The judgment of the High Court was attacked on these grounds and as we are unable to accept any of these contentions the appeals must fail. Kania, C.J.

One of the appellants is the secretary of one corporation and another is a salesman and clerk in one of the firms. On their behalf it was urged that they could not indulge in black market activities. We are unable to accept this contention in view of what is stated in the affidavits of the District Magistrate. It is therefore pointed out that in addition to being a secretary or a clerk and in those capacities actively participating in the black market activities of their principals, they were themselves indulging in black market activities in cloth. If these and other facts in respect of the appellants are disputed the matter will be considered by the Advisory Board. The question of the truth of those statements however is not within the jurisdiction of this Court to decide. As all the grounds urged against the judgment of the High Court fail, all the five appeals are dismissed.

CIVIL MISCELLANEOUS

Before Harnam Singh and Soni, JJ

THE JUPITER GENERAL INSURANCE CO., LTD.,—*Petitioner*

versus

A RAJAGOPALAN OF SIMLA, THE CONTROLLER OF INSURANCE AND ANOTHER,—*Respondents*

1951

June 20th

Civil Miscellaneous Writ No. 17 of 1951

Constitution of India, Article 226—High Court's jurisdiction under—Insurance Act (IV of 1938) as amended by Insurance (Amendment) Act, 1950—Sections 52-A to 52-G —Whether ultra vires *of Articles 19 (1) (f) (g) and 31 (2) of the Constitution of India—Whether a company can raise*

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this objection—Nature and extent of the powers and functions of the Controller of Insurance under section 52-A of the Insurance Act—Writs of mandamus and certiorari—distinction between.

Held, (i) That Article 226 empowers the High Court to issue to any person or authority within its territories directions, orders or writs for the enforcement of any of the rights conferred by Part III of the Constitution of India. Under Article 226, the High Court acts *in personam* and looks to the fulfilment of its orders to the person of the respondent. The Controller of Insurance being at Simla, within the jurisdiction of the Punjab High Court, an appropriate writ can be issued to him, provided the conditions for the issue of such a writ are satisfied.

(ii) That the Legislature was competent to enact sections 52-A to 52-G of the Insurance Act.

(iii) That sections 52-A to 52-G of the Insurance Act are not *ultra vires* of the Constitution of India on the ground that they abridge or take away the rights conferred by Articles 19 (1) (f) and (g) and Article 31 of the Constitution of India. Under section 52-A of the Insurance Act only the right of management is taken away. Such right is merely incidental to the ownership of the property of the insurer and is not itself "property" within the meaning of Article 31 (2) of the Constitution of India. The term "Property" in the Article means "*Property rights in rem*" and therefore the benefits of a contract are not property. Section 52-A of the Insurance Act merely puts reasonable restrictions on the rights of management for a limited period for the benefit of the general body of policy holders, in the interests of the general public and therefore is saved by clauses (5) and (6) of Article 19 of the Constitution of India. Further if the pith and substance of Article 19 is considered, it is clear that section 52-A of the Insurance Act is not directly in respect of the subjects dealt with in Article 19 (1) (f) and (g) and Article 31 (2) and therefore the question of their infringement does not arise.

(iv) That a company is not included in the term "citizen" in Article 19 of the Constitution of India and therefore cannot raise the question that the

restrictions imposed by sections 52-A to 52-G of the Insurance Act take away or abridge the rights conferred by Article 19 (1) (f) and (g) of the Constitution of India.

(v) That the Controller of Insurance exercises administrative functions within the first part of section 52-A (i) of the Insurance Act and he is the sole judge of the nature and extent of the opportunity to be given to the insurer within the 2nd part of section 52 (1).

Per Soni, J. *Held* (i) That the exercise of the powers under Article 226 of the Constitution of India being discretionary, the remedy for any wrongs alleged to be done would be more adequate and complete and the grievances would be better dealt with by the Bombay High Court, particularly when the Controller proposes to hold his enquiry in Bombay.

(ii) That the Controller of Insurance when exercising the functions under section 52-A of the Insurance Act is not acting judicially or *quasi*-judicially and the High Court has no power to issue the writs of *certiorari* or prohibition prayed for.

Petition praying :—

(a) that this Hon'ble Court will be pleased to issue a writ of *certiorari* against the 1st respondent calling for the record, if any, relating to the said notice being Ext. "A" hereto and after making inquiries and looking into the same and going into the question of legality thereof quash and set aside the said notice and any order passed thereon.

(b) that this Hon'ble Court be pleased to issue a Writ of Prohibition against the respondents prohibiting the respondents, their servants and agents from enforcing or taking any steps or proceedings for the enforcement of the said notice or from making any report by the 1st respondent to the 2nd respondent.

(c) that this Hon'ble Court will be pleased to issue a writ of *mandamus* or a writ in the nature of a *mandamus* ordering the 1st respondent to cancel

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the said notice being Ext. "A" hereto and restraining the 1st respondent, his servants and agents from enforcing or taking or continuing to take any proceedings for the enforcement of the said notice or in pursuance and furtherance thereof.

(d) that this Hon'ble Court may be pleased to issue a writ of *mandamus* or a writ in the nature of a *mandamus* against the 2nd respondent to forbear from taking or continuing to take any proceedings or making any order on any report if made by the 1st respondent to the 2nd respondent.

(e) that this Hon'ble Court will be pleased to issue directions and/or orders under Article 226 of the Constitution of India as follows:—

(a) a direction or order to the 1st respondent to forbear from acting in continuation of the said notice, taking any further steps and in particular from making a report.

(b) for a direction or order to the first respondent to cancel or withdraw the said notice.

(c) for a direction or order to the second respondent to refrain from acting upon any report made by the 1st respondent in continuation of the said notice.

(d) an order or direction to bring up before this Hon'ble Court the papers and records of the case.

(e) an order quashing and setting aside the said notice and the report if any made.

(f) that pending the hearing and final disposal of this petition the respondents, their servants and agents may be restrained by an order and injunction of this Hon'ble Court from acting pursuant to or following upon the said notice being Ext. "A" hereto or from taking or continuing to take steps or proceedings in pursuance of or following upon the said notice of the 1st respondent or the report if any made to the 2nd respondent;

(g) for interim injunction in terms of prayer (f) hereof.

(h) that the respondents may be ordered to pay to the petitioners their costs of this petition.

(i) for such further and other relief as the nature and circumstances of the case may require.

P. R. DAS, Advocate of Patna, M. P. AMIN and A. C. KAPADIA, Advocates of Bombay, M. L. PURI and GYAN SINGH Vohra, Advocates of Punjab, for the Petitioners.

S. CHAUDHRY, Advocate of Calcutta, VED VYAS and INDER DEV Dua, Advocates of Punjab, for the Respondents.

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ORDER

HARNAM SINGH, J. This order disposes of Civil Miscellaneous Writs Nos. 17, 18 and 19 of 1951.

Briefly summarized, the material facts are these. On the 17th of February 1951, respondent No. 1 gave notice under section 52A of the Indian Insurance Act, 1938, hereinafter referred to as the Act, to the Jupiter General Insurance Company, Limited, Bombay, the Empire of India Life Assurance Company, Limited, Bombay, and the Tropical Insurance Company, Limited, New Delhi, hereinafter referred to as the Companies, that he had reason to believe that the Companies were acting in a manner likely to be prejudicial to the interests of holders of life insurance policies of those Companies and informing them that he would hear them on the 26th of February 1951, in his office in New Delhi, and unless satisfactory cause was shown he would make a report to respondent No. 2 for the appointment of an Administrator to manage the affairs of the Companies. Grounds for action under section 52A of the Act were stated in the notices issued to the Companies.

On the 17th of February 1951, the Controller informed the Companies that the hearing on the 26th of February 1951, would be at Bombay instead of New Delhi.

On the 19th of February 1951, the Companies applied to the Controller for the postponement of the date of hearing to March 1951. On the 20th of February 1951, the Controller refused postponement of the date of hearing. On the 21st of February 1951, the Companies again asked the Controller to postpone the date of hearing and furnish them with particulars

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of the charge that they were acting in a manner likely to be prejudicial to the interests of holders of life insurance policies, but the Controller refused.

On the 26th of February 1951, the Companies appeared before the Controller in Bombay and applied in writing for the postponement of the date of hearing by at least fifteen days. Each one of the three Companies complained in writing that the grounds for action under section 52A of the Act given by the Controller were vague and indefinite. The Controller, however, neither adjourned the proceedings nor did he give to the Companies particulars of the grounds for action under section 52A of the Act.

In the circumstances set out above, the Companies apply under Article 226 of the Constitution of India.

In Civil Miscellaneous Writs Nos. 17 to 19 of 1951 the main reliefs claimed are that the provisions of the Act dealing with the management by Administrator are *ultra vires* and void, being inconsistent with the rights conferred by Articles 14, 19 (1)(f) and (g) and 31 of the Constitution of India, that a writ of *certiorari* should issue to the Controller to bring up, in order to be quashed, the proceedings under section 52A of the Act and that a writ of *mandamus* be issued directing the Controller to give opportunity to the Companies to be heard on the charge that the Companies are acting in a manner likely to be prejudicial to the interests of holders of life insurance policies. In arguments counsel for the Companies did not press that the impugned legislation abridges the rights conferred by Article 14.

Respondents have put in written objections alleging that in Civil Miscellaneous Writs Nos. 17 and 18 of 1951 this Court has no jurisdiction to make an order under Article 226 of the Constitution of India, that in any case the Court has no jurisdiction to issue writs of *certiorari* and prohibition on the short ground that

under section 52A of the Act the Controller does not exercise judicial or *quasi-judicial* functions. Respondents then allege that under section 52A of the Act the Companies have no legal right to compel the Controller to give them an opportunity of being heard for there is no such duty imposed upon the Controller by the statute. Respondents maintain that the impugned legislation does not abridge the rights conferred by Articles 19(1)(f) and 31 of the Constitution of India.

From the arguments several subsidiary points emerge. In what follows I examine the main points set out above and deal with the subsidiary points in so far as it is necessary for the disposal of Civil Miscellaneous Writs Nos. 17 to 19 of 1951.

Counsel for the respondents urge that in Civil Miscellaneous Writs Nos. 17 and 18 of 1951 this Court has no jurisdiction to make an order under Article 226 of the Constitution of India for the order passed by the Controller has to take effect outside the territories in relation to which this Court exercises jurisdiction and the acts sought to be restrained under Article 226 of the Constitution of India are to be done by the Controller outside the territorial jurisdiction of this Court. In support of the argument raised counsel cite *Ryots of Garabandho and other villages* v. *Zamindar of Parlakimedi and another* (1), *Hamid Hassan Nomani* v. *Banwari Lal Roy* (2), and *Shree Menakshi Mills* v. *Provincial Textile Commissioner* (3).

For the reasons given by me in *Ebrahim Aboobakar and another* v. *Shri Achhru Ram, Custodian-General, Evacuee Property,* (4) decided on the 24th of May 1951, I have no doubt that the argument raised has no substance, but considering the importance of the point, I would like to add a few observations to supplement what I have said in that case.

(1) (1942-43) 70 I.A. 129.
(2) I.L.R. (1948) Vol. 1 Cal. 230.
(3) A.I.R. (1949) P.C. 307.
(4) Civil Misc. (Writ) No. 15 of 1951.

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Article 226(1) provides :—

> "226 (1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories, directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose."

In plain English article 226 empowers this Court *to issue to any person or authority within the territories in relation to which it exercises jurisdiction*, directions, orders or writs, for the enforcement of any of the rights conferred by Part III of the Constitution of India and for any other purpose. Respondents in Civil Miscellaneous Writs Nos. 17 to 19 of 1951 are within the territories in relation to which this Court exercises jurisdiction and I think that this Court possesses power to issue writs claimed in the petitions, provided the conditions for the issuance of such writs are satisfied. In such cases, I apprehend, the Court acts *in personam* and looks to the fulfilment of its orders to the person of the respondent.

In *Ryots of Garabandho and other villages* v. *Zamindar of Parlakimedi and another* (1) there was an order passed by the Board of Revenue in favour of the Zamindar of Parlakimedi and the *ryots* of Garabandho and other villages wanted that order to be quashed. The Board of Revenue had their office in the town of Madras but the Zamindar of Parlakimedi and the *ryots* of Garabandho and other villages were not within the jurisdiction

(1) (1942-43) 70 I.A. 129.

of the High Court. On those facts the Privy Council found that inasmuch as the Zamindar of Parlakimedi and the *ryots* of Garabandho and other villages were not within the jurisdiction of the Court, the High Court at Madras had no jurisdiction to issue a writ of *certiorari* merely by reason of the location of the Board of Revenue within the town of Madras. The decision in that case proceeded on the construction put on the charter, dated the 26th of December 1800, establishing the Supreme Court at Madras. In that case Viscount Simon, L. C., said :—

> "There question depends in the first place upon the true construction to be put on the charter, dated the 26th December 1800, establishing the Supreme Court at Madras. If the power was given by that charter it is now vested in the High Court by virtue of the Indian High Courts Act, 1861, and the statutes *repeating this provision.*"

In *Hamid Hassan Nomani* v. *Banwari Lal Roy* (1) Sir John Beaumount observed :—

> "Their Lordships feel no doubt on the construction of section 9 of the High Courts Act, 1861, and the Letters Patent of 1865, that the Original Civil Jurisdiction which the Supreme Court of Calcutta possessed over certain classes of persons outside the territorial limits of that jurisdiction has not been inherited by the High Court, that the power to grant an information in the nature of *quo warranto* arises in the exercise of the Ordinary Original Civil Jurisdiction of the High Court, that such jurisdiction is confined to the town of Calcutta and that, as the appellant does not reside and the office which he is alleged to have usurped is not situate, within those

(1) I.L.R. (1948) Vol I Cal. 230.

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limits, the Court had no power to grant the information in this case."

Clearly, the judgment in *Hamid Hassan Nomani* v. *Banwari Lal Roy* (1), proceeds upon section 9 of the High Courts Act, 1861, and the Letters Patent of 1865.

In *Shree Manakshi Mills* v. *Provincial Textile Commissioner* (2) Sir Madhavan Nair said :—

> "*The scope of the provisions of section 45 restricts the jurisdiction of the High Court of Madras to make an order 'requiring any specific act to be done or foreborne within the local limits of its ordinary original civil jurisdiction.*" In the present case the appellant desired the Court to direct the respondent to resist from seizing the yarn supplied or that might be entrusted to the weavers at or around Madura or Rajapalayam and to 'restore to the applicant the yarn already seized.' Both Madura and Rajapalayam are outside the local limits of the ordinary original civil jurisdiction of the Madras High Court. It is not shown that the yarn seized was brought to Madras. It must be presumed that the yarn still remains in Madura, where it was seized. It is clear that all the reliefs asked for relate to acts done or to be done outside the limits of the ordinary original civil jurisdiction of the High Court."

In *Shree Manakshi Mills* v. *Provincial Textile Commissioner* (2) the point decided was that section 45 of the Specific Relief Act, 1877, restricts the jurisdiction of the High Court of Madras to make an order "requiring any specific act to be done or foreborne within the local limits of its ordinary original civil jurisdiction."

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(1) I.L.R. 1948 I Cal. 230.
(2) (A.I.R. 1949 P.C. 307.

The material portion of section 45 reads :—

> "45. Any of the High Courts of Judicature at Fort William, Madras and Bombay may make an order requiring any specific act to be done or foreborne, within the local limits of its ordinary original civil jurisdiction, by any person holding a public office, whether of a permanent or temporary nature ....."

I do not pause to elaborate the point because in my opinion the jurisdiction of this Court in these matters must be gathered from the provisions of Article 226 and Article 226 alone. That being so, the cases cited above cannot be regarded as authority under Article 226 in support of the respondents' case. As has often been said, the observations in a case have to be read along with the facts thereof and reading the facts of the cases cited, I think that the cases do not support the proposition advanced in these proceedings.

As stated above, the respondents in Civil Miscellaneous Writs Nos. 17 to 19 of 1951 are within the territories in relation to which this Court exercises jurisdiction and I have no doubt that this Court has power to issue the writs claimed in the petitions provided the conditions for the issuance of such writs are satisfied. Under Article 226 of the Constitution of India the *sole* condition upon which the jurisdiction of the Court depends is that the person or authority to whom orders, directions and writs are issued is within the territories in relation to which the High Court exercises jurisdiction and I am not prepared to read in Article 226 the conditions mentioned in section 45 of the Specific Relief Act, 1877, or the charters establishing the Supreme Courts at Madras and Calcutta.

Mr Chaudhri then argues that having regard to the provisions of section 52A of the Act no writ is available in law in these proceedings. In argument it is said that the order complained of is a ministerial

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or administrative order which does not involve the exercise of any judicial or *quasi*-judicial function and to a purely administrative order no writ of *certiorari* lies.

Mr P. R. Das on the other hand maintains that the provisions of the Act dealing with the management of the business of any insurer by an Administrator take away or abridge the rights conferred by Articles 19 and 31 of the Constitution of India and are void.

Before discussing the issues involved, it is necessary to examine the provisions of the impugned legislation to see in what manner that legislation abridges the rights conferred by Articles 19 and 31, Constitution of India. The impugned legislation reads :—

"MANAGEMENT BY ADMINISTRATOR

52A. *When Administrator for management of insurance business may be appointed.* (1) If at any time the Controller has reason to believe that an insurer carrying on life insurance business is acting in a manner likely to be prejudicial to the interests of holders of life insurance policies, he may, after giving such opportunity to the insurer to be heard as he thinks fit, make a report thereon to the Central Government.

(2) The Central Government, if it is of opinion after considering the report that it is necessary or proper to do so, may appoint an Administrator to manage the affairs of the insurer under the direction and control of the Controller.

(3) The Administrator shall receive such remuneration as the Central Government may direct and the Central Government may at any time cancel the appointment and appoint some other person as Administrator.

(4) The management of the business of the insurer shall as on and after the date of appointment of the Administrator vest in such Administrator, but except with the leave of the Controller, the Administrator shall not issue any further policies.

(5) As on and after the date of appointment of the Administrator any person vested with any such management immediately prior to that date shall be divested of that management.

(6) The Controller may issue such directions to the Administrator as to his powers and duties as he deems desirable in the circumstances of the case, and the Administrator may apply to the Controller at any time for instructions as to the manner in which he shall conduct the management of the business of the insurer or in relation to any matter arising in the course of such management.

52B. *Power and duties of the Administrator.* (1) The Administrator shall conduct the management of the business of the insurer with the greatest economy compatible with efficiency and shall, as soon as may be possible, file with the Controller a report stating which of the following courses is in the circumstances most advantageous to the general interests of the holders of life insurance policies, namely :—

(a) the transfer of the business of the insurer to some other insurer ;

(b) the carrying on of its business by the insurer (whether with the policies of the business continued for the

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original sum insured with the addition of bonuses that attach to the policies or for reduced amounts);

(c) the winding up of the insurer; or

(d) such other course as he deems advisable.

(2) On the filing of the report with the Controller, the Controller may take such action as he thinks fit for promoting the interests of the holders of life insurance policies in general.

(3) Any order passed by the Controller under subsection (2) shall be binding on all persons concerned, and shall have effect notwithstanding anything in the memorandum or articles of association of the insurer, if a company.

52C. *Cancellation of contracts and agreements.* The Administrator may, at any time during the continuance of his appointment with respect to an insurer and after giving an opportunity to the persons concerned to be heard, cancel or vary (either unconditionally or subject to such conditions as he thinks fit to impose) any contract or agreement (other than a policy) between the insurer and any other person which the Administrator is satisfied is prejudicial to the interests of holders of life insurance policies.

52D. *Termination of appointment of Administrator.* If at any time, on a report made by the Controller in this behalf, it appears to the Central Government that the purpose of the order appointing the Administrator has been fulfilled or that for any reason it

is undesirable that the order of appointment should remain in force, the Central Government may cancel the order and thereupon the Administrator shall be divested of the management of the insurance business which shall, unless otherwise directed by the Central Government, again vest in the person in whom it was vested immediately prior to the date of appointment of the Administrator.

52E. *Finality of decision appointing Administrator.* Any order or decision of the Central Government made in pursuance of section 52A or section 52D shall be final and shall not be called in question in any Court.

52F. *Penalty for withholding documents or property from Administrator.* If any director or officer of the insurer or any other person fails to deliver to the Administrator any book of account, register or any other documents in his custody relating to the business of the insurer the management of which has vested in the Administrator, or retains any property of such insurer, he shall be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

52G. *Protection of action taken under sections 52A to 52D.* (1) No suit, prosecution or other legal proceedings shall lie against an Administrator for anything which is in good faith done or intended to be done in pursuance of sections 52A to 52C inclusive.

(2) No suit or other legal proceeding shall lie against the Central Government or the Controller for any damage caused or likely

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to be caused by anything which is in good faith done or intended to be done under section 52A, section 52B, or section 52D."

Now, the validity of the impugned legislation which was enacted by the Insurance (Amendment) Act, 1950, and which received the assent of the President on the 20th of May 1950, may be challenged on the following grounds :—

(i) that the Legislature was not competent to enact the impugned legislation ; and

(ii) that the impugned legislation takes away or abridges the rights conferred by Part III of the Constitution of India.

In these proceedings there is no dispute as to the legislative competency in enacting the impugned provisions of the Act. Indeed, entries Nos. 43, 44 and 47 of the Union List set out in the Seventh Schedule to the Constitution of India clearly support the impugned legislation so far as the question of legislative competency is concerned. The question is whether the impugned legislation takes away or abridges the rights conferred by Articles 19 and 31 of the Constitution of India. The relevant clauses of Articles 19 and 31 are :—

"19 (1) All citizens shall have the right—

* * * * * * * *

(f) to acquire, hold and dispose of property ; and

(g) to practise any profession, or to carry on any occupation, trade or business.

* * * * * * * *

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 authorizing the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession 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.

* * * * * * * * *

In considering the point we have to approach the question thinking, firstly, that the presumption is in favour of the constitutionality of the impugned legislation, and the burden is upon the Companies to show that there has been a clear transgression of the constitutional principles, and, secondly, to use the words of Lord Watson in *Union Colliery Company of British Colombia* v. *Bryden* (1), that "the pith and substance" of the impugned legislation is the true test of its constitutionality.

In an earlier part of this order I have set out *in extenso* the provisions of the impugned legislation. Section 52A provides that on the report of the Controller that the insurer is acting in a manner prejudicial to the interests of the policy-holders, the Central Government may appoint an Administrator who will be vested with the management of the insurer under the direction of the Controller divesting the person previously incharge of the management of the insurer.

(1) (1899) A.C. 580.

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Section 52B empowers the Administrator to conduct the management of the business of the insurer and to make a report to the Controller suggesting as to which of the courses specified hereunder will be in the interests of the policy-holders :—

(1) the transfer of business of the insurer to another insurer ;

(2) the carrying on of the business of the insurer ; and

(3) the winding-up of the insurer.

On the report of the Administrator, the Controller may pass such order as he thinks fit which shall take effect notwithstanding anything in the memorandum and articles of association of the insurer, if a company.

Section 52C empowers the Administrator to cancel or vary any contract between the insurer and any other person, if he thinks that the contract is prejudicial to the interest of the policy-holders.

Section 52D empowers the Central Government on a report of the Controller to cancel the appointment of an Administrator and revest the management in the person in whom it was vested immediately prior to the date of the appointment of the Administrator.

Sections 52E and 52G are not material for the decision of the point before us. Section 52F provides penalty for withholding documents or property from the Administrator.

Counsel for the Companies maintain that the effect of the impugned legislation is to make the Administrator the sole arbiter of the destinies of the insurer to the total exclusion of managers, directors and the shareholders. The Administrator is put in full control and management of the Company and the Board of Directors and other persons in charge become *functus offcio*.

The Administrator is not governed or controlled by the articles of association of the insurer, if a company. He can revise or cancel contracts entered into by the insurer without providing for compensation. On the appointment of the Administrator, the share-holders have absolutely no control over the conduct of the insurer and the Administrator is even entitled to apply for the winding-up of the insurer without consulting the share-holders. That being the position under the impugned legislation, it is said that the impugned legislation abridges the rights conferred by articles 19 and 31, Constitution of India.

In order to bring the case within Article 31, Constitution of India, the following conditions must be satisfied :—

(a) the impugned legislation must authorize the taking possession of or the acquisition of property ;

(b) the property must be capable of possession or acquisition ;

(c) the acquisition or taking possession of property must be for public purposes ; and

(d) the acquisition or the taking possession of property must be without paying or providing for compensation.

Now, it is not disputed that the impugned legislation is for public purposes in that the legislation seeks to protect thereby the interests of the policy-holders and thus benefit the public in general. Then it is clear that the provisions of the impugned legislation, if they amount to acquiring or taking possession of property, do not provide for any compensation to persons whose rights may be affected. That being so, the third and the fourth requirements of law are satisfied. The question is whether the impugned legislation authorizes the taking possession of or the acquisition of property.

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In these proceedings it was not said that under the impugned legislation any property is acquired. '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 for the former. In the taking possession of property, the title in the property possessed remains in the original holder, though he is excluded from possession or enjoyment of that property. Article 31 (2) of the Constitution itself makes a clear distinction between the acquisition of property and the taking possession of it for a public purpose though it places both of them on the same footing in the sense that a legislation authorizing either of these acts must make provision for payment of compensation to the displaced or expropriated holder of the property.

Mr P. R. Das maintains that the impugned legislation seeks to take possession of the property of an insurer without payment of compensation. On the other hand, Mr Chaudhri contends that the impugned legislation does not provide for the taking possession of property but provides for the change of management for such period of time as may be necessary to fulfil the purpose.

No doubt the affairs of the insurer are to be managed by the Administrator and not by the insurer but this, it is argued, would not mean the taking possession of any property within the meaning of Article 31 (2), Constitution of India.

Now, the term "property" possesses a singular variety of different applications having different degrees of generality. In its widest sense "property" includes all a person's legal rights, of whatever description. A man's property is all that is his in law. This usage, however, is obsolete at the present day, though it is common enough in the older books. In

a second or narrower sense, " property " includes not all a person's rights, but only his proprietary as opposed to his personal rights. The former constitute his estate or property, while the latter constitute his status or personal condition. In this sense a man's land, chattels, shares, and the debts due to him are his property ; but not his life or liberty or reputation. In a third application, the term includes not even all proprietary rights, but only those which are both proprietary and *in rem*. The law of property is the law of proprietary rights *in rem,* the law of proprietary rights *in personam* being distinguished from it as the law of obligations. According to this usage a freehold or lease hold estate in land, or a patent or copyright is property ; but a debt or the benefit of a contract is not. Finally, in the narrowest use of the term, it includes nothing more than corporeal property, that is to say, the right of ownership in a material object, or that object itself. Authority on what I have said in this paragraph is to be found in Salmond on Jurisprudence, Tenth edition, pages 423-424.

In Blackstone's Commentaries on the Laws of England by Dr Herbert Broom, Volume I, page 163, we find—

> " The third absolute right, inherent in every Englishman, is that of property, which consists in the free use, enjoyment and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land. "

In my judgment, the term " property " used in article 31 (2) means " *proprietary rights in rem* " and that being so, the benefit of a contract would not come within the meaning of the term " property " as used in Article 31(2). A Director acts in that capacity under a contract with the Company and the contract that subsists between him and the Company is a contract of employment. It is a contract that the Director shall render personal services to the Company in

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return for the remuneration fixed under the articles of association or by a resolution that may be passed at the meeting of the Company. Similar considerations apply to the contract of managing agency. The benefit of a contract being not a proprietary right *in rem*, the Directors and the Managing Agents are not dispossessed of " property " under the impugned legislation.

In *Charanjit Lal* v. *Union of India* (1), Mukerjea, J., said :—

> " A share-holder has undoubtedly an interest in the Company. His interest is represented by the share he holds and the share is a 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 share-holders 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 share-holders. "

Under the impugned legislation, the share-holder continues to hold the shares and his legal and beneficial interest in the shares he holds is left intact. In case the Administrator declares dividend, he would

(1) A.I.R. 1950 S.C. 41.

be entitled to the same. He can sell or otherwise dispose of the shares at any time at his option. The impugned legislation 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 Administrator continues; and as a result of that, his right to participate in the management of the Company has been abridged to that extent. Notwithstanding all that it cannot be said that the impugned legislation seeks to dispossess the share-holder from the property owned by him.

Basing himself on A. I. R. 1951 S. C. 41, Mr P. R. Das urges that the impugned legislation seeks to take possession of the " property " of the Company. In this connection Mr Das maintains that the term "property" in article 31(2) means any of the indicia or attributes of property, while Mr Chaudhri maintains that the word " property " used in article 31(2), Constitution of India, means the totality of the rights which the ownership of the object connotes. Dealing with this point Mukerjea J. said in *Charanjit Lal* v. *Union of India* (1) :—

> " 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 proprietary rights. "

In considering whether the Sholapur Spinning and Weaving Company (Emergency Provisions) Act of 1950 abridges the right conferred by Article 31 (2), Das, J., said in *Charanjit Lal* v. *Union of India* (1) :—

> " In my judgment the question whether the Ordinance or the Act has deprived the

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share-holder 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 Ordinace 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 share-holder has been taken away by the Ordinance or the Act."

That being the law declared by the Supreme Court of India, it is unnecessary to examine the rival contentions put forward by the counsel for the parties in these proceedings.

In support of the argument that the impugned legislation abridges the right conferred by Article 31 (2), counsel for the Companies base themselves on *Charanjit Lal* v. *Union of India* (1)

In *Charanjit Lal* v. *Union of India* (1), Mr Chari contended that after management is taken over by the Statutory Directors under Act XXVIII of 1950, it cannot be said that the Company still retains possession and control over its property and assets. In considering this argument, Mukerjea, J., said :—

> "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 interposition of this statutory management and control amounts to taking possession of the property and assets belonging to the Company."

To similar effect are the observations made by Das, J., in *Charanjit Lal* v. *Union of India* (1). Clearly,

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(1) A.I.R. 1951 S.C. 41.

their Lordships of the Supreme Court have expressed no opinion on the point before us. In *Chranjit Lal* v. *Union of India* (1) the test applicable to such cases was, however, stated to be whether the rights taken away by the statute are such as would render the rights left untouched illusory and practically valueless. That being so, without noticing herein other authorities which were cited at the hearing, I proceed to apply that test to the cases before us.

Applying then the test laid down in *Charanjit Lal* v. *Union of India* (1) to these cases, we have to see whether the Companies have been dispossessed substantially from the rights held by them or the loss is with regard to some minor ingredients of the proprietary right. Undoubtedly, under the impugned legislation the rights of the Companies have been restricted and may not be capable of being exercised to the fullest extent as long as the management of the Administrator continues, but I apprehend that the restrictions imposed by the impugned legislation do not amount to the taking possession of the property of the Companies. Indeed, the right of management of the business of the insurer, being a right incidental to the ownership of property of the insurer, the right of management cannot by itself be " property " within Article 31(2). Under section 52A(5) of the Act, on and after the date of appointment of the Administrator, persons vested with the management of the business of the insurer shall be divested of that management, but notwithstanding all that the rights in property left to the insurer on the appointment of the Administrator are substantial and not illusory. The beneficial interest in the property remains in the insurer during the period that the Administrator manages the business. That being so, the impugned legislation does not abridge the fundamental right guaranteed by Article 31(2).

And this brings me to the question raised by counsel for the Companies that the restrictions im-

(1) A.I.R. 1951 S.C. 41 at p. 63

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posed by the impugned legislation offend against the provisions of article 19(1)(f) and (g) 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. Clauses (2) to (6) of the article prescribe the limits that may be placed on those liberties to safeguard public welfare or general morality. Article 19(1)(f) guarantees that *all citizens* shall have the right to acquire, hold and dispose of property, while article 19(1)(g) guarantees to all citizens the right to practise any profession, or to carry on any occupation, trade or business. Clearly, an infringement of Article 19(1)(f) and (g) amounts to a violation of the fundamental rights unless it comes within the exception provided for in clauses (5) and (6) of the Articles. Clauses (5) and (6) permit the imposition of reasonable restrictions upon the exercise of such rights either in the interests of the general public or for the protection of the interests of any Scheduled Tribe. That being so, the questions that arise for decision are whether the restrictions imposed by the impugned legislation upon the rights of the insurers amount to infringement of the right to acquire, hold or to dispose of property or to practise any profession or to carry on any occupation, trade or business within the meaning of Article 19(1)(f) and (g) of the Constitution, and, if so, whether the impugned legislation is saved by the exceptions provided for in clauses (5) and (6) of the Article.

Before I address myself to the merits of the contentions raised under Article 19 (1)(f) and (g), it is necessary to examine whether the Companies can claim protection under Article 19 of the Constitution. As stated above, Article 19 enumerates the different forms of individual liberty the protection of which is guaranteed by the Constitution. The question that arises for decision is whether a 'corporation' is a '*citizen*' within Article 19.

Mr P. R. Das points out that in order to sustain the proposition that a corporation is a citizen within Article 5 of the Constitution of India, three conditions have to be satisfied—

(i) that the corporation is a person ;

(ii) that the corporation had its domicile in the territory of India at the commencement of the Constitution ; and

(iii) that the corporation had been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement.

Article 367 of the Constitution of India provides that the General Clauses Act, 1897, shall apply for the interpretation of the Constitution unless the context otherwise requires. Section 3(39) of the General Clauses Act, 1897, reads :—

> " ' Person ' shall include any Company or association or body of individuals, whether incorporated or not. "

Clearly, corporation is a person within section 3(39) of the General Clauses Act, 1897.

In the case of corporations the rule is that the domicile of a corporation is the country in which it is registered and if it is not required by law to be registered, then its domicile is in the country by the law of which it is incorporated. On this point Dicey's Conflict of Laws, sixth edition, Chapter 2, rule 18, may be seen. In these proceedings it is common case that the Companies had their domicile in India at the commencement of the Constitution.

Then it may be stated that a corporation resides where the principal direction of the corporate business

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is located. In other words the country of central control of the affairs of the corporation determines the residence of the corporation. In the case of two of the three Companies the principal direction of the corporate business has been located in Bombay for not less than five years immediately preceding the commencement of the Constitution and the principal direction of the corporate business of the Tropical Insurance Company, Limited, has been located at Delhi for the requisite period.

The question for decision is whether the expression "citizen" used in Article 19, Constitution of India, includes a corporation. In such cases the rule is that the question must be decided upon the construction put upon the statute. In Corpus Juris Secundum, volume XVIII, at page 389, it is stated that a corporation is not a citizen within section 2(1) of Article IV and section 1 of Article XIV, Constitution of the United States of America, 1787. Section 2(1) of Article IV reads :—

> "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

Section 1 of Article XIV reads :—

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

As stated above, the answer to the question whether a corporation is a citizen within the particular statute depends upon the intent to be gathered from

the context and general purpose of that statute. Clauses (a) and (b) of Article 5 do not apply to corporations. Articles 6 and 8 of the Constitution which deal with the rights of citizenship of persons who have migrated to India from Pakistan and the rights of citizenship of persons of Indian origin residing outside India, have likewise no application to corporations. Article 19(1)(a) to (e) cannot possibly apply to corporations. In Article 39(a) the expression " citizen " means " men and women ".

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

But an insurer may be a natural person and I may be wrong in the opinion expressed in the preceding paragraph. That an insurer may be a natural person is plain from section 2(9) of the Act. The question that then arises for decision is whether the restrictions imposed by the impugned legislation are saved by clauses (5) and (6) of Article 19. The impugned legislation imposes restrictions on the right of management of the business of an insurer for a limited period for the benefit of the general body of policyholders. Clearly, the restrictions are reasonable and in the interests of the general public.

This matter may be tested in another way. As stated above, the objection under Article 13(2), Constitution of India, is to be decided upon the " *pith and substance* " of the impugned legislation. Dealing with Article 19 in *A. K. Gopalan* v. *State of Madras* (1)., Kania C. J. said :—

> " The Article has to be read without any preconceived notions. So read, it clearly

(1) A.I.R. 1950 S.C. 27.

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means that the legislation to be examined must be directly in respect of one of the rights mentioned in the sub-clauses. If there is a legislation directly attempting to control a citizen's freedom of speech or expression, or his right to assemble peaceably and without arms, etc., the question whether that legislation is saved by the relevant saving clause of Article 19 will arise. If, however, the legislation is not directly in respect of any of these subjects, but as a result of the operation of other legislation, for instance for punitive or preventive detention, his right under any of these sub-clauses is abridged, the question of the application of Article 19 does not arise. The true approach is only to consider the directness of the legislation and not what will be the result of the detention otherwise valid on the mode of the detenu's life."

As seen above, the nature, purpose and scope of the impugned legislation show that the "*pith and substance*" of the impugned legislation is the regulation of insurance corporations and the winding-up of such corporations, if that be most advantageous to the general interests of the holders of life insurance policies. In other words the impugned legislation is not directly in respect of the subjects dealt with in Article 19(1)(f) and (g) and Article 31(2). If so, the question of the infringement of Articles 19 and 31 does not arise.

For all these reasons, I am firmly of the view that the impugned legislation does not abridge the rights conferred by Article 19(1)(f) and (g) and Article 31(2), Constitution of India, and that the legislation is not void within Article 13(2), Constitution of India.

On the merits these cases present no difficulty. As stated above, the reliefs claimed in the petitions are that a writ of *certiorari* should issue to the Controller to bring up, in order to be quashed, the proceedings under section 52A of the Act and that a writ of *mandamus* be issued directing the Controller to give opportunity to the Companies to be heard on the charge that the Companies are acting in a manner likely to be prejudicial to the interests of the holders of life insurance policies. Now, the distinction between "*mandamus*" and "*certiorari*" is that "*mandamus*" issues to compel the performance of an unperformed official duty while "*certiorari*" reviews a performed judicial or *quasi*-judicial duty. In other words, the writ of *certiorari* is intended to bring into the High Court the decision of an inferior Court or Tribunal, in order that the High Court may be satisfied whether the decision is within the jurisdiction of the inferior Court or Tribunal.

In these proceedings the respondents object that the Court has no jurisdiction to issue writs of *certiorari* and prohibition on the short ground that under section 52A the Controller does not exercise judicial or *quasi*-judicial functions. To the issuance of the writ of *mandamus* the objection raised is that under section 52A of the Act, the Companies have no right to compel the Controller to give them an opportunity of being heard, for there is no such duty imposed upon the Controller by the statute. In what follows I examine these arguments in so far as it is necessary for the disposal of Civil Miscellaneous Writs Nos. 17 to 19 of 1951.

In the picturesque words of Lord Simonds used in the *Labour Relations Board of Saskatchewan* v. *John East Iron Works Limited* (1), the border land in which judicial and administrative functions overlap is a wide one and the boundary is the more difficult to define in the case of a body, the greater part of whose functions are beyond doubt in the administrative sphere. Indeed, the same proceeding may be

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administrative at one stage and judicial or *quasi*-judicial at another stage. In these proceedings it is not claimed that the Controller acts judicially at any stage of the proceedings under section 52A of the Act. In order to determine whether the Controller acts *quasi*-judicially under section 52A of the Act, the test applicable is to be found in *Province of Bombay* v. *Khushaldas* (1). In that case, Kania, C. J., said :—

> "It seems to me that the true position is that when the law under which the authority is making a decision, itself requires a judicial approach, the decision will be *quasi*-judicial. Prescribed forms of procedure are not necessary to make an inquiry judicial, provided in coming to the decision the well-recognized principles of approach are required to be followed."

That being the position of law, I now proceed to examine section 52A(1) of the Act :—

Section 52A(1) of the Act reads :—

> "52A (1) If at any time the Controller has reason to believe that an insurer carrying on life insurance business is acting in a manner likely to be prejudicial to the interests of holders of life insurance policies, he may, after giving such opportunity to the insurer to be heard as he thinks fit, make a report thereon to the Central Government."

Now, in the first part of section 52A(1) of the Act the Legislature has conferred on the Controller the power to initiate proceedings against an insurer carrying on life insurance business if at any time he has reason to believe that that insurer is acting in a manner likely to be prejudicial to the interests of holders of life insurance policies. That being so, the Courts

(1) A.I.R. 1950 S. C. 222.

cannot exercise any control over the discretion confided by the Legislature in the Controller within the first part of section 52A(1) of the Act. In other words this Court has no authority to issue a writ of *certiorari* to the Controller to bring up, in order to be quashed, the proceedings initiated by him within the first part of section 52A(1) of the Act. On this point the dictum of Lord Halsbury in *Mayor of Westminister* v. *London and North-Western Railway Company* (1), may be seen. In that case Lord Halsbury said :—

> " Where the Legislature has confided the power to a particular body with a discretion how it is to be used, it is beyond the power of any Court to contest that discretion. Of course this assumes that the thing done is the thing which the Legislature has authorized. "

Indeed, in arguing the point Mr P. R. Das conceded that if the impugned legislation is not void, the initiation of proceedings within the first part of section 52A(1) is not open to challenge.

But it is said that within the second part of section 52A(1) of the Act, the Controller exercises *quasi*-judicial functions. The argument raised is that within the second part of section 52A(1) of the Act, the Controller has to give opportunity to the insurer to be heard on the objection that that insurer in carrying on life insurance business is acting in a manner likely to be prejudicial to the interests of holders of life insurance policies. On the other hand, counsel for the respondents urge that the Controller is not bound to give an opportunity to the insurer to be heard on the point arising under section 52A (1) of the Act. In my judgment, the extent and nature of the opportunity to be given by the Controller to the insurer is left to the discretion of the Controller, but section 52A (1) of the Act does not leave it to the Controller to give or not to give an opportunity to the insurer to be heard on the question arising under that provision of law. Indeed,

(1) (1905) A. C. 426.

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if it was intended to leave to the Controller the question of giving or not giving of an opportunity to the insurer to be heard on the point arising under section 52A(1), the section would have run :—

> " 52A. ( ) If at any time the Controller has reason to believe that an insurer carrying on life insurance business is acting in a manner likely to be prejudicial to the interests of holders of life insurance policies, he may, if he thinks fit, give an opportunity to the insurer to be heard, before making a report thereon to the Central Government ".

Construing the section as I have described above, the conclusion is inescapable that the Controller is bound in law to give an opportunity to the insurer to be heard on the point arising under section 52A(1) of the Act. From what I have said, it follows that an insurer has a legal right to enforce the performance of that statutory duty.

In these proceedings it is contended that the Controller has failed to perform the duty imposed upon him by law in refusing to give opportunity to the Companies to be heard on the point arising under section 52A(1) of the Act. Counsel point out that the grounds for action given in the notices are vague and indefinite and the time given to the Companies for showing cause was not sufficient. Clearly, on these facts writ of prohibition is not the appropriate remedy. Prohibition is the converse of *mandamus* in that prohibition is used to prevent a Court or Tribunal from doing something which it has not the power to do while *mandamus* is used to require it to do something which it is required to do. Finding as I do, that the legislation is valid and not void, the Controller possesses the power to make an enquiry under section 52A(1) of the Act. In my judgment, there is no justification for the issuance of writs of prohibition in these proceedings.

Having regard to my conclusion that on the facts and circumstances of these cases a writ of prohibition is not the appropriate remedy, it is not necessary to discuss whether the Controller exercises *quasi*-judicial functions within the second part of section 52A(2) of the Act. The *sole* question that calls for decision is whether the conditions for the issuance of a writ of *mandamus* are satisfied.

In order to appreciate the objection raised, it is necessary to set out at this stage the grounds for action given in the notices. In the case of Jupiter General Insurance Company, Limited, Bombay, the notice stated :—

> " (i) The above-named insurer has misapplied or is misapplying his funds ;
>
> (ii) The above-named insurer has invested or is investing his funds in a manner likely to be prejudicial to the interests of holders of life insurance policies ; and
>
> (iii) The management of the above-named insurer has been changing in a manner detrimental to the interests of the policy-holders. "

In the case of the Tropical Insurance Company, Limited, New Delhi, the grounds for action given in the notice are :—

> " (i) The above-named insurer has misapplied or is misapplying his funds ; and
>
> (ii) The above-named insurer has invested or is investing his funds in a manner likely to be prejudicial to the interests of the holders of life insurance policies. "

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In the case of the Empire of India Life Assurance Company, Limited, Bombay, the grounds given in the notice are :—

" (i) The above-named insurer has misapplied or is misapplying his funds ;

(ii) The above-named insurer has invested or is investing his funds in a manner likely to be prejudicial to the interests of the holders of life insurance policies ;

(iii) The life insurance fund of the above-named insurer has been or is being wrongly diminished ;

(iv) The expenses of management of the above-named insurer have been or are excessive ;

(v) The above-named insurer has failed to elect policy-holders' directors ; and

(vi) The management of the above-named insurer has been changing in a manner detrimental to the interests of the policy-holders."

In this connection, counsel for the Companies urge a double-barrelled objection. Firstly, it is said that the Controller did not give sufficient time to the Companies to show cause and, secondly, it is said that the particulars of the *manner* of carrying on life insurance business likely to be prejudicial to the interests of holders of life insurance policies were neither stated in the notices nor were they supplied to the Companies on requisition.

Now, section 52A (1) of the Act does not require the giving of a written notice to the insurer. From a perusal of section 52A (1) of the Act it appears that the requirements of the statute are satisfied if opportunity is given to the insurer to be heard before

the Controller makes a report to the Central Government. Notices directing the Companies to show cause on the 26th of February 1951, were received by the Companies on the 19th of February 1951. Under section 52A (1) the Controller is the *sole* Judge of the nature and the extent of the opportunity to be given to the insurer. In any case, each of the Companies has had by now ample time to prepare its defence. In these circumstances, there is no warrant for the issuance of the writs of *mandamus* on the ground that the Controller did not give sufficient time to the Companies to show cause on the point arising under section 52A (1) of the Act.

I now pass on to examine the objection that the Companies should have been informed with certainty and accuracy the exact nature of the charge brought against them.

Section 52A (1) of the Act provides that the Controller may, after giving such opportunity to the insurer to be heard as he thinks fit, make a report to the Central Government. Under section 52A (1) of the Act, if the Controller thinks that the insurer carrying on life insurance business is acting in a *manner* likely to be prejudicial to the interests of the holders of life insurance policies, he may call upon the insurer to show cause why an Administrator for the management of the business of that insurer should not be appointed. In the notices it is stated that the Controller objects, *inter alia*, to the mode of investments and misapplication of funds.

In Civil Miscellaneous Writ No. 17 of 1951, ground No. (iii) is definite and precise, while grounds Nos (i) and (ii) state that the Controller objects to the mode of investments and misapplication of funds. In Exhibit 'F', dated the 26th of February 1951, the Jupiter General Insurance Company, Limited, Bombay, maintained :—

> "Your notice, we submit, is untimed as the Bombay police have taken proceedings

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against the Directors and Secretary of the Company under sections 109 and 409 of the Indian Penal Code. They have made charges and accusations against us which are more or less identical with the general charges that you have made. In view of this fact your investigation, we fear, may be a kind of interference with the course of justice with a matter which is *sub-judice.*"

Mr Rajagopalan, Assistant Controller, has stated in his affidavit, sworn by him on the 14th of March 1951, that on the 26th of February 1951, he intimated to the Company that he would continue with the hearing on that date, but if it appeared necessary to allow the Company further time, he would adjourn the proceedings. In his affidavit Mr Rajagopalan affirms that the Company persisted in its refusal to avail itself of the opportunity of being heard which he gave it. Mr A. Rajagopalan was acting as Controller of Insurance on the 26th of February 1951.

In Civil Miscellaneous Writ No. 18 of 1951, the grounds given in the notice at Nos. (iii), (iv), (v) and (vi) are definite, while grounds Nos (i) and (ii) mention that the Controller objects to the mode of investments and the misapplication of funds. The Empire of India Life Assurance Company, Limited, also maintains in their application in this Court that the Bombay police has taken proceedings against the officers of the Company under sections 109 and 409 of the Indian Penal Code.

In Civil Miscellaneous Writ No. 19 of 1951, the Controller objects in the notice as to the mode of investments and the misapplication of funds. No other ground for action is given in the notice. In the case of the Tropical Insurance Company, Limited, New Delhi, no criminal proceedings are pending. In

drafting the petition in Civil Miscellaneous Writ No. 19 of 1951, the pendency of criminal proceedings was mentioned in paragraph Nos 9, 11 and 13 of the petition, but as there were no such proceedings pending, references to the criminal proceedings in the petition were deleted.

That being the petition, it cannot be maintained that the Controller has failed to give opportunity to the Companies to be heard on the points arising under section 52A(1) of the Act. Notices given to the Companies indicate the *manner* of carrying on life insurance business which the Controller has reason to believe to be prejudicial to the interests of holders of life insurance policies. In response to the notice the Company concerned may place before the Controller information rebutting the objections as to the *manner* of carrying on life insurance business and I have no doubt that if at any stage of the proceedings it becomes necessary to examine specific items of misapplication of funds or abuse of investments the Controller will give particulars of such items to the Company concerned before he makes a report thereon to the Central Government. But lest there may be confusion I herein mention that I do not decide in these proceedings that action can be taken under section 52A(1) of the Act on proof of items of misapplication of funds or abuse of investments. The point has not been canvassed in these proceedings and it is open to argument that section 52A(1) of the Act deals with the *manner* of the carrying on of the business as opposed to neglect or dereliction of duty in the carrying on of that business in that manner.

In Civil Miscellaneous Writ No. 17 of 1951 Mr Chaudhri urged that inasmuch as the Jujiter General Insurance Company, Limited, had not carried out the undertakings given by the Company to this Court on the 14th of March 1951, the Company was in contempt and could not be heard in these proceedings. In Civil Miscellaneous Writ No. 18 of 1951, Mr Damodar Sarup Seth put in an affidavit alleging that

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Mr V. Subhedar had no authority to initiate proceedings in this Court on behalf of the Empire of India Life Assurance Company, Limited, Bombay. Having regard to my conclusions in these cases, it is not necessary to discuss these points. Indeed, in the matter of contempt, proceedings are pending in this Court and it is not desirable to discuss any aspect of those proceedings on an incomplete record.

In these proceedings my conclusions are :—

(a) that this Court has power to issue the writs claimed in the petitions in Civil Miscellaneous Writs Nos. 17 to 19 of 1951, provided the conditions for the issuance of such writs are satisfied ;

(b) that the Legislature was competent to enact sections 52A to 52G of the Act, which were added by the Insurance (Amendment) Act, 1950 ;

(c) that the Companies cannot raise the question that sections 52A to 52G of the Act take away or abridge the rights conferred by Article 19 (1) (f) and (g), Constitution of India ;

(d) that the restrictions imposed by sections 52A to 52G of the Act on the right of management of the business of an insurer are reasonable and in the interests of the general public ;

(e) that the Controller exercises administrative functions within the first part of section 52A (1) of the Act ;

(f) that on the facts and circumstances of Civil Miscellaneous Writs Nos. 17 to 19 of 1951 the issuance of writs of prohibition is not appropriate to discuss whether the Control-

ler exercises *quasi*-judicial functions within the second part of section 52A(1) of the Act;

(g) that the Controller is the sole judge of the nature and the extent of the opportunity to be given to the insurer within the second part of section 52A (1) of the Act; and

(h) that on the facts and circumstances of these cases it cannot be maintained that the Controller has failed to give opportunity to the Companies to be heard on the points arising under section 52A (1) of the Act.

On the findings summarized in the preceding paragraph, Civil Miscellaneous Writs Nos. 17, 18 and 19 of 1951 fail and are dismissed with costs.

SONI, J. There are three applications made by (1) the Jupiter General Insurance Co., Ltd., Bombay, (2) the Empire of India Life Assurance Co., Ltd., Bombay, and (3) the Tropical Insurance Co., Ltd., New Delhi, against Mr Rajagopalan, Controller of Insurance, and the Union of India, in which the prayer is that certain orders and directions should be issued to the respondents. These applications came up for a preliminary hearing before our learned brother Mr Justice J. L. Kapur who, on the 2nd March 1951, passed an *ad interim* order of prohibition prohibiting Mr Rajagopalan to do certain things. The case came up for hearing on the 14th March 1951, when on certain undertakings being given by the three petitioners, it was adjourned by consent of counsel to the 3rd of April 1951.

We have heard Mr Chaudhari for the respondents in the Jupiter General Insurance Company's case. His arguments have been adopted by Mr Inder Dev Dua who has also appeared for the respondents in the other cases. We have heard Mr P. R. Das, Mr Ameen and Mr M. L. Puri for the petitioners. We have also

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heard Mr Veda Vyasa who alleged that the application by the Empire of India Life Assurance Co., Ltd., was not competent as a resolution had been passed stating that the application was not to be pursued.

The matter that has been alleged by the various Companies is that on the 17th of February 1951, Mr Rajagopalan as the Controller of Insurance issued a notice purporting to be one under section 52-A of the Insurance Act, 1938, in which he gave notice to the Companies individually that he had reasons to believe that they were acting in a manner likely to be prejudicial to the interests of the policy-holders and informing them that he would hear them on the 26th of February 1951, in his office in the Secretariat, Ministry of Finance, New Delhi, and that unless satisfactory cause was shown to the contrary, the Controller of Insurance would make a report to the Central Government for the appointment of an Administrator to manage the affairs of the three Companies in the interests of the policy-holders. Grounds were stated in that notice. By another notice of the same date, i.e. 17th of February 1951, the Companies were informed that the hearing would be at Bombay instead of at New Delhi. On receipt of this notice, the Companies sent telegrams to the Controller on the 19th February 1951, for postponement of the date of hearing to some day in March 1951. The Controller refused postponement on the 20th February 1951. On the 21st of February 1951, a request was again made to the Controller for postponement which was again refused. On the 26th of February 1951, the petitioners appeared by counsel before the Controller in Bombay at the place notified by him and made a written submission for postponement by at least 15 days. The Controller, however, refused to adjourn the hearing. The petitioners alleged before him on that day in their written submission that the grounds given to them were vague. They had done this on the 19th also. It is alleged in the application that the petitioners were asked to answer the grounds then and there. They refused to do so on the ground that

unless further particulars were furnished to them they could not reply to the allegations the charge of which was made against them. It is alleged in the applications that Mr Rajagopalan said that unless the petitioners answered the charges on the spot he would proceed further and make a report to the Government of India as stated in his notice. The petitioners beyond making their written submissions through counsel on the 26th of February 1951, did not do anything or partake further in the proceedings on that day. They put in the present applications three days later in this Court on the 1st of March and, as already stated, an *ad interim* order of prohibition was obtained from Mr Justice Kapur on the 2nd of March 1951.

In these applications preliminary objections have been taken both by the petitioners and by the respondents. On behalf of the Controller and the Union it is stated as a preliminary objection that this Court has no jurisdiction to proceed with the hearing of these applications as whatever the Controller was going to do was to be done in Bombay, which is outside the limits of this Court's territorial jurisdiction. The petitioners have alleged that section 52-A is *ultra vires* of the Constitution and that the Controller cannot possibly take any action relying on that section. The other preliminary objections are that even if this section be *intra vires*, the proceedings before the Controller under that section are judicial or *quasi*-judicial and that the Controller must furnish particulars of the charges which are mentioned too generally and vaguely in the notices and give them such opportunities as the petitioners consider necessary to answer those charges before he can make a report to the Central Government; that unless this is done the Controller cannot act and this Court should issue writs or orders whether in the nature of *certiorari*, *mandamus* or prohibition or otherwise, calling up his proceedings, prohibiting the Controller to proceed with the notice, forbidding him to make a report to the Central Government and directing the Central Government not to act on his report.

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A preliminary objection was raised in the case of the Empire of India Life Assurance Company, Ltd., the objection being that there had been a resolution of the Directors not to proceed with the petition. Another objection was raised during the course of arguments at an adjourned hearing that the Jupiter Company had not carried out the undertakings that it had been directed by this Court to carry out. It was alleged that this Company had committed contempt of Court and had, therefore, lost its right to be heard and get any mandates or orders from this Court.

I shall first take up the question whether this Court has jurisdiction to entertain these petitions. The argument that this Court has no jurisdiction is based on the allegation that whatever the Controller proposed to do was to be done in Bombay and that as Bombay is outside the territorial jurisdiction of this Court, this Court has no jurisdiction to hear these petitions. In support of this argument the judgment of their Lordships of the Privy Council in the *Parlakimedi case* (1), was relied on. The facts of that case were that the appellants before the Privy Council were ryots of three villages included in the Parlakimedi estate in the district of Ganjam in the Northern Circars. The respondents were (1) the Zamindar of Parlakimedi and (2) the Board of Revenue at Madras. In October 1925, the Zamindar applied, under chapter 11, Madras Estates Land Act, for the settlement of rent in respect of these villages, and, by a supplemental application in March 1926, he applied for settlement of a 'fair and equitable rent' under section 168 (1) of the Act. The Government of Madras in November 1927, directed the Special Revenue Officer of the district to settle a fair and equitable rent in respect of lands in the said villages. After memoranda had been submitted by the contesting parties and after elaborate investigation on the spot, the Special Revenue Officer in 1925, made an

(1) I.L.R. (1944) Mad. 457=(1942-43) 70 I.A. 129.

order doubling the previous rents. On the ryots' appeal to the Board of Revenue, a member of that Board sitting alone reversed this decision and allowed an increase of rent of only 12½ per cent. The Zamindar appealed by way of revision to the Collective Board of Revenue from the decision of the single member. The Collective Board on 9th October 1936, increased the rent to 37½ per cent. On 9th February 1937, the appellants petitioned the Madras High Court for a writ of *certiorari* to quash the order of the Collective Board of Revenue. On 5th November 1937, the Madras High Court dismissed the application for the writ. Before their Lordships of the Privy Council the question raised was whether the Madras High Court had any jurisdiction to issue the writ, the contention of the appellants being that it had. Their Lordships held that the High Court of Madras had no power to issue writs of *certiorari* outside the Presidency Town of Madras unless the person to whom the writ was directed was a British subject and that in the case before them as both the ryots and the Zamindar were not and were outside the limits of the town of Madras and as also the Special Revenue Officer, who dealt with the matter in the first instance, was outside the limits, the mere fact that the Board of Revenue had its office in Madras, did not give the Madras High Court the power to issue a writ. Their Lordships thought that the question of jurisdiction must be regarded as one of substance and that it was not within the competence of the Madras High Court to issue a writ. This decision of their Lordships of the Privy Council is sought to be applied in the present cases. But Mr P. R. Das urged that the present cases are distinguishable. Here the Controller of Insurance issued his notice from Simla and wanted to make his inquiry at Delhi initially. Later he changed the place of inquiry to Bombay. One of the three petitioning Companies, namely, the Tropical Insurance Co., Ltd., has its office in New Delhi, which is within the territorial jurisdiction of this Court. Though the other two petitioning Companies have their head offices in Bombay, yet both of them have submitted themselves

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to the jurisdiction of this Court. The Controller being within the jurisdiction of this Court, one of the Companies being also within the jurisdiction and the other two Companies having submitted to the jurisdiction of the Court, all the parties are within the jurisdiction of this Court. The reliefs sought by way of issue of writs of *certiorari*, prohibition or *mandamus* directed against Controller of the Insurance can be entirely obtained through his personal obedience. The jurisdiction which is exercised in these writs is exercised *in personam*. It is no doubt true that what the Controller proposes to do is to be done in Bombay, but the Controller can by the issue of proper writs be directed to do things and if he is within the jurisdiction of this Court this Court can take action against him if he disobeys the orders of this Court. The argument is based on the exercise by the Court of King's Bench in England to issue high prerogative writs against persons within its jurisdiction. I admit that the argument has great force behind it. But their Lordships of the Privy Council have given repeated rulings on this subject. One of them was given in the case of an application for a writ of *quo warranto* to be issued to a person resident within the original jurisdiction of the Calcutta High Court regarding the usurpation of an office by him without that jurisdiction. That is *Nomani's* case (1). Another is a case under section 45 of the Specific Relief Act regarding a *mandamus* to be issued to the Textile Commissioner whose office was at Madras within the limits of the original jurisdiction of the Madras High Court regarding an act with reference to which the relief asked for was to take place beyond those limits. That is the case of *Meenakshi Mills* (2). In both these cases their Lordships held as they did in the Parlakimedi case that the High Courts had no jurisdiction. It is, however, urged that whatever may have been the state of law before the promulgation of the Constitution the law which has now to be enforced is what is laid down by

(1) I.L.R. (1948) 1 Cal. 230=(1946-47) I.A. 120.
(2) A.I.R. 1949 P.C. 307=(1948-49) 76 I.A. 191.

the framers of the Constitution. Under Article 226 of the Constitution the only necessary condition for the issue of a direction, order or writ is that the person to whom it is to be directed be within the territorial limits of the High Court to whom the application for the direction, order or writ is made. If this condition is satisfied the powers given are the amplest, ampler than those exercised by the Court of King's Bench in England. But regarding the Courts in England, I find it mentioned in the case of the *Justices of Bombay* (1), that Sir Thomas Strange, Chief Justice of Madras, observed at page 135 in the first volume of his *Note of Cases at Madras* in the case of *Nagapah Chitty* v. *Rachummah* as follows :—

> "Those Courts being by their constitution, according to their respective modes and purposes of proceeding, the great depositaries of the universal justice of the realm, and as such, in every instance in which it is attempted to withdraw a case from their cognizance, bound to see, distinctly and unequivocally, that a jurisdiction adequate to the object in view exists elsewhere. If that be not stated so as to appear to the Court, a plea to the jurisdiction fails, and the jurisdiction remains."

In the present cases of the three petitioning Companies, a jurisdiction adequate to the object in view exists in Bombay where the Controller proposes to hold his inquiry. In my opinion the remedy for any wrongs alleged to be done to the petitioners would be more adequate and complete and their grievances better dealt with by the High Court at Bombay than here. I hold accordingly. The issue of a writ, direction or order under Article 226 of the Constitution is discretionary.

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(1) (1901) 12 E.R. 222 (235).

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Supposing, however, it is held that it was imperative for this Court to exercise its jurisdiction, I proceed to deal with the points arising in these cases.

I shall first deal with the question whether section 52-A is *ultra vires* of the Constitution. Section 52-A reads as follows :—

"(1) If at any time the Controller has reason to believe that an insurer carrying on life insurance business is acting in a manner likely to be prejudicial to the interests of holders of life insurance policies, he may, after giving such opportunity to the insurer to be heard as he thinks fit, make a report thereon to the Central Government.

(2) The Central Government, if it is of opinion after considering the report that it is necessary or proper to do so, may appoint an Administrator to manage the affairs of the insurer under the direction and control of the Controller.

(3) The Administrator shall receive such remuneration as the Central Government may direct and the Central Government may at any time cancel the appointment and appoint some other person as Administrator.

(4) The management of the business of the insurer shall as on and after the date of appointment of the Administrator vest in such Administrator, but except with the leave of the Controller the Administrator shall not issue any further policies.

(5) As on and after the date of appointment of the Administrator any person vested with any such management immediately prior to that date shall be divested of that management.

(6) The Controller may issue such directions to the Administrator as to his powers and duties as he deems desirable in the circumstances of the case, and the Administrator may apply to the Controller at any time for instructions as to the manner in which he shall conduct the management of the business of the insurer or in relation to any matter arising in the course of such management."

Section 52-A was added along with sections 52-B to 52-G by the Insurance (Amendment) Act, 1950 (47 of 1950), and came into force on the 1st June 1950. Section 52-B deals with the powers and duties of the Administrator and it is stated in that section that the Administrator shall conduct the management of the business of the insurer with the greatest economy possible with efficiency and shall, as soon as may be possible, file with the Controller a report stating which of the four courses specified in that section is in the circumstances most advantageous to the general interests of the holders of life insurance policies, the four courses being—

(a) the transfer of the business of the insurer to some other insurer;

(b) the carrying on of its business by the insurer (whether with the policies of the business continued for the original sum insured with the addition of bonuses that attach to the policies or for reduced amounts);

(c) the winding-up of the insurers; or

(d) such other course as may be deemed advisable.

There are two other clauses of this section which need not be mentioned.

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Under section 52-C the Administrator has been given the power to cancel or vary contracts.

Section 52-D reads as follows :—

> " If at any time, on a report made by the Controller in this behalf, it appears to the Central Government that the purpose of the order appointing the Administrator has been fulfilled or that for any reason it is undesirable that the order of appointment should remain in force, the Central Government may cancel the order and thereupon the Administrator shall be divested of the management of the insurance business which shall, unless otherwise directed by the Central Government, again vest in the person in whom it was vested immediately prior to the date of appointment of the Administrator."

Section 52-E makes orders or decisions of the Central Government under section 52-A or section 52-D final and not to be called in question in any Court.

Section 52-F relates to penalties for withholding documents or properties from the Administrator.

Section 52-G relates to protection of action taken under sections 52-A to 52-D.

The submission on behalf of the petitioners was based on Articles 19 and 31 of the Constitution. It was submitted that section 52-A of the Insurance Act infringes Article 19 (1), sub-clauses (f) and (g), and also infringes clause (2) of Article 31. Sub-clauses (f) and (g) of Article 19 (1) read as follows :—

> " All citizens shall have the right—

(f) to acquire, hold and dispose of property; and

(g) to practise any profession, or to carry on any occupation, trade or business."

Sub-clauses (f) and (g) are, however, subject to clauses (5) and (6) of this Article.

Caluse (5) of this Article reads as follows :—

"(5) Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing reasonable restrictions on the exercise of any of the rights conferred by the said sub-clause either in the interests of the general public or for the protection of the interests of any Scheduled Tribe."

Clause (6) of this Article reads as follows :—

"(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes or prevents the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it prescribes or empowers any authority to prescribe, or prevent the State from making any law prescribing or empowering any authority to prescribe, the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business."

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Article 19 relates to citizens. The question is whether a Company is a citizen. Article 5 of the Constitution reads as follows :—

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

Mr P. R. Das urged that this Article applies to artificial persons as much as it applies to natural born persons. His argument was that the petitioning Companies in this case were domiciled in the territory of India and had been ordinarily resident in the territory of India for not less than five years immediately preceding the commencement of the Constitution and that, therefore, the Companies were citizens of India. In my opinion this argument has no force. I am of the view that Article 5 applies to natural born persons and not to artificial persons and a reading of the next Articles of Part II in which Article 5 finds a place makes it abundantly clear that what is intended by the word 'citizen' is a natural born person and not an artificial person. In this view it is not necessary to consider the effect of clauses (5) and (6) of Article 19 on the validity of section 52-A. But as the Insurance Act relates to insurer and as it is not necessary that an insurer should be a Company, I would hold that section 52-A enacts reasonable restrictions and

even if Article 19 were to apply, the provisions of the section are saved by clauses (5) and (6) of Article 19. I, therefore, hold that section 52-A of the Insurance Act is not hit by Article 19 of the Constitution.

Section 52-A of the Insurance Act was then challenged under clause (2) of Article 31. That Article has six clauses. The first clause reads as follows :—

> " No person shall be deprived of his property save by authority of law ".

It is not urged that this clause applies. What is urged is that it is the second clause which makes section 52-A *ultra vires*. That clause reads as follows :—

> " (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 authorizing the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation or specifies the principles on which, and the manner in which compensation is to be determined and given."

It was urged that under section 52-A the Central Government takes possession of the property of the Company and no compensation is paid to the Company for Government taking possession. It was not argued that the Government was acquiring this property but it was argued that possession of this property was taken and that clause (2) of Article 31 hits Government's taking possession as much as Government's acquisition of the property unless compensation is paid or the terms of the clause are otherwise complied

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with. It was urged that the Controller and the Administrator after action has been taken under section 52-A take possession of the property of the Company and can do what they like with the property of the Company. The business of the Company can be transferred, the Company can be wound up or anything else can be done, contracts and agreements can be cancelled or varied and nobody can question the decision of the Central Government. It was argued that observations made by the Honourable Mr Justice Mukarjea and the Honourable Mr Justice Das in the case of *Charanjit Lal Chowdhry* v. *The Union of India and others* (1), support the contention. But when that case is read I do not find anywhere decided in that case that the possession taken of as it is in the present case by Government is in any way hit by clause (2) of Article 31. Argument was advanced which is given in column 2 of page 54 in the judgment of Mr Justice Mukarjea or in column 2 of page 63 in the judgment of Mr Justice Das. Mr Justice Das did not decide whether this argument in that case was a sound one or not. He merely said that it was an argument but did not go into the validity of that argument nor did Mr Justice Mukarjea or any of the other learned Judges. Mr P. R. Das also referred to the Patna case regarding management of Zamindaris, A.I.R. 1950 Pat. 392, and said that that case also supported his contention.

In my view, however, we have to see what actually is done under the provisions of section 52-A. What is done and what is repeated in that section as well as in the succeeding sections, more especially in section 52-D is the taking over of the management of the insurance business. No beneficial interest in the property is taken over by Government. The property still remains the property of the Company. The share-holders are still the share-holders of the Company and entitled to get what they can out of the

(1) A.I.R. 1951 S.C 41.

Company. Though the powers of Directors and share-holders *qua* management are taken away, they still retain the powers, for instance, of selling or transferring their rights in the Company to another Company. It is the management and management alone that is taken over by Government. The property taken over is managed under section 52-B in the interests of the owner, which is the Company, and as if the Administrator was a trustee. When it appears to the Government that the purpose for the appointment of the Administrator has been fulfilled or that for any reason it is undesirable that the order of appointment should remain in force, the Central Government cancels the order of the appointment of the Administrator. On this cancellation what happens ? Section 52-D provides that the Administrator shall be divested of the management of the insurance business and, unless otherwise directed by the Central Government, the management again vests in the person in whom it was vested immediately prior to the date of appointment of the Administrator. The Insurance Act is passed under the provisions in entries Nos 43, 44 and 47 of List 1 of the Seventh Schedule to the Constitution. Under Article 246 of the Constitution, Parliament has exclusive power to make laws with respect to any of the matters enumerated in List 1. Entry 43 reads as follows :—

> " Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies."

In my opinion the taking over of the management of the life insurance business of an Insurance Company because of the Company carrying on its business in a manner likely to be prejudicial to the interests of holders of life insurance policies is nothing but the regulation of the Insurance Company. Mr P. R. Das argued that regulation does not mean the killing of the Company and submitted that whenever action is taken under section 52-A the Company is killed. I

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do not agree. In my opinion, the Company continues to exist. It is merely the management that is taken over and after the management is put in a better condition that management is again given back to the Company. The other powers that are exercised under the provisions of sections 52-A to 52-G are merely incidental to the powers of management. The power to apply for winding up is a power which already existed in the Company and is also one of the incidents of management. Management of property is only one of the bundle of rights comprised in possession of property. When management is taken over, there is no transfer to public ownership of all the bundle of rights comprised in possession. In *Dwarka Das Shriniwas* v. *The Sholapur Spg. & Wvg. Co. Ltd.* (1), Chagla, C.J., is reported to have said at page 226 :—

> " When possession is taken as contemplated by Article 31 (2), the person taking possession of the property must take possession of the whole bundle of rights that go to Constitute ' property ' * * * * * Also in our opinion, just as in the case of acquisition undoubtedly the beneficial interest is transferred from the person from whom the property is acquired to the person in whose favour the acquisition is made, similarly in the case of possession the person in possession must have transferred to him the beneficial interest in the property although the title may not be divested."

The learned Chief Justice further at page 227 is reported to have said as follows :—

> " But in the first instance, the right of management is not such property as is contemplated by Article 31. This is not property

(1) (1950) 53 Bom L.R. 218.

which can be acquired or taken possession of.* * * * * * * * * * * "

I hold that the temporary deprivation of management that is apprehended to take place in the present case is by virtue of the police powers of the State. I think that the introduction of sections 52-A to 52-G can be supported with reference to clause (5) of Article 31 which states that nothing in clause (2) of Article 31 shall affect the provisions of any law which the State may hereafter make for the prevention of danger to property. This clause is not confined to cases, where, for instance, a building may have to be sacrificed in order to prevent a conflagration destroying a row of buildings. The clause is couched in general terms. Under section 52 of the Insurance Act, steps are taken to prevent the insurer from acting in a manner prejudicial to the interests of holders of life insurance policies, that is to say, to prevent danger to the property of the policy-holders.

Entry 43 of List I of the Seventh Schedule to the Constitution allows the Union Parliament to make laws regulating trading or insurance corporations. With regard to this entry, Mr Justice Das in the ruling cited already (1951 Supreme Court 41) observed at page 62, column 2 :—

> "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 share-holders, should be appointed by Government."

In my opinion, the objection that section 52-A of the Insurance Act is *ultra vires* of the Constitution has no force and I would overrule this preliminary objection.

Before I take up the next point, I would like to mention that the opinion which I have formed regarding section 52-A of the Insurance Act not being *ultra*

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vires of our Constitution finds support from American Law. I find given in Willoughby on the Constitution of the United States, Volume 3, page 1589, the classic definitions of police power. That is of Shaw, C.J., given in *Commonwealth* v. *Alger* (1). He says :—

> " We think it is a settled principle, growing out of the nature of well-ordered civil society, that every owner of property; however absolute and unqualified may be his title, holds it under the implied liability that his use of it shall not be injurious to the general enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. All property in this Commonwealth is . . . . . held subject to those general regulations which are necessary to the common good and general welfare. Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment as shall prevent them from being injurious, and to such reasonable restraints and regulations established by law as the legislature under the governing and controlling power vested in them by the Constitution, may think necessary and expedient. This is very different from the right of eminent domain,——the right of a Government to take and appropriate private property whenever the public exigency requires it, which can be done only on condition of providing a reasonable compensation therefor. The power we allude to is rather the police power; the power vested in the legislature by the Constitution to make, ordain, and establish all manners of wholesome and reasonable

(1) (1851) 61 Mass. 53.

laws, statutes, and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the Commonwealth, and of the subjects of the same. It is much easier to perceive and realize the existence and the sources of this power than to mark its boundaries, and prescribe the limits to its exercise."

Willoughby also quotes here, in his American Constitutional Law, Volume II, 766 saying :—

"The police power may be justly said to be more general and pervading than any other. It embraces all the operations of society and Government; all the constitutional provisions presuppose its existence, and none of them precludes its ligitimate exercise. It is impliedly reserved in every public grant. Chartered rights and privileges are therefore like other property, held in subordination to the authority of the Government, which may be so exercised as to preclude the use or doing of the very thing which the company was constituted or authorized to manufacture or perform. The legislature cannot be presumed to have intended to tie its hands in this regard in the absence of express words ; but if such a purpose were declared, it would fail, as an attempt to part with an attribute of sovereignty which is essential to the welfare of the community."

Willis on Constitutional Law, at page 727, quotes from Cooley's Constitutional Limitations, page 1223, as follows :—

"The police of a state, in a comprehensive sense, embraces its whole system of internal regulation, by which the state seeks

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not only to preserve the public order and to prevent offences against the state, but also to establish for the intercourse of citizens with citizens those rules of good manners and good neighbourhood which are calculated to prevent a conflict of rights, and to ensure to each the uninterrupted enjoyment of his own so far as is reasonably consistent with a like enjoyment of rights by others."

Willoughby at page 1774 makes the following observations regarding police power :—

> "From what has been said it sufficiently appears that the police power knows no definite limits. It extends to every possible phase of what the Courts deem to be the public welfare—it is a general right upon the part of the public authority to abridge, or, if necessary, to destroy, without compensation, the property or contract rights of individuals, and to control their conduct in so far as this may be necessary for the protection of the community or of a particular class of the community, against danger in any form, against fraud, or vice, or economic oppression, or even for the securing of the public convenience."

At page 1775, Willoughby says :—

> The right of control exercisable under the police power is, however, co-extensive with the social and economic activities of men, and finds its limits not in the public or *quasi*-public character of the industries affected, but in the nature of the acts forbidden or required, and finds its justification upon the direct relation of these acts to the public welfare.

> The fundamental principle which is held to justify this exercise of State power is that no one shall so use his property or exercise any of his legal rights (i.e., legal in the sense of not being forbidden by law) as injuriously to interfere with or affect the property or other legal rights of others. The guiding maxim is *sic utere tuo et alienum non laedas*. The purpose and possible result of the police law being shown, the fact that indirectly, private interests or property values are affected, becomes immaterial, and the persons detrimentally affected have no claim upon the State for compensation. Theirs is a case of *damnum absque injuria*."

Under our Constitution police powers are exercised by the State in making laws under, amongst other, the provisions of clauses (5) and (6) of Article 19 and clause (5) of Article 31. What is known as 'eminent domain' in American Law is given in our Constitution under clause (2) of Article 31. Regarding this Willis quotes *Commonwealth* v. *Alger* (1), the case already mentioned, and other cases at page 225, and states :—

> "Eminent domain differs from the police power in that the police power is not a taking of any rights, whether of property or a person, from people, but a limitation on the exercise of such rights by people, although the police power may also result in making people lose their property."

Willoughby at page 1781, quotes the case of *Mugler* v. *Kansas* (2). In that case the Court said :—

> "As already stated the present case must be governed by principles that do not involve

(1) (1851) 61 Mass 53. (2) 123 U.S. 623.

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the power of eminent domain, in the exercise of which property may not be taken for public use without compensation. A prohibition simply upon the use of property for purposes that are declared, by valid legislation, to be injurious to the health, morals or safety of the community cannot, in any just sense, be deemed a taking or an appropriation of property for the public benefit. Such legislation does not disturb the owner in the control or use of his property for lawful purposes, nor restrict his right to dispose of it, but is only a declaration by the State that its use by anyone, for certain forbidden purposes, is prejudicial to the public interests."

At page 1858, Willoughby quotes the case of *Knox* v. *Lee* (1), and says :—

> "The Court referring to the provisions of the Fifth Amendment with reference to the due process of law said :—'That provision has always been understood as referring only to a direct appropriation and not to consequential injuries resulting from the exercise of lawful power. It has not been supposed to have any bearing upon or to inhibit laws that indirectly work harm and loss to individuals . . . . . By the Act of June 28, 1834, a new regulation of the weight and value of gold coin was adopted, and about six per cent was taken from the weight of each dollar. The effect of this was that all creditors were subjected to a corresponding loss . . . . . But was it ever imagined that this was taking property without compensation or without due process of law ?"

(1) 12 Wall 457.

From what I have quoted from Willoughby and from Willis and from the authorities mentioned by them, it appears to me that the American Law supports me in my view that section 52-A of the Insurance Act is not *ultra vires* of our Constitution and that regulating the management of a Company would not be appropriation or the taking of such possession or such acquisition for which compensation must be paid. The taking over of management falls short of appropriation and comes under the exercise of police power by the State for which no compensation is to be paid. Every possible presumption must be made in favour of the validity of a statute and this continues until the contrary is shown beyond reasonable doubt. A statute cannot be declared *ultra vires* except for reasons so clear and satisfactory as to leave no doubt as to its coming in conflict with rights guaranteed by the Constitution.

I come now to the next question which was argued at great length before us, viz., whether the Controller when acting under section 52-A acts judicially. The argument that was advanced on behalf of the petitioning Companies was that his action decides matters ; if his report is accepted the previous management becomes suspended and the Administrator becomes the sovereign authority who can do what he thinks fit without let or hindrance ; that the Companies can be deprived not only of their management but also of their property and that the Controller owes a duty to the insurer and his proceedings must, therefore, be judicial. On behalf of the Controller it is urged that he is merely a reporting officer of Government, that he himself decides nothing, that it is his report which is put up before the Central Government and the authority which issues the orders against the Company is the Central Government, and not the Controller, that functions of the Controller are purely ministerial and executive and no judicial element enters into his proceedings. In these circumstances it is necessary to consider what exactly are the functions of the Controller. I may say at the outset that the mere fact that a person does

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not pass the final order does not necessarily mean that his functions are purely ministerial or executive. It has been held in a number of cases that the final authority may be vested in somebody else but the person conducting an inquiry which might result in the final order may still be performing his duties judicially. See for example, the case of *The King* v. *Electricity Commissioners* (1), where it is stated at page 207 : "I know of no authority which compels me to hold that a proceeding cannot be a judicial proceeding subject to confirmation or approval, even where the approval has to be that of the Houses of Parliament. The authorities are to the contrary." In my opinion the mere fact that the Controller has got to report which report is to be considered by the Central Government would not necessarily prove that his proceedings before he makes a report are not judicial. The question therefore remains to be seen whether under the provisions of this section his proceedings are judicial. Clause (1) of section 52-A enacts that if at any time the Controller has reason to believe that an insurer carrying on life insurance business is acting in a manner likely to be prejudicial to the interests of holders of life insurance policies, he may, after giving such opportunity to the insurer to be heard as he thinks fit, make a report thereupon to the Central Government. This provision implies that the Controller should come to a conclusion in his own mind that the insurer who is carrying on life insurance business is acting in a manner likely to be prejudicial to the interests of holders of life insurance policies. The Controller himself is the judge regarding the matters which he has to enquire into and about which he has to make a report. While proceeding with the matter it is important to remember that the statute gives him a wide discretion ; he may make a report, but the opportunity that he has to give to the insurer to be heard is such as he (the Controller) thinks fit. The Act does not provide the manner in which he has to give the opportunity. Nor does it give the insurer

(1) (1924) 1 K.B. 171.

any grievance if the insurer thinks that the opportunity that has been provided to him is not adequate. In a recent case which came up before their Lordships of the Privy Council from Ceylon, *Nakkuda Ali* v. *M. F. De S. Jayaratne* (1), their Lordships had to determine whether the Controller of Textiles in that case was acting judicially. The regulation which their Lordships had to construe was regulation 62 of Defence (Control of Textiles) Regulations, 1945, which ran as follows :—

> " Where the Controller has reasonable grounds to believe that any dealer is unfit to be allowed to continue as a dealer, the Controller may cancel the textile licence or textile licences issued to the dealer."

At page 77 of the report, Lord Radcliffe who deliver ed the judgment of their Lordships of the Privy Council, said :—

> " Their Lordships therefore treat the words in regulation 62, ' where the Controller has reasonable grounds to believe that any dealer is unfit to be allowed to continue as a dealer ' as imposing a condition that there must in fact exist such reasonable grounds, known to the Controller, before he can validly exercise the power of cancellation.
>
> But it does not seem to follow necessarily from this that the Controller must be acting judicially in exercising the power. Can one not act reasonably without acting judicially ? It is not difficult to think of circumstances in which the Controller might, in any ordinary sense of the words have reasonable grounds of belief without having ever confronted the license-holder with the information which is the source of his belief. It is a long step in the argument to say that because a man is enjoined that he must not take action unless he has reasonable ground for believing

(1) 1951 A.C. 66.

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something he can only arrive at that belief by a course of conduct analogous to the judicial process. And yet, unless that proposition is valid, there is really no ground for holding that the Controller is acting judicially or *quasi*-judicially when he acts under the regulation. If he is not under a duty so to act then it would not be according to law that this decision should be amenable to review and, if necessary, to avoidance by the procedure of *certiorari*."

Lord Radcliffe then goes on to say :—

" Their Lordships have come to the conclusion that *certiorari* does not lie in this case. It would not be helpful to consider the immense range of reported cases in which *certiorari* has been granted by the English Courts : or the reported cases, themselves numerous, in which it has been held to be unavoidable as a remedy. It is, of course, a common place that its subjects are not confined to established courts of justice, and instances may be found of the quashing of orders or decisions in which the occasion of their making seems only distantly related to a judicial act. It is probably true to say that the courts have been readier to issue the writ of *certiorari* to established bodies whose function is primarily judicial, even in respect of acts that approximate to what is purely administrative that to ministers or officials whose function is primarily administrative even in respect of acts that have some analogy to the judicial. But the basis of the jurisdiction of the Courts by way of *certiorari* has been so exhaustively analysed in recent years that individual instances are now only of importance as

illustrating a general principle that is beyond dispute. That principle is most precisely stated in the words of Atkin, L.J. (as he then was) in *Rex* v. *Electricity Commissioners* (1), * * * * * * * * * * * * * * * * the operation of the writs has extended to control the proceedings of bodies who do not claim to be, and would not be recognised as, Courts of Justice. Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs. As was said by Lord Hewart, C.J., in *Rex* v. *Legislative Committee of the Church Assembly* (2), when quoting this passage, 'In order that a body may satisfy the required test it is not enough that it should have legal authority to determine questions affecting the rights of subjects; there must be superadded to that characteristic the further characteristic that the body has the duty to act judicially."

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Lord Radcliffe then goes on to say :—

"It is that characteristic that the Controller lacks in acting under regulation 62. In truth, when he cancels a licence he is not determining a question : he is taking executive action to withdraw a privilege because he believes, and has reasonable grounds to believe, that the holder is unfit to retain it. But, that apart, no procedure is laid down by the regulation for securing

(1) (1924) 1 K, B 171 (205) (2) 1928) 1 K, B. 411 (415)

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that the license-holder is to have notice of the Controller's intention to revoke the license, or that there must be any inquiry, public or private, before the Controller acts. The license-holder has no right to appeal to the Controller or from the Controller. In brief, the power conferred on the Controller by regulation 62 stands by itself on the bare words of the regulation and, if the mere requirement that the Controller must have reasonable grounds of belief is insufficient to oblige him to act judicially, there is nothing else in the context or conditions of his jurisdiction that suggests that he must regulate his action by analogy to judicial rules."

There is, no doubt, a difference between the words of the Ceylon regulation 62 and the words of section 52-A of our Insurance Act. The difference is in these words, "The Controller may after giving such opportunity to the insurer to be heard as he thinks fit . . . . . ." The giving of the opportunity is, however, in my opinion, not compellable in the manner an insurer may want. If opportunity is given to him by the Controller, the fact that the opportunity may be regarded by the insurer as inadequate is no ground for annulling the act of the Controller. The Controller has the amplest jurisdiction given by the statute to give such opportunity as he thinks fit, and the manner and the mode and the giving of that opportunity are entirely within his discretion. In my opinion the phrase 'as he thinks fit' is a phrase which takes the action of the Controller outside the ambit of a judicial process. In considering the question as to whether the statute creates a duty as distinct from a mere power or discretion it is necessary to consider the provisions of the statute and to weigh its general scheme and its substantial object. Primarily, the duties of Controller are executive or ministerial. While acting under section 52-A, I conceive him to be

a Vigilance Officer of the Central Government whose duty it is to keep an eye on Insurance Companies and to see that they are acting fairly towards the interests of holders of life insurance policies. When he has reason to believe that they are not behaving properly, his functions come into operation and in discharging those functions he is under no obligation to the Insurance Company ; his obligation is really speaking to the holders of life insurance policies. He does not determine questions. He may and can only *recommend* executive action to withdraw the privilege of management from the insurer. In a case from West Africa reported as *Patterson* v. *District Commissioner of Accra* (1), their Lordships of the Privy Council had to construe section 9 of the Peace Preservation Ordinance there, which ran thus :—

> " Where additional constabulary or police have been sent up to or stationed in a proclaimed district the Governor in Council may order that the inhabitants of such proclaimed district be charged with the cost of such additional constabulary or police. A District Commissioner within whose district any portion of a proclaimed district is shall, after inquiry, if necessary, assess the proportion in which such cost is to be paid by the said inhabitants according to his judgment of their respective means.
> * * * * * * * * * * * "

Regarding this section, their Lordships said at pages 348 and 349 of the report :—

> " Apart from the difficulty of ascertaining exactly what persons were ' inhabiting ' the proclaimed district at the time when the additional police were stationed there, and

(1) 1948 A.C. 341.

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of assessing persons who might have left the district shortly afterwards, it is difficult to see how the District Commissioner could conduct a judicial inquiry into the respective means of the inhabitants without having any power of compelling parties to attend and disclose their means. Moreover, the words of section 9, and in particular the phrases 'after inquiry, if necessary' and 'according to his judgment of their respective means' are in their Lordships' opinion, quite inconsistent with the view that the District Commissioner was to be bound to hold anything in the nature of a judicial inquiry. In their Lordships' view, section 9 of Ordinance contemplates a *simple and ministerial proceedings* on the part of the District Commissioner. He has to form an honest opinion as to how the sum prescribed by the Governor ought fairly to be borne by the inhabitants acting on the principle that the greater a person's means, the greater the sum which he should be called on to pay. It is contemplated that the District Commissioner may carry out this duty without making any inquiry, but if, for instance, he has been recently appointed, he may think it right to supplement his knowledge by questioning persons more familiar with the district. Their Lordships can find nothing in the section which compels the District Commissioner to give each inhabitant, on whom he proposes to make an assessment, an opportunity of being heard before the assessment is made."

In my opinion the words of section 52-A when they state that an opportunity be given to the insurer do not compel the Controller to take the demands of the insurer into consideration in the giving of the opportunity because he has to give the opportunity "as

he thinks fit ". The phrase " as he thinks fit " cuts the rights of the insurer and does not make it obligatory on the Controller to give the insurer any judicial hearing. The information with the Controller may be so ample that he may not think it would serve any useful purpose to make any inquiry from the insurer, or the situation may be so emergent that delay would defeat the ends which the Legislature had in view. The Controller, as I said before, is a Vigilance Officer and as a reporting and ministerial officer of the Government aids the Government in the discharge of its police functions. In my opinion, the Controller's proceedings while acting under section 52-A are purely ministerial and involve no judicial element. In my opinion even if it may be held that he determines questions affecting the rights of an insurer, there is not in the words of Lord Hewart, C.J., " super-added to that characteristic the further characteristic that the body has the duty to act judicially ".

We were referred by Mr P. R. Dass and other learned counsel for the petitioning Companies to various rulings of various Courts in which the question had to be determined whether a person was acting judicially. The main case that was relied on was the case which is referred to by Lord Radcliffe in the case already cited, the case of *Rex* v. *Electricity Commissioners* (1), and to the observations of Atkin, L.J., therein. It would serve no useful purpose to examine those various cases as each case had to be decided on what had happened in that case and what was the provision of law that had to be construed. In this connection I would refer to Advani's case reported as *The Province of Bombay* v. *Khushaldas S. Advani* (2). Kania, C.J., noticed the remarks of May, C.J., in *Regina* (*John M' Evoy*) v. *Dublin Corporotion* (3), of Atkin, L. J., in *The King* v. *The Electricity Commissioners* (1), and of Scrutton and Slesser, L.JJ., in *The King* v. *London County Council* (4), and said at

(1) (1924) 1 K.B. 171. (2) A.I.R. 1950 S.C. 222.
(3) (1878) 2 L.R. Ir. 371 (376). (4) (1931) 2 K.B. 215.

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pages 225 and 226 of the report in Advani's case as follows :—

"Learned counsel for the respondent referred to several cases but in none of them the dicta of Atkin, L.J., or the four conditions analysed by Slesser, L.J., have been suggested, much less stated, to be not the correct tests. The respondent's argument that whenever there is a determination of a fact which affects the right of parties, the decision is *quasi*-judicial, does not appear to be sound. The observations of May, C.J., when properly read, included the judicial aspect of the determination in the words used by him. I am led to that conclusion because after the test of judicial duty of the body making the decision was expressly stated and emphasized by Atkin and Slesser, L.JJ., in no subsequent decision it is even suggested that the dictum of May, C.J., was different from the statement of law of the two Lord Justices or that the latter, in any way, required to be modified. The word '*quasi*-judicial' itself necessarily implies the existence of the judicial element in the process leading to the decision. Indeed, in the judgment of the lower Court, while it is stated at one place that if the act done by the inferior body is a judicial act, as distinguished from a ministerial act, *certiorari* will lie, a little later the idea has got mixed up where it is broadly stated that when the fact has to be determined by an objective test and when that decision affects rights of someone, the decision or act is *quasi*-judicial. This last statement overlooks the aspect that every decision of the executive generally is a decision of fact and in most cases affects the rights of someone or the other.

Because an executive authority has to determine certain objective facts as a preliminary step to the discharge of an executive function, it does not follow that it must determine those facts judicially. When the executive authority has to form an opinion about an objective matter as a preliminary step to the exercise of a certain power conferred on it, the determination of the objective fact and the exercise of the power based thereon are alike matters of an administrative character and are not amenable to the writ of *certiorari*. Observations from different decisions of the English Courts were relied upon to find out whether a particular determination was *quasi*-judicial or ministerial. In some cases it was stated that you require a proposition and an apposition, or that a *lis* was necessary, or that it was necessary to have a right to examine, cross-examine and re-examine witnesses. As has often been stated, the observations in a case have to be read along with the facts thereof and the emphasis in the cases on these different aspects is not necessarily the complete or exhaustive statements of the requirements to make a decision *quasi*-judicial or otherwise. It seems to me that the true position is that when the law under which the authority is making a decision itself requires a judicial approach, the decision will be *quasi*-judicial. Prescribed forms of procedure are not necessary to make an inquiry judicial, provided in coming to the decision the well-recognized principles of approach are required to be followed."

The result of the cases has been well given by Lord Radcliffe in the quotation already cited by me when he said that the Courts have been readier to

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issue the writ of *certiorari* to established bodies whose function is primarily judicial, even in respect of acts that approximate to what is purely administrative, than to ministers or officials whose function is primarily administrative even in respect of acts that have some analogy to the judicial. In the present case, in my opinion, the Controller when exercising the functions under section 52-A of the Insurance Act is not acting judicially or *quasi*-judicially. This disposes of the prayer for the issue of writs of *certiorari* or prohibition made by the petitioning Companies.

Their other two prayers are prayers for the issue of writs of *mandamus*. These may be issued against persons whose proceedings need not be judicial or *quasi*-judicial. Before the introduction of Article 226 in the Constitution, orders in the nature of *mandamus* were issued by the High Courts of Calcutta, Madras and Bombay under section 45 of the Specific Relief Act. Before an order could be issued five conditions had to be satisfied :

(a) that an application for such order be made by some person whose property, franchise or personal right would be injured by the forbearing or doing, as the case may be, of the said specific act ;

(b) that such doing or forbearing is, under any law for the time being in force, *clearly incumbent* on such person * * * * * * in his or its public character or on such corporation in its corporate character ;

(c) that in the opinion of the High Court such doing or forbearing *is consonant to right and justice ;*

(d) that the applicant has no other specific and adequate legal remedy ; and

(e) that the remedy given by the order applied for will be complete.

There were certain exemptions given in that section, which because of the introduction of Article 226 do not now apply. Section 45 laid down the principles under which writs used to be issued and the introduction of Article 226 has not, in my opinion, varied in any manner the principles under which these writs are now to be issued. That section in my opinion, lays down good conditions to be fulfilled before a writ can be issued even under the Constitution. One of the conditions that must be fulfilled in the present case is that the doing of the act is clearly incumbent on the Controller. The words "clearly incumbent" are strong words. They imply an absence of doubt regarding the obligation on the Controller. The words used in section 52-A are, "The Controller may, after giving such opportunity to the insurer to be heard as *he thinks fit* * * * * * * * * ." The phrase "as he thinks fit" in my mind is clearly destructive of an obligation. I cannot hold that it becomes clearly incumbent on the Controller to do the various things which the petitioning Companies want him to do. In this connection we must examine what are the facts, what notices the Controller has issued and what attitude the Companies have adopted regarding them and him. The issue of a writ is discretionary. It will be issued only if the facts clearly justify it. It must be consonant to right and justice to issue it in the circumstances.

In the case of the Jupiter Insurance Company, Ltd., Bombay, the notice which the Controller of Insurance gave to the Company on the 17th February 1951, in which he asked them to appear before him in New Delhi on the 26th of February 1951, stated :—

> "The grounds for the proposed action are, amongst others, as follows :—
>
> (i) The above-named insurer has misapplied or is misapplying his funds ;

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(ii) The above-named insurer has invested or is investing his funds in a manner likely to be prejudicial to the interests of the holders of life insurance policies; and

(iii) The management of the above-named insurer has been changing in a manner detrimental to the interests of the policy-holders."

He allowed the insurer to be represented at the hearing by an agent, Director or other officer duly authorized in that behalf or to make any representation in writing on or before the above-named date. In the event of a default in the aforesaid representation either in person or in writing, the Controller reserved the right to proceed with the matter without giving any further opportunity to the insurer to be heard in this connection.

On the 19th February 1951, the Company sent him a telegram stating that Mr Kaul (who is one of the Directors) would not be in Bombay on the 26th of February and whereabouts of Lala Shankar Lal. Managing Director, were not known and, therefore, asking that date of hearing be changed to some time in March. To this telegram the Controller replied by telegram that the postponement would not be possible. On the 21st of February 1951, the Company sent another telegram stating that the time given for reply was much too inadequate and the charges were only general with no specific particulars or details and prayed that the same be furnished, otherwise it was impossible to controvert the accusations. On the same day a letter was written to the Controller asking for specific facts, particulars and details and wanting the hearing to be adjourned to some time about the 10th of March 1951, and stating that if details are not furnished they would have no alternative but to ask for an adjournment on the 26th February

1951, till the 10th March 1951. On the 21st February 1951, the Controller also wrote to the Company stating that he would hear them in Bombay, giving the place where he was to meet them. On the 26th February 1951, the Company appeared before him in Bombay by counsel and put in a representation in which it was stated that the grounds given in the notice were vague, indefinite and too general and that unless particulars were given regarding dates, months, etc., and specific accusations were properly formulated, it would be unreasonable to proceed with the investigation under section 52-A. They further mentioned in paragraph 7 of the representation as follows :—

> " 7. Your notice is, we submit, untimed as the Bombay Police have taken proceedings against the Directors and Secretary of the Company under sections 409 and 109 of the Indian Penal Code. They have made charges and accusations against us which are more or less identical with the general charges that you have made. In view of this fact your investigation may be, we fear, a kind of interference with the course of justice on a matter which is *sub judice.*"

In paragraphs 9 and 10 of the representation they stated that the Controller had the power of an autocrat but expected his autocracy to be benevolent in fact. They also went into questions of law in that representation. In the eleventh (the last) paragraph of that representation they requested the Controller not to proceed with the inquiry on that date but give them sufficient time and sufficient details by formulating his accusations in a clear and specific manner. In case the Controller failed to do so, they stated that they would ask for a permanent injunction from a competent Court and they requested the inquiry to be adjourned by at least fifteen days.

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An affidavit, dated the 14th March 1951, has been put in by the Controller before this Court in which he stated in paragraph 7 :—

> "With reference to paragraphs 9 and 10 of the said petition, I say that at all material times I had and I still have reason to believe that the petitioner was and is acting in a manner likely to be prejudicial to the interests of holders of life insurance policies. I gave the petitioner such opportunity to be heard as I thought fit. It is submitted that such opportunity was sufficient and proper. Such opportunity was given on 26th February 1951, but the petitioner refused to avail itself of the said opportunity and applied for an adjournment for 15 days. As I had reason to believe that delay would tend to further misapplication of the petitioner's funds and would be greatly prejudicial to the interests of the policy-holders, I stated that I would continue with the hearing on that day but if after further hearing it appeared necessary to allow the petitioner further time, I would do so. The petitioner, however, persisted in its refusal to avail itself of the opportunity of being heard which I gave it."

To me it is clear that the petitioning Company on its own showing knew what was happening. It was stated that the Bombay Police had taken action against the Directors and the Secretary of the Company under the Penal Code and that the accusations made by the Police were more or less identical with what the Controller was charging them with. The Controller in his affidavit has made it clear that he asked them to continue with the hearing on the 26th February 1951, and if the representatives of the petitioning Company had continued with the hearing and it appeared to the Controller that further time was necessary to be

given, he would have given them further time. They, however, adopted an attitude of non-co-operation with the Controller. In my opinion they have no grievance whatsoever. I conceive that the main thing that was to be done by them was to tell the Controller how their funds had been invested during the last couple of years or so and how they had been managing their affairs. I dare say that the Controller would have to tell them if they had co-operated with him what sort of information was in his possession regarding which he wanted an explanation. It is not necessary in law, in my opinion, for the Controller to draw up a charge sheet with full particulars as the Company was asking him to do. The scope and method of his inquiry is left to the discretion of the Controller and if the Company non-co-operated with him, they did so at their own risk.

On 14th March 1951, the hearing in this case in this Court was adjourned to the 3rd April 1951, on certain undertakings being given by the petitioning Company. When the hearing was resumed on the 3rd April, it was pointed out to this Court that the Jupiter General Insurance Company had not carried out its undertakings and had committed contempt of Court and therefore could not be heard. We, however, allowed arguments to proceed as they were common to the cases of the other two Companies, giving the Jupiter General Insurance Company time to reply to the allegation regarding contempt of Court. Arguments were concluded on the 6th of April 1951, and the case was adjourned to the 10th of April 1951. On the 10th of April 1951, counter affidavits were filed by Mr Shankar Lal, Managing Director of the Company, and Mr P. N. Kaul, another Director, and it was alleged that the Company had complied with the undertakings so far as it lay in its power. It was, however, suggested that day that Auditors of the Company should examine the position and send a certificate to this Court showing whether the orders of this Court had been complied with or not and the hearing was adjourned to the 20th of

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April 1951, for the production of the certificate of the Auditors. There being no opposition whatsoever to this suggestion it was adopted by this Court. On the 20th April 1951, the Auditors sent their report to the Registrar of this Court which ran as follows :—

"Referring to the copy of the Orders above sent to us by the Director-in-Charge of the Jupiter Insurance Company, wherein the Court has ordered us, the Auditors of the Company, to send a Report to the Court as to whether the petitioners in the above case have complied with the undertakings given by them as per the Court's order of the 14th March 1951, we have to report as follows :—

2. The order for the undertaking runs as under :—

(1) That the Companies in Civil Miscellaneous No 17 and 18 of 1951 will keep in Safe Deposit with the Imperial Bank of India, Bombay, or the Bank of India, Ltd., Bombay, all securities and title deeds. The Company in Civil Miscellaneous No. 19 of 1951, will keep in Safe Deposit with the Imperial Bank of India, Delhi, all securities and title deeds.

(2) That the Companies will not deal with any assets or give any loans except to the policy-holders within their Surrender Value or make any other Investments.

(3) That all receipts relating to Life Assurance shall be deposited by the Companies with their bankers.

(4) That no payment shall be made by the Companies except for the settlement of

claims or payments to the policy-holders or for the urgent expenses of the Companies concerned.

(5) That no loan or advances or overdrafts shall be raised by the Companies.

(6) That the Controller or his nominees or both will be given all facilities to prepare lists of securities and assets at all times during the working hours.

3. A copy of the above two orders was received by us at 10-45 a.m. on Saturday, the 14th instant, and we understand that the case had been adjourned to the 20th instant, before which date our Report should be in the hands of the Honourable Judges. Our Mr Bharat Aiyar and our Mr V. R. Deshpande, who have been attending to the affairs of the Jupiter Insurance Company, Ltd., were then out of Bombay, and on their arrival on Monday, the 16th instant, they immediately took up the matter. The report had to be sent by the afternoon of the 17th instant, to enable it to reach Simla before the 20th instant, as the 19th instant was a public holiday. Owing to the complex nature of the question and the variety of things to be gone through, it has been impossible for us to go through everything.

4. Without a thorough audit and investigation of the Company's accounts which would entail a number of weeks or even months, it is not possible for us to report on the undertakings numbered 2, 3, 4 and 5. We have, therefore, confined ourselves to Undertaking No. 1 and that too within the limitations mentioned herein.

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5. The books and records of the Company are in the custody of the Police, and we could not, therefore, make out a list of the securities and title deeds that ought to be in the possession of the Company on the 16th and 17th instant when we attended at the Company's office. We had, therefore, perforce to accept as correct for the purposes of this report the statement of securities and title deeds of property prepared by the Company as at the 13th instant.

6. In the first place, according to our interpretation of the order the securities and title deeds to be verified are those of the entire Company and *not that of the Life Department only.* Mr. P. N. Kaul, however, emphatically declared that the order refers only to the Life Section, and he, therefore, declined to show us the securities of the General Section. We feel that it could not have been the Court's intention to confine our report to the affairs of the Life Department only. In a composite Company to examine the securities of one Section only is absolutely meaningless from the auditing point of view, as interchanges of securities could easily be made without any chance of being detected. Mr Kaul maintained his stand notwithstanding that under section 145 of the Indian Companies Act, we, as the statutory auditors of the Company, are entitled as under :—

'Every auditor of a Company shall have a right of access *at all times* to the books, accounts and vouchers of the Company, and shall be entitled to require from the directors and officers of the Company such information and explanation as may be necessary for the performance of the duties of auditors.'

7. In the statement of investments as prepared by the Company, we have to remark as under :—

There are deposits with (1) The Reserve Bank, (2) The Travancore State, (3) The Bank of Jaipur and (4) The Imperial Bank, Colombo. These consist of the statutory deposits required by the Insurance Laws in the respective States. These could not be verified by us as no certificates from the respective Governments or Banks as at date have been obtained. It may, however, be noted that these parties will not part with the securities, as they are deposited under the Insurance Law of the respective States.

8. The Life Investments other than the above have been examined by us with the Safe Custody receipts of the Bank of India. Among these are securities deposited with the Bank of India *after the 14th March 1951* as under :—

3% C. P. and Berar Loan 1964, F. V. Rs. 1,30,600.	Deposited on 9th April 1951
3 % Bombay Loan 1962 F. V. Rs. 1,50,000	Deposited on 2nd April 1951
3 % 1970—75 Loan F. V.Rs. 7,50,000.	Deposited on 11th April 1951
3 % 1959—61 F. V. 15,00,000	Deposited on 2nd April 1951
2 % 1957 Loan F. V. Rs. 3,75,000	Deposited on 2nd April 1951.

9. Of the Life Investments, which are not deposited with the Bank of India, Ltd., 3 per

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cent 1986 Loan of the face value of Rs 5,35,000 were at the Punjab National Bank, Ltd., Bombay. We were told that these Bonds were kept at the Punjab National Bank for tendering to the Reserve Bank for renewal, as all the cages were exhausted. This is an incorrect statement; the renewal could have been done by the Bank of India as well, and in any case the question would not have arisen until the question of the sale of these securities arose. We called at the office of the Punjab National Bank, Bombay, on the 16th instant, and examined the Bonds. We were unable to see any reason for not transferring these to the Bank of India, and asking the latter to get them renewed at the Reserve Bank. On inspection of these Bonds, we found that they consisted of 27 Promissory Notes aggregating to the face value of Rs 5,35,000. In most of these endorsements are found in the following order :—

(1) Bank of India, Ltd., to the Jupiter Company.

(2) Two endorsements (in a few cases, one) signed by Mr Shankar Lal and/or Mr Kaul. These endorsements in all the 27 Bonds have been scored out in ink heavily in such a manner that the endorsees' name could not be made out in any of the Bonds. An explanation is called for for this extraordinary correction in every one of them.

(3) Jupiter to Tropical.

(4) Tropical to Grindlays.

(5) Grindlays to Tropical.

(6) Tropical to Jupiter.

(7) Jupiter to the Punjab National Bank.

We feel explanation is necessary for the bewildering set of endorsements.

10. Three per cent C.P. and Berar Loan 1964 of the face value of Rs 1,30,600 were at the Bank of India, and we inspected them at that Bank. They consisted of five pieces of Rs 25,000 each and two more aggregating Rs 5,600. In these five pieces we found from the endorsements at the back that the Bond was first endorsed by the Reserve Bank to the Jupiter Insurance Company, and in the second endorsement signed by Shanker Lal, the endorsee's name has been heavily scored out, in the same manner as those mentioned in para 9 above.

11. The following are the properties and loans on properties made by the Company in the Life Department. In the absence of the account books of the Company we could not verify this list. These have been lodged as mentioned against each. The Bank's Safe Custody Receipt only says 'Sealed packed said to contain title deeds to property.'

D. Abraham and Sons 38 000	Lodged at the Bank of India, on 9th April, 1951.
Peoples Insurance Co. Rs. 5 lacs.	Ditto
Mamchan-Morarilal Rs. 6,20,000	Lodged on 9th April 1951, at the Bank of India.
Bharat Stores, Agra Rs. 1,15,000	Ditto
Calcutta Loan. Rs. 6,11,977-6-0	Ditto
Delhi Loan Rs. 7,02,493-9-0	Ditto.

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12. With regard to the title deeds of the properties not held by the Bank of India, the position is as under :—

B. P. Vorah Loan	Rs. 5,00,000	Reported to be lying with solicitors for completion of deed.
N. M. Kamta	Rs. 35,500 ...	Lying at the office for completion.
Mackwee Mansion,	Rs. 4,91,485 ...	Reported to be with solicitors for completion.
Imperial House	Rs. 4,72,000 ...	Reported to be with Calcutta solicitors for completion.

13. We have compared the Safe Custody receipts in respect of the Life Department Shares and Debentures with the list prepared by the Company as at 16th April 1951. We would like to repeat that shares and securities of the General Department were not produced to us as already mentioned elsewhere. Further, the books of account being with the Police, we have not been able to check the said list, which has been accepted by us as correct for purposes of this report.

14. We are of the opinion that the undertakings have not been carried at all in respect of the Bonds in para 9. As regards the item in paras 8, 11 and 12, the papers therein have been lodged only after the 14th March ".

Counsel on behalf of the Jupiter General Insurance Company controverted the statement made in the Auditors' report and stated that this is a biassed report and did not state the true facts. It was, however, agreed on that day by Counsel for the Controller and the Union that the objection regarding

contempt be separately dealt with and that the case be decided without taking into consideration whether a person in contempt had or had not the right to be heard. Notices were issued to Mr Shanker Lal and Mr Kaul to show cause why contempt proceedings should not be taken against them.

Without deciding whether contempt has or has not been committed, it is perfectly clear from the report of the Auditors that investments of the Company *prima facie* require to be investigated and the apprehensions of the Controller are *prima facie* well founded. It is within the special knowledge of the Company as to how they are investing their funds and they should have been the first persons to seize the opportunity that was being offered to the Company to explain what they had been doing with their funds. The fact that criminal proceedings are pending against officers of the Company is no ground whatever to stay proceedings before the Controller. In my opinion the Jupiter General Insurance Company has made out no case at all for the issue of a mandate or order of this Court against the Controller. The issue of mandates or orders is discretionary. In the present case it would not be consonant to right and justice to issue any mandate or order against the Controller.

In the case of the Tropical Insurance Co., Ltd., New Delhi, the grounds as given by the Controller did not include ground No. (iii) of the grounds given to the Jupiter Insurance Company, but otherwise the first two grounds were the same. The reply of this Company to the Controller was identical with the reply of the Jupiter General Insurance Company. They also stated that the Bombay Police had taken action against the Directors and Secretary of the Company under sections 409 and 109 of the Penal Code. In fact even the written representation made by them to the Controller on the 26th February 1951, was identical in terms with the one put in by the Jupiter General Insurance Company on that day. In this case

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also the Tropical Insurance Company has no grievance.

In the case of the Empire of India Life Assurance Co., Ltd., Bombay, the grounds given by the Controller for his action were :—

"(i) The above-named insurer misapplied or is misapplying his funds ;

(ii) The above-named insurer has invested or is investing his funds in a manner likely to be prejudicial to the interests of the holders of life insurance policies ;

(iii) The life insurance fund of the above-named insurer has been or is being wrongfully diminished ;

(iv) The expenses of management of the above-named insurer have been or are excessive ;

(v) The above-named insurer has failed to elect policy-holders' Directors ; and

(vi) The management of the above-named insurer has been changing in a manner detrimental to the interests of the policy-holders."

The Company appeared before the Controller on the 26th February 1951, and made a written representation in which they stated that the grounds were extremely vague and that particulars should be supplied to them and wanted the date of hearing to be changed and reasonable time given to the Company after necessary particulars had been furnished to it.

The petition on behalf of the Empire of India Life Assurance Company was put in this Court by Mr V. V. Subhedar on 1st March 1951. In this case there is an affidavit, dated 13th March 1951, of Mr Damodar Swarup Seth, who was till the 12th

March the Managing Director of the Company, in which he has stated that the petition which had been presented in this Court by Mr V. V. Subhedar was without authority and that a meeting of the Board of Directors of the Company was held on the 3rd March 1951, in which it had been resolved that the petition being without authority should not be pursued. This meeting was attended by two Directors. This affidavit further states that on the 3rd February 1951 Mr Damodar Swarup Seth's suspicions were aroused regarding the withdrawal of large amounts from the funds of the Company under the guise of loans. He thereupon requested Mr S. Parkash Chopra, Chartered Accountant, Delhi, to proceed to Bombay to examine the account books and records of the Company and to apprise him of the correct position. A provisional report was supplied to him by Mr Chopra, a copy of which is attached to the affidavit. It is further stated in that affidavit that Mr Chopra after his return from Bombay informed him that a sum of about rupees seven lacs was still lying according to the account books of the Company to the credit of the Company with the Civil Lines Branch of the Punjab National Bank, Ltd., Delhi, and that a sum of about rupees ten lacs had been transferred from Imperial Bank of India, Bombay, to the said Branch on or about the 17th February 1951. Thereupon Mr Damodar Swarup Seth rushed to the said Branch immediately and found that the balance was only about rupees nine lacs. He further states in his affidavit that there is a grave apprehension of the funds of Company being misapplied inasmuch as there is no properly constituted Board of Directors and some of the Directors and Mr Bhagwan Swarup were acting against the interests of the Company. The affidavit also states that the confidence of the public in the management of the Company has been completely shaken and all its business is practically at a standstill.

After the meeting of the 3rd March 1951, Mr Damodar Swarup Seth received a notice informing him that another meeting of the Board of Directors

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had been called by some Directors for the 8th of March 1951. It appears from counter-affidavits that a further meeting of the Directors in which four Directors were present, was held on the 12th of March 1951. In that meeting it was resolved that all the resolutions passed in the Board meeting held on 3rd March be rescinded. It was also resolved that the Court proceedings in this Court be pursued, and Mr V. V. Subhedar be nominated to pursue and represent the Company in the present proceedings. In that meeting it was also resolved to remove Mr Damodar Swarup Seth from the Chairmanship of the Board of Directors, and from the managing Directorship of the Company and all powers hitherto given to him were withdrawn. On the 27th March another meeting of the Board of Directors was held in which the following resolutions were passed :—

> " Resolved that the action of Mr V. V. Subhedar in filing a suit in the High Court, Simla, against the Controller of Insurance is approved and ratified. Further resolved that Dewan Bahadur N. V. Sayana is authorized to pursue the High Court proceedings at Simla along with Mr V. V. Subhedar.
>
> Further resolved that in view of the fact that Shri Damodar Swarup Seth has challenged the authority of Mr V. V. Subhedar in filing the petition for the issue of writ of *certiorori etc.*, in the Punjab High Court, further to what the Company resolved on 12th March 1951, in this behalf the Board hereby ratifies all his (Subhedar's) action unequivocally in this connection and places on record its appreciation of the prompt action he took."

So far as the continuation of the present proceedings is concerned, it appears to me that the objection that the petition cannot continue in this Court is untenable. The Board of Directors can, by passing

a resolution adopt and ratify prior action and proceedings, even if there had been any irregularity in them in the beginning, provided the prior action was not illegal or *ultra vires*. It cannot be said in this case that it was either illegal or *ultra vires*. The case of *Notified Area Committee, Okara* (1), was cited in support of the objection. This case is clearly distinguishable.

The affidavit of Mr Damodar Swarup Seth, though the facts stated therein have been challenged by counter-affidavits, shows perfectly clearly that the apprehensions of the Controller were *prima facie* well founded. What the Company is doing with its funds and investments is within the special knowledge of the Company. As stated by me already, the Controller's affidavit is that though he was not willing to adjourn the hearing on the 26th of February 1951, yet if the Company had not persisted in its attitude of non-co-operation he would, after questioning them, have given them more time if he found that further time should be given. The Company states that it is an old Company and that it was impossible to find out what was in the Controller's mind regarding what he had alleged in his notice of the 17th February. But as practical men of the world, it should be apparent to them that it would be only the recent working of the Company regarding their investments, their dealings with the insurance fund, their expenses and their management generally that was to be enquired into by the Controller. If they had given him information which was within their special knowledge as to how they had been managing and conducting themselves during the last couple of years or so, they may have been able to satisfy the Controller that there was no cause for any apprehension on his part. It is a grave thing for a Managing Director of a Company to state that the funds of the Company are being taken away and the confidence of the public in the management of the Company has been shaken. In his letter of 21st

(1) I.L.R. (1936) 17 Lah. 35 = A.I.R. 1935 Lah. 345.

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February 1951, to Mr V. V. Subhedar, Mr Damodar Swarup Seth told him that he had informed the Delhi police about the Secretary of the Company Mr Bhagwan Swarup transferring money from Bombay to the Punjab National Bank, Delhi, and withdrawing a sum of rupees seven lacs therefrom. It may no doubt be urged that he is being won over by the Controller, but that does not in any way change the position so far as the Controller's apprehensions and enquiries are concerned. It does not change the legal aspect of the matter. As I have said already, the Controller is a Vigilance Officer of the Government and has been given powers by the statute to conduct his inquiries in such manner as he thinks fit. It would be hardly possible for this Court to tell him how he should proceed in the details of his inquiry.

The grounds stated by the Controller in the case of the Empire of India Life Assurance Co., Ltd., were more detailed than in the other two cases. The allegation that the Company had failed to elect policyholders' Directors is as definite as can be. Nor can grounds Nos (iii) and (iv) be said to be wholly indefinite.

It is the duty of the Controller to make a report to the Central Government. The report may be based on information which the Controller has received from the police, from the Directors, from the Auditors or from anybody else. It is not necessary for him to put down in the notice what information he had received. He may not think it advisable to do so in his notice. He may question the representatives of the Company when they appear before him. They must impart to him information of facts which are within their special knowledge. This Court is in no better position to issue directions to the Controller as to how he should conduct himself in details than it would be in case of a Police Officer conducting an investigation against a person alleged to have committed an offence. This Court cannot take charge of inquiries by the Controller any more than it can take

charge of investigations by the Police. The rights of the Company are no more important than rights given to the Controller to safeguard the interests of the policy-holders. In the case of *Khwaja Nazir Ahmad* (1), their Lordships of the Privy Council said :—

> " In their Lordships' opinion, however, the more serious aspect of the case is to be found in the resultant interference by the Court with the duties of the police. Just as it is essential that every one accused of a crime should have free access to a Court of Justice so that he may be duly acquitted if not found guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry.
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> In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own functions always of course subject to the right of the Court to intervene in an appropriate case when moved under section 491 of the Criminal Procedure Code to give directions in the nature of *habeas corpus*."

(1) I.L.R. (1945) 26 Lah. 1 (P.C.) : 71 I.A. 203.

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In my opinion no ground has been made out by any of the three Companies for interference by this Court by a mandate or order under Article 226 of the Constitution with the proceedings of the Controller at this stage. In the circumstances disclosed here, it would not be consonant to right and justice to do so. It is impossible to ask him to withdraw his notice. It is impossible to ask him not to make his report. It cannot be anticipated what his report would be or whether he would make a recommendation that an Administrator be appointed. It is impossible to ask the Central Government not to consider that report or to ask it not to make an order on that report as no report has yet been made. Whatever may be said regarding the case against the Controller, no case whatsoever has been made out for the issue of any order or direction to the Central Government. The Union of India was a wholly unnecessary party in this case.

For the reasons given above, I would dismiss these petitions. The petitioners will pay the costs of the Controller and the costs of the Union.

Petitions dismissed.

2505 HC—600—24-6-52—GP and S. Punjab. Simla.