

Company: Sol Infotech Pvt. Ltd.

Website: www.courtkutchehry.com

Printed For:

Date: 25/10/2025

The State Trading Corporation of India Ltd. and Others Vs The Commercial Tax Officer, Visakhapatnam and Others

Writ Petition (Civil) 202-204 of 1961

Court: Supreme Court of India

Date of Decision: July 26, 1963

Acts Referred:

Constitution of India, 1950 â€" Article 14, 19(1), 20, 21, 22, 23, 24, 25, 26, 27, 28,

32#Citizenship Act, 1955 â€" Section 2(f)

Citation: AIR 1963 SC 1811: (1963) 33 CompCas 1057: (1964) 4 SCR 99

Hon'ble Judges: B. P. Sinha, C.J; S. K. Das, J; P. B. Gajendragadkar, J; N. Rajagopala Ayyangar, J; M. Hidayatullah, J; K. N. Wanchoo, J; K. C. Das Gupta, J; J. C. Shah, J; A. K.

Sarkar, J

Bench: Full Bench

Advocate: M. C. Setalvad, G. S. Pathak, B. Parthasarthy, B. Dutta, B. Dadachanji, O. C.

Mathur and Ravinder Narain

Final Decision: Disposed Of

Judgement

Sinha, C.J.

The following questions have been referred to the Special Bench by the Constitution Bench before which these cases came up

for hearing:

(1) whether the State Trading Corporation, a company registered under the Indian Companies Act, 1956, is a citizen within the meaning of Art. 19

of the Constitution and can ask for the enforcement of fundamental rights granted to citizens under the said article; and

(2) whether the State Trading Corporation is, notwithstanding the formality of incorporation under the Indian Companies Act, 1956, in substance a

department and organ of the Government of India with the entirety of its capital contributed by Government; and can it claim to enforce

fundamental rights under Part III of the Constitution against the State as defined in Art. 12 thereof.

- 2. The questions were raised by way of preliminary objections to the maintainability of the Writ Petitions under Art. 32 of the Constitution.
- 3. As the whole case is not before us, it is necessary to state only the following facts in order to appreciate how the controversy arises. The State

Trading Corporation of India Ltd., and K. B. Lal, the then Additional Secretary, Ministry of Commerce and Industries, Government of India,

moved this Court under Art. 32 of the Constitution for quashing by a writ of certiorari or any other appropriate writ, direction or order, certain

proceedings instituted by or under the authority of the respondents, - (1) The Commercial Tax Officer, Visakhapatnam; (2) the State of Andhra

Pradesh; and (3) the Deputy Commissioner of Commercial Taxes, Kakinada. Those proceedings related to assessments of sales tax under the

provisions of the Andhra Pradesh Sales Tax Act. Writ Petition 202 and 203 of 1961 are between the parties aforesaid. In Writ Petition 204 of

1961, the parties are the petitioners aforesaid against (1) the Assistant Superintendent of Commercial Taxes, I/c Chaibasa Sub-Circle, Bihar State;

(2) the Deputy Commissioner of Sales Tax, Bihar, Ranchi; and (3) the State of Bihar. Thus, the petitioners are the same in all the three case, but

the respondents are the State of Andhra Pradesh and its two officers in the first two cases and the State of Bihar and its two officers in the third

case.

4. The first petitioner is a private limited company registered under the Indian Companies Act, 1956, with its head office at New Delhi, in May,

1956. The second petitioner is a shareholder in the first petitioner company. The two petitioners claim to be Indian citizens as all its shareholders

are Indian citizens. Proceedings were taken for assessment of sales tax, and in due course of those proceedings demand notices were issued. It is

not necessary for the purposes of deciding the two points referred to us to set out the details of the assessments the grounds of attack raised by the

petitioners. It is enough to say that the petitioner claim to be Indian citizens and contend that their fundamental rights under Art. 19 of the

Constitution had been infringed as a result of the proceedings taken and the demands for sales tax made by the appropriate authorities. When the

case was opened on behalf of the petitioners in this Court, before the Constitution Bench, counsel for the respondents raised the preliminary

objections which have taken the form now indicated in the two questions, already set out. The Bench rightly pointed out that those two questions

were of great constitutional importance and should, therefore, be placed before a larger Bench for determination. Accordingly they referred the

matter to the Chief Justice and this larger Bench had been constituted to determine those questions.

5. At the very outset of the arguments, we indicated that we shall give our decision only on the preliminary questions and that the decision of the

controversies on their merits will be left to the Constitution Bench.

6. Before dealing with the arguments at the Bar, it is convenient to set out the relevant provisions of the Constitution. Part III of the Constitution

deals with Fundamental Rights. Some fundamental rights are available to ""any person"", whereas other fundamental rights can be available one to

all citizens"". ""Equality before the law"" or ""equal protection of the laws"" within the territory of India is available to any person (Art. 14). The

protection against the enforcement of ex-post-facto laws or against double-jeopardy or against compulsion of self-incrimination is available to all

persons (Art. 20); so is the protection of life and personal liberty under Art. 21 and protection against arrest and detention in certain ceases, under

Art. 22. Similarly, freedom of conscience and free profession, practice and propagation of religion is guaranteed to all persons. Under Art. 27, no

person shall be compelled to pay any taxes for the promotion and maintenance of any particular religious denomination. All persons have been

guaranteed the freedom to attend or not to attend religious instructions or religious worship in certain educational institutions (Art. 28). And, finally,

no person shall be deprived of his property save by authority of law and no property shall be compulsorily acquired or requisitioned except in

accordance with law, as contemplated by Art. 31. These, in general terms, without going into the details of the limitations and restrictions provided

for by the Constitution, are the fundamental rights which are available to any person irrespective of whether he is a citizen of Indian or an alien or

whether a natural or an artificial person. On the other hand, certain other fundamental rights have been guaranteed by the Constitution only to

citizens and certain disabilities imposed upon the State with respect to citizens only. Article 15 prohibits the State from discriminating against any

citizen on grounds only of religion race, casts, etc., or from imposing any disability in respect of certain matters referred to in the Article. By Art.

16, equality of opportunity in matters of public employment has been guaranteed to all citizens, subject to reservations in favour of backward

classes. There is an absolute prohibition against all citizens of Indian from accepting any title from any foreign State, under Art. 18(2), and no

person who is not a citizen of Indian shall accept any such title without the consent of the President, while he holds any office of profit of trust under

the State [Art. 18(3). And then we come to Art. 19 with which we are directly concerned in the present controversy. Under this Article, all citizens

have been guaranteed the right :-

- (a) to freedom of speech and expression;
- (b) to assemble peaceable and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India;
- (f) to acquire, hold and disposed of property; and

- (g) to practise any profession, or to carry on any occupation, trade or business.
- 7. Each one of these guaranteed rights under cls. (a) to (g) is subject to the limitations or restrictions indicated in cls. (2) to (6) of the Article. Of the

rights guaranteed to all citizens, those under cls. (a) to (e) aforesaid are particularly apposite to natural persons whereas the freedoms under cls. (f)

and (g) aforesaid may be equally enjoyed by natural persons or by juristic persons. Art. 29(2) provides that no citizen shall be denied admission

into any educational institution maintained by the State of State-aid on grounds only of religion, race, caste, language or any of them. This short

resume of the fundamental rights dealt with by Part III of the Constitution and guaranteed either to "any person" or to "all citizens" leaves out of

account other rights or prohibitions which concern groups, classes or associations of person, with which we are not immediately concerned. But

irrespective of whether a person is a citizen or a non-citizen or whether he is a natural person or a juristic person, the right to move the Supreme

Court by appropriate proceedings for the enforcement of their respective rights had been guaranteed by Art. 32.

8. It is clear on consideration of the provisions of Part III of the Constitution that the makers of the Constitution deliberately and advisedly made a

clear distinction between fundamental rights available to "any person" and those guaranteed to "all citizens". In other words, all citizens are persons

but all persons are not citizens, under the Constitution.

9. The question next arises: What is the legal significance of the term ""citizen""? It has not been defined by the Constitution. Part II of the

Constitution deals with "Citizenship", at the commencement of the Constitution. Part II, in general terms, lays down that citizenship shall be by

birth, by decent, by migration and by registration. Every person who has domicile in the territory of India shall be a citizen of India, if he was born

in the territory of India or either of whose parents was so born or who has been ordinarily resident in the territory of India for not less than five

years immediately preceding the commencement of the Constitution (Art. 5). Secondly, any person who had migrated to the territory of India from

the territory included in Pakistan shall be deemed to be a citizen of India, if he satisfied the conditions laid down in Art. 6(a) and 6(b)(i). Any

person who does not come within the purview of Art. 6(a) and 6(b)(i), but who has migrated to India and has been registered, as laid down in Art.

6(b)(ii), shall also be deemed to be a citizen of India. Similarly, a person of Indian origin, residing outside India, shall be person of a citizen of India

if he has been registered as such by an accredited diplomatic or consular representative of India of the country where he has been residing (Art. 8).

Persons coming within the purview of Arts. 5, 6 & 8, as aforesaid, may still not be citizens of India if they have migrated from India to Pakistan, as

laid down in Art. 7, or if they have voluntarily acquired the citizenship of any foreign State (Art. 9). Those, in short, are the provisions of the

Constitution in Part II relating to "Citizenship", and they are clearly inapplicable to juristic persons. By Art. 11, the Constitution has vested

Parliament with the power to regulate, by legislation, the rights to citizenship. It was in exercise of the said power that Parliament has enacted the

Citizenship Act (LVII of 1955). It is absolutely clear on a reference to the provisions of this statute that a juristic person is outside the purview of

the Act. This is an act providing for acquisition and termination of Indian citizenship. The Constitution in Part II, as already indicated, has

determined who are Indian citizens at the commencement of the Constitution. As the Constitution does not lay down any provisions with respect to

acquisition of citizenship or its termination or other matters relating to citizenship, after the commencement of the Constitution, this law had to be

enacted by way of legislation supplementary to the provisions of the Constitution as summarised above. The definition of the word ""person"" in s.

2(1)(f) of this Act says that the word ""person"" in the Act ""does not include any company or association or body of individuals, whether

incorporated or not"". Hence, all the subsequent provisions of the Act relating to citizenship by birth (s. 3), citizenship by descent (s. 4), citizenship

by registration (s. 5), citizenship by naturalisation (s. 6) and citizenship by incorporation of territory (s. 7) have nothing to do with a juristic person.

10. It is thus absolutely clear that neither the provisions of the Constitution, Part II, not of the Citizenship Act aforesaid, either confer the rights of

citizenship on, or recognise a citizen, any person other than a natural person. That appears to be the legal position, on an examination of the

relevant provisions of the Constitution and the Citizenship Act. But it was contended that this Court had expressed itself to the contrary in certain

decisions, and some of the High Courts have also taken a contrary view, which we may now proceed to consider. In, what is now known as the

first Sholapur case, 281675, Mukherjea, J., speaking for the majority of the Court, made the following observations at page 898, which seem to

countenance the contention raised on behalf of the petitioners that fundamental rights are available to juristic persons also, as to citizens:

The fundamental rights guaranteed by the Constitution are available not merely to individual citizens but to corporate bodies as well except where

the language of the provision or the nature of the right compels the inference that they are applicable only to natural persons. An incorporated

company, therefore, can come up to this Court for enforcement of its fundamental rights \dots

11. Though the observations quoted above would seem to lend countenance to the contention raised on behalf of the petitioner, they really do not

determine the controversy one way or the other. In that case, a shareholder of the Sholapur Spinning and Weaving Company made an application

under Art. 32 of the Constitution for a declaration that the Act impugned in that case was void, as also for the enforcement of his fundamental

rights by a writ of mandamus against the Government and the directors of the company, restraining them from exercising any power under the Act.

It is not necessary to refer to the details of the controversy in that case because it is plain that it was not the company which was seeking the

enforcement of its fundamental rights, if any, but only a shareholder. As a matter of fact, the company opposed the petition under Art. 32 of the

Constitution. It is manifest that the observations quoted above were purely obiter and did not directly arise for decision of the Court.

12. Then we come to the second Sholapur case, reported as 281482. In the first Sholapur case, this Court had been moved under Art. 32 of the

Constitution by an individual shareholder, as aforesaid, for enforcement of his alleged fundamental rights. That petition, by majority judgment, stood

dismissed. The second case arose out of a suit instituted by a preference shareholder, in a representative capacity on behalf of himself and other

preferential shareholders, for a declaration that the law which had been impugned in the previous case was ultra vires. This Court held that the law

impugned had authorised, in effect, the deprivation of the property of the company within the meaning of Art. 31 of the Constitution, without

compensation, and had thus violated the fundamental rights of the company under Art. 31(2) of the Constitution. It will thus appear that the

decision of this Court proceeded on an examination of the provisions of Art. 31, which is no confined to citizens only and and had reference also to

the property of ""any person"". But there are observations made in the course of the judgment which would support the view propounded on behalf

of the respondents. At page 694, Mahajan J., while discussing the scope and effect of the provisions of the Constitution in Part III, with particular

reference to Arts. 19 and 31, made the following observations:-

In considering Article 31 it is significant to note that it deals with private property of person residing in the Union of India (UOI), while Article 19

only deals with citizens defined in Article 5 of the Constitution. It is thus obvious that the scope of these two articles cannot be the same as they

cover different fields. It cannot be seriously argued that so far as citizens are concerned, freedoms regarding enjoyment of property have been

granted in two articles of the Constitution, while the protection to property qua all other person has been dealt with in Article 31 alone. If both

articles covered the same ground, it was unnecessary to have two articles on the same subject.

13. These observations would appear to support the view that Art. 31 has reference to property of ""persons"" and Art. 19 deals with fundamental

rights of ""citizens"" as described in Part II of the Constitution.

14. Bose J., in the course of his judgment, at page 732 observed as follows:

Article 19(1)(f) confers a certain fundamental freedom on all citizens of India, namely, the freedom to acquire, hold and dispose of property.

Article 31(1) is a sort of corollary, namely, that after the property has been acquired it cannot be taken away save by authority of law. Article 31 is

wider than Article 19 because it applies to everyone and is not restricted to citizens. But what Article 19(1)(f) means is that whereas a law can be

passed to prevent persons who are not citizens of India form acquiring and holding property in this country no such restriction can be placed on

citizens. But in the absence of such a law non-citizens can also acquire property in India and if they do then they cannot be deprived of it any more

than citizens, save by authority of law.

15. But it has got to be said that those observations, though they may appear to support the contention raised on behalf of the respondents, were

not made directly with reference to the question now before us, namely, whether a corporation could claim the status of a citizen. That question did

not arise in that case also because the company, as such, was not seeking any relief. Even if the company were interested in seeking relief under

Art. 31 of the Constitution, it could do so without having the statutes of a citizen.

16. In the case of 279450 the appellant company had moved the High Court under Art. 226 of the Constitution for certain reliefs against the

provisions of the Bihar Sales Tax Act, but this Court (per S. R. Das, Acting C.J. at page 618 and per Venkatarama Ayyar J. at pages 765-766)

left the question open and granted relief to the company without deciding that question. This case only serves the purpose of showing that the

question now before us was still an open one and that this Court had not given its considered judgment on the issue now before us.

17. It is, therefore, not necessary to refer to certain decisions of the Madras, Bombay and Calcutta High Courts as they cannot be decisive one

way or the other in the absence of the clear decision of this Court. We have, therefore, to examine the legal position afresh on the footing that it is

still an open question.

18. On an examination of the relevant provisions of the Constitution and the Citizenship Act aforesaid, we have as already indicated, reached the

conclusion that they do not contemplate a corporation as a citizen. But Mr. Setalvad, appearing on behalf of the petitioners, contended that Part II

of the Constitution relating to citizenship is not relevant for our purposes because it does not define ""a citizen"" nor does it deal with the totality of

citizenship"". It was further submitted that the same is the position with reference to the provisions of the Citizenship Act. It is common ground,

therefore, that the constitutional and the statutory provisions discussed above have no reference to juristic person. But even so, it was contended,

we have to review the legal position in the light of the pre-existing law, i.e., the Common Law, which it was claimed, was preserved by Art. 372 of

the Constitution. In this connection, reference was made to Halsbury"s Laws of England, Vol. 6, 3rd Edition, pages 113-114, para 235. which

lays down that on incorporation, a company is a legal entity the nationality or domicile of which is determined by its place of registration. Reference

was also made to Vol. 9 of Halsbury"s Laws of England, page 19, paragraphs 29-30, which say that the concept of nationality is applicable to

corporations and it depends upon the country of its incorporation. A corporation incorporated in England has a British nationality, irrespective of

the nationality of its members. So far as domicile is concerned, the place of incorporation fixes its domicile, which clings to it throughout its

existence. In this connection, reference was made to the case of Janson v. Driefontain Consolidated Mines [1902] A.C. 484 for the proposition

that a company may be regarded as a national of the country where it was incorporated, notwithstanding the nationality of its shareholders. It is not

necessary to refer to other decisions, because the position is absolutely clear that a corporation may claim a nationality which ordinarily is

determined by the place of its incorporation. But the question still remains whether ""nationality"" and ""citizenship"" are interchangeable terms.

Nationality"" has reference to the jural relationship which may arise for consideration under international law. On the other hand ""citizenship"" has

reference to the jural relationship under municipal law. In other words, nationality determines the civil rights of a person, natural or artificial.

particularly with reference to international law, whereas citizenship is intimately connected with civic rights under municipal law. Hence, all citizens

are nationals of a particular State, but all nationals may not be citizens of the State. In other words, citizens are those persons who have full political

rights as distinguished from nationals, who may not enjoy full political rights and are still domiciled in that country (vide P. Weis - Nationality and

Statelessness in International. Law, pp. 4-6; and Oppenheim's International Law, Vol. 1, pp. 642, 644).

19. In our opinion, it is not correct to say, as was contended on behalf of the petitioners, that the expression ""citizen"" in Art. 5 is not as wide as the

same expression used in Art. 19 of the Constitution. One could understand the argument that both the Constitution and the Citizenship Act have

not dealt with juristic persons at all, but it is more difficult to accept the argument that the expression ""citizen"" in Part II of the Constitution is not

conterminous with the same expression in Part III of the Constitution. Part II of the Constitution, supplemented by the provisions of the Citizenship

Act (LVIII of 1955) deals with ""citizens" and it is not correct to say that citizenship in relation to justice persons was deliberately left out of account

so far as the Constitution and the Citizenship Act were concerned. On the other hand, the more reasonable view of take of the provisions of the

Constitution is to say that whenever any particular right was to be enjoyed by a citizen of India, the Constitution takes care to use the expression

any citizen"" or ""all citizens"", in clear contradistinction to those rights which were to be enjoyed by all, irrespective of whether they were citizens or

aliens, or whether they were natural persons or juristic persons. On the analogy of the Constitution of the Untied States of America, the equality

clause in Art. 14 was made available to ""any person"". On the other hand, the protection against discrimination on denominational grounds (Art. 15)

and the equality of opportunity in matters of public employment (Art. 16) were deliberately made available only to citizens. In this connections,

reference may be made to the Constitution of the United States of America (Senate Document No. 170, 82d, Congress, Ed. Edward S. Corwin)

Corporations:

Citizens of the United States within the meaning of this article must be natural and not artificial persons; a corporate body is not a citizen of the

United States."" (P. 965)

Persons"" defined

Notwithstanding the historical controversy that has been waged as to whether the framers of the Fourteenth Amendment intended the word.

persons"" to mean only natural persons, or whether the word, ""persons"" was substituted for the word ""citizen"" with a view to protecting

corporations from oppressive State legislation, the Supreme Court, as early as the Granger cases, decided in 1877, upheld on the merits various

State laws without raising and question as to the statues of railway corporation-plaintiffs to advance due process contentions. There is not doubt

that a corporation may not be deprived of its property without due process of law; and although prior decisions have held that the ""liberty

guaranteed by the Fourteenth Amendment is the liberty of natural, not artificial, persons, nevertheless a newspaper corporation was sustained in

1936, in its objection that a State law deprived it of liberty of press. As to the natural persons protected by the due process clause, these include

all human being regardless of race, colour or citizenship."" (p. 981)

20. We have already referred, in general terms, to those provisions of the Constitution, Part III, which guarantee certain rights to ""all persons"" and

the other provisions of the same part of the Constitution relating to fundamental rights available to "citizens" only, and, therefore, it is not necessary

to recount all those provisions. It is enough to say that the makers of the Constitution were fully alive to the distraction between the expressions

any person" and "any citizen", and when the Constitution laid down the freedoms contained in Art. 19(1)(a) - (g), as available to "all citizens", it

deliberately kept out all non-citizens. In that context, non-citizens would include aliens and artificial persons. In this connection, the following

statement in Private International Law by Martin Wolff is quite apposite :-

It is usual to speak of the nationality of legal persons, and thus to import something that we predicate of natural persons into an area in which it can

be applied by analogy only. Most of the effect of being an "alien" or a "citizen" of the State are inapplicable in the field of corporation; duties of

allegiance or military service, the franchise and other political rights do not exist."" (p. 308)

21. This apart, it is necessary to refer to another aspect of the controversy. It was argued on behalf of the petitioners that the distinction made by

the Constitution between ""persons"" and ""citizens"" is not the same thing as a distinction between natural and juristic persons, and that as ""persons

would include all citizens and non-citizens, natural and artificial person, the makers of the Constitution deliberately left artificial persons out of the

consideration because it may be that the pre-existing law was left untouched. It is very difficult to accept the contention that when the makers of the

Constitution were at pains to lay down in exact terms the fundamental rights to be enjoyed by ""citizens"" and those available to all ""persons"", they

did not think it necessary or advisable clearly to indicate the classes of persons who would be included within the expression ""citizens"". On the

other hand, there is clear indication in the provisions of Part III of the Constitution itself that they were fully cognizant of the provisions of the

constitution of the United States of America, where the Fourteenth Amendment (s. 1) clearly bring out the antithesis between the privileges or

immunities of citizens of the United States and life, liberty or property of any person, besides laying down who are the citizens of the United States.

Section 1 aforesaid is in these terms and brings our the distinction very clearly :-

All persons born or naturalised in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State

wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the Untied 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.

22. The question may be looked at from another point of view. Art. 19 lays down that ""all citizens"" shall have the right to freedoms enumerated in

cls. (a) to (g). Those freedoms, each and all of them, are available to ""all citizens"". The Article does not say that those freedoms, or only such of

them as may be appropriate to particular classes of citizens, shall be available to them. If the Court were to hold that a corporation is a citizen

within the meaning of Art. 19, then all the rights contained in cls. (a) to (g) should be available to a corporation. But clearly some of them,

particularly those contained in cls. (b), (d) and (e) cannot possibly have any application to a corporation. It is thus clear that the rights of citizenship

envisaged in Art. 19 are not wholly appropriate to a corporate body. In other words, the right of citizenship and the rights flowing from the

nationality or domicile of a corporation are not conterminous. It would thus appeal that the makers of the Constitution had altogether left out of

consideration juristic persons when they enacted Part II of the Constitution relating to ""citizenship"", and made a clear distinction between ""persons

and ""citizens"" in Part III of the Constitution. Part III, which proclaims fundamental rights, was very accurately drafted, delimiting those rights like

freedoms of speech and expression, the right to assemble peaceably, the right to practise any profession, etc., as belonging to ""citizens"" only and

those more general rights like the right to equality before the law, as belonging to ""all persons"".

23. In view of what has been said above, it is not necessary to refer to the controversy as to whether there were any citizens of India before the

advent of the Constitution. It seems to us, in view of what we have said already as to the distinction between citizenship and nationality, that

corporations may have nationality in accordance with the country of their incorporation; but that down not necessarily confer citizenship on them.

There is also no doubt in our mind that Part II of the Constitution when it deals with citizenship refers to natural persons only. This is further made

absolutely clear by the Citizenship Act which deals with citizenship after the Constitution came into force and confines it only to natural persons.

We cannot accept the argument that their can be citizens of this country who are neither to be found within the of our corners of Part II of the

Constitution or within the four corners of the Citizenship Act. We are of opinion that these two provisions must be exhaustive of the citizens of this

country, Part II dealing with citizens on the date the Constitution came into force and the Citizenship Act dealing with citizens thereafter. We must,

therefore, hold that these two provisions are completely exhaustive of the citizens of this country and these citizens can only be natural persons. The

fact that corporations may be nationals of the country for purposes of international law will not make them citizens of this country for purposes of

municipal law or the Constitution. Nor do we think that the word ""citizen"" used in Art. 19 of the Constitution was used in a different sense from that

in which it was used in Part II of the Constitution. The first question, therefore, must be answered in the negative.

24. In view of this answer, we do not consider it necessary to answer the second question as that would have arisen only if the first question had

been answered in the affirmative.

25. Let the cases go back to the Bench for hearing on merits with this opinion. Costs of the hearing before the special Bench will be dealt with by

the Bench which ultimately hears and determines the controversy.

Hidayatullah, J.

- 26. Two questions have been referred to this Bench for opinion. They are :
- (1) Whether the State Trading Corporation, a Company registered under the Indian Companies Act, 1956, is a citizen within the meaning of

Article 19 of the Constitution and can ask for the enforcement of fundamental rights granted to citizens under the said Article; and

(2) Whether the State Trading Corporation is not-withstanding the formality of incorporation under the Indian Companies Act 1956, in substance a

department and organ of the Government of India with the entirely of its capital contributed by Government; and can it claim to enforce

fundamental rights under Part III of the Constitution against the State as defined in Article 12 thereof?

27. The State Trading Corporation has been assessed to sales tax by the Commercial Tax Officer, Visakhapatnam and a demand has been made

upon it. By this petition under Article 32 of the Constitution it challenges the demand on the ground inter alia that the impugned order and the

demand for the tax infringe its fundamental rights which are guaranteed to citizens by Art. 19 sub-clauses (f) and (g) and these sub-clauses read:

Art. 19(1). All citizens shall have the right:

- (f) to acquire, hold and dispose of property;
- (g) to practice any profession, or to carry on any occupation, trade or business.
- 28. The State Trading Corporation claims to be a citizen for the application of these sub-clauses, which fact being disputed on the other side, has

given rise to the two questions above set out. As the questions amply indicate, the share capital of the state Trading Corporation is entirely

contributed by the Central Government. The shares are held by the President of India and two Secretaries to Government. The State of Andhra

Pradesh, therefore, denies that the State Trading Corporation being an artificial person is a citizen and consequently contends that Art. 19 is

inapplicable because the word "citizen" in the article refers to natural persons. Additionally, it contends that being a department of Government, the

State Trading Corporation cannot claim protection of Art. 19 against an action of the State.

29. Mr. Setalvad in formulating the grounds on which he rests the claim of the State Trading Corporation to citizenship, points out that the

Constitution does not define the word "citizen", that Part II of the Constitution which deals with citizenship is not material inasmuch as it is

concerned with natural persons only and is not exhaustive and that the Citizenship Act (LVII of 1955) which provides for certain matters relating to

citizenship but defines the word "person" so as to excluded artificial persons like corporations aggregate, cannot also be regarded as exhaustive.

He thus contends that corporations aggregate which, according to him, were citizens before the Constitution and the Citizenship Act, continue to

enjoy the privileges of citizens, one of which is the guarantee in Article 19. In support of his submission that corporations were and continue to be

citizens, he relies upon the fact that corporation possess a nationality and claims that in this connection "nationality" and "citizenship" bear the same

meaning. He relies upon the observations of Mukherjea, J. (as he then was), in 281675 where the learned Judge observed obiter:

The fundamental rights guaranteed by the Constitution are available not merely to individual citizens but to corporate bodies as well except where

the language of the provisions or the nature of the right compels the inference that they are applicable only to natural persons. An incorporated

company, therefore, can come up to this Court for enforcement of its fundamental rights and so may the individual shareholders to enforce their

own; but it would not be open to an individual shareholder to complain of an Act which affects the fundamental rights of the company except to the

extent that it constitutes an infraction of his own rights as well.

30. Mr. Setalvad also refers to other cases in which, though the point was not decided, several corporations claimed the protection of Article 19

and no objection was raised. Lastly he contends that the word "citizen" should be liberally construed to include a corporation aggregate which

consists of Indian citizens only. On the second question he contends that a company has an existence which is independent of its members and the

State Trading Corporation cannot be equated with the shareholders or the Government since the corporate veil cannot be allowed to be pierced.

He points out that there are several States in our Republic and there is a great danger of one Government stifling the trading activities of another

Government either by law or executive action against which Article 19 is the only effective safeguard. He submits that it could not have been

intended that while every individual citizen should be protected, a group of citizens, should by mere incorporation, lose the benefits of the guarantee

in Article, 19.

31. We are dealing here with an incorporated company. The nature of the personality of an incorporated company which arises from a fiction of

law, must be clearly understood before we proceed to determine whether the word "citizen" used in the Constitution generally or in Article 19

specially, covers an incorporated company. Unlike an unincorporated company, which has no separate existence and which the law does not

distinguish from its members an incorporated company has a separate existence and the law recognises it as a legal person separate and distinct

form its members. This new legal personality emerges from the moment of incorporation and from that date the persons subscribing to the

memorandum of association and other persons joining as members are regarded as a body corporate or a corporation aggregate and the new

person begins to function as an entity. But the members who from the incorporated company do not pool their statute or their personality. If all of

them are citizens of India the company down not become a citizen of India any more than if all are married the company would be a married

person. The personality of the members had little to do with the persona of the incorporated company. The persona that comes into being is not

the aggregate of the parson either in law or in metaphor. The corporation rally has no physical existence; it is a mere "abstraction of law" as Lord

Selborne described it in G. E. Rly v. Turner [1872] L.R. 8 Ch. App. 152, or as Lord Macnaghten said in the well-known case of Salomon v.

Salomon & Co. [1897] A.C. 22 it is ""at law a different person altogether from the subscribers to the memorandum of association. ""This distinction

is brought home if one remembers that a company cannot commit crimes like perjury, bigamy or capital murder. This persona ficta being a creature

of a fiction, is protected by natural limitations as points out by Palmer in his Company Law (20th edn.) p. 130 and which were tersely summed up

by counsel in R. v. City of London [1632] 8 St. Tr. 1087 when he asked ""Can you hang its common seal ?"". It is true that sometimes the law

permits the corporate veil to be lifted, but of that later.

32. There is a rule of English Law that a company or an incorporated corporation has a nationality and this nationality is determined by the law of

the country in which it is incorporated. Mr. Setalvad thus begins his contention by citing certain obiter statements from Janson v. Driefontein

Consolidated Mines Ltd. L.R. [1902] A.C. 492 such as :

I assume that the corporation was to all intents and purpose in the position of a natural born subject to the late South African Republic.

(Lord Macnaghten - p. 497)

I think it must be taken that the respondent company war technically an alien and became, on the breaking out, of hostilities between this country

and South African Republic an alien enemy"".

(Lord Davey - p. 498)

The company must clearly be treated as a subject of the Republic notwithstanding the nationality of its shareholders.

(Lord Brampton - p. 501)

33. He contends that there is no difference between "nationality" and ""citizenship"" and the two words are synonymous and relies upon the following

passage from Weis on Nationality and Statelessness in International Law (1956) pp. 4-5 -

One of the terms frequently used synonymously with nationality is citizenship. Historically, this is correct for States with the Roman conception of

nationality, but not for States with the feudal conception of nationality, where citizenship is used to denote not political status but membership of a

local community. It has, however, become usual to employ the term citizen instead of subject in republican States - including common law

countries such as the United States; he who before was a "subject of the King" is now a "citizen of the State" - and in that sense and in those

States the terms "nationality" and "citizenship" must be regarded as synonymous.

34. It is, therefore, contended somewhat syllogistically that all incorporated corporations have the nationality of the State under the laws of which

they are incorporated, that nationality is synonymous with citizenship and therefore incorporated companies are citizens. From this it is but a mere

step, which is also taken, that incorporated companies in India were and still are citizens and that the Constitution and the Citizenship Act have

nowhere deprived them of this citizenship or of the right to protect themselves by invoking Article 19(1)(f) and (g). Alternatively it is contended that

if all the members of the Corporation are Indian citizens then the Corporation as a whole must be a citizen, for the whole cannot be different from

its parts.

35. Both the arguments involve fallacies. The first assumes that "nationality" of corporations and citizenship of natural persons are the same

concepts and caps it with the fallacy of ignorantio elenchi which in English is called the fallacy of irrelevant conclusion because instead of proving

that corporations are citizens, it is sought to be shown that they ought to be citizens for the remedy is so good and effective. The second involves

the fallacy of petitio principii because it tends to beg the question and founds a conclusion on a basis that as much needs to be proved as the

conclusion itself. In my opinion, the State Trading Corporation cannot be said to be a citizen either by itself or by taking it as the aggregate of

citizens, that nationality of a corporation is a different concept not to be confused with citizenship of natural persons, that the word ""citizen" in Art.

19(1) sub-clauses (f) and (g) refers to a natural person, that State Trading Corporation is really a Department of Government behind the corporate

veil and that for all these reasons the two questions must be answered in favour of the objectors. I shall now make good these conclusions with

reasons.

36. Article 19 uses the word "citizen" while the word "person" is used in some other articles in Part III notably Art. 14 (creating equality before the

law), Art. 21 (protection of life and personal liberty). By Art. 367, (unless the context otherwise requires) the General Clauses Act, 1897 applies

to the interpretation of the Constitution. The word "citizen" is not defined in the Constitution or the General Clauses Act but the word "person" is

defined in the latter to include "any company or association or body of individuals whether incorporated or not." The word ""person"" therefore,,

conceivably bears this extended meaning at least in some places in Part III of the Constitution. But it is not necessary to determine where in the

Constitution the word "person" includes a company etc. because that word has not been used in Article 19. The claim of corporations aggregate,

like the petitioner, to the benefits which Art. 19 gives, must depend on whether the word "citizen" which is actually used can bear a similar enlarged

meaning. Mr. Setalvad is right in contending that use of the word "person" with an enlarged meaning in some places and of the word "citizen" in

other places does not by itself prove that artificial persons are outside the meaning of the word "citizens. The contrast may not be between natural

and artificial persons so much as between citizens and non-citizens, and it is possible that where the benefit is intended to go to non-citizens, a

word of wide meaning is used and where the benefit is meant for citizens only the word "citizen" is used. It is true that the word "citizen" cannot

include an enemy or an alien while the more general word "person" may but that does not answer the question whether the word "citizen" can

include a company or association or body of individuals to borrow the words of the definition. The answer to that question must depend, as

already pointed out, on the connotation of the word "citizen" which must be found out.

37. In attempting to determine whether the word "citizen" in Art. 19 denotes only a natural person or includes a company etc., we must turn first to

the Constitution to see if the use of the word "citizen" or "citizenship" in any other place bears the extended meaning or throw any light on this

problem. The word "citizen" is used in 29 places and the word "citizenship" in 6 places. These words are also used in headings to Chapters and

marginal notes but these may be ignored. It is worth inquiring if there is any place at all other than Art. 19 where not only a natural person but also

an artificial person is meant. The word first occurs in the preamble thus :

We the people of India having solemnly resolved to secure to all its citizens

Justice, social, economic and political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity; and to promote among them all

Fraternity assuring the dignity of the individual and the Nation,"" etc.

38. "Liberty of thought, expression, belief, faith and worship, equality of status" and "dignity of the individual are expressions appropriate to natural

persons and not companies, associations and other corporations aggregate and the word "citizen" in the preamble refers to individuals for whom

the Constitution was being made. In this connection, it must be remembered that a Constitution is a bond between the citizens and the

administration and regulates their respective actions. It is an Ahrens defined it :

L." ensemble des institutions et des lois fondamentales, destine eargler l" action del" administration et de tous les cityens.

(Ahren: Course de Droit Naturel & C. iii p. 380)

(The body of institutions and fundamental law designed to regulate the action of the Administration and all the citizens).

39. The preamble in solemn words sums up what is later provided in the Constitution. 'Citizens" in the preamble mean those individuals who under

the Constitution are guaranteed civic rights in the body politic that is India and who can hold public offices and elect their representatives to

Parliament and Assemblies of the people. They are persons who were declared citizens on the in-auguration of the Constitution and those on

whom the rights of citizens were conferred and on whom they may be conferred by law. Of course the Constitution also confers some rights on

aliens and assists and protects them but the guarantee in the preamble is to the citizens alone that is individuals who enjoy full civic rights in the

body politic.

40. Then follows as special chapter entitled ""Citizenship"". That part contains seven Articles. Art. 5 spoke at the commencement of this

Constitution. That article uses the word "person" but the context shows that only natural persons were meant. Citizenship was conferred on every

person who had 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.

41. The reference to the birth of the person or of his parents clearly shows that only natural persons were meant because corporations though born

in a metaphorical sense do not have parents. By the same token Art. 6 also refers to natural persons. Articles 7, 8, 9 and 10 so clearly speak of a

natural person as to need to elaboration. That leaves Art. 11 which gives Parliament the power to make laws for the acquisition and termination of

citizenship, and all other matters relating to citizenship. That article reaffirms the power which is given to Parliament by Entry 17 of List I of

Schedule VII of the Constitution. As we shall see presently, the Citizenship Act of 1955 expressly excludes companies, etc. from its provisions.

The power conferred by Art. 11 or Entry No. 17 may give rise hereafter to the question whether Parliament can invest corporations, institutions,

trusts, funds, ships or aeroplanes with citizenship but till Parliament does so there is nothing in Part II to indicate that the words "citizen" and

"citizenship" were used to include any of them.

42. In the fourth part which is entitled "Directive principles" the word "citizen" is used twice. In Art. 39 it is qualifies by the words "men and

women" which addition tells its own story. In Article 44 the State is asked to endeavour to secure a uniform civil Code for all citizens and the word

plainly means men and women because it is impossible to think that the Constitution is thinking of a uniform civil Code for corporations. In the

other parts of the Constitution "citizenship" is a condition precedent for some office, post or privilege. The President, the Vice-president, the

Governors, the Members of Parliament and the Legislative Assemblies, the Judges of the Supreme Court and High Court must be citizens.

Members of Parliament and Legislatures cease to be members if they cease to be citizens of India or acquire the citizenship of other countries. The

words "citizen" and "citizenship" thus refer to natural persons because these offices cannot be held by corporations aggregate. Art. 326 says that

every citizen 21 years in age has a vote. This means only a natural person.

43. There remains only Part III entitled "Fundamental Rights. In Articles 15 and 16, the word clearly means a natural person. The words religion,

race, casts, set, descent, place of birth and residence mark out a human being. In Art. 18, which mentions titles, a natural person is again meant

because titles are ordinarily conferred on individuals. In Art. 29(1), where citizens residing in the territory of India having distinct language script or

culture of their own have been given a right to preserve the same, the word definitely refers to natural persons. In Art. 29(2) entrance to

educational institutions is guaranteed to citizens and the entrant can only be a natural person and not a corporation.

44. The above analysis shows that in 34 places, the words "citizen" and "citizenship" refers to natural and not artificial persons. The question is

whether in the thirty-fifth place the word is meant to include corporations aggregate. For this purpose we must ascertain if there is anything special

which points to a different use of the word. Sub-clauses (a) to (e) of Art. 19 contemplate natural persons. The claim is that the word "citizen" must

bear a different meaning in respect of clauses (f) and (g) because corporations acquire, hold and dispose of proper and carry on trade or business.

It is argued that if several citizens carry on business together as an incorporated company they cannot lose the guarantee which is given to citizens,

and we are invited to give a meaning to the word which is wide enough to include companies. It has been shown above that the way in which the

words "citizen" and "citizenship" have been used in the Constitution goes to show that such was not the intention at least in 34 other places. It may

however be conceded that this is not decisive and if corporations can possess citizenship there is no reason for not interpreting the Constitution

liberally to give them the benefits of clauses (f) and (g) of Art. 19(1). For this purposes is necessary to find out that is meant by "citizen and

citizenship" generally and to trace historically the concept of citizenship to see if that concept included at any time artificial persons like corporations

so that the word can be said to be intended to bear such a meaning.

45. The word "citizen" which is used in Art. 19 of the Constitution has not been defined. Its meaning in the context of Art. 19 must be found out. If

is bore the same meaning as in the other parts of the Constitution, it would mean a member, born or naturalised, of the State, on which the

Constitution or a law of Parliament confers citizenship. It there is law a citizenship of a group of persons who may be all citizens or some of whom

may be non-citizens? The answer is that the word in its normal meaning does not admit ""bulk citizenship"" which is the only way to describe it.

Salmond in an article on ""Citizenship and Allegiance" 1901-1902 Law Quarterly Review Part I pp. 270-82, says that the word is derived from the

Latin "civitas" and "civis" More directly, of course, the root is in the French words "citoyen" or "citeyen". From the earliest times, the concept of

citizenship concerned natural personal and not groups of persons. In ancient Greece, according to Aristotle, the population of Attica was divided

into groups which were brotherhoods (phratriai) and of clans (gene). Groups of brotherhoods formed tribes (phylai). The entire citizen body was

thus included in the tribes and brotherhoods but the wealthy formed the clans. When monarchy was abolished through the efforts of the clans, the

citizenship of the members of the brotherhoods was in name only because they had no civic rights. Draconian reforms created four classes

according to wealth and Solon gave to the four classes the right to act in a political capacity (ecclesia) and also in a judicial capacity (heliaia) and

thus earned the title "the first champion of the people". But even under him, the concept of citizenship was immature. The first recognition of

citizenship came with Cleisthenes under whose reforms there was a distribution of the population on a geographical basis and an enfranchisement

of persons of pure or partial Athenian descent. Resident foreigners had inter-married and though there was a partial recognition of foreigners

permanently settled (domiciled) in Athens even from the days of Peisistratus there was no recognition of the offsprings of mixed marriages as

citizens. These were added to the list of citizens because citizenship no longer depended on membership of the phratries. This state of affairs

continued till Pericles abrogated the enlightened measure. He limited citizenship to those of Athenian descent on both sides. Had he come earlier

some famous men of Athens like Themistocles would have been barred from not only office but other civic rights. It is not necessary to follow the

history of Athens further. It is reasonable to believe that all other States in Greece except Sparta followed this kind of citizenship. The Spartans had

their own system of rule with two kings and an elected council (gerusia) elected by the citizens which was both advisory and judicial. There was

also an assembly of all citizens over twenty called the appella which elect the magistrates and met monthly. The right of vote in the election of the

gerusia and membership of the appellate was open to those who were selected at the birth by the partiate. All children were inspected at birth by

the heads of the tribe and those who were sickly were exposed in a ravine of Mt. Taygetus and of the others those that lived all boys were taken

away at the age of seven and trained as citizens. All the Hellenic States followed Athens but Crete perhaps was influenced by Sparta.

46. This is the earliest recognition of citizenship that we need consider in Europe. The next to consider is the conception of citizenship in Rome.

The words "civitas" and "civis" were used in Roman Law to describe persons who had the freedom of the city and who enjoyed all political and

civic privileges of Government. In this way were distinguished a slave (servus), and enemy (hostis) who had none of these rights on the one hand

and a foreigner (peregrinus) particularly from a country with which Rome was on terms of peaceful intercourse on the other, from citizens. Though

by Justinian's time everyone became a citizen, unless he was an unmanumitted slave, in the time of Gaius citizenship was the privilege of Romans

and carried with it the right to vote (jus suffragii) and the right to told public office (jus honorum) the right to a Roman marriage (jus connubium)

and the right to legal relations (jus commericum). The son of a Roman citizen was also a Roman citizen irrespective of where he was born. The

peregrinus had no civic rights unless he belonged to a Latin country. There were different laws for a long time for the citizens and the latini and the

peregrini. The first to be given the statues of citizens were the latini. Later all free subjects were to be cives. The only peregrines who were left

were foreigners and barbarians and they had no civic rights just as members of certain treacherous communities (dediticii) and persons deprived of

citizenship (deportati) had none.

47. Thus both in Greece and Rome the idea of citizenship was bound up with natural persons in whom certain civic rights were considered to

inhere and which marked them out form others. Sometimes descent, sometimes the wealth, sometimes the status, military or other, determined the

privilege but at no time was there a concept of citizenship of any but a natural person. In Roman Law citizenship was transmitted by birth to an

offspring of a Roman citizen.

48. So far we have dealt with citizenship namely membership of body politic with full civic rights. In the middle ages this membership of the State

began to carry a dual status : one status was political and the other civil. The double status came in Central Europe in the wake of Roman Law and

was partly due to the growth of feudal vassalage by which what might have grown into nations composed of "clans" became divided into feudal

Chieftainships. The feudal lord did not concern himself with decent as such so long as his follower held land or rendered service according to his

laws. Such laws did not apply to foreigners but if the foreigners held lands or chattels or rendered service he was equally bound. But the main

reason was the impact of international relations. An individual began to be viewed in two capacities. Firstly, he was regarded as the subject of a

certain State (a political status) and secondly as one entitled to certain rights and privileges in his own State (a civil status). Both arose from the

bond to a particular State or territory but it would be wrong to say that the word "nationality" describes the civil status. The word "nationality"

whether denoting an ethnic group or political membership of a State is a word of much later origin. M. Cogordan (La Nationalite p. 2) has given

the origin of the word and in the Dictionnaire de I, Academie frans is it appeared for the first time in 1835. Even the Code Napoleon dealt with

rules concerning the status of Frenchmen abroad but did not provide for the status of foreigners in France. The recognition of nationality as a test of

the law applicable to an individual followed the famous lecture by Mancini at the University of Turin in 1851. The impact of international relations

added to the civic rights possessed by a citizen by investing him with a political status which he could claim aboard. The word "nationality" itself

has now come to acquire two distinct meanings - a political one by which is indicated the membership of a State and the other an ethnic one

denoting membership of a nation. All this time citizenship has also meant membership of a State put in a municipal aspect. In this sense, the words

"national" and "citizen" are not interchangeable as has been sometimes supposed. In the United States Public Law 414 (82nd Congress, 2nd

session) section 308 is entitled ""Nationals but not citizens of the United States at birth"". According to Weis Nationality and Citizenship p. 5:

That the term American National has a wider meaning than the United States citizen was recognised in Administrative Decision No. V. of the

Mixed Claims Commission between the United States and Germany (Decisions and Opinions Vol. 1 pp. 18-19; Hackworth Digest of International

Law, Vol. III p. 5; Annual Digest, 1923-24, Case No. 100).

49. Weis has given other examples of the disparate use of the two words in the Constitution of the Netherlands, Honduras, Nicaragua and

Roumania. Even in the United States Immigration and Nationality Act, 1952, the distinction is preserved. This dual status which has caused all the

trouble in this case was summed up by Lord Westbury in Udny v. Udny by saying that the political status:

May depend upon different laws in different countries, wheras civil status is governed universally by one single principle, namely that of domicile,

which is the criterion established by law for purposes of determining civil status. For it is on this basis that the personal rights of the party, that is to

say, the law which determines his majority or minority, his marriage, succession, testacy or intestacy, must depend.

50. Thus, in the Middle ages, it was begun to be realised that the legal personality of persons was composed of a political status and a civil status.

It was possible for a person to have political status but not civil status, that is to say, he could be a national but not a citizen but it was difficult to

imagine a citizen without political status. This political status was determined according to two different theories. One was the theory of descent

(jus sanguinis) and the other a theory of domicile (jus soli). The European countries applied the former and the Common Law countries the latter to

determine the status. We have already seen that according to Roman Law the son of a Roman citizen was also a Roman citizen and it did not

matter where he was born and this was the theory which was recognised in Central Europe. In the Common Law countries (and I include the

United States of America) birth in the territory of the King (jus soli) determined political as well as civil status. Descent from a citizen or subject

outside the territory was recognised statutorily. Statutes from the time of Edward III recognised descent as one of the modes of acquisition of

political as well as civil status in England. In the United States the principle of descent also was recognised statutorily except in the case of children

whose parents though citizens had never resided in the States, but the governing theory was birth in the territory of the States.

51. I have, I think, sufficiently explained that citizenship and nationality are not entirely similar concepts though the words are sometimes used

interchangeably owing to the fact that most citizens are also nationals and vice versa. But strictly speaking citizenship:

is a term of municipal law, and denotes the possession within the particular State of full civil and political rights, subject to special disqualification

such as minority or sex. The Conditions on which citizenship is acquired are regulated by municipal law.

- 52. J. B. Moore (Digest of International Law Vol. III (1906) p. 273.)
- 53. The disqualifications of citizenship in the past and even today are many and different from country to country. Some of them which operate

even today in several countries are: minority, heresy, colour, lack of settled abode, insolvency, infamy, treason, sex etc.

54. I have wondered what would have been the argument in this case to support the claim of citizenship if our Constitution had thought with

Bluntschli (Die Lehre Vom modernen Statt, i, p. 246) "die Politik ist Sache des Mannes." Politics is men"s concern.

55. It will thus be seen that the concepts of citizenship and nationality have been influenced either by descent or by birth in a particular place. Some

countries like the Republics of South America do not recognise descent because, it is reasoned, to do so enables succeeding generations of former

citizens to claim the privileges of citizenship irrespective of where they are born, while being outside the territory they do not contribute to the

country of which they are citizens. Some countries recognise both the principles but there are many differences in the approach to the problem of

descent. In some counties, citizenship is confined to children born from a citizen-father resident abroad and in others such descent is considered

applicable upto grand-children. Thus certain statutes before the Act of 1914 conferred British citizenship and nationality upon grand-children born

abroad of natural born subjects, while the French Naturalization Law (1889) gave recognition only to children born in France of a father also born

in France and to children born abroad of a French father. The former German law adhered only to the principle of descent but later recognised

marriage, naturalization etc. In Italy long residence of the father and his domicile in Italy is considered sufficient. Today nationality has assumed

enormous importance and the principles of dual nationality and statelessness cut across some of the former theories and Cogordon's statement

que tout homme doitposseder une nationalite" is no longer true because of many stateless persons.

56. It is not my intention to speak exhaustively about citizenship and nationality. I have, I hope, sufficiently established my point that citizenship and

nationality from the earliest times to date have been viewed as the attributes of natural persons. We are not concerned however, with other peoples

or nations or States. We are concerned only with our laws on the subject. When the French Naturalization Law of 1889 differed from the English

law, Sir James Ferguson stated on the advice of the law officers in Parliament that if the English and the French laws differed there was no help and

each country was entitled to its own laws. We have thus to see how our own citizenship has evolved and who are the persons who are citizens and

what further arrangement exists for investing others with citizenship.

57. As India was, for centuries, ruled by Britain we have necessarily to examine the laws on the subject of citizenship and nationality before

independence. There was no law of citizenship in India. The Indian Naturalization Act was merely supplemental to the Imperial Act and hardly

needed. I have already pointed out that the English Common Law recognised the principle of jus soli but English Statute Law (the Naturalization

Act of 1870 in particular) recognising descent conferred British nationality on persons,

(a) born in Great Britain or the Dominions (jus soli) (b) upto and including the second generation of descent from natural born British subjects born

abroad; and (c) by naturalization, denization and resumption.

58. The statutes on the subject are collected by Clive Parry in his Nationality and Citizenship Laws and need not be referred to in detail here as we

are really not concerned with them except as the background of our laws. In 1914, the British Nationality and Status of Alien Act, 1914 was

passed which was later amended in 1943. The definition of a natural-born British subject in that Act shows the classes of persons who were

regarded as British subjects by birth. The word "subject" need not be considered in a sinister sense. It only meant a citizen though the feudal

concept of subjection seemed to persist in the word. The Act of 1914 as amended in 1943 made one significant departure and it was the limitation

of British nationality on birth to the first foreign-born generation. The Act of 1914 as amended in 1943 ruled the field till the British Nationality Act,

1948 was passed. By that time the problem of British-born subjects underwent a cataclysmic change along with the changes in the British Empire.

A new conception namely that of Commonwealth citizenship came to be recognised but it was obvious that members of the Commonwealth

countries were about to enact their own citizenship and nationality laws. The Act of 1948 did two things with which we are concerned. It laid

down rules by which the status of British subjects was conferred on persons who were citizens of certain countries named in the Act. India was

one of such countries. This new citizenship was Commonwealth citizenship. It also contained transitional provisions and s. 12(4) provided:

S. 12(4):- A person who was a British subject immediately before the date of the commencement of this Act and does not become a citizen of the

United Kingdom and colonies by virtue of any of the foregoing provisions of this section shall on that date become such a citizen unless -

(a) he is then a citizen of any country mentioned in sub-section (3) of section 1 of this Act under a citizenship law having effect in that country or a

citizen of Eire; or

- (b) he is then potentially a citizen of any country mentioned in sub-section (3) of section 1 of this Act.
- 59. One of the Commonwealth countries (Canada) had already such laws but others followed immediately afterwards. India lagged behind and the

citizenship laws came in the Constitution and in the Act of 1955. During the period between 1948 and 1950 Indian citizens were only potentially

so. They however enjoyed Commonwealth citizenship which term was synonymous with British subject in effect but "was more appropriate to

certain countries in view of the attainment by them of full nationhood." Thus every Indian in British India by virtue of s. 1 of the English Act of 1948

and every Indian in the Indian States as a protected person enjoyed Commonwealth citizenship. Of course this citizenship was to continue till India

enacted its own citizenship laws and thereafter if there was a common clause preserving this citizenship and was to cease if there was an express

abrogation of Commonwealth citizenship. Under the English Act of 1948, Indians became Commonwealth citizens or British subjects without

citizenship and were regarded as potential citizens of India. The Indian Constitution made provisions for citizenship on the inauguration of the

Constitution but it was not a law for the purpose of the British Nationality Act, 1948. It only provided that certain natural persons were to be

regarded as citizens of India from January 26, 1950.

60. In so far as we are concerned this created a hiatus because the scheme of Indian citizenship was not completely worked out on 26th January,

1950. The Constitution no doubt declared who were Indian citizens on that date but the status of a British subject without citizenship which was

mellifluously called Commonwealth Citizenship ""could not be liquidated"" unless there was a citizenship law as contemplated by the English Act of

1948. As a result, in the words of Clive Parry,

Pending the completion of the scheme of Indian citizenship, persons who were potentially citizens of India but are not citizens thereof remained

British subjects without citizenship in the eyes of the United Kingdom.

61. No doubt in 1955, the Citizenship Act was enacted by the Indian Parliament. Some writers think that even that is not the citizenship law

contemplated by the English Act of 1948. Whether or not it fulfills the test, it is not necessary to decide here because it does not affect the status of

corporations. Its provisions are applicable to "persons" and the definition of the word "person" in the Act expressly excludes ""any company or

association or body of individuals, whether incorporated or not.

62. I have attempted to establish that citizenship as viewed from country to country and from one period of time to another was concerned with

natural persons. The manner of acquisition of citizenship and/or nationality described by me are admirably summed up by Mervyn Jones in his

book ""British Nationality Law"" at p. 9 in the form of a pedigree which may be seen. It is enough to read the various headings in the pedigree to

realize that there is no room for artificial persons there. From the point of view of Mr. Setalvad"s argument this raises an intriguing situation. If

corporations possessed citizenship immediately before our Constitution they would be citizens under the English Act of 1948, that is to say, British

subjects without citizenship or Commonwealth citizens and only potential citizens of India. The Indian Constitution dealt with natural persons and

not artificial persons in its provisions dealing with citizenship and the status of corporations was not disturbed by those provisions. When the

Citizenship Act was enacted in 1955, it began to speak from January 26, 1950, and it might have affected corporations but for the fact that it

excluded them. Thus if there was any citizenship which the corporations enjoyed, it remained where it was. The corporations, if at all, would thus

be Commonwealth citizens, not Indian citizens because no law had made them Indian citizens. But I do not accept the basic argument that

corporations enjoyed citizenship even before, because in the sense in which I have explained citizenship, there is no room for artificial persons.

63. The argument here repelled is sought to be supported by referring to the rule of law under which corporations are said to possess nationality.

Nationality in this context is not to be confused with the status of a citizen. What is meant by that nationality may next be seen. Ordinarily

corporations are given recognition by law as persons who can sue or be sued. Corporations also own property, carry on business or trade. But it

is not to be thought that corporations have an access to courts as a matter of course. The courts are open as a matter of course to natural persons

and not to "intangible concepts" like corporations. Unless the law gives this right to corporations they cannot sue or be sued. What the law does is

to invest corporations with a distinct personality and with a right to sue and with a disability to be sued. Ordinarily such rights and disabilities attach

to "persons" but that word is given an extended meaning to include corporations. In this way the law invests an intangible body with a unity and

individuality and creates a legal person capable of suing or being sued. Foreign corporations enjoy the same privilege by a comity of nations and

also sue and are sued. These privileges which corporations share with natural persons do not make them "citizens" entitled to every other privilege

which the municipal law gives to citizens. In other words corporations enjoy only such privileges under the municipal law which that law expressly

confers on them.

64. It is, of course, undeniable that corporations have an existence in the eye of law. The law further regards that corporations have a domicile and

a residence. The law also recognises that corporations have a nationality. What does the law mean by that ? The concept of the nationality of a

corporation is comparatively new and it was really developed during the First World War. Nationality of corporations becomes important when it

is necessary to apply the "nationality of claims" principle before an international tribunal or to give effect to law-making treaties applying to

"nationals". See Starke (An Introduction to International Law 4th edn. p. 256). Starke has pointed out that there is no unanimity of opinion

regarding the tests to be applied to ascertain the nationality of corporations. Clive Parry does not recognise this nationality and calls it quasi-

nationality. I shall now explain in what sense the word "nationality" is used in this connection.

65. There have been many theories about the nationality of corporations which were again reconsidered during the First World War. According to

Hilton Young 22 Harvard Law Review p. 2, there were four main theories at first. The first theory viewed a corporation as the national of the State

in which its members or the majority of them or owning the greater part of the capital, were nationals. This theory considered the word

"corporation" as "a collective name for the corpoators", the corporate veil being considered to be of such gossamer texture as to hide almost

nothing. This theory of which the chief proponents were Sommieres and Morawetz was criticised on all hands and particularly by Maitland and

was abandoned as it made nationality a matter of accident and liable to change day in and day out. The second theory regarded nationality as

determined by the nationality of the State under which it was created. The United States of America has adhered to it but England may be said to

have adopted this theory modified by considerations of domicile. The Germans call this theory Griindungstheorie that is the theory of the place of

birth. The theory has great names behind it - Calvo, Fiore, Pineau, Weiss etc. This theory is inadequate to cover corporations which are not

authorised by the State and has been modified in the United States by evolving a theory of "implied consent to extraterritorial service". The third

theory considers that a corporation acquires the nationality of the place where its acts or any of its acts are performed. This theory is rejected

universally by lawyers but it was adopted by businessmen in the Congress of Joint Stock Companies held at Paris in 1889. Under this theory

nationality can be changed at will. Obviously enough difficulty is likely to be felt in the event of simultaneous actions in different countries. The

fourth theory considers that corporations are domiciled where they have a permanent home. This Theory was influenced by Von Bar who

considered that though juristic persons could not be nationals either jure sanguinis or jure soli, they could be nationals by domicile. Chief Justice

Taney summed up the thought by saying that ""a corporation must dwell in the place of its creation and cannot migrate to another sovereignty"". The

Bank of Augusta v. Erle [1839] 13 Pet. 519, 588-10 L. Ed. 274. Domicile of a corporation has more foundations than one. It may be fixed by the

territory of the sovereign which created it or by the charter or other constitutive documents or by the place where the corporation discharges its

functions or by the bona fide center of its administrative business. These different concepts have led to diverse theories.

66. English Law regarded nationality as dependent on domicile and was at first content to regard a corporation as the national of a State where it

was incorporated. But a glance at the history of the law of corporations shows that there is a variation in this theme in later years. The conception

of domicile was adopted in the English Common Law merely for purposes of jurisdiction and law. A corporation's domicile, it was held, depended

upon where it came into being and this domicile was not changeable though Lord St. Leonards was of a contrary opinion in Carron Iron Co. v.

McLaren [1952] 5 H.L.C 416. Similarly it was held that a corporation had a residence though it could change its residence and even have more

than one residence under certain laws. On what then did nationality depend? According to English Common Law a corporation incorporated

under the English Law had British nationality and it did not matter if its members held a different nationality. A corporation which was not of British

nationality was an alien corporation. According to the laws of many European Countries particularly France, nationality depended upon the siege

social by which is meant the seat or center of control. Both these theories suffered during the First World War. As regards the English Common

Law the leading case was Janson v. Driefontein [1902] A.C. 484. from which I have already quoted certain extracts. In that case it was decided

that a company possessed the nationality of the country under the laws of which it was incorporated and that the nationality of the share-holders

was not determinative of the question. Once this nationality was determined then the corporation received the treatment as a national, as an alien,

or as an enemy as the case was in peace or in war. This view was revised in the First World War. In Daimler Co. Ltd. v. Continental Tyre and

Rubber Co. (Great Britain Ltd.[1916] 2 A.C. 307, all the shares of the respondent company (except one) were held by a German company and

all directors were Germans though the company was incorporated in Great Britain. If the principle that nationality follows incorporation applied, the

respondent company would have had a British nationality and it could not change it. But the House of Lords applied the principle of effective

control to determine its nationality. In the Court of Appeal the case was heard by the full Court and the above principle was held applicable

(Buckley L.J. dissenting). The majority view was confirmed by the full judicial strength of the House of Lords by majority. Lords Shaw and

Parmoor considered that enemy character depended on whether it was incorporated in an enemy country. The majority (Lords Halsbury, Mersey,

Kinnear, Atkinson, Parker and Sumner) however, considered that it depended upon where the effective control lay. Lord Parker summarized the

law in six propositions as under:

(1) A company incorporated in the United Kingdom is a legal entity, a creation of law with the status and capacity which the law confers. It is not a

natural person with mind or conscience. To use the language of Buckley L.J., ""It can be neither loyal nor disloyal. It can be neither friend nor

enemy.

(2) Such a company can only act through agents properly authorized, and so long as it is carrying on business in this country through agents so

authorized and residing in this or a friendly country, it is prima facie to be regarded as a friend, and all His Majesty's lieges may deal with it as

such.

(3) Such a company may, however, assume an enemy character. This will be the case if its agents or the persons in de facto control of its affairs,

whether authorized or not, are resident in an enemy country, or, wherever resident, are adhering to the enemy or taking instructions from or acting

under the control of enemies. A person knowingly dealing with the company in such a case is trading with the enemy.

(4) The character of individual shareholders cannot of itself affect the character of the company. This is admittedly so in times of peace, during

which every shareholder is at liberty to exercise and enjoy such rights as are by law incident to his status as shareholder.

(5) In a similar way a company registered in the United Kingdom, but carrying on business in a neutral country through agents properly authorized

and resident here or in the neutral country, is prima facie to be regarded as a friend, but may, through its agents or persons in de facto control of its

affairs, assume an enemy character.

(6) A company registered in the United Kingdom but carrying on business in an enemy country is to be regarded as an enemy.

67. The House of Lords case is regarded as an instance of judicial legislation on the subject of "enemy character" and it undoubtedly was so. It is

not as if this theory has been universally accepted. It was criticised by Sir Arnold Mcnair in 1923/24 British Year Book of International Law p. 44

and by Mr. Ralph A. Norem: American Journal of International Law Vol. 24 p. 310.

68. We have seen that in the United States a corporation is a domestic corporation of the State which incorporates it or under the laws of which it

is incorporated. Some of the States have even laws to this effect. While other countries were revising their attitude in Europe, the United States

adhered to this theory and the Supreme Court observed that the Congress had definitely adopted the policy of disregarding stock ownership as a

test of enemy character. In other words, in the United States there was no attempt to look behind the corporate veil. We have also seen that

England drifted from the theory of domicile to the continental theory of siege social. But France, Germany, Italy and Belgium went a step further

than before. The Cour de Cassation departed from the principle of siege social in Societe Conserve Lenzburg in which it was held that the court

was entitled ""to go to the bottom of things and ascertain whether a corporation was really French or not."" The French Minister of Justice issued a

circular in 1916 which stated the French approach to the question thus:

Les formes juridique dont la societe est revetue, le lieu de son principal etablissement, tous les indices auxquels"s attache le droit prive pour

determiner la nationalite d'une societe, sont inoperants, alors qu'il s'agit de fixer au point de vue du droit public le caractre reel de cette societe.

Elle doit etre assimilee aux sujets de nationalite ennemie des que notoirement sa direction ou ses capitaux sont en totalite ou en majeure partic entre

les mains de sujets ennemis, car, en pareil cas, derriere la fiction du droit prive se dissimule vivante et agissante la personnalite ennemie elle-meme.

(The juridical forms in which the society is dressed, the place of its principal office and all the indicia on which Private Law fastens to determine the

nationality of a society, are inoperative when one tries to fix from the point of view of Public Law the real character of this society. The society

must be counted among enemy nationals if manifestly its direction or its capital wholly or in major part is in enemy hands for in such a case behind

the fiction of the Private Law lurks the active personality of an enemy.)

69. The Cour de Cassation justified the change by holding that the corporation was a personne interposee under the cover of which an enemy did

business. The German attitude also changed to Geschaftssitz from der Mittelpunkt des Geschaftes i.e., to the ""seat"" of real control from the ""center

of its enterprise". The corporation was said to have its seat where the ""brain" was and not where it had its center of exploitation. The Italians also

adopted the same test. The Belgians framed a law which sums up the new theory in crisp legal language (Act 172-Mai 23, 1913):

Toute societe dont le principal etablissement est en Belgique est soumise a la loi belge bien que l'acte constitutif ait ete Passed en pays etranger.

(Every society of which the principal establishment is in Belgium is under the laws of Belgium, notwithstanding that the incorporation took place in a

foreign country.)

70. In the Mixed Arbitral Tribunals which followed the First World War there were some cases which were decided on the theory of control but

many others were decided on the theory of domicile depending upon the composition of the Tribunal. There are indeed many other tests which I

have not mentioned such as the test of beneficial interest, or of substantial ownership or of responsibility which it is not necessary to describe here.

71. It would not be wrong to say that the control theory is also losing ground and there is a great support for the theory that the juridical life of the

corporation must ultimately fix its nationality. It is also to be noticed that Herr Marburg and M. Mazeaud two noted thinkers have pointed out that

all this law is not so much to fix the nationality of a corporation but its enemy character. Many writers (including Dicey, Cheshire, Foote and

Farnsworth) have also pointed out that the conception of the nationality of a corporation is important only in war and it has significance not so

much in Municipal Law as in Public International Law. During times of peace the domicile of a corporation which, as Lord Westbury pointed out,

is an idea of law creating a relationship between an individual and a particular country is allowed to operate a fiction. A corporation resembles a

natural person in the matter of domicile except that an individual can choose his domicile but a corporation"s domicile is tied to its place of birth.

The law of the country of its birth gives it such rights as it considers practicable and foreign corporations share in those rights subject to any special

provisions. In times of war these rules and the rule of corporate entity give way and public policy dictated by the consideration whether the

resources of the corporation are likely to be used for enemy purposes determines the issue. Thus in the Daimler case ""the fons et origo of the

control theory"" -

The acts of a company"s organs, its directors, managers, secretary and so forth, functioning within the scope of their authority are regarded as the

company"s acts"" [1916] 2 A.C. 307.

72. The operatives are regarded as the "brain" of the corporation and where the brain functions the corporation is held to function. During times of

peace a corporation may own property, do business because the Municipal law expressly permits that all this can be done and foreign

corporations also obtain the benefit of such laws either because of provisions of the Municipal law or by a comity of nations. In times of was all this

changes. The law of nationality is thus a law to determine the enemy character and not a law recognising nationality either in a political or municipal

sense. There may be some analogy between an individual and a corporation but as Mr. Vaughan Williams said 49 L.Q.R. 334 in an article which

has been of great assistance to me, it is not necessary "to ride the analogy to death." The English Law was summed up by Mervyn Jones (British

Nationality Law, Revised Edn.):

A corporation is a juridical person, but could not be a subject at Common Law, because allegiance, being essentially a personal bond, was a

conception limited in its application to individuals. Nor have corporations been recognised as statutory British subjects or as citizens of the United

Kingdom and colonies.

73. Oppenheim also points out (International Law, Lauterpacht Edition) p. 642 n. 3 -

The nationality of corporations is mainly a matter of Private International Law, and considerations of Public policy have a decisive influence upon

the attitude of every State with regard to it.

74. Citizenship depends upon Municipal Law and the same learned author says (ibid p. 643):

It is not for International Law but for Municipal Law to determine, who is, and who is not, to be considered a subject.

75. Hyde in his International Law Vol. 2 (2nd Edn.) p. 1066 also says :

Citizenship as distinct from nationality, is a creature solely of domestic law. It refers to rights which a State sees fit to confer upon certain

individuals who are also its nationals.

76. But perhaps the most practical argument against the recognition of corporations as citizens comes from M. Niboyet (who, as Mr. Vaughan

Williams points out) observed in his Manual of Private International Law that in computing the total number of citizens of a country we do not add

to the number of physical persons the number of corporations of that nationality. Indeed Lord Atkinson (and all who formed the majority except

Lord Halsbury) was of opinion in the Daimler case that -

The question of the residence of the company apart, I do not think that the legal entity, the company, can be so completely identified with its

share-holders, or the majority of them, as to make their nationality its nationality." [1916] 2 A.C. 307.

- 77. We have only two laws on the subject of citizenship and none on the subject of the nationality of corporations.
- 78. The fundamental law provides only for natural persons where it enacts rules for determining citizenship and the Citizenship Act excludes

corporations. The chapter on fundamental rights does not altogether ignore corporations as did the American Constitution. In places the word

"person" is used which attracts the definition in the General Clauses Act and in others the word "citizen". The word "citizen" could have been

defined specially for Article 19(1)(f) and (g) but it is not. There is nothing which can justify us in giving a special meaning to the word ""citizen" for

purposes of clauses (f) and (g). The fact that corporations are regarded in some circumstances as possessing nationality does not make them

citizens. As Mr. Menon rightly pointed out ships and aircraft also possess nationality in International Law but it cannot be claimed that they possess

citizenship in Municipal Law.

79. Which corporations should be regarded as possessing Indian Nationality is a question to be answered when it arises. Whether the provisions

of the Companies Act dealing with foreign companies furnish any assistance in this behalf must also be left unanswered. It is sufficient to say that

even if it be established that a corporation possesses Indian Nationality this has not the result which is contended for namely that all or any of the

citizenship rights arise. It may be admitted that the State Trading Corporation which is incorporated in India is not a foreign company under the

Companies Act. If we were to lift the veil of incorporation it will be found that the entire capital is subscribed by the Government of India, that the

share-holders are the President of India and two Secretaries to Government, in their official capacities and that its management is a governmental

function for the benefit of the nation. It may be conceded that it possesses Indian Nationality in an ideal sense and that there is also no possibility of

its acquiring an enemy character. But even so it is not a "national" that is to say an individual who is a part of our nation. When we count Indian

nationals for purposes of census we do not count the corporations as nationals. The argument is not one what advanced by dropping the word

"citizen" and using the word "national". No doubt the existence of corporations as entities is recognised but the entity obtains only such rights as the

law confers on it. This entity cannot claim other rights as a matter of course or by standing side by side with citizens. This entity cannot aspire to

hold a public office or to membership of Parliament or the Legislatures or to franchise or to entry into educational institutions. This is because it is

not a citizen in the true sense of the term and because its "nationality" though of consequence in Public or Private International Law, in treaties, in

conventions and in protocols, is of no consequence in Municipal Law except to the extent that the Municipal Law says so.

80. This is not to say that corporations have not been given any protection under our Constitution. Unlike the Constitution of the United States of

America our Constitution does not overlook corporations. The General Clauses Act is applicable to interpret the Constitution and that Act, as has

been pointed out already, defined "person" as including corporations. The following articles of the Constitution employ the word "person" which

applies equally to individuals and to corporations etc.

Art. 14: Equality before the law.

Art. 20: Protection in respect of convictions for offences.

Art. 27: Freedom as to payment of taxes for promotion of any particular religion.

Art. 31: Compulsory acquisition of property.

81. The seven freedoms guaranteed by Art. 19(1) are for "citizens". It was easy to say that the word "citizen" included corporations etc. of Indian

Nationality for purposes of any of the clauses of Art. 19(1) but it has not been so said. It is to be noticed that in the third part the Constitution

defines "the State". `the law", "laws in force", "estate" and "rights". The expression "law in force" is defined twice and differently. Can it be said

that the word "citizen" was purposely left vague so that a broad and liberal spirit could enter the interpretation? What a chance to take! It must

have been well-known that an attempt by the Supreme Court of the United States to give an artificial meaning to the word "citizen" has been

regarded on all hands as Constitution making. It is easy to see that our Constitution was circumspect enough to use a word of larger import

(person) in some places but not in others. The intention may well have been that the seven freedoms shall guarantee the rights of individuals whom

the body politic recognised as "citizens" and not the rights of abstractions like corporations. The observations of Chief Justice Mukherjea quotes

earlier mean that a corporation is protected only where the language admits the inclusion of corporations otherwise only individuals are meant.

82. It is however argued that in the United States the Supreme Court has held that the word "citizen" includes corporations. Reference was also

made to the Constitutions of some minor countries where corporations are expressly mentioned. It is not necessary to refer to these Constitutions

because no inspiration can be drawn from them to rewrite our Constitution. As Willis said (and he is not alone in this) of the position in the United

States that the rights and liabilities of corporations ""have been worked out under and through the judge-made United States Constitution"". Perhaps

this was forced upon the Supreme Court by the diversity of citizenship existing in the United States but it may be noted that the word "citizen" has

not been held to include corporations in other articles. Since this precedent was strongly relied upon I shall briefly refer to it.

83. The Constitution of the United States of America overlooked corporations and this has made the language intractable in places. The Supreme

Court has supplied this want by "judicial legislation". How this was done may be explained. I have already referred to the dictum of Chief Justice

Taney and to the attitude of the Congress and the Supreme Court on the subject of nationality of corporations. There is a fixed view that nationality

follows incorporation and is unalterable. This geographical theory coupled with dual citizenship of the State and United States has led to some

difficulties. Corporations were always regarded as the citizens of the State of incorporation but not of the United States. The citizenship of the

State has been accepted for purpose of exercise of the judicial power of the United States.

- $84. \ The following provisions of the Constitution of the United States may be read at this stage :$
- Art. I Section 8. ""Congress shall have power to establish an uniform Rule of Naturalization.

Art. III Section 1. ""The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress

may from time to time ordain and establish

Art. III Section 2. ""The judicial Power shall extend to controversies between a State and Citizens of another State; between Citizens of

different States; between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof.

and foreign States, Citizens or Subjects.

Art. IV Section 2 ""The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Amendment XIV Section 1 ""All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United

States and of the State 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.

85. The Supreme Court has held that a corporation is the citizen of the State of incorporation for purposes of federal jurisdiction on the ground of

diversity of citizenship. Though Art. I Section 8 and Amendment XIV refer to natural persons the word "citizen" was given a larger meaning for

purposes of controversies between citizens of different States over which federal courts alone have jurisdiction. The jurisdiction of the national

courts could not be invoked if the defendant was a corporation but the Supreme Court has by slow stages created a fictional jurisdiction. The

development of the law has had an interesting course. Rather than describe it in my own words I quote a small passage from Willis, Constitutional

Law of the United States (p. 850) :-

At first a corporation was not regarded as a citizen for any purpose and it could not get into or be taken into the federal courts on the ground of

diversity of citizenship. Then a case arose where all of the stockholders of the corporation were citizens of the same State where the corporation

was incorporated and the plaintiff was a citizen of another State, and it was held that the Court would look behind the corporate veil to the

stockholders and give the federal courts jurisdiction because of the diversity of citizenship thus found. In a later case some of the stockholders

were not citizens of the State where the corporation was incorporated but of the state in which the opposing litigant was a citizen. To avoid robbing

the federal courts of their jurisdiction, the Court held that for purposes of diversity of citizenship all of the stockholders of a corporation would be

conclusively presumed to be citizens of the chartering state. This rule, however, had to be modified later so as to make an exception in the case of

a stockholder plaintiff. Now it is believed that the courts have come to the position that the corporation is itself a citizen of the state of its

incorporation for the purposes of diversity of citizenship.

86. The following extract from St. Louis & San Francisco Railway Co. v. James [1896] 161 U.S. 545 sums up the position so far as the Supreme

Court is concerned:

There is an indisputable legal presumption that a State corporation, when sued or suing in a circuit court of the United States, is composed of

citizens of the State which created it That doctrine began, as we have seen, in the assumption that State corporations were composed of

citizens of the State which created them; but such assumption was one of fact, and was the subject of allegation and traverse, and thus the

jurisdiction of the Federal courts might be defeated. Then after a long contest in this court, it was settled that the presumption of citizenship is one

of law, not to be defeated by allegation or evidence to the contrary. There we are content to leave it.

87. States have, however, begun to destroy the presumption which is thus erected by requiring a corporation as a condition to doing business there

to incorporate in the State. This can be done because the Supreme Court has rejected the claim of corporations to citizenship for purposes of the

privileges and immunities clauses quoted above. As Corwin pointed out in The Constitution and what it means today 11th edn. p. 166:

Nor does the term "citizens" include corporations. Thus a corporation chartered elsewhere may enter a State to engage in local business only on

such terms as the State chooses to lay down, provided these do not deprive the corporation of its rights under the Constitution - of its right, for

instance, to engage in interstate commerce, or to appeal to the national courts or, once it has been admitted into a State, to receive equal treatment

with corporations chartered by the latter.

88. It remains to point out that corporations have been held to be "persons" within the Fourteenth Amendment and are entitled to equal protection

of the laws. But a foreign corporation as Corwin points out (at p. 268) is entitled to equal treatment with the corporations chartered by a State if

there is submission to the jurisdiction of the State.

89. The Nationality Act of 1940 declared that for the purpose of that Act a "national" meant a person owing personal allegiance to a State in the

United States. Corporations were thus not included because in the words of Buckley L.J. a corporation cannot be loyal or disloyal. For

international purposes a corporation is treated as a national if subjected to illegal treatment in an international aspect by a foreign power. The

position of corporations is protected in treaties as for example the treaties between Great Britain and the United States of 1783 and 1794 and the

treaty of Guadalupe Hidalgo between the United States and Mexico. Other examples are found in Hyde and international documents. Similarly

treaties of commerce are construed to include corporations within expressions denoting natural persons. But even in international sphere

corporations are not on a par with natural persons or nationals. As Hyde points out:

..... at least in a technical sense, a corporation is not, for many purposes to be deemed a national of the State to which its life is due, and lacks

many privileges that enure to a natural person

90. The question is whether the precedent of the United States Supreme Court should be followed. Apart from the fact that this involves a

conscious effort at judicial legislation, I am of opinion that such a spirit of libre recherche scientifique is hardly justified in India in view of the

following considerations:

- (a) We have a single citizenship and there is no citizenship of the States to create diversity;
- (b) We have only one set of courts and and two with separate jurisdiction;
- (c) Our Constitution has not completely overlooked corporations and some of the fundamental rights are prima facie guaranteed to corporations as

well;

(d) Members of a corporation who are citizens can enforce the rights under Art. 19(1)(f) and (g). Even if corporations may not be able to do so

directly, the members who are citizens by enforcing their personal rights can effectively benefit the corporation. The only persons who are not able

to do so are non-citizens whether as individuals or as members of a corporation;

- (e) There has never been a recognition of a corporation as a citizen; and
- (f) Unless a presumption juris et de jure is raised that corporations whether composed of citizens only or of non-citizens only or of citizens and

non-citizens are citizens of India, every time an inquiry will have to be made into their composition and there is no discernible principle on which the

citizenship can be bases when there is diversity of citizenship in the composition of the corporation.

91. I am, therefore, of opinion that the State Trading Corporation cannot be regarded as citizen for the purpose of enforcing rights under Art.

19(1)(f) and (g).

92. The next question is whether the State Trading Corporation is a department or organ of Government not-withstanding the formality of

incorporation. On behalf of the Corporation it is contended that if the corporate veil is pierced one sees that the right to invoke Art. 19(1)(f) and

(g) is being claimed by three persons who are admittedly citizens of India namely the President of India and the two secretaries. The contention on

the other side is that the corporate veil cannot be pierced at all and that if it is, then behind that veil there is the Government of India.

93. It is quite clear that none of the shareholders holds his share or shares for his personal beneficial enjoyment. None of them has paid for the

shares held in his name. The administration of the affairs of the corporation though technically a company, is a concern of the Government of India.

The legal and beneficial ownership of the corporation vests in the Government of India. Now there are not two veils so to speak, so that by lifting

the first one sees the shareholders and by lifting the other the Government of India. There is but one veil and if it at all to be lifted, it must be lifted

right off. What one would see on lifting the veil may be described in the words of Martin Wolff (Private International Law, 1945 p. 56) as follows

It occurs frequently that a state creates e.g., for a commercial purpose, a separate legal entity, in law distinct from the state, but in fact, if the veil

of personality is pierced, identical with it. Examples are notably many companies under state control, the state possessing all or practically all

the shares in that company.

94. If the corporation is to be regarded as a separate entity from its members and not merely as an association of individuals, it is not permissible to

tear the veil aside. Corporations in which the State owns the stock do not, in the United States, benefit from the immunity of the State. It is because

of these difficulties that the Supreme Court of the United States settled the question of federal jurisdiction in the face of diversity of citizenship by

making an irrebuttable presumption of law that the stockholders of a corporation incorporated in a State are citizens of that State and the

corporation is thus also a citizen of that State. There is a fiction upon a fiction. I do not think that it is permissible under our laws to raise such an

irrebuttable presumption of Indian citizenship in respect of every member of a corporation in India and it is obvious that if no such presumption can

be raised the citizenship of corporations raises an issue of fact. Can we say that if all the corporators are found to be Indian citizens then we must

hold that the corporation is an Indian citizen? Such a view was held in an early case by the Supreme Court of the United States - see Bank of the

United States v. Deveaux (1809)5 Cranch 61: 3 L. Ed. 38. In that case Chief Justice Marshal, while recognising that a corporation aggregate was

certainly not a citizen because it was an "invisible", "intangible" and "artificial" being, held that since the Constitution dealt with matters generally

and not in detail, and the general purpose and object of the law of incorporation showed that such an artificial person was to have corporeal

qualities, a corporation had the character of a citizen if those that composed it had that character. In the Daimler case (op. cit. sup.) Lord Parker

seemed to be of the opinion that this was the established law in the United States but Farnsworth (The Residence and Domicile of Corporations p.

311) supports Dr. Schuster (The Nationality of Trading Corporations 2 Grotius Society (1916) at p. 195) in the view that Lord Parker"s

statement was inaccurate. Farnsworth has also quoted from Garner's International Law in the World War Vol. I p. 227 where the opinion of the

Federal Judge in FritzSchultz Jr. Co. v. Raines & Co. (1917) 166 N.Y.S. 567 is quoted with approval :-

In upholding the right to bring the action the Court expressed the opinion that the authority in the case of United States v. Deveaux had been much

limited, if not overruled, by subsequent cases and that "at the present time the courts of this country are entirely wedded to the doctrine that the

corporators of a corporation are conclusively presumed to be citizens of the same State as the corporation". The statements of Lord Reading and

Lord Parker in the Daimler case, that the Supreme Court had laid down the principle that a court may look behind the corporate name to ascertain

the character of the individuals comprising it, was, said Justice Lehman, obviously not accurate.

95. I have earlier quoted from St. Louis & San Francisco Railway Co., v. James (cit. sup.) which also supports Dr. Schuster's view.

96. In my judgment it is not possible to pierce the veil of incorporation in our country to determine the citizenship of the members and then to give

the corporation the benefit of Art. 19. If we did pierce the veil and saw that the corporation was identical with Government there would be

difficulty in giving relief unless we held that the State can be its own citizen. Nor is it possible to raise an irrebuttable presumption about the

citizenship of the members. I have given detailed reasons already in answer to the first question posed for our decision. If we go by the corporate

entity then we must hold that Art. 19 applies to natural persons. On that subject I have said a great deal but what I have said sums up to the

following passage from Ducat v. Chicago (1868) 48 172 quoted by Farnsworth (op. cit.) at p. 310 and approved by the United States Supreme

Court :-

The term citizen can be correctly understood in no other sense than that in which it was understood in common acceptation when the Constitution

was adopted, and as it is universally explained by writers on government, without exception. A citizen is of the genus homo, inhabiting, and having

certain rights in some State or district these privileges attach to him in every State into which he may enter, as to a human being - as a

person with faculties to appreciate them, and enjoy them, and not to an intangibility, a mere legal entity, an invisible artificial being, but to a man,

made in God"s image.

97. It is not necessary to refer to the earlier cases of this court. The point was not raised in this form before and even the observations of

Mukherjea J. (as he then was) were obiter. In most cases an individual member also joined the corporation in the petition for the enforcement of

fundamental rights (as is the case here also) and this Court was content to leave the matter there. Joseph Kurvilla Vellukunnel v. Reserve Bank of

India [1962] Su. 3 S.C.R. 632 was heard by this Court in which the Palai Bank Ltd. was a party along with others. No objection was raised

about the competency of the Palai Bank to claim the benefit of Art. 19. The main case (there were two heard together) was an appeal from a

decision of Raman Nayar J. in proceedings for the winding up of the Palai Bank [I.L.R. (1961) Ker 166. It was an action properly brought against

the Palai Bank under the Banking Companies Act. The main question in this Court was whether a section of the Banking Companies Act which

enabled the Reserve Bank to decide whether a banking company deserved to be wound up was ultra vires in as much as it took away the right of

the court to decide this matter. It was held by majority that there was no flaw in the law and that it was for Parliament to say at what stage in a

particular case, the judicial process should begin and not for the courts who come into the picture from the stage the judicial process commences

under the law. This point could be decided in an appeal in which beside the corporation there were other interested parties.

98. Lastly, I have no cause for anxiety about Corporations in general and companies in which the States own all or the majority of the shares in

particular. They are amply protected under our Constitution. There can be no discrimination, no taxation without authority of law, no curbs

involving freedom of trade, commerce or intercourse and no compulsory acquisition of property.

99. There is sufficient guarantee there and if more is needed then any member (if citizen) is free to invoke Art. 19(1)(f) and (g) and there is no

doubt that the corporation in most case will share the benefit. We need not be apprehensive that corporations are at the mercy of State

Governments.

100. For these reasons my answers to the question posed are against the State Trading Corporation.

Das Gupta, J.

101. I think the State Trading Corporation of India is entitled to fundamental rights under Art. 19(1)(f) and (g) of the Constitution as citizen of

India.

102. The petitioner bases its claim to these fundamental rights on the fact that all its members are citizens. That this is so not deputed by the

respondent. But the respondent resists the claim on the legal basis that the Corporation is not a natural person but only an artificial person forming a

distinct entity from the natural persons who are its members. According to the respondent no artificial person is a citizen of India either under the

Constitution or under the Citizenship Act which was passed in 1955 in accordance with the Constitution. The respondent also contends that it

would be a mistake to confuse nationality with citizenship and while it is correct that the present petitioner having been incorporated in India under

the Indian Companies Act is a national of India it would be wholly erroneous to think that it also became on such incorporation a citizen of India.

The fact that it is a national of India puts it in no better position that any other person, natural or artificial, which is not a citizen of India in the matter

of fundamental rights.

103. While creating fundamental rights ""the people of India"" created some which they conferred on all persons (Arts. 14, 20, 21, 22, 23, 24, 25,

26, 27, 28 and 30); but some were created that were conferred only on citizens and were denied to others. Among those conferred on citizens

only are the fundamental rights created by Arts. 15, 16, 19 and 29. The word ""citizen"" was not, however defined in the Constitution and so we

have not got a key that is provided by a clear definition, to the minds of those who framed the Constitution, on the question whether they intended

to exclude corporations as such from the fundamental rights conferred on citizens. The respondent points out that immediately before dealing with

the question of fundamental rights, the Constitution deals with question of citizenship in seven Articles, viz,. Arts. 5 to 11. There is force in the

respondent's contention that these articles do not appear to contemplate any artificial person, like a corporation, before in its capacity of

corporation, a citizen of India. Article 5, the first and the main article dealing with the question makes persons, (1) born in the territory of India, or

(2) born of parents one or both of whom were born in the territory of India, or (3) persons who have been ordinarily residents in the territory of for

not less than 5 years preceding the commencement of the Constitution, citizens of India. Article 6 and 7 deal with the cases of certain persons who

have migrated to India from Pakistan, while Art. 8 deals with the question of rights of citizenship of persons of Indian origin residing outside India.

Article 9 lays down that inspite of Arts. 5, 6 or 8 a person who has voluntarily acquired the citizenship of any foreign State shall not be a citizen of

India. Article 10 embodies the provisions of continuity of citizenship ""subject to the provisions of any law that may be made by Parliament""; Article

11 makes an express provision that Parliament would be competent to make any provision with respect to acquisition and termination of citizenship

and all other matters relating to citizenship.

104. I agree with the contention raised on behalf of the respondent that it is not reasonably possible to read into these articles of the Constitution

any intention that an artificial person might also be a citizen. We also find that the Citizenship Act, 1955, which was enacted by Parliament in

exercise of the powers preserved to it by Art. 11 of the Constitution, expressly excludes from its benefit ""any company or association or body of

individuals, whether incorporated or not."" A Corporation is not a citizen under the Citizenship Act, 1955, nor is a corporation as such a citizen

under the constitutional provisions on the question of citizenship. From this it seems an easy step to say: Arts. 5 to 11 do not make the corporation

a citizen; the Citizenship Act does not make the corporation a citizen; there is no other Indian law that makes the corporation a citizen; and so the

problem is solved: corporation is not a citizen for the purpose of fundamental rights.

105. That, according to the respondent, should end the search for light. I am unable to agree. After all it is a constitution that we are interpreting

and it has again and again been laid down that those on whom falls this task have to take a broad and liberal view of what has been provided and

should not rest content with the mere grammarians" role. If, as is undoubtedly true, a syllogistic or mechanical approach of construction and

interpretation of statutes should always be avoided, it is even more important when we construe a Constitution that we should not proceed

mechanically but try to reach the intention of the Constitution-makers by examining the substance of the thing and to give effect to that intention, if

possible.

106. There was some discussion at the Bar as to whether there were citizens of India, even before the Constitution. It will serve no useful purpose,

in my opinion, to enter into that controversy. For, I am inclined to think that the Constitution in dealing with the matter of citizenship had no

intention to keep any former citizenship alive. If that had been intended a suitable provision would have been made to make that clear. In the

absence of any provision to that effect it is difficult to hold that citizenship as might have existed in pre-Constitution India continued even after the

Constitution.

107. Nor do I find it possible to agree that because a company incorporated in India would be a national of India it would necessarily be a citizen

of India. Nationality and citizenship are not identical; and it has been rightly said that while every citizen will be a national, every national is not

necessarily a citizen.

108. We are still left with the question whether the framers of the Constitution when conferring some fundamental rights on citizens only intended

that citizens forming themselves into a corporation would cease to enjoy these rights. The peculiar position that results from the strict legalistic

approach to the problem can be best shown by means of an illustration.

109. A, a citizen of India, whether under the Constitution or under the Citizenship Act is entitled to the fundamental right to acquire, hold and

dispose of property under Art. 19 of the Constitution. When A engages with another such citizen, B, in business the two can still come to the

courts to claim the benefit of the same fundamental right. The position remains the same if A and B join more persons without incorporating

themselves into a company: even if the number is seven or more they can still join in the same application and come to the court jointly for

enforcement of their fundamental right under Art. 19 when they are jointly engaged in the same business. For, in all these cases the claim of each to

the fundamental right cannot be in law defeated of the fact that several other citizens have joined him in making a similar claim for themselves. As

soon as, however, two more persons who are in their own right citizens of India from themselves into a private company, or seven or more

persons, each of whom is a citizen in his own right, form a public incorporated company, they are faced with the proposition that the company not

being a citizen, it is excluded from the right which they could have claimed.

110. It is well known that many years before 1950 when the Constitution came into force much of the trade and industry of this country was being

carried on by corporations. Most of these corporations were and are composed of persons who are clearly citizens of India under the provisions

of the Constitution. The obvious effect of the strictly legalistic approach that a corporation being an artificial person cannot be a citizen for the

purpose of any of the fundamental rights even when all its members are citizens of India would thus be to deny a considerable part - if not the

major part of Indian industry and commerce (using the word ""Indian"" to mean "carried on by Indian citizens") the valuable protection of the

fundamental rights under Art. 19(1)(f) and (g). No doubt the mere fact that the effect is inconvenient or even regrettable can be no justification for

a forced construction of a constitutional provision. But it is permissible, nay proper, often to consider the effect of proposed construction to find an

answer to the question: was that the intention of the Constitution makers?

111. What do we find here ? In Art. 19(1)(f) and (g) the Constitution-makers are creating a right intended to be of great benefit to industry and

trade. They decide to restrict this benefit to only citizens of India. They are aware that much if not most - of the trade and industry carried on by

Indian citizens are carried on by them, after forming themselves into corporations. They know equally well that corporations are in law distinct

entities from their members and so the "State" naturally anxious to extend the domain where the restriction of fundamental right on its powers does

not operate, may well argue that corporations even though composed entirely of citizens are not entitled to fundamental rights. The concern of the

Constitution-makers to improve the economic condition of the country is writ large over the Constitution's many provisions. The question has

reasonably been asked: why then did not the Constitution-makers distinctly provide that corporations composed of Indian citizens will be deemed

to be citizens for at least the fundamental rights under Art. 19(1)(f) (g) ? The mystery disappears, however, if we credit the Constitution-makers

with the further knowledge that in the United States of America when somewhat similar questions had arisen regarding the character of

corporations composed of citizens of a particular State the courts had not hesitated to apply the process of what has been called ""tearing the veil

and granted to a corporation composed of citizens of a State some of the rights of a citizen of that State, inspite of the fact that the corporation as

such is an artificial person distinct from its members. Is it not reasonable to think that the makers of our Constitution trusted that courts in India

would also not hesitate to apply a similar process of going under the surface and looking at the composition of the corporation, in deciding whether

the corporation is entitled to fundamental rights? In my judgment the answer to the question must be in the affirmative. Indeed I would go further

and say that to take another view is an insult to the intelligence and understanding of those who drafted the Constitution.

112. I am thus clearly of opinion that the Constitution-makers when they used the word ""citizen"" in Art. 19 intended that at least a corporation of

which all the members were citizens of India would get the benefit of the fundamental rights enshrined in that Article. The legal position that the

corporation is a distinct entity from its members does not appear to me to create any real difficulty in the way of giving effect to this intention. The

proposition, viz., that the corporation is a distinct legal entity from its members is too well established to require discussion. I see no reason

however why the charm of this legal learning should so hold us captives as to blind us to the great rule of interpretation of giving effect to the

intention of those who made the law unless the words make that impossible. I can find nothing in the words of the Constitution that stand in the way

of giving effect to the intention of the Constitution-makers of giving all citizens of India, whether forming into a corporation or not, the benefit of the

fundamental rights under Art. 19(1)(f) and (g). Whether the Constitution-makers also intended that a corporation of which the major portion of the

interest was held by citizens of India would also get the benefits of the rights, it is unnecessary for the purpose of this case to investigate.

113. This view of the law was taken, and in my opinion rightly, by the Bombay High Court in 468800 . It is of interest also to mention that in this

view of the law it is possible to appreciate what was said by way of dicta by Mr. Justice Mukherjea (as he then was) in 281675:

The fundamental rights guaranteed by the Constitution are available not merely to individual citizens but to corporate bodies as well except where

the language of the provision or the nature of the right compels the inference that they are applicable only to natural persons. An incorporated

company, therefore, can come up to this Court for enforcement of its fundamental rights

114. In that case the Court had to consider an allegation of infringement of the fundamental rights not only under Arts. 31 and 14 but also under

Art. 19(1)(f). While the observations of Mr. Justice Mukherjea may not perhaps be regarded as a considered decision on the question now before

us, it is not unreasonable to think that his Lordship felt no difficulty about extending the fundamental rights under Art. 19(1)(f) to the Sholapur

Spinning and Weaving company, the share-holders of which were Indian citizens.

115. It is proper to mention in this connection that in the 13 years that have rolled by since the Constitution came into force there have been many

cases in which this Court as also the High Courts have given companies of which the members were Indian citizens the benefit of fundamental

rights, special to citizens. In some of these cases the question was sometimes raised whether or not a corporation was a citizen for the purpose of

the fundamental rights but that was left unanswered. Among the cases in which relief claimed on fundamental rights, specially conferred on citizens

has been granted to corporations may be mentioned: 286078; 279450; The Bombay Dyeing & Manufacturing Co., Ltd., v. State of Bombay

[1958] S.C.R. 1122.

116. In my judgment, therefore, the first question referred to this Special Bench should be answered in the affirmative.

117. On the other question that has been referred, I agree with the conclusion of my learned brother Shah J. that the State Trading Corporation is

not in substance a department and organ of the Government of India. As I entirely agree with the reasoning on which he has based this conclusion.

I do not propose to discuss the matter further.

118. For the reasons mentioned above I would answer the two questions referred to this Special Bench thus:-

(1) The State Trading Corporation, so long as it consists wholly of citizens of India, can ask for enforcement of the fundamental rights granted to

citizens under Art. 19(1)(f) and (g) of the Constitution;

(2) The State Trading Corporation is not a department or organ of the Government of India and can claim to enforce the fundamental rights under

Part III of the Constitution against the State as defined in Art. 12 thereof.

Shah, J.

119. On May 18, 1956, the State Trading Corporation of India Ltd. - hereinafter called "the Company" was incorporated as a Private Limited

Company under the Indian Companies Act, 1956, with an authorised capital of Rs. 5 crores divided into five hundred thousand shares of Rs. 100

each. Ninety eight per cent of the subscribed capital which was contributed out of the funds of the Government of India stood registered in the

name of the President of India and the remaining two per cent in the names of two Joint Secretaries in the Ministry of Commerce & Industries. On

February 12, 1961, the Commercial Tax Officer, Vishakhapatnam assessed the Company in the sum of Rs.5,79,198.17 nP. to sales tax in respect

of certain transactions and issued a notice demanding payment of the amount. The Company and Mr. K. B. Lall, Joint Secretary, Ministry of

Commerce & Industries then petitioned this Court for a writ quashing the order of the Commercial Tax Officer and the notice of demand on the

plea that the assessment order and the notice of demand infringed the fundamental rights of the petitioners, amongst others, under Art. 19(1)(f) and

(g). At the hearing of the petition; counsel for the Commercial Tax Officer and the State of Andhra Pradesh submitted that the petition was not

maintainable because the Company was not a "citizen" within the meaning of Art. 19 of the Constitution, and in any event the Company being ""an

organ, department or instrumentality"" of the Government of India was incompetent to enforce a any fundamental right against the State of Andhra

Pradesh. The Court thereupon referred the following questions to a larger Bench:

(1) Whether the State Trading Corporation a Company registered under the India Companies Act 1956 is a citizen within the meaning of Art. 19

of the Constitution and can ask for the enforcement of fundamental rights granted to citizens under the said article; and

(2) Whether the State Trading Corporation is notwithstanding the formality of incorporation under the Indian Companies Act 1956 in substance a

department and organ of the Government of India with the entirety of its capital contributed by Government and can it claim to enforce fundamental

rights under Part III of the Constitution against the State as defined in Art. 12 thereof?

120. We are not at this stage concerned to deal with any right which the second petitioner K. B. Lall may have, to maintain the petition, for the

question deal only with the right of the Company to set up the protection of Art. 19(1)(f) & (g) of the Constitution.

121. Article 19 guarantees certain basic freedoms in favour of citizens: it provides that -

- (1) All citizens shall have the right -
- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India;
- (f) to acquire, hold and dispose of property; and
- (g) to practise any profession, or to carry on any occupation, trade or business.
- 122. The fundamental freedoms (exercise whereof is by cls. (2) to (6) subject to certain restrictions) being expressly guaranteed to citizens, the

question which presents itself at the threshold is whether the Company can claim to be a citizen and on that basis claim protection of the freedoms

to acquire, hold and dispose of property, and to carry on any trade, occupation or business. The plea that a Company incorporated under the

Indian Companies Act is not a "citizen" within the meaning of Art. 19 of the Constitution is advanced principally on two grounds:

(1) That prior to January 26, 1950, there was no law relating to citizenship in force in India and by Arts. 5 to 10 of the Constitution only natural

persons were for the first time declared citizens. Under the provisions of the Citizenship Act, 1955, only natural persons may claim rights of

citizenship since the commencement of the Constitution. The Company which came into existence after the promulgation of the Constitution not

being a citizen under the Citizenship Act, 1955, is therefore incompetent to enforce the rights claimed by it, for Arts. 5 to 11 constitute an

exhaustive code relating to citizenship in India, and an artificial person not being of the classes enumerated in Arts. 5, 6 & 8, nor under the

Citizenship Act, 1955 (enacted in exercise of powers under Art. 11), the claim of the Company to citizenship must stand rejected;

(2) Citizenship postulates allegiance to the State of which a person claims to be a citizen and involves a duty to serve when called upon in the civil

Administration, and in the defence forces in the maintenance of peace or defence of the State in an emergency, and an artificial person being

incapable of owing allegiance and of rendering these services cannot be regarded as citizen. This argument is based on what is called the traditional

concept of citizenship.

123. Counsel for the Company submits that citizenship is the status which a person endowed with full civil and political rights in a State possesses

under its municipal law, and such rights inhere the status of natural and artificial persons alike.

124. In determining the content of the expression "citizen" used in Art. 19, which is defined neither in the Constitution nor in the General Clauses

Act, it may, in the first instance, be useful to consider the scheme under which the diverse fundamental rights are declared and guaranteed by Part

III of the Constitution and the extent of protection afforded against infringement of those fundamental rights. The Constitution in declaring the

fundamental rights uses different expressions to denote the beneficiaries of different rights. By Arts. 14, 20(1), (2) & (3), 21, 22(1), (2) & (4),

25(1), 27, 28(3) and 31 certain fundamental rights are declared in favour of persons. By Arts. 16(1) & (2), 26(1) & (2), 19(1) and 29(2) citizens

are the recipients of fundamental rights guaranteed thereby. Certain fundamental rights are declared in favour of groups such as denominations.

sections, minorities or institutions e.g. Arts. 26, 29(1), 30(1) and 30(2): these would in the very nature of things be groups of individuals. By

certain other Articles prohibitions are declared e.g. 17, 23(1), and 24 and 28(1) for removal of evils, such as untouchability, traffic in human

beings, forced labour, employment of children in hazardous employment, and against imparting of religious instructions in educational institutions.

The expression "citizen" used in Ch. III has undoubtedly narrower connotation than "person". By Art. 367 of the Constitution read with s. 3(42) of

the General Clauses Act a ""person"" includes any company or association or body of individuals whether incorporated or not. By declaring rights in

favour in favour of persons, it may at first sight appear that it was intended to confer those rights upon persons artificial as well as natural. But this

presumption is not in fact uniformly true. In Arts. 25(1), 28(3) and probably Art. 20(3) by the use of the expression ""person"" having regard to the

character of the right conferred natural persons only could be the beneficiaries of the rights declared thereby. By Art. 15(1) & (2) prohibitions are

imposed against the State in making discrimination between citizens on the ground of religion, race, caste, sex or place of birth; cls. (1) & (2) of

Art. 16 declare equality of opportunity to citizens in matters of public employment, and Art. 18(2) impose restrictions on citizens against

acceptance of titles from any foreign State. In these Articles, the expression citizen may refer only to a natural person. But that cannot be decisive

of the meaning of the expression ""citizen"" in Art. 19. In ascertaining the meaning of expressions used in a vital document like the Constitution of a

nation, a mechanical approach would be impermissible. The Constitution is but the declaration of the will of the people, and must be interpreted

liberally, and not in any narrow or doctrinaire spirit. It must be interpreted according to its true purpose and intent as disclosed by the phraseology

in its natural signification in the light of its setting and its dynamic character which is intended to fulfill the aspirations of the people. There can be

little doubt that an artificial person like a Corporation is capable of exercising rights conferred by cls. (a), (c), (f) and (g) of Art. 19(1) and the right

to hold property and the right to carry on trade or business are two rights of vital importance vested in artificial persons and a substantial segment

of trade and business in India and abroad is carried on through corporate activity. On the view that only a natural person having certain attributes

under the municipal law may be a citizen, the rights conferred by Art. 14 (equality before the law and equal protection of the laws),

(freedom from payment of taxes for promotion of any particular religion or religious denomination), Art. 20(1) & (2) (bar against retrospective

operation of penal statutes, and rule against double jeopardy) and Art. 31 (bar against deprivation of property otherwise than by authority of law)

are guaranteed even in the case of artificial persons, but some of the most cherished rights i.e. right to acquire, hold and dispose of property, and to

carry on trade or business of artificial persons may not be protected against executive or legislative action. Was it intended by the Constituent

Assembly when declaring the freedoms under Art. 19 to make a deliberate departure, and in respect of rights declared under Art. 19 to restrict the

enforcement thereof against action of the law makers or the executive only in favour of natural persons and not in favour of artificial persons ?

125. It is in this background we may turn to the question whether, the declaration of citizenship under Arts. 5, 6 & 8 of the Constitution, and the

Citizenship Act, 1955, was to be exhaustive; or merely to deal with the rights of natural persons. It may be necessary first to have a true concept of

citizenship and to ascertain whether the common law of England which formed the foundation of the Indian jurisprudence, attributed to artificial

persons prior to the Constitution the statues of citizens or "subjects" as it was usual to call them in a monarchical form of Government.

126. Waite C.J., in Virginia L. Miner v. Reese Happersett (21 Wall. 162 : 88 U.S. 627.) observed :

There cannot be a nation without a people. The very idea of a political community, such as a nation is, implies an association of persons for the

promotion of their general welfare. Each one of the persons associated becomes a member of the nation formed by the association. He owes it

allegiance and is entitled to its protection. Allegiance, and protection are, in this connection, reciprocal obligations. The one is a compensation for

the other allegiance for protection and protection for allegiance.

For convenience it has been found necessary to give a name to this membership. The object is to designate by a title the person and the relation he

bears to the nation. For this purpose the words ""subject"", ""inhabitant"" and ""citizen"" have been used, and the choice between them is sometimes

made to depend upon the form of the government. Citizen is not more commonly employed, however, and as it has been considered better suited

to the description of one living under a republican government, it was adopted by nearly all of the States upon their separation from Great Britain,

and was afterwards adopted in the Articles of Confederation and in the Constitution of the United States. When used in this sense it is understood

as conveying the idea of membership of a nation, and nothing more.

127. In the Digest of International Law (J. B. Moore) Vol. III, 1906 Edn. at p. 273, it is stated :

Citizenship, strictly speaking, is a term of municipal law, and denotes the possession within the particular state of full civil and political rights,

subject to special disqualification, such as minority or sex. The condition on which citizenship is acquired are regulated by municipal law.

128. In Oppenheim"s International Law (Lauterpacht) Vol. I p. 644 it is stated :

In the United States of America, while the expressions "citizenship" and "nationality" are often used interchangeably, the term "citizen" is, as a rule,

employed to designate persons endowed with full political and personal rights within the United States, while some persons - such as those

belonging to territories and possessions which are not among the States forming the Union - are described as "nationals". They owe allegiance to

the United States and are United States nationals in the contemplation of International Law; they do not possess full rights of citizenship in the

United States In the British Commonwealth of Nations it is the citizenship of the individual States of the Commonwealth which is primarily of

importance for International Law, while the quality of a "British subject" or "Commonwealth citizen" is probably relevant only as a matter of the

Municipal Law of the countries concerned.

129. Citizenship and nationality emphasize different facets of a single concept of association with or membership of a political community. The form

and content of the association have varied in their historical evolution with the complexion of the governmental machinery, but in essence they

denote the relation which a person bears to the sovereign authority. Citizenship is the relation that a person bears to the State in its national or

municipal aspect; nationality appertains to the domain of International Law, and represents the political status of a person, by virtue of which he

owes allegiance to a particular sovereign authority. `Citizen" and "national" are frequently used as interchangeable terms, but the two terms are not

synonymous. Citizenship in most societies is the highest political status in the State, it is employed to denote persons endowed with full political and

civil rights. There are in some States nationals who though owing allegiance, lack citizenship such as those belong to colonial possessions which are

not included within the metropolitan territory, and do not participate in the Government. Even in States where association of nationals in the

governmental machinery does not exist or is too tenuous to be effective, the national endowed with capacity to exercise personal and political rights

may be called a citizen. Again there may be citizens even in States having a form of government, which permits an effective association of its

citizens with the administration, who do not participate in the government, or who by reason of sex, minority or personal disqualification are

incompetent or are unable to participate. Citizenship is therefore membership of a jural society investing the holder with all the rights and privileges

which are normally enjoyed by its nationals, and subjecting him to corresponding duties; nationality is the link between a person and a State,

ensuring that effect be given to his rights in international affairs. Every citizen is a national, but every national is not always a citizen. The tie which

binds the national and the citizen is the tie of allegiance to the State; it arises by birth, naturalisation or otherwise in a political society which is called

a State, Kingdom or Empire.

130. Under the English common law, a company or a corporation aggregate is regarded as possessing attributes which would make it a national of

the State in which it was incorporated and the incapacity of a corporation aggregate to discharge obligations such as performance of military or

civil service, or to exercise franchise, has not been held to be a bar to the recognition of its status as a national of the State of its incorporation. This

is reflected in the judicial decisions that public corporations aggregate are nationals of the country of incorporation, irrespective of the nationality of

the share-holders. The English Statute Law did not regulate the nationality of Corporations, but the decisions of the highest tribunals regarded them

for certain purposes as capable of possessing all the attributes of nationality. In Janson v. Driefontain Consolidated Mines Ltd. L.R. (1902) A.C.

494. the House of Lords regarded a company registered under the laws of the South African Republic as a national of that State. The observations

of Lord Macnaghten at p. 497, of Lord Davey at p. 498, of Lord Barmpton p. 501 and of Lord Lindley at p. 505 proceed on the view that the

Company concerned in that case was a national of the Republic of South Africa and the question as to the validity of the contract of insurance by

British underwriters against capture during transit to the United Kingdom by the foreign State before declaration of war was valid. Similarly

Attorney General v. Jewish Colonization Association [1901] 1 K.B. 123 was decided on the footing that a public Corporation is capable of

nationality, and in Generali v. Selim Cotrap L.R. (1932) A.C. 288 it was accepted that a public Corporation has the attributes of nationality. In

Gasque v. Commissioners of Inland Revenue L.R. [1940] 2 K.B. 80 Macnaughten J., observed:

But by analogy with a natural person the attributes of residence, domicile and nationality can be given, and are, I think, given by the law of

England to a body corporate. It is not disputed that a company formed under the companies Acts, has British nationality, though, unlike a natural

person, it cannot change its nationality.

131. In Kuenigi v. Donnersmarck L.R. [1955] 1 Q.B. 515 it was held that a company incorporated under the laws of England and registered in

England and so having an English domicile, and by analogy, British nationality, did not cease by English law to be an English company subject to

English law merely because it was under enemy control. Mc. Nair J. observed at p. 535:

"I think that it is also clear that, in so far as nationality can by analogy be supplied to a juristic person, its nationality is determined in an inalienable

manner by the laws of the country from which it derives its personality.

132. The personality of a Corporation aggregate therefore springs from the laws of the country in which it is incorporated, and upon that

personality is impressed the nationality of that country, for the Corporation is by virtue of the law incorporating it capable of exercising rights, is

subject to obligations and by common acceptance is entitled to claim protection in international affairs of the State of its incorporation.

133. If a Corporation aggregate is a national, can it be regarded as a citizen? According to our law a juridical person may normally exercise all

civil rights except those which from the nature of its constitution or of the rights, cannot be exercised or enforced by the Corporation. A juridical

person may acquire, hold and dispose of property, carry on trade or business, take up residence within the territory and form associations. It is

also liable to discharge obligations which the nature of its incorporation permits. There are no special restrictions placed upon its activity and upon

exercise of its rights in its corporate character. It is capable of exercising to the fullest extent a large majority of civil rights which natural persons

may exercise as citizens, its incapacity to exercise others arises from the nature of its personality and constitution and not from any special

restriction imposed upon it. Undoubtedly franchise cannot be exercised by the Corporations but the capacity to exercise franchise is not a sine qua

non of citizenship. The State normally affords to Corporations protection as to its nationals abroad and recognises its corporate character with

capacity to exercise rights within the realm. In the matter of protection, the law makes no distinction between natural persons and artificial persons

like corporations. Was it then intended by the Constitution which afforded protection of the widest amplitude in favour of Corporations as well as

natural persons against discrimination under Art. 14, against deprivation of property under Art. 31(1), against compulsory acquisition or, requisition

of property for purposes not public and without payment of compensation under Art. 31(2), against imposition of taxes the proceeds of which are

specifically appropriated for payment of expenses for maintenance of a particular religion or religious denomination under Art. 27, against being

subjected to taxation without authority of law under Art. 265, and to the freedom of trade, commerce and intercourse, subject only to the

provisions of Part XIII, still did not guarantee the right to carry on business of trade, to acquire, hold, and dispose of property and the right to form

associations, or the right to take up residence of its choice within the territory? Unless the language or the scheme of the Constitution is so

compulsive, it would be difficult to reach that conclusion, on any predilection as to a limited connotation of the expression citizen occurring in Art.

19(1). It may be remembered that Constitutional practice is not inconsistent with the recognition of artificial persons as citizens. The Constitution of

the United States of Maxico 1917, Of E1 Salvador 1950, and of the Spanish People do recognise the status of Corporations as citizens. It was

also not disputed at the Bar and could not reasonably be disputed that it was open to the Constitution-makers, and the Parliament of India to make

express provisions declaring artificial persons as citizens of India.

134. But it is urged that the intention of the Constitution-makers was not to recognise the corporate character of a Company as a citizen. It is said

that the provisions of Arts. 5, 6 and 8 and the law made under Art. 11 in matters post-constitutional, are exhaustive of the conferral of the right of

citizenship and there can be no citizen who does not satisfy the prescribed requirements. A necessary corollary of that thesis is that there were no

citizens in India before the Constitution - natural or artificial and it was by the Constitution and the Citizenship Act, 1955, that only natural persons

are made citizens and no one else.

135. To examine the validity of this assumption, it is necessary to examine carefully the relevant provisions of the Constitution and the material

provisions which preceded the Constitution. It must be conceded that persons mentioned in Arts. 5(1), 5(b), 6 and 8 are natural persons and the

expression "person" in the context of those provisions does not include artificial persons. Clause (c) of Art. 5 refers to persons resident within the

territory of India for not less that five years, and it may be presumed that this clause was also intended to apply to natural persons. Similarly by the

definition contained in section 2(f) of the Citizenship Act, 1955, the Act is made applicable only to natural persons. But the assumption that there

were in India prior to January 26, 1950, no citizens, and citizenship rights were conferred for the first time by the Constitution is not warranted

either by the language used in the Constitution, or the history of our national evolution. The status of British Indians prior to 1947 was governed by

the British Nationality and Status of Aliens Act, 1914. They were regarded as British subjects, and the entitled in British India to such rights and

privileges as were accorded to British nationals in India. Their status as British subjects was analogous to the status of citizens of a republic. They

exercised civil rights, and such political rights as the form of Government permitted. If a citizen is a national who under the law of the state is

entitled to enforce full civil and political rights, British Indian subjects prior to the Constitution had within the territory of British India that quality of

rights which would go to make them citizens. Similarly the subjects of the Indian States had the rights of citizenship within their own States, and

those rights were not affected by the stand-still and merger agreements of their rulers with the Dominion of India. The thesis being merely to

establish the existence of rights which were analogous to rights of citizenship prior to the enactment of the Constitution, it is unnecessary to enter

upon a detailed examination of the constitutional developments which took place between August 1947, and the 26th of November, 1949, which

culminated in the setting up of the Republic of India by the erstwhile British Indian subjects and the subjects of the Indian States. It may be

sufficient to observe that before the Indian Independence Act, 1947, the Legislature was invested with the power to confer upon foreigners rights

as British Indians by naturalization, and had also sought to invest the Government of the day with power to deny entry into India to foreigners or

even of nationals of British possessions. Part II of the British Nationality & Status of Aliens Act, 1914, relating to the naturalization of aliens was

not extended to British India, though Parts I & III were intended to apply to all territories which formed part of the British empire subject to the

provisions of section 26 of the Act which preserved the power of Colonial or Dominion Governments and Legislatures to legislate on the subject of

nationality and to safeguard the validity of laws passed by them relative to the treatment of different classes of British subjects. Under the Act of

1914 the place of birth within the British empire was determinative of British nationality, but power was reserved to the Dominions and the

Colonies by legislation to make provision for naturalization restricted to their territory. The British Indian legislature in 1926 enacted the Indian

Naturalization Act, 1926, which enabled the local Governments to grant certificates of naturalization to persons applying in that behalf and

satisfying the local Government on matters specified therein. Power was also reserved to revoke the certificates of naturalization. The Legislature

also enacted the Immigration into India Act, III of 1924, which authorised the Central Government to make rules for the purpose of securing that

persons not being of Indian origin, domiciled in any British Possession, shall have no greater rights and privileges, as regards entry into and

residence in British India than are accorded by the law and administration of such possession to persons of Indian domicile. The effect of these

statutory provisions was - subject to certain exceptions to recognize the right of British subjects in India and to approximate them to the rights of

citizenship, to grant such rights by naturalization and to restrict immigration into India. The British Nationality Act, 1948, was enacted after the

Indian Independence Act, 1947, and was not incorporated in the stream of the statute law in India. The effect of that Act was to create a new

statutory concept of citizenship of the various constituent units of the British Commonwealth and to provide for a dual citizenship, citizenship of the

country in which the local community resided within the units and of the Commonwealth. The concept of allegiance which was the foundation of the

status of subject, was excluded from the rules governing local citizenship. The Act contemplated the passing of Citizenship Acts by various

Dominions and till the enactment of such Acts accorded to the citizens potential or actual of any Dominion (which expression included India) the

status of Commonwealth citizen. In relation to this citizenship, allegiance to the British Crown was not a condition.

136. This brief review of the legislative history is sufficient to destroy the assumption that the status of citizenship was not recognized under the

common law operative in India prior to January 26, 1950, for, in my judgment, British subjects of Indian origin held for all purposes the status in

British India of citizens. That status arose by birth and could also be conferred by naturalization.

137. If a natural person could be a citizen prior to November 26, 1949 (the day on which by Art. 394, Arts. 5 to 9 came into force), there is no

reason to suppose that artificial persons who were nationals of the British Empire and who could claim the protection abroad could not claim rights

of citizenship within the territory of India, when they were in fact exercising all the rights and privileges which natural persons who were citizens

exercised, except those which by their incorporation they could not exercise. There was before the Constitution no statute which indicated even

indirectly that a Corporation aggregate could not be a citizen.

138. At the time when the Constitution of the United States of America was proclaimed, no citizenship laws were enacted, but rights of citizenship

were recognized under diverse provisions of the Constitution of the United States. The American Constitution recognised even without any express

statute law, citizenship of States, and also of the Union. Under the Constitution of the United States of America, the expression ""citizen"" has been

given different meanings under diverse Articles. In some clauses the expression ""citizen"" meant only natural persons, in others it included artificial

person like Corporations. Though Constitution as originally proclaimed was silent upon the subject, corporations were regarded as citizens of the

State of their incorporation for the purpose of federal jurisdiction. Initially no corporation was regarded according to the decisions of the Court in

the United States as a citizen within the meaning of Art. 3 section 2: The Bank of the United States v. Deveaux et 3 L.Ed. 38. But this view was

modified in a later case : The Louisville, Cincinnati & Charleston Railroad Company v. Thomas W. Letson 11 L.Ed. 353. This case arose on the

interpretation of the ""diversity clause"" in Art. 3 section 2. In neither of these cases was the capacity of corporations to be citizens of the State in

which they were incorporated, denied. For the purpose of the 14th Amendment which prohibits a State from making or enforcing any law which

abridged privileges or immunities of citizens of the United States, an individual alone was regarded as a citizen: Orient Insurance Company v.

Robert E. Daggs 172 U.S. 552 and Bankers Trust Company v. Texas & Pacific Railway 241 U.S. 295. In cases arising under Art. 4 section 2 it

was also held that a corporation could not be regarded as a citizen of a State other than the State of its incorporation. In Paul v. Virginia 75 U.S.

357 Field J. delivering the opinion of the Court observed at p. 359. :

But in no case which has come under our observation, either in the State or Federal Courts, has a corporation been considered a citizen within the

meaning of that provision of the Constitution which declares that the citizens of each State shall be entitled to all the privileges and immunities of

citizens of the several States.

139. The learned judge however made it clear that he was restricting the observations only to the claim of citizenship made by a Corporation in a

State other than the State which incorporated it. On p. 360 he observed :

... a grant of corporate existence is a grant of special privileges to the corporators, enabling them to act for certain designated purposes as a single

individual, and exempting them (unless otherwise specially provided) from individual liability. The corporation being the mere creation of local law.

can have no legal existence beyond the limits of the sovereignty where created Having no absolute right of recognition in other States, but

depending for such recognition and the enforcement of its contracts upon their assent, it follows, as a matter of course, that such assent may be

granted upon such terms and conditions as those States may think proper to impose.

140. It may be noticed that corporations have been regarded as persons within the meaning of the 14th Amendment and therefore they cannot be

deprived of their property or rights without due process of law: Smyth v. Ames 169 U.S. 466. and Kentucky Finance Corporation v. Paramount

Auto Exchange Corporation 262 U.S. 544. Our Constitution has not accepted the doctrine of due process as a test for protection of fundamental

freedoms, but has sought to effectuate protection of those freedoms by the 19th Article.

141. In this Court there has been no definite expression of opinion about the rights of corporations aggregate to enforce the fundamental freedoms

under Art. 19 of the Constitution, though it seems to have been consistently assumed that corporations aggregate are entitled to claim protection of

the Courts against violation of fundamental freedoms enumerated in Art. 19(1). In 281675, Mukherjea J., observed:

The fundamental rights guaranteed by the Constitution are available not merely to individual citizens but to corporate bodies as well except where

the language of the provision or the nature of the right compels the inference that they are applicable only to natural persons. An incorporated

company, therefore, can come up to this court for enforcement of its fundamental rights and so may the individual shareholders to enforce their

own, but it would not be open to an individual shareholder to complain of an Act which affects the fundamental rights of the company except to the

extent that it constitutes an infraction of his own rights as well.

142. In that case an individual shareholder petitioned this Court for the issue of a writ declaring that the Sholapur Spinning and Weaving Company

(Emergency Provisions) Act (XXVIII of 1950) which enacted that the managing agents of the Company stood dismissed and the Directors

automatically vacated their office, and which authorised the Government to appoint new Directors and restricted the rights of shareholders in the

matter of voting and appointment of Directors, passing resolutions and applying for winding up and which further authorised the Government to

modify the Indian Companies Act was ultra vires the legislative authority of Parliament, in that it infringed the fundamental rights of the shareholders

and the action taken there-under infringed the shareholders" fundamental rights under Arts. 19(1)(f), 31 and 14 of the Constitution. The Court in

that case dismissed the petition holding that the fundamental rights of the petitioner under Art. 31(1) & (2), 19(1)(f) and 14 were not infringed. The

observations of Mukherjea J., cannot be regarded as an expression of a considered opinion of the Court holding that all fundamental rights are

enforceable by individual citizens as well as corporate bodies. The question was mooted in two later cases: 279450 and 281480. It may be

pointed out that the High Court of Bombay in 468800 held that an application at the instance of a corporation alleging infringement of a

fundamental right to carry on business was maintainable. Again in 279361 Sinha C.J., in delivering the judgment of the majority observed:

The fundamental rights are primarily for the protection of rights of individuals and Corporations enforceable against executive and legislative action

of a governmental agency.

It may be pointed out that there have been scores of cases in this Court in which it has been assumed without contest that a company is a citizen,

and competent to enforce fundamental rights under Art. 19(1)(f) & (g) of the Constitution, I propose only to set out a short illustrative list of cases

picked up at random:

(1)(1955)ILLJ129SC... Bijay Cotton Mills Ltd. v. State of Ajmer.

(2)(1958)ILLJ527SC... Messrs Kasturi and Sons (Private) Ltd. v. Shri N. Salivateeswaran.

(3)(1961)ILLJ339SC... Express Newspapers (Private) Ltd. v. Union of India (UOI).

(4)[1960]2SCR408... Messrs Fedco (P) Ltd. & Another v. S.M. Bilgrami.

(5)(1960)IILLJ1SC... M/S Hathisingh Manufacturing Co. Ltd. v. Union of India (UOI).

(6)[1961]1SCR379... Tata Iron & Steel Co. Ltd. v. S. R. Sarkar.

(7)[1963]3SCR792... State Trading Corporation of India Ltd. v. The State of Mysore

143. There have arisen a number of cases in the High Courts in which conflicting views have been expressed. In the 194781 the Madras High

Court held that Art. 19(1)(f) applies only to citizens and a company incorporated under the Indian Companies Act does not satisfy the

requirements of the definition of citizen in Art. 5. This case reached the Supreme Court in 281701, but the question whether the fundamental right

could be enforced by a company was, it appears, not raised. In Jupiter General Insurance Company Ltd. v. Rajgojalan ILR [1952] Pun 1, it was

held by the Punjab High Court that a company cannot raise the question that an impugned legislation takes away or abridges the rights conferred

by Art. 19(1)(f) & (g) of the Constitution, because a company is not a citizen. In 95360 single judge of the Allahabad High Court held that Art. 5

applied to natural-born persons and not to artificial persons and hence a corporation is not a citizen within the meaning of Art. 19. But the

Rajasthan High Court in Maharaja Kishangarh Mills Ltd. v. State of Rajasthan(I.L.R. [1953] Ralj 363) assumed that the question whether a

corporation was a citizen for the purpose of Art. 19 was generally decided in Chairanjitlal Chowdhuri's case([1950] S.C.R. 869, 893) and held

that a corporation was entitled to raise by a petition under Art. 226 a plea of a breach of a fundamental right under Art. 19. Authorities in the

Calcutta High Court appear to be somewhat conflicting. In 13351 it was held that the rights conferred by Art. 19 being granted only to citizens,

non-citizens could not enforce such rights and the Company incorporated in India not being a citizen could not challenge the validity of sub-section

52-A and 167(12-A) of the Sea Customs Act on the ground that those provisions infringed Art. 19(1)(g) of the Constitution. The same view was

affirmed in 34977. It was held in that case that a company was not entitled to enforce the fundamental rights granted under Art. 19, which are

available only to citizens. But it was held in 25204 that a corporation ordinarily resident in India for a period exceeding five years prior to the

commencement of the Constitution being a person was a citizen within the provisions of Art. 5(c) of the Constitution and entitled to enforce

fundamental rights under Art. 19(1), but a company incorporated after January 26, 1950, will not be regarded as a citizen, for the Citizenship Act

expressly excludes artificial persons from the benefit of citizenship rights. In recording this conclusion the earlier judgment of the Calcutta High

Court in 30621 was referred to, and it was pointed out that in the group of cases which were then heard relief was granted to petitioners some

whom were corporations claiming that their fundamental rights were infringed.

144. In The State of Bombay v. R. M. D. Chamarbaugwala(I. L. R. [1955] Bom. 680) in considering whether a company incorporated under the

Indian Companies Act prior to the Constitution could claim protection of its fundamental rights under Art. 19(1)(g), Chagla C.J., speaking for the

Court observed:

... can it be said in the first place that a corporation can ever be under any circumstances a citizen, and if it can be so said, what must be the

constitution of the corporation before it could be said that it is a citizen? ""Citizen"" has not been defined by the Constitution and the only provision

which is relevant is the provision contained in Art. 5. But that article only deals with the citizenship at the commencement of the Constitution and it

lays down who was a citizen at the commencement of the Constitutionalthough domicile is a question of private international law, rights and

acquisition of citizenship is a creation of municipal law and it is only Parliament by municipal law that can determine who is a citizen. It would be

perfectly competent to Parliament by legislation to provide that a corporation satisfying certain conditions should be deemed to be a citizen for the

purpose of Art. 19(1) but Parliament has not done so. But the very curious anomaly that arises is that when we turn to some of the provisions of

Art. 19(1) it is impossible to contend that it could ever have been the intention of the Constituent Assembly that the rights guaranteed by those

provisions were not to apply to corporations but only to individual citizens. Take two of the rights guaranteed under Art. 19(1)(f) and (g). Can it be

suggested that a corporation which, let us assume, is Indian in every sense of its term - its shareholders are Indians, its directors are Indians, its

capital is Indian - that such a corporation should not have the right under clause (f) to acquire, hold and dispose of property, or under clause (g) to

practise any occupation, trade or business?

145. In The Assam Company Ltd. v. The State of Assam (A. I. R. 1953 Ass 177) the High Court of Assam proceeded to consider the claim for

protection of fundamental rights under Art. 19(1)(g) on the assumption that a corporation could seek to enforce those rights.

146. In Reserve Bank of India v. Palai Central Bank Ltd.(I. L. R. [1961] Kerala 166) Raman Nayar J. observed:

Many of the rights in Art. 19(1) and, in particular those in clauses (f) and (g) thereof, are capable of enjoyment by companies. Our Constitution-

makers could not have been unaware of the existence of legal persons. By Article 19(1)(c) they gave all ""citizens the right to form associations and

unions, and it could not have been their intention that the corporate bodies so formed by citizens, should be denied the rights guaranteed to the

individual citizens, in particular that the agencies through which a substantial portion of their business is conducted by the citizens of this country and

a considerable portion of their property held, should not have the protection of clauses (f) and (g).

That would mean a denial of the fundamental rights to property and occupation not merely to companies but to all corporate bodies even though

they may be Indian in every sense of the term, their members Indian, directors Indian, and capital Indian, a denial which virtually amounts to a

denial of those fundamental rights to the citizens who (though, of course, different persons) really constitute those bodies.

147. The Palai Central Bank"s case was carried to this Court in appeal, and the Court entered upon an exhaustive discussion of the complicated

questions raised therein, instead of disposing of the appeal on the limited ground that the Palai Bank was not a citizen and could not claim any

fundamental rights under Art. 19(1)(f) and (g): 283107.

148. It was submitted that he alone can be a citizen who can take an oath of allegiance to the State because the bond of citizenship arises by virtue

of the allegiance which the citizen bears to the State. Municipal laws of various States do insist upon an oath of allegiance being taken on

naturalisation, but the actual swearing of an oath of allegiance is not one of the conditions which go to make or constitute the right of citizenship.

Children of Indian citizens become citizens by their birth and taking of oath or even capacity to swear an oath of allegiance is not predicated as a

condition of citizenship. If allegiance may be presumed from birth and the requirement of taking a formal oath of allegiance is not a condition of

citizenship the law proceeding upon a presumption of allegiance in respect of natural persons, I see no reason why such a presumption of allegiance

may not be made in respect of artificial persons like corporations.

149. It was also submitted that corporations are incapable of rendering military service, or to assist in the maintenance of peace when called upon

to serve the State. But that again, in my view, is not a ground on which the rights of citizenship could be denied. Incapacity to render service may

arise on account of diverse causes such as infancy, physical or mental incapacity, and such incapacity in the case of natural person will not deprive

him of the rights of citizenship. By reason of their constitution, artificial persons are incapable of rendering service - military or civil - but that may

not by itself be a ground for holding that they cannot be citizens. If the corporations or artificial persons can be regarded as nationals of the State

where they are incorporated and if they are permitted to exercise the various functions for which they are constituted and no prohibition is imposed

upon them in the enforcement of the rights similar to those which are enforceable by natural persons who are citizens, notwithstanding the special

character of the corporations and their incapacity to perform duties or to exercise such other rights which natural persons may possess, it will not

be a ground for depriving them of the rights of citizenship for enforcing the fundamental rights under Art. 19.

150. Two views are presented before us as to the meaning of the expression ""citizen" used in Art. 19(1). On the one hand it is said that a citizen is

a person natural or artificial who is entitled to all the rights which are capable of being enjoyed by the citizens under the municipal law as

distinguished from persons who are aliens or persons who are not competent to exercise such rights. The distinction, according to this view, springs

from the capacity to exercise the rights - whether the body which exercises the rights is a natural person or an artificial person. The other view is

that citizens are only natural persons who being national and not aliens are under the municipal law competent to exercise all the rights which the

State permits. This view proceeds on the assumption that an artificial person can never be a citizen and it is only the natural persons who can be

citizens. But having regard to the privileges and duties of nationals competent by the municipal law to exercise full political and civil rights, and also

having regard to the fact that companies invested with important fundamental rights like equality before law, protection against taking of property

without authority of law, protection against acquisition of property without payment of compensation or without public purpose, protection from

imposition of taxes for sectional purposes, and also having regard to the fact that the companies are persons by their constitution and by the

recognition afforded to them are competent to hold property and to dispose of property and to carry on trade, business, vocation or occupation

and are protected from levy of taxes without authority of law and are guaranteed the freedom of trade, commerce and inter-course it would be

difficult to hold that the expression ""citizen"" used in Art. 19 was intended to have a restricted meaning of one who is a natural person.

151. The alternative argument submitted by Mr. Setalvad based upon the decision of the Bombay High Court in 468800 need not then be

considered in any detail. Chagla, C.J., in delivering the judgment of the Court relying upon a number of cases which arose under Art. 3 section 2 of

the Constitution of the United States of America expressed the view that it was open to the Court ""to tear the corporate veil"" and to look behind it

and if all the shareholders of the corporation are found to be citizens, the corporation should not be denied the fundamental rights which each of the

shareholders has under Art. 19(1)(g) of the Constitution. In reaching that conclusion the learned Chief Justice relied upon the observation made by

Mukherjea J., In 281675 which have already been set out. I am however unable to agree with the principle enunciated by the learned Chief

Justice. A corporation is distinct from the shareholders who constitute it. The theory of corporate existence independent of shareholders, and its

capacity to exercise rights has been built on Salomon v. Saloman and Company Ltd. L.R. (1897) A.C. 22.. The rights and obligations of the

company are different from the rights and obligations of the shareholders. By action taken against the company, the shareholders may be indirectly

affected because their interest in the capital of the company is reduced. But action taken against the company does not directly affect the

shareholders. The company in holding its property and carrying on its business is not the agent of the shareholders. Mukherjea J. in 281675

pointed out the difference in the passage already quoted between the rights of the company and the shareholders. Even if a company consists of

shareholders who are all Indian citizens, the company has still a distinct personality and an infringement of the rights of the company alone will not

furnish a cause of action to the share holders. The doctrine of what is called ripping open the Corporate veil was evolved by American jurists in

dealing with cases under the ""diversity of jurisdiction"" clause to enable companies constituted within one State to have recourse to the Federal

Courts in respect of disputes arising in other States as citizens. If the company is not a citizen it would be difficult to found a claim upon this

doctrine attributing the status of citizenship to the company relying upon the status of its shareholders and thereby to enforce rights of the

shareholders as if they were the fundamental rights of the Company. In enforcing the rights of the shareholders, as if they were the rights of the

company as envisaged by Chagla C.J., numerous practical difficulties may arise. Suppose in the case of a company a substantial number of

shareholders though not the majority are aliens, would it be possible for the Court to attribute right of citizenship to the company relying upon the

citizenship of some of its members so as to enable it to enforce fundamental rights under Art. 19 ? Similarly in a case where a company

incorporated in India may have a majority of its shareholders aliens. Would it be possible for the Court to enter upon an enquiry and to deny the

rights of citizenship notwithstanding the place of its incorporation, because a majority of its members are aliens? The shareholding may vary from

time to time: to-day the shareholding of aliens may exceed the shareholding of citizens and the next day the position may be revised. Can it be said

that the company goes on changing its citizenship, according as the shareholding fluctuates between nationals and aliens? If the place of

incorporation and the center of management of its affairs do not confer right of citizenship upon the company, it would be impossible to project the

citizenship of the shareholders upon the company so as to enable it to claim this reflected right and on that basis to claim relief for breach of

fundamental rights.

152. The first part of the second question raises what is essentially a question of fact. The State Trading Corporation was, on the date of the

petition, functioning under the direct supervision of the Government of India, the shareholding was in the names of the President and two

Secretaries to the Government and its entire subscribed capital was contributed by the Government of India. But it is a commercial body,

incorporated as the Memorandum of Association indicates to organise and undertake trade generally with State Trading countries as well as other

countries in commodities entrusted to it for such purpose by the Union Government from time to time and to undertake purchase, sale and

transport of such commodities in India or any where else in the world and to do various acts for that purpose. The Articles of Association make

minute provisions for sale and transfer of shares, calling of general meetings, procedure for the general meetings, voting by members, Board of

Directors and their powers, the issue of dividend, maintenance of accounts and capitalisation of profits. The State Trading Corporation has been

constituted not by any special statute or charter but under the Indian Companies Act as a Private Limited Company. It may be wound up by order

of a competent Court. Though it functions under the supervision of the Government of India and its Directors; it is not concerned with performance

of any governmental functions. Its functions being commercial, it cannot be regarded as either a department or an organ of the Government of

India. It is a circumstance of accident that on the date of its incorporation and thereafter its entire share-holding was held by the President and the

two Secretaries to the Government of India.

153. Strong reliance was sought to be placed upon the decision of the House of Lords in Bank Voor Handel En Scheepvasrt N.V.

Administration of Hungarian Property (1954) L.R. 584. in support of the contention that the State Trading Corporation, which is the first petitioner

in this case, was merely an agent of the Government of India. That was a case in which after the invasion of Holland in 1940, certain stocks of gold

belonging to a Dutch banking corporation in London were transferred to the Custodian of Enemy Property, who sold the same and invested and

re-invested the proceeds. These investments were subsequently transferred to the Administrator of Enemy Property in the erroneous belief that

they were the property of a Hungarian national. After the termination of hostilities the Bank obtained judgment for recovery of the proceeds of sale,

together with interest or other profits earned thereon. During the management of the Custodian, tax was paid to the British Treasury on the income

received by him by the sale of the stocks of gold but the Bank claimed that it was entitled to recover a sum equivalent to an amount assessed on

the Custodian as tax in respect of the income of the invested proceeds of sale and paid by him. The House of Lords by a majority held that if the

Custodian had asserted Crown immunity, he would not have been obliged to pay tax on the income, for the Custodian was a servant or agent of

the Crown and under the "trading with the enemy legislation" the Crown had sufficient interest to enable it to invoke immunity from tax if it chose to

do so even if the Crown had no beneficial interest in the income. The principle of that case, in my judgment, has no application in the present case.

The Custodian who was constituted a Corporation sole was regarded by the House of Lords as entitled in the circumstances of the case to Crown

immunity from payment of income tax.

154. The question whether the corporation either sole or aggregate is an agent or servant of the State must depend upon the facts of each case. In

the absence of any statutory provision a commercial corporation acting on its own behalf, even if it is controlled wholly or partially by a

Government Department, will be presumed not to be a servant or an agent of the State. The fact that a Minister appoints the members of the

Corporation and is entitled to call for information and to supervise the conduct of the business, does not make the Corporation an agent of the

Government. Where, however, the Corporation is performing in substance governmental, and not commercial functions an inference that it is an

agent of the Government may readily be made.

155. In Tamlin v. Hannaford L.R. (1950) 1 K.B. 18 a house had vested by the operation of the Transport Act, 1947, in the British Transport

Commission and the question arose whether the house could be regarded as owned by the Crown and administered by the British Transport

Commission as Crown"s agent. Denning L.J., pointed out that the Minister of Transport had extensive powers over the British Transport

Commission. The Minister had powers as great as those of a man who holding all the shares in a private company possesses. He appointed the

Directors i.e. the Members of the Commission and fixed their remuneration. They were bound to give him the information he wanted, he was

entrusted with power to give directions of a general nature, in matters which appeared to him to affect the national interest, as to which he was the

sole judge and the Commissioners were bound to obey him. Notwithstanding these great powers the Corporation could not be regarded as an

agent of the Minister any more than the Company is the agent of the share-holders or even of the sole shareholder. Denning L.J., observed:

In the eye of the law, the corporation is its own master and is answerable as fully as any other person or corporation. It is not the Crown and has

none of the immunities or privileges of the Crown. Its servants are not civil servants, and its property is not Crown property. It is as much bound

by Acts of Parliament as any other subject of the King. It is, of course, a public authority and its purposes, no doubt, are public purposes, but it is

not a government department nor do its powers fall within the province of government.

156. The assumption underlying the second question that a department and organ of the Union or the State even if it is entitled to be called a citizen

cannot claim to enforce fundamental rights under Part III of the Constitution against the ""State"" as defined in Art. 12 thereof needs to be examined.

Assuming that the State Trading Corporation is a department or organ of the Government of India, it is not still seeking to enforce any fundamental

rights against the Union of India (UOI); it is seeking to enforce its rights against the State of Andhra Pradesh. By Art. 12 of the Constitution the

union as well as the state of Andhra Pradesh are States. Assuming that the State Trading Corporation be regarded as "the State" within the

meaning of Art. 12 of the constitution, if it be regarded as a citizen there is nothing in Art. 19 which prohibits enforcement by the citizen of the

fundamental rights vested in it. For the application of Art. 19, two conditions are necessary - (1) that the claimant to the protection of the right must

be a citizen and (2) that the right infringed must be one of the fundamental freedoms mentioned in Art. 19. If these two conditions are fulfilled, the

citizen would, in my judgment, be entitled subject to the restrictions imposed by the Article to enforce the rights against their infringement by action

executive or legislative by any Government or the Legislature of the Union or the State and all local or other authorities within the territory of India

or under the control of the Government of India. There is no warrant for restricting the enforcement of these rights on some implication that an

agent or servant of the State if or it be a citizen cannot enforce the fundamental rights against another body which can be regarded also as a State

within the meaning of Art. 12 of the Constitution.

157. In my view, therefore, the first question should be answered in the affirmative, and the first part of the second question in the negative. The

answer to the second part of the second question will be as follows : even if the State Trading Corporation be regarded as a department or organ

of the Government of India, it will, if it be a citizen competent to enforce fundamental rights under Part III of the Constitution against the State as

defined in Art. 12 of the Constitution.