decision of the High Court of Australia,(1) where the question arose as to whether the taking of exclusive possession of a property for an indefinite period of time by the Commonwealth of Australia under Reg. 54 of the National Security Regulation amounted to acquisition of property within the meaning of placitum 31, section 51, of the Commonwealth Constitution. The majority of the Full Bench answered the question in the affirmative and the main reason upon which the majority decision was based is thus expressed in the language of Rich J.—

"Property, in relation to land, is a bundle of rights exercisable with respect to the land. The tenant of an unencumbered estate in fee simple in possession has the largest possible bundle. But there is nothing in

(1) See *Minister of State for the Army* v. *Dalziel*, 68 C L.R. p. 261.

the placitum to suggest that the legislature was intended to be at liberty to free itself from the restrictive provisions of the placitum by taking care to seize something short of the whole bundle owned by the person whom it was expropriating."

It is not, however, necessary for my purpose to pursue the matter any further, as in my opinion there has been no dispossession of the rights of a shareholder in the present case.

Mr. Chari in course of his opening relied exclusively on clause (2) of article 31 of the Constitution. During his reply, however, he laid some stress on clause (1) of the article as well, and his contention seems to be that there was deprivation of property in the present case in contravention of the terms of this clause. It is difficult to see what exactly is the contention of the learned Counsel and in which way it assists him for purposes of the present case. It has been argued by the learned Attorney-General that clause (1) of article 31 relates to a power different from that dealt with under clause (2). According to him, what clause (1) contemplates is confiscation or destruction of property in exercise of what are known as 'police powers' in American law, for which no payment of compensation is necessary. I do not think it proper for purposes of the present case to enter into a discussion on this somewhat debatable point which has been raised by the learned Attorney-General. In interpreting the provisions of our Constitution, we should go by the plain words used by the Constitution-makers and the importing of expressions like 'police power', which is a term of variable and indefinite connotation in American law can only make the task of interpretation more difficult. It is also not necessary to express any opinion as to whether clauses (1) and (2) of article 31 relate to exercise of different kinds of powers or they are to be taken as cumulative provisions in relation to the same subject-matter, namely, compulsory acquisition of property. If the word "deprived" as used in clause (1) connotes the idea of destruction or confiscation of property, obviously no such thing has happened in the present

1950

Chiranjitlal Chowdhuri v. *The Union of India and Others.*

Mukherjea J.

case. Again if clauses (1) and (2) of article 31 have to be read together and "deprivation" in clause (1) is given the same meaning as compulsory acquisition in clause (2), clause (1), which speaks neither of compensation nor of public purpose, would not by itself, and apart from clause (2), assist the petitioner in any way. If the two clauses are read disjunctively, the only question that may arise in connection with clause (1) is whether or not the deprivation of property is authorised by law. Mr. Chari has raised a question relating to the validity of the legislation on the ground of its not being covered by any of the items in the legislative list and to this question I would advert later on; but apart from this, clause (1) of article 31 of the Constitution seems to me to be altogether irrelevant for purposes of the petitioner's case.

This leads me to the consideration of the next point raised by Mr. Chari, namely, whether these restrictions offend against the provision of article 19(1)(f) of the Constitution.

Article 19(1) of the Constitution enumerates the different forms of individual liberty, the protection of which is guaranteed by the Constitution. The remaining clauses of the article prescribe the limits that may be placed upon these liberties by law, so that they may not conflict with public welfare or general morality. Article 19(1)(f) guarantees to all citizens 'the right to acquire, hold or dispose of property.' Any infringement of this provision would amount to a violation of the fundamental rights, unless it comes within the exceptions provided for in clause (5) of the article. That clause permits the imposition of reasonable restrictions upon the exercise of such righ teither in the interests of the general public or for the protection of the interests of any Scheduled Tribe. Two questions, therefore, arise in this connection: first, whether the restrictions that have been imposed upon the rights of the petitioner as a shareholder in the company under the Sholapur Act amount to infringement of his right to acquire, hold or dispose of property within the meaning of article 19(1)(f) of the Constitution and

secondly, if they do interefere with such rights, whether they are covered by the exceptions laid down in clause (5) of the article.

So far as the first point is concerned, it is quite clear that there is no restriction whatsoever upon the petitioner's right to acquire and dispose of any property. The shares which he holds do remain his property and his right to dispose of them is not fettered in any way. If to 'hold' a property means to possess it, there is no infringement of this right either, for, as I have stated already, the acts complained of by the petitioner do not amount to dispossession of him from any property in the eye of law. It is argued that 'holding' includes enjoyment of all benefits that are ordinarily attached to the ownership of a property. The enjoyment of the fruits of a property is undoubtedly an incident of ownership. The pecuniary benefit, which a shareholder derives from the shares he holds, is the dividend and there is no limitation on the petitioner's right in this respect. The petitioner undoubtedly has been precluded from exercising his right of voting at the election of directors so long as the statutory directors continue to manage the affairs of the company. He cannot pass an effective resolution in concurrence with the majority of shareholders without the consent or sanction of the Central Government and without such sanction, there is also a disability on him to institute any winding up proceedings in a court of law.

In my opinion, these are rights or privileges which are appurtenant to or flow from the ownership of property, but by themselves and taken independently, they cannot be reckoned as property capable of being acquired, held or disposed of as is contemplated by article 19 (1) (f) of the Constitution. I do not think that there has been any restriction on the rights of a shareholder to hold, acquire or dispose of his share by reason of the impugned enactment and consequently article 19 (1) (f) of the Constitution is of no assistance to the petitioner. In this view, the other point does not arise for consideration, but I may state here that even if it is conceded for argument's sake that the

1950

Chiranjitlal Chowdhuri v. *The Union of India and Others*

Mukherjea J.

disabilities imposed by the impugned legislation amount to restrictions on proprietory right, they may very well be supported as reasonable restraints imposed in the interests of the general public, *viz.*, to secure the supply of a commodity essential to the community and to prevent a serious unemployment amongst a section of the people. They are, therefore, protected completely by clause (5) of article 19. This disposes of the second point raised by Mr. Chari.

The next point urged on behalf of the petitioner raises an important question of constitutional law which turns upon the construction of article 14 of the Constitution. It is urged by the learned Counsel for the petitioner that the Sholapur Act is a piece of discriminatory legislation which offends against the provision of article 14 of the Constitution. Article 14 guarantees to all persons in the territory of India equality before the law and equal protection of the laws and its entire object, it is said, is to prevent any person or class of persons from being singled out as a special subject of discriminatory legislation. It is pointed out that the law in this case has selected one particular company and its shareholders and has taken away from them the right to manage their own affairs, but the same treatment has not been meted out to all other companies or shareholders situated in an identical manner.

Article 14 of the Constitution, it may be noted, corresponds to the equal protection clause in the Fourteenth Amendment of the American Constitution which declares that "no State shall deny to any person within its jurisdiction the equal protection of the laws." We have been referred in course of the arguments on this point by the learned Counsel on both sides to quite a number of cases decided by the American Supreme Court, where questions turning upon the construction of the 'equal protection' clause in the American Constitution came up for consideration. A detailed examination of these reports is neither necessary nor profitable for our present purpose but we think we can cull a few general principles from some of the pronouncements of

the American Judges which might appear to us to be consonant with reason and help us in determining the true meaning and scope of article 14 of our Constitution.

I may state here that so far as the violation of the equality clause in the Constitution is concerned, the petitioner, as a shareholder of the company, has as much right to complain as the company itself, for his complaint is that apart from the discrimination made against the company, the impugned legislation has discriminated against him and the other shareholders of the company as a group vis a-vis the shareholders of all other companies governed by the Indian Companies Act who have not been treated in a similar way. As the discriminatory treatment has been in respect to the sharholders of this company alone, any one of the shareholders, whose interests are thus vitally affected, has a right to complain and it is immaterial that there has been no-discrimination *inter se* amongst the shareholders themselves.

It must be admitted that the guarantee againstthe denial of equal protection of the laws does not mean that identically the same rules of law should be made applicable to all persons within the territory of India in spite of differences of circumstances and conditions. As has been said by the Supreme Court of America, " equal protection of laws is a pledge of the protection of equal laws(1)," and this means "subjection to equal laws applying alike to all in the same situation(2)." In other words, there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is the same. I am unable to accept the argument of Mr. Chari that a legislation relating to one individual or one family or one body corporate would *per se* violate the guarantee of the equal protection rule. There can certainly be a law applying to one person or to one group of persons and it cannot be held to be

(1) *Yick Wo* v. *Hopkins*, 118 U S at 369.

(2) *Southern Railway Company* v. *Greene*, 216 U.S. 400, 412.

1950

Chiranjitlal Chowdhuri v. *The Union of India and Others.*

Mukherjea J.

unconstitutional if it is not discriminatory in its character (1). It would be bad law "if it arbitrarily selects one individual or a class of individuals, one corporation or a class of corporations and visits a penalty upon them, which is not imposed upon others guilty of like delinquency(2)." The legislature undoubtedly has a wide field of choice in determining and classifying the subject of its laws, and if the law deals alike with all of a certain class, it is normally not obnoxious to the charge of denial of equal protection; but the classification should never be arbitrary. It must always rest upon some real and substantial distinction bearing a reasonable and just relation to the things in respect to which the classification is made; and classification made without any substantial basis should be regarded as invalid(3).

The question is whether judged by this test the the impugned Act can be said to have contravened the provision embodied in article 14 of the Constitution. Obviously the Act purports to make provisions which are of a drastic character and against the general law of the land as laid down in the Indian Companies Act, in regard to the administration and management of the affairs of one company in Indian territory. The Act itself gives no reason for the legislation but the Ordinance, which was a precursor of the Act, expressly stated why the legislation was necessary. It said that owing to mismanagement and neglect, a situation had arisen in the affairs of the company which prejudicially affected the production of an essential commodity and caused serious unemployment amongst a certain section of the community. Mr. Chari's contention in substance is that there are various textile companies in India situated in a similar manner as the Sholapur company, against which the same charges could be brought and for the control and regulation of which all the reasons that are mentioned in the preamble to the Ordinance

(1) Willis Constitutional Law, p. 580.

(2) *Gulf C. & S. F. R. Co.* v. *Ellis*, 163 U.S. 150, at 159.

(3) *Southern Railway Co.* v. *Greene*, 216 U.S. 400, at 412.

could be applied. Yet, it is said, the legislation has been passed with regard to this one company alone. The argument seems plausible at first sight, but on a closer examination I do not think that I can accept it as sound. It must be conceded that the Legislature has a wide discretion in determining the subject matter of its laws. It is an accepted doctrine of the American Courts and which seems to me to be well founded on principle, that the presumption is in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a transgression of constitutional principles. As was said by the Supreme Court of America in *Middleton* v. *Texas Power and Light Company*(1), "It must be presumed that a Legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based upon adequate grounds." This being the position, it is for the petitioner to establish facts which would prove that the selection of this particular subject by the Legislature is unreasonable and based upon arbitrary grounds. No allegations were made in the petition and no materials were placed before us to show as to whether there are other companies in India which come precisely under the same category as the Sholapur Spinning and Weaving Company and the reasons for imposing control upon the latter as mentioned in the preamble to the Ordinance are applicable to them as well. Mr. Chari argues that these are matters of common knowledge of which we should take judicial notice. I do not think that this is the correct line of approach. It is quite true that the Legislature has, in this instance, proceeded against one company only and its shareholders; but even one corporation or a group of persons can be taken as a class by itself for the purpose of legislation, provided it exhibits some exceptional features which are not possessed by others. The courts should *prima facie*

(1) 249 U.S. 152, at p. 157.

1950

Chiranjitlal Chowdhuri v. *The Union of India and Others.*

Mukherjea J.

lean in favour of constitutionality and should support the legislation if it is possible to do so on any reasonable ground, and it is for the party who attacks the validity of the legislation to place all materials before the court which would go to show that the selection is arbitrary and unsupportable. Throwing out of vague hints that there may be other instances of similar nature is not enough for this purpose. We have not even before us any statement on oath by the petitioner that what has been alleged against this particular company may be said against other companies as well. If there was any such statement, the respondents could have placed before us the whole string of events that led up to the passing of this legislation. If we are to take judicial notice of the existence of similar other badly managed companies, we must take notice also of the facts which appear in the parliamentary proceedings in connection with this legislation which have been referred to by my learned brother, Fazl Ali J. in his judgment and which would go to establish that the facts connected with this corporation are indeed exceptional and the discrimination that has been made can be supported on just and reasonable grounds. I purposely refrain from alluding to these facts or basing my decision thereon as we had no opportunity of investigating them properly during the course of the hearing. As matters stand, no proper materials have been placed before us by either side and as I am unable to say that the legislature cannot be supported on any reasonable ground, I think it to be extremely risky to overthrow it on mere suspicion or vague conjectures. If it is possible to imagine or think of cases of other companies where similar or identical conditions might prevail, it is also not impossible to conceive of something "peculiar" or "unusual" to this corporation which led the legislature to intervene in its affairs. As has been laid down by the Supreme Court of America, "The Legislature is free to recognise degrees of harm and it may confine its restrictions to those cases where the need is deemed to be the clearest"(1). We should

(1) *Radice* v. *New York*, 264 U.S. 294.

1950

Chiranjitlal Chowdhuri v. *The Union of India and Others.*

Mukherjea J.

bear in mind that a corporation, which is engaged in production of a commodity vitally essential to the community, has a social character of its own, and it must not be regarded as the concern primarily or only of those who invest their money in it. If its possibilities are large and it had a prosperous and useful career for a long period of time and is about to collapse not for any economic reason but through sheer perversity of the controlling authority, one cannot say that the legislature has no authority to treat it as a class by itself and make special legislation applicable to it alone in the interests of the community at large. The combination of circumstances which are present here may be of such unique character as could not be existing in any other institution. But all these, I must say, are matters which require investigation on proper materials which we have not got before us in the present case. In these circumstances I am constrained to hold that the present application must fail on the simple ground that the petitioner made no attempt to discharge the *prima facie* burden that lay upon him and did not place before us the materials upon which a proper decision on the point could be arrived at. In my opinion, therefore, the attack on the legislation on the gound of the denial of equal protection of law cannot succeed.

The only other thing that requires to be considered is the argument of Mr. Chari that the law in question is invalid as it is not covered by any of the items in the legislative list. In my opinion, this argument has no substance. What the law has attempted to do is to regulate the affairs of this company by laying down certain special rules for its management and administration. It is fully covered by item No. 43 of the Union List which speaks *inter alia* of "incorporation, regulation and winding up of trading corporations."

The result is that the application fails and is dismissed with costs.

Das J.

DAS J.—As I have arrived at a conclusion different from that reached by the majority of this Court, I

1950

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Chiranjitlal Chowdhuri

v.

The Union of India and Others.

—

Das J.

consider it proper, out of my respect for the opinion of my learned colleagues, to state the reasons for my conclusions in some detail.

On January 9, 1950, the Governor-General of India, acting under section 42 of the Government of India Act, 1935, promulgated an Ordinance, being Ordinance No. II of 1950, concerning the Sholapur Spinning and Weaving Company, Limited, (hereafter referred to as the said company). The preambles and the provisions of the Ordinance have been referred to in the judgment just delivered by Mukherjea J. and need not be recapitulated by me in detail. Suffice it to say that the net result of the Ordinance was that the managing agents of the said company were dismissed, the directors holding office at the time automatically vacated their office, the Government was authorised to nominate directors, the rights of the shareholders of this company were curtailed in that it was made unlawful for them to nominate or appoint any director, no resolution passed by them could be given effect to without the sanction of the Government and no proceeding for winding up could be taken by them without such sanction, and power was given to the Government to further modify the provisions of the Indian Companies Act in its application to the said company.

On the very day that the Ordinance was promulgated the Central Government acting under section 15 delegated all its powers to the Government of Bombay. On January 10, 1950, the Government of Bombay appointed Respondents Nos. 3 to 7 as the new directors. On March 2, 1950, Respondent No. 5 having resigned, Respondent No. 8 was appointed a director in his place and on the same day Respondent No. 9 was also appointed as a director. In the meantime the new Constitution had come into force on January 26, 1950. On February 7, 1950, the new directors passed a resolution sanctioning a call for Rs. 50 on the preference shares. Thereupon a suit being Suit No. 438 of 1950 was filed in the High Court of

Bombay by one Dwarkadas Shrinivas against the new directors challenging the validity of the Ordinance and the right of the new directors to make the call. Bhagwati J. who tried the suit held that the Ordinance was valid and dismissed the suit. An appeal (Appeal No. 48 of 1950) was taken from that decision which was dismissed by a Division Bench (Chagla C.J. and Gajendragadkar J.) on August 29, 1950. In the meantime, on April 7, 1950, the Ordinance was replaced by Act No. XXVIII of 1950. The Act substantially reproduced the provisions of the Ordinance except that the preambles to the Ordinance were omitted. On May 29, 1950, the present petition was filed by one Chiranjitlal Chowdhuri.

The petitioner claims to be a shareholder of the said company holding 80 preference shares and 3 ordinary shares. The preference shares, according to him, stand in the name of the Bank of Baroda to whom they are said to have been pledged. As those preference shares are not registered in the name of the petitioner he cannot assert any right as holder of those shares. According to the respondents, the petitioner appears on the register as holder of only one fully paid up ordinary share. For the purposes of this application, then, the petitioner's interest in the said company must be taken as limited to only one fully paid up ordinary share. The respondents are the Union of India, the State of Bombay and the new directors besides the company itself. The respondent No. 5 having resigned, he is no longer a director and has been wrongly impleaded as respondent. The reliefs prayed for are that the Ordinance and the Act are *ultra vires* and void, that the Central Government and the State Government and the directors be restrained from exercising any powers under the Ordinance or the Act, that a writ of mandamus be issued restraining the new directors from exercising any powers under the Ordinance or the Act or from in any manner interfering with the management of the affairs of the company under colour of or in purported exercise of any powers under the said Ordinance or Act.

1950

Chiranjitlal Chowdhuri v. *The Union of India and Others.*

Das J.

The validity of the Ordinance and the Act has been challenged before us on the following grounds:—(i) that it was not within the legislative competence—(a) of the Governor-General to promulgate the Ordinance, or (b) of the Parliament to enact the Act, and (ii) that the Ordinance and the Act infringe the fundamental rights of the shareholders as well as those of the said company and are, therefore, void and inoperative under article 13.

Re (i) —The present application has been made by the petitioner under article 32 of the Constitution. Sub-section (1) of that article guarantees the right to move this Court by appropriate proceedings for the enforcement of the rights conferred by Part III of the Constitution. Sub-section (2) empowers this Court to issue directions or orders or writs, including certain specified writs, whichever may be appropriate, for the enforcement of any of the rights conferred by that Part. It is clear, therefore, that article 32 can only be invoked for the purpose of the enforcement of the fundamental rights. Article 32 does not permit an application merely for the purpose of agitating the competence of the appropriate legislature in passing any particular enactment unless the enactment also infringes any of the fundamental rights. In this case the claim is that the fundamental rights have been infringed and, therefore, the question of legislative competence may also be incidentally raised on this application. It does not appear to me, however, that there is any substance in this point for, in my opinion, entry 33 of List I of the Seventh Schedule to the Government of India Act, 1935, and the corresponding entry 43 of the Union List set out in the Seventh Schedule to the Constitution clearly support these pieces of legislation as far as the question of legislative competency is concerned. Sections 83-A and 83-B of the Indian Companies Act can only be supported as valid on the ground that they regulate the management of companies and are, therefore, within the said entry. Likewise, the provisions of the Ordinance and the Act relating to the appointment of directors by the

Government and the curtailment of the shareholders' rights as regards the election of directors, passing of resolutions giving directions with respect to the management of the company and to present a winding up petition are matters touching the management of the company and, as such, within the legislative competence of the appropriate legislative authority. In my judgment, the Ordinance and the Act cannot be held to be invalid on the ground of legislative incompetency of the authority promulgating or passing the same.

Re (ii)—The fundamental rights said to have been infringed are the right to acquire, hold and dispose of property guaranteed to every citizen by Article 19(1)(f) and the right to property secured by article 31. In *Gapalan's case* (1) I pointed out that the rights conferred by article 19 (1) (a) to (e) and (g) would be available to the citizen until he was, under article 21, deprived of his life or personal liberty according to procedure established by law and that the right to property guaranteed by article 19 (1) (f) would likewise continue until the owner was, under article 31, deprived of such property by authority of law. Therefore, it will be necessary to consider first whether the shareholder or the company has been deprived of his or its property by authority of law under Article 31 for, if he or it has been so deprived, then the question of his or its fundamental right under article 19 (1) (f) will not arise.

The relevant clauses of article 31 run as follows:—

"31. (1) No person shall be deprived of his property save by authority of law.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired

(1) [1950] S.C.R. 88.

1950

Chiranjitlal Chowdhuri v. *The Union of India and Others.*

Das J.

and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given."

Article 31 protects every person, whether such person is a citizen or not, and it is wide enough to cover a natural person as well as an artificial person. Whether or not, having regard to the language used in article 5, a corporation can be called a citizen and as such entitled to the rights guaranteed under article 19, it is quite clear that the corporation is protected by article 31, for that article protects every "person" which expression certainly includes an artificial person.

The contention of the petitioner is that the Ordinance and the Act have infringed his fundamental right to property as a shareholder in the said company. Article 31, like article 19(1) (f), is concerned with "property". Both the articles are in the same chapter and deal with fundamental rights. Therefore, it is reasonable to say that the word "property" must be given the same meaning in construing those two articles. What, then, is the meaning of the word "property"? It may mean either the bundle of rights which the owner has over or in respect of a thing, tangible or intangible, or it may mean the thing itself over or in respect of which the owner may exercise those rights. It is quite clear that the Ordinance or the Act has not deprived the shareholder of his share itself. The share still belongs to the shareholder. He is still entitled to the dividend that may be declared. He can deal with or dispose of the share as he pleases. The learned Attorney-General contends that even if the other meaning of the word "property" is adopted, the shareholder has not been deprived of his "property" understood in that sense, that is to say he has not been deprived of the entire bundle of rights which put together constitute his "property". According to him the "property" of the shareholder, besides and apart from his right to elect directors, to pass resolutions giving directions to the directors and to present a winding up petition, consists in his right to participate

in the dividends declared on the profits made by the working of the company and, in case of winding up, to participate in the surplus that may be left after meeting the winding up expenses and paying the creditors. Those last mentioned rights, he points out, have not been touched at all and the shareholder can yet deal with or dispose of his shares as he pleases and is still entitled to dividends if and when declared. Therefore, concludes the learned Attorney-General, the shareholder cannot complain that he has been deprived of his "property", for the totality of his rights have not been taken away. The argument thus formulated appears to me to be somewhat too wide, for it will then permit the legislature to authorise the State to acquire or take possession, without any compensation, of almost the entire rights of the owner leaving to him only a few subsidiary rights. This result could not, in my opinion, have been intended by our Constitution. As said by Rich J. in the *Minister for State for the Army* v. *Datziel* (1) while dealing with section 31 (XXXI) of the Australian Constitution—

"Property, in relation to land, is a bundle of rights exercisable with respect to the land. The tenant of an unencumbered estate in fee simple in possession has the largest possible bundle. But there is nothing in the placitum to suggest that the legislature was intended to be at liberty to free itself from the restrictive provisions of the placitum by taking care to seize something short of the whole bundle owned by the person whom it is expropriating."

The learned Judge then concluded as follows at p. 286:—

"It would, in my opinion, be wholly inconsistent with the language of the placitum to hold that whilst preventing the legislature from authorising the acquisition of a citizen's full title except upon just terms, it leaves it open to the legislature to seize possession and enjoy the full fruits of possession indefinitely, on any terms it chooses or upon no terms at all."

(1) (1943-1944) 68 C.L.R. 261.

1950

Chiranjitlal Chowdhuri v. *The Union of India and Others.*

Das J.

In my judgment the question whether the Ordinance or the Act has deprived the shareholder of his "property" must depend, for its answer, on whether it has taken away the substantial bulk of the rights constituting his "property". In other words, if the rights taken away by the Ordinance or the Act are such as would render the rights left untouched illusory and practically valueless, then there can be no question that in effect and substance the "property" of the shareholder has been taken away by the Ordinance or the Act. Judged by this test can it be said that the right to dispose of the share and the right to receive dividend, if any, or to participate in the surplus in the case of winding up that have been left to the shareholder are illusory or practically valueless, because the right to control the management by directors elected by him, the right to pass resolutions giving directions to the directors and the right to present a winding up petition have, for the time being, been suspended? I think not. The right still possessed by the shareholder are the most important of the rights constituting his "property", although certain privileges incidental to the ownership have been put in abeyance for the time being. It is, in my opinion, impossible to say that the Ordinance or the Act has deprived the shareholder of his "property" in the sense in which that word is used in article 19 (1) (f) and article 31. The curtailment of the incidental privileges, namely, the right to elect directors, to pass resolutions and to apply for winding up may well be supported as a reasonable restraint on the exercise and enjoyment of the shareholder's right of property imposed in the interests of the general public under article 19 (5), namely, to secure the supply of an essential commodity and to prevent unemployment.

Learned counsel for the petitioner, however, urges that the Ordinance and the Act have infringed the shareholder's right to property in that he has been deprived of his valuable right to elect directors, to give directions by passing resolutions and, in case of apprehension of loss, to present a petition for the winding

up of the company. These rights, it is urged, are by themselves "property" and it is of this "property" that the shareholder is said to have been deprived by the State under a law which does not provide for payment of compensation and which is, as such, an infraction of the shareholder's fundamental right to property under article 31 (2). Two questions arise on this argument. Are these rights "property" within the meaning of the two articles I have mentioned? These rights, as already stated, are, no doubt, privileges incidental to the ownership of the share which itself is property, but it cannot, in my opinion, be said that these rights, by themselves, and apart from the share are "property" within the meaning of those articles, for those articles only regard that as "property" which can by itself be acquired, disposed of or taken possession of. The right to vote for the election of directors, the right to pass resolutions and the right to present a petition for winding up are personal rights flowing from the ownership of the share and cannot by themselves and apart from the share be acquired or disposed of or taken possession of as contemplated by those articles. The second question is, assuming that these rights are by themselves "property", what is the effect of the Ordinance and the Act on such "property". It is nobody's case that the Ordinance or the Act has authorised any acquisition by the State of this "property" of the shareholder or that there has in fact been any such acquisition. The only question then is whether this "property" of the shareholder, meaning thereby only the rights mentioned above, has been taken possession of by the State. It will be noticed that by the Ordinance or the Act these particular rights of the shareholder have not been entirely taken away, for he can still exercise these rights subject of course, to the sanction of the Government. Assuming, however, that the fetters placed on these rights are tantamount to the taking away of the rights altogether, there is nothing to indicate that the Ordinance or the Act has, after taking away the rights from the shareholder,

1950

Chiranjitlal Chowdhuri v. *The Union of India and Others.*

Das J.

vested them in the State or in any other person named by it so as to enable the State or any other person to exercise those rights of the shareholder. The Government undoubtedly appoints directors under the Act, but such appointment is made in exercise of the the powers vested in the Government by the Ordinance or the Act and not in exercise of the shareholder's right. As already indicated, entry 43 in the Union List authorises Parliament to make laws with respect, amongst other things, to the regulation of trading corporations. There was, therefore, nothing to prevent Parliament from amending the Companies Act or from passing a new law regulating the management of the company by providing that the directors, instead of being elected by the shareholders, should be appointed by the Government. The new law has undoubtedly cut down the existing rights of the shareholder and thereby deprived the shareholder of his unfettered right to appoint directors or to pass resolutions giving directions or to present a winding up petition. Such deprivation, however, has not vested the rights in the Government or its nominee. What has happened to the rights of the shareholder is that such rights have been temporarily destroyed or kept in abeyance. The result, therefore, has been that although the shareholder has been for the time being deprived of his "property", assuming these rights to be "property", such "property" has not been acquired or taken possession of by the Government. If this be the result brought about by the Ordinance and the Act, do they offend against the fundamental rights guaranteed by article 31? Article 31 (1) formulates the fundamental right in a negative form prohibiting the deprivation of property except by authority of law. It implies that a person may be deprived of his property by authority of law. Article 31 (2) prohibits the acquisition or taking possession of property for a public purpose under any law, unless such law provides for payment of compensation. It is suggested that clauses (1) and (2) of article 31 deal with the same topic, namely, compulsory acquisition or taking possession

of property, clause (2) being only an elaboration of clause (1). There appear to me to be two objections to this suggestion. If that were the correct view, then clause (1) must be held to be wholly redundant and clause (2), by itself, would have been sufficient. In the next place, such a view would exclude deprivation of property otherwise than by acquisition or taking of possession. One can conceive of circumstances where the State may have to deprive a person of his property without acquiring or taking possession of the same. For example, in any emergency, in order to prevent a fire spreading, the authorities may have to demolish an intervening building. This deprivation of property is supported in the United States of America as an exercise of "police power". This deprivation of property is different from acquisition or taking of possession of property which goes by the name of "eminent domain" in the American Law. The construction suggested implies that our Constitution has dealt with only the law of "eminent domain", but has not provided for deprivation of property in exercise of "police powers". I am not prepared to adopt such construction, for I do not feel pressed to do so by the language used in article 31. On the contrary, the language of clause (1) of article 31 is wider than that of clause (2), for deprivation of property may well be brought about otherwise than by acquiring or taking possession of it. I think clause (1) enunciates the general principle that no person shall be deprived of his property except by authority of law, which, put in a positive form, implies that a person may be deprived of his property, provided he is so deprived by authority of law. No question of compensation arises under clause (1). The effect of clause (2) is that only certain kinds of deprivation of property, namely those brought about by acquisition or taking possession of it, will not be permissible under any law, unless such law provides for payment of compensation. If the deprivation of property is brought about by means other than acquisition or taking possession of it, no compensation is required, provided that such deprivation is by

1950

Chiranjitlal Chowdhuri v. *The Union of India and Others.*

Das J.

authority of law. In this case, as already stated, although the shareholder has been deprived of certain rights, such deprivation has been by authority of law passed by a competent legislative authority. This deprivation having been brought about otherwise than by acquisition or taking possession of such rights, no question of compensation can arise and, therefore, there can be no question of the infraction of fundamental rights under article 31 (2). It is clear, therefore, that so far as the shareholder is concerned there has been no infringement of his fundamental rights under article 19 (1) (f) or article 31, and the shareholder cannot question the constitutionality of the Ordinance or the Act on this ground.

As regards the company it is contended that the Ordinance and the Act by empowering the State to dismiss the managing agent, to discharge the directors elected by the shareholders and to appoint new directors have in effect authorised the State to take possession of the undertaking and assets of the company through the new directors appointed by it without paying any compensation and, therefore, such law is repugnant to article 31 (2) of our Constitution. It is, however, urged by the learned Attorney-General that the mills and all other assets now in the possession and custody of the new directors who are only servants or agents of the said company are, in the eye of the law, in the possession and custody of the company and have not really been taken possession of by the State. This argument, however, overlooks the fact that in order that the possession of the servant or agent may be juridically regarded as the possession of the master or principal, the servant or agent must be obedient to, and amenable to the directions of, the master or principal. If the master or principal has no hand in the appointment of the servant or agent or has no control over him or has no power to dismiss or discharge him, as in this case, the possession of such servant or agent can hardly, in law, be regarded as the possession of the company(1). In this view of the

(1) See Elements of Law by Markby, 6th Edition, Para 371, p. 192.

matter there is great force in the argument that the property of the company has been taken possession of by the State through directors who have been appointed by the State in exercise of the powers conferred by the Ordinance and the Act and who are under the direction and control of the State and this has been done without payment of any compensation. The appropriate legislative authority was no doubt induced to enact this law, because, as the preamble to the Ordinance stated, on account of mismanagement and neglect, a situation had arisen in the affairs of the company which had prejudicially affected the production of an essential commodity and had caused serious unemployment amongst a certain section of the community, but, as stated by Holmes J. in *Pennsylvania Coal Company* v. *Mahon*(1), "A strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." Here, therefore, it may well be argued that the property of the company having been taken possession of by the State in exercise of powers conferred by a law which does not provide for payment of any compensation, the fundamental right of the company has, in the eye of the law, been infringed.

If the fundamental right of the company has been infringed, at all, who can complain about such infringement ? *Prima facie* the company would be the proper person to come forward in vindication of its own rights. It is said that the directors having been dismissed, the company cannot act. This, however, is a misapprehension, for if the Act be void on account of its being unconstitutional, the directors appointed by the shareholders have never in law been discharged and are still in the eye of the law the directors of the company, and there was nothing to prevent them from taking proceedings in the name of the company at their own risk as to costs. Seeing that the directors have not come forward to make the application on behalf of the company and in its name the question arises whether

(1) 260 U.S. 393.

1950

Chiranjitlal Chowdhuri v. *The Union of India and Others,*

Das J.

an individual shareholder can complain. It is well settled in the United States that no one but those whose rights are directly affected by a law can raise the question of the constitutionality of that law. Thus in *McCabe* v. *Atchison*(1) which arose out of a suit filed by five Negros against five Railway Companies to restrain them from making any distinction in service on account of race pursuant to an Oklahoma Act known as "The Separate Coach Law," in upholding the dismissal of the suit Hughes J. observed :—

"It is an elementary principle that in order to justify the granting of this extraordinary relief, the complainants' need of it and the absence of an adequate remedy at law must clearly appear. The complaint cannot succeed because someone else may be hurt. Nor does it make any difference that other persons who may be injured are persons of the same race or occupation. It is the fact, clearly established, of injury to the complainant - not to others -which justifies judicial interference."

In that case there was no allegation that anyone of the plaintiffs had ever travelled on anyone of the rail roads or had requested any accommodation in any of the sleeping cars or that such request was refused. The same principle was laid down in *Jeffrey Manufacturing Company* v. *Blagg*(2), *Hendrick* v. *Maryland*(3) and *Newark Natural Gas and Fuel Company* v. *The City of Newark*(4). In each of these cases the Court declined to permit the person raising the question of constitutionality to do so on the ground that his rights were not directly affected by the law or Ordinance in question. On the other hand, in *Truax* v. *Raich*(5) and in *Buchanan* v. *Warley*(6) the Court allowed the plea because in both the cases the person raising it was directly affected. In the first of the two last mentioned cases an Arizona Act of 1914 requiring employers employing more than five workers to employ not less than eighty per cent. native born citizens was

(1) 235 U.S. 151.
(2) 235 U.S. 571.
(3) 235 U.S. 610.
(4) 242 U.S. 403.
(5) 239 U.S. 33.
(6) 245 U.S. 60.

challenged by an alien who had been employed as a cook in a restaurant. That statute made a violation of the Act by an employer punishable. The fact that the employment was at will or that the employer and not the employee was subject to prosecution did not prevent the employee from raising the question of constitutionality because the statute, if enforced, would compel the employer to discharge the employee and, therefore, the employee was directly affected by the statute. In the second of the two last mentioned cases a city Ordinance prevented the occupation of a plot by a coloured person in a block where a majority of the residences were occupied by white persons. A white man sold his property in such a block to a Negro under a contract which provided that the purchaser should not be required to accept a deed unless he would have a right, under the laws of the city, to occupy the same as a residence. The vendor sued for specific performance and contended that the Ordinance was unconstitutional. Although the alleged denial of constitutional rights involved only the rights of coloured persons and the vendor was a white person yet it was held that the vendor was directly affected, because the Courts below, in view of the Ordinance, declined to enforce his contract and thereby directly affected his right to sell his property. It is, therefore, clear that the constitutional validity of a law can be challenged only by a person whose interest is directly affected by the law. The question then arises whether the infringement of the company's rights so directly affects its shareholders as to entitle any of its shareholders to question the constitutional validity of the law infringing the company's rights. The question has been answered in the negative by the Supreme Court of the United States in *Darnell* v. *The State of Indiana*(1). In that case the owner of a share in a Tennessee corporation was not allowed to complain that an Indiana law discriminated against Tennessee corporations in that it did not make any allowance, as it did in the case of Indiana corporations, where the corporation

(1) 226 U.S. 388.

1950

Chiranjitlal Chowdhuri v. *The Union of India and Others.*

Das J.

had property taxed within the State. This is in accord with the well established legal principle that a corporation is a legal entity capable of holding property and of suing or being sued and the corporators are not, in contemplation of law, the owners of the assets of the corporation. In all the cases referred to above the question of constitutionality was raised in connection with the equal protection clause in the Fourteenth Amendment of the American Federal Constitution. If such be the requirements of law in connection with the equal protection clause which corresponds to our article 14, it appears to me to follow that only a person who is the owner of the property can raise the question of constitutionality under article 31 of a law by which he is so deprived of his property. If direct interest is necessary to permit a person to raise the question of constitutionality under article 14, a direct interest in the property will, I apprehend, be necessary to entitle a person to challenge a law which is said to infringe the right to that property under article 31. In my opinion, although a shareholder may, in a sense, be interested to see that the company of which he is a shareholder is not deprived of its property he cannot, as held in *Darnell* v. *Indiana*(1), be heard to complain, in his own name and on his own behalf, of the infringement of the fundamental right to property of the company, for, in law, his own right to property has not been infringed as he is not the owner of the company's properties. An interest in the company owning an undertaking is not an interest in the undertaking itself. The interest in the company which owns an undertaking is the "property" of the shareholder under article 31 (2), but the undertaking is the property of the company and not that of the shareholder and the latter cannot be said to have a direct interest in the property of the company. This is the inevitable result of attributing a legal personality to a corporation. The proceedings for a writ in the nature of a writ of *habeas corpus* appear to be somewhat different for the

(1) 226 U.S. 388.

rules governing those proceedings permit, besides the person imprisoned, any person, provided he is not an utter stranger, but is at least a friend or relation of the imprisoned person, to apply for that particular writ. But that special rule does not appear to be applicable to the other writs which require a direct and tangible interest in the applicant to support his application. This must also be the case where the applicant seeks to raise the question of the constitutionality of a law under articles 14, 19 and 31.

For the reasons set out above the present petitioner cannot raise the question of constitutionality of the impugned law under article 31. He cannot complain of any infringement of his own rights as a shareholder, because his "property" has not been acquired or taken possession of by the State although he has been deprived of his right to vote and to present a winding up petition by authority of law. Nor can he complain of an infringement of the company's right to property because he is not, in the eye of law, the owner of the property in question and accordingly not directly interested in it. In certain exceptional cases where the company's property is injured by outsiders, a shareholder may, under the English law, after making all endeavours to induce the persons in charge of the affairs of the company to take steps, file a suit on behalf of himself and other shareholders for redressing the wrong done to the company, but that principle does not apply here for this is not a suit, nor has it been shown that any attempt was made by the petitioner to induce the old directors to take steps nor do these proceedings purport to have been taken by the petitioner on behalf of himself and the other shareholders of the company.

The only other ground on which the Ordinance and the Act have been challenged is that they infringe the the fundamental rights guaranteed by article 14 of the Constitution. "Equal protection of the laws", as observed by Day J. in *Southern Railway Company* v. *Greene* (1), "means subjection to equal laws, applying

(1) 216 U.S. 400.

1950

Chiranjitlal Chowdhuri v. *The Union of India and Others.*

Das J.

alike to all in the same situation". The inhibition of the article that the State shall not deny to any person equality before the law or the equal protection of the laws was designed to protect all persons against legislative discrimination amongst equals and to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation. It does not, however, mean that every law must have universal application, for all persons are not, by nature, attainment or circumstances, in the same position. The varying needs of different classes of persons often require separate treatment and it is, therefore, established by judicial decisions that the equal protection clause of the Fourteenth Amendment of the American Constitution does not take away from the State the power to classify persons for legislative purposes. This classification may be on different bases. It may be geographical or according to objects or occupations or the like. If law deals equally with all of a certain well-defined class it is not obnoxious and it is not open to the charge of a denial of equal protection on the ground that it has no application to other persons, for the class for whom the law has been made is different from other persons and, therefore, there is no discrimination amongst equals. It is plain that every classification is in some degree likely to produce some inequality, but mere production of inequality is not by itself enough. The inequality produced, in order to encounter the challenge of the Constitution, must be "actually and palpably unreasonable and arbitrary." Said Day J. in *Southern Railway Company* v. *Greene*[1] :—"While reasonable classification is permitted, without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed; and the classification cannot be arbitrarily made without any substantial basis. Arbitrary selection, it has been said, cannot be justified by calling it classification". Quite conceivably there may be a law

relating to a single individual if it is made apparent that, on account of some special reasons applicable only to him and inapplicable to anyone else, that single individual is a class by himself. In *Middleton* v. *Texas Power and Light Company*(1) it was pointed out that there was a strong presumption that a legislature understood and correctly appreciated the needs of its own people, that its laws were directed to problems made manifest by experience and that the discriminations were based upon adequate grounds. It was also pointed out in that case that the burden was upon him who attacked a law for unconstitutionality. In *Lindsley* v. *Natural Carbonic Gas Company*(2) it was also said that one who assailed the classification made in a law must carry the burden of showing that it did not rest upon any reasonable basis but was essentially arbitrary. If there is a classification, the Court will not hold it invalid merely because the law might have been extended to other persons who in some respects might resemble the class for which the law was made, for the legislature is the best judge of the needs of the particular classes and to estimate the degree of evil so as to adjust its legislation according to the exigency found to exist. If, however, there is, on the face of the statute, no classification at all or none on the basis of any apparent difference specially peculiar to any particular individual or class and not applicable to any other person or class of persons and yet the law hits only the particular individual or class it is nothing but an attempt to arbitrarily single out an individual or class for discriminating and hostile legislation. The presumption in favour of the legislature cannot in such a case be legitimately stretched so as to throw the impossible onus on the complainant to prove affirmatively that there are other individuals or class of individuals who also possess the precise amount of the identical qualities which are attributed to him so as to form a class with him. As pointed out by Brewer J. in the *Gulf, Colorado and Santa Fe' Railway* v. *W. H. Ellis* (3), while good faith

(1) 249 U.S. 152. (2) 220 U.S. 61. (3) 165 U.S. 150,

1950

Chiranjitlal Chowdhuri v. *The Union of India and Others.*

Das J.

and a knowledge of existing conditions on the part of a legislature was to be presumed, yet to carry that presumption to the extent of always holding that there must be some undisclosed and unknown reason for subjecting certain individuals or corporations to hostile and discriminating legislation was to make the protecting clause a mere rope of sand, in no manner restraining State action.

The complaint of the petitioner on this head is formulated in paragraph 8 (iii) of the petition as follows:—"The Ordinance denied to the company and its shareholders equality before the law and equal protection of the laws and was thus a violation of article 14 of the Constitution. The power to make regulations relating to trading corporations or the control or production of industries was a power which consistently with article 14 could be exercised only generally or with reference to a class and not with reference to a single company or to shareholders of a single company." The Act is also challenged on the same ground in paragraph 9 of the petition. The learned Attorney-General contends that the petitioner as an individual shareholder cannot complain of discrimination against the company. It will be noticed that it is not a case of a shareholder complaining only about discrimination against the company or fighting the battle of the company but it is a case of a shareholder complaining of discrimination against himself and other shareholders of this company. It is true that there is no complaint of discrimination *inter se* the shareholders of this company but the complaint is that the shareholders of this company, taken as a unit, have been discriminated vis-a-vis the shareholders of other companies. Therefore, the question as to the right of the shareholder to question the validity of a law infringing the right of the company does not arise. Here the shareholder is complaining of the infringement of his own rights and if such infringement can be established I see no reason why the shareholder cannot come within article 32 to vindicate his own rights. The fact that these proceedings have been taken by

one single shareholder holding only one single fully paid up share does not appear to me to make any the least difference in principle. If this petitioner has, by the Ordinance or the Act, been discriminated against and denied equal protection of the law, his fundamental right has been infringed and his right to approach this Court for redress cannot be made dependent on the readiness or willingness of other shareholders whose rights have also been infringed to join him in these proceedings or of the company to take substantive proceedings. To take an example, if any law discriminates against a class, say the Punjabis, any Punjabi may question the constitutionality of the law, without joining the whole Punjabi community or without acting on behalf of all the Punjabis. To insist on his doing so will be to put a fetter on his fundamental right under article 32 which the Constitution has not imposed on him. Similarly, if any law deprives a particular shareholder or the shareholders of a particular company of the ordinary rights of shareholders under the general law for reasons not particularly and specially applicable to him or them but also applicable to other shareholders of other companies, such law surely offends against article 14 and any one so denied the equal protection of law may legitimately complain of the infringement of his fundamental right and is entitled as of right to approach this Court under article 32 to enforce his own fundamental right under article 14, irrespective of whether any other person joins him or not.

To the charge of denial of equal protection of the laws the respondents in the affidavit of Sri Vithal N. Chandavarkar filed in opposition to the petition make the following reply:—"With reference to paragraph 6 of the petition, I deny the soundness of the submissions that on or from the 26th January, 1950, when the Constitution of India came into force the said Ordinance became void under article 13(1) of the Constitution or that the provisions thereof were inconsistent with the provisions of Part III of the said Constitution or for any of the other grounds mentioned in paragraph 8

1950

Chiranjitlal Chowdhuri v. *The Union of India and Others.*

Das J.

of the said petition." In the whole of the affidavit in opposition there is no suggestion as to why the promulgation of the Ordinance or the passing of the Act was considered necessary at all or on what principle or basis either of them was founded. No attempt has been made in the affidavit to show that the Ordinance or the Act was based upon any principle of classification at all or even that the particular company and its shareholders possess any special qualities which are not to be found in other companies and their shareholders and which, therefore, render this particular company and its shareholders a class by themselves. Neither the affidavit in opposition nor the learned Attorney-General in course of his arguments referred to the statement of the objects and reasons for introducing the bill which was eventually enacted or the Parliamentary debates as showing the reason why and under what circumstances this law was made and, therefore, apart from the question of their admissibility in evidence, the petitioner has had no opportunity to deal with or rebut them and the same cannot be used against him.

The learned Attorney-General takes his stand on the presumption that the law was founded on a valid basis of classification, that its discriminations were based upon adequate grounds and that the law was passed for safeguarding the needs of the people and that, therefore, the onus was upon the petitioner to allege and prove that the classification which he challenged did not rest upon any reasonable basis but was essentially arbitrary. I have already said that if on the face of the law there is no classification at all or, at any rate, none on the basis of any apparent difference specially peculiar to the individual or class affected by the law, it is only an instance of an arbitrary selection of an individual or class for discriminating and hostile legislation and, therefore, no presumption can, in such circumstances, arise at all. Assuming, however, that even in such a case the onus is thrown on the complainant, there can be nothing to prevent him from proving, if he can, from the text of the law itself, that

it is "actually and palpably unreasonable and arbitrary" and thereby discharging the initial onus.

The Act is intituled an Act to make special provision for the proper management and administration of the Sholapur Spinning and Weaving Company, Limited." There is not even a single preamble alleging that the company was being mismanaged at all or that any special reason existed which made it expedient to enact this law. The Act, on its face, does not purport to make any classification at all or to specify any special vice to which this particular company and its shareholders are subject and which is not to be found in other companies and their shareholders so as to justify any special treatment. Therefore, this Act, *ex facie*, is nothing but an arbitrary selection of this particular company and its shareholders for discriminating and hostile treatment and read by itself is palpably an infringement of Article 14 of the Constitution.

The learned Attorney-General promptly takes us to the preambles to the Ordinance which has been replaced by the Act and suggests that the Act is based on the same considerations on which the Ordinance was promulgated. Assuming that it is right and permissible to refer to and utilise the preambles, do they alter the situation? The preambles were as follows:— "Whereas on account of mismanagement and neglect a situation has arisen in the affairs of the Sholapur Spinning and Weaving Company, Limited, which has prejudicially affected the production of an essential commodity and has caused serious unemployment amongst a certain section of the community; And whereas an emergency has arisen which renders it necessary to make special provision for the proper management and administration of the aforesaid company;—" The above preambles quite clearly indicate that the justification of the Ordinance rested on mismanagement and neglect producing certain results therein specified. It will be noticed that apart from these preambles there is no material whatever before us establishing or even suggesting that this company and its shareholders have in fact been guilty of any

1950

Chiranjitlal Chowdhuri v. *The Union of India and Others.*

Das J.

mismanagement or neglect. Be that as it may, the only reason put forward for the promulgation of the Ordinance was mismanagement resulting in falling off of production and in producing unemployment. I do not find it necessary to say that mismanagement and neglect in conducting the affairs of companies can never be a criterion or basis of classification for legislative purposes. I shall assume that it is permissible to make a law whereby all delinquent companies and their shareholders may be brought to book and all companies mismanaging their affairs and the shareholders of such companies may, in the interest of the general public, be deprived of their right to manage the affairs of their companies. Such a classification made by a law would bear a reasonable relation to the conduct of all delinquent companies and shareholders and may, therefore, create no inequality, for the delinquent companies and their shareholders from a separate class and cannot claim equality of treatment with good companies and their shareholders who are their betters. But a distinction cannot be made between the delinquent companies *inter se* or between shareholders of equally delinquent companies and one set cannot be punished for its delinquency while another set is permitted to continue, or become, in like manner, delinquent without any punishment unless there be some other apparent difference in their respective obligations and unless there be some cogent reason why prevention of mismanagement is more imperative in one instance than in the other. To do so will be nothing but an arbitrary selection which can never be justified as a permissible classiffication. I am not saying that this particular company and its shareholders may not be guilty of mismanagement and negligence which has brought about serious fall in production of an essential commodity and also considerable unemployment. But if mismanagement affecting production and resulting in unemployment is to be the basis of a classification for making a law for preventing mismanagement and securing production and employment, the law must embrace within its

ambit all companies which now are or may hereafter become subject to the vice. This basis of classification, by its very nature, cannot be exclusively applicable to any particular company and its shareholders but is capable of wider application and, therefore, the law founded on that basis must also be wide enough so as to be capable of being applicable to whoever may happen at any time to fall within that classification. Mismanagement affecting production can never be reserved as a special attribute peculiar to a particular company or the shareholders of a particular company. It it were permissible for the legislature to single out an individual or class and to punish him or it for some delinquency which may equally be found in other individuals or classes and to leave out the other individuals or classes from the ambit of the law the prohibition of the denial of equal protection of the laws would only be a meaningless and barren form of words. The argument that the presumption being in favour of the legislature, the onus is on the petitioner to show there are other individuals or companies equally guilty of mismanagement prejudicially affecting the production of an essential commodity and causing serious unemployment amongst a certain section of the community does not, in such circumstances, arise, for the simple reason that here there has been no classification at all and, in any case, the basis of classification by its very nature is much wider and cannot, in it application, be limited only to this company and its shareholders and, that being so, there is no reason to throw on the petitioner the almost impossible burden of proving that there are other companies which are in fact precisely and in all particulars similarly situated. In any event, the petitioner, in my opinion, may well claim to have discharged the onus of showing that this company and its shareholders have been singled out for discriminating treatment by showing that the Act, on the face of it, has adopted a basis of classification which, by its very nature, cannot be exclusively applicable to this company and its shareholders but which may be equally applicable to other companies

1950

Chiranjitlal Chowdhuri v. *The Union of India and Others.*

Das J.

and their shareholders and has penalised this particular company and its shareholders, leaving out other companies and their shareholders who may be equally guilty of the alleged vice of mismanagement and neglect of the type referred to in the preambles. In my opinion the legislation in question infringes the fundamental rights of the petitioner and offends against article 14 of our Constitution.

The result, therefore, is that this petition ought to succeed and the petitioner should have an order in terms of prayer (3) of the petition with costs.

Petition dismissed.

Agent for the petitioner: *M. S. K. Aiyengar.*
Agent for opposite party Nos. 1 & 2: *P.A. Mehta.*
Agent for opposite party Nos. 3 to 5 and 7 to 10: *Rajinder Narain.*