(1986) 01 BOM CK 0049

Bombay High Court

Case No: Writ Petition No. 2251 of 1984

Bennett Coleman and Company Ltd. and Another		APPELLANT
	Vs	
Union of India (UOI) and Others		RESPONDENT

Date of Decision: Jan. 31, 1986

Acts Referred:

- Constitution of India, 1950 - Article 14, 19, 19(1), 31C, 39
- Monopolies and Restrictive Trade Practices Act, 1969 - Section 2, 21, 22

Citation: AIR 1986 Bom 321

Hon'ble Judges: Pendse, J

Bench: Single Bench

Advocate: K.K. Venugopal, J.J. Bhatt and D.D. Madon, instructed by Kanga and Company, V.D. Govilkar, for the Appellant; D.R. Dhanuka, M.I. Sethna, C.J. Shah and Shankararamkrishnan, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Pendse, J.

This petition involves an important question relating to Constitutional validity of Sections 21 and 22 read with Section 2(r) of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as the "Act")--in its application to an Undertaking connected with the publication of Newspaper. The petitioners challenge the validity of these provisions on the ground of violation of fundamental rights conferred under Article 19(1)(a) of the Constitution of India.

The petitioner No. 1 is a joint stock company governed by the provisions of the Companies Act, 1956 and has its registered office at The Times of India Building, Bombay, while respondent No. 2 is a shareholder and Executive Director of

petitioner No. 1. The "Times of India" is published by petitioner No. 1 from New Delhi, Bombay and Ahmedabad and Hindi Newspaper "Nav Bharat Times" is published from New Delhi and Bombay. Jansevak Karyalaya Limited of 8 Camac Street, Calcutta (hereinafter referred to as "Jansevak") decided to establish and commission a modern printing press with photo composing and offset printing facilities at Lucknow. In the year 1983, Jansevak started negotiations with petitioner No. 1 with regard to the printing and publishing of editions of Times of India and Nav Bharat Times from Jansevak''s press to be established at Lucknow. The negotiations resulted into agreements which are recorded in three agreements dated July 30, 1983, June 4, 1983 and October 1, 1983. In pursuance of the agreements, necessary applications were made under the Press and Registration of Books Act, 1867, and thereafter the first issue of Times of India in English and Nav Bharat Times in Hindi was published from Lucknow from October 17, 1983. The City Magistrate at Lucknow who was the relevant authority under the Press and Registration of Books Act, and respondent No. 3, the authority concerned with the enforcement of the provisions of the Act, received complaint from several parties alleging that the petitioner No. 1 had violated the provisions of the Press and Registration of Books Act and the Monopolies and Restrictive Trade Practices Act. Thereupon the City Magistrate commenced proceedings under the Press and Registration of Books Act, but those proceedings were stayed in view of the Writ Petition filed by Jansevak in the High Court of Calcutta. The interim relief granted in that petition was challenged before the Division Bench of the Calcutta High Court, but was confirmed with slight modification. The matter was thereafter carried to the Supreme Court and though the interim relief was confirmed, the Supreme Court permitted the authorities under the Act to proceed with the enquiries under the Monopolies and Restrictive Trade Practices Act.

2. The respondent No. 3 had addressed letter dated October 5, 1983 to petitioner No. 1 communicating about the complaints received in respect of violations of provisions of the Act and the petitioners were asked to explain the reason why prior approval u/s 22 of the Act for setting up new Undertaking at Lucknow was not secured. The petitioners sent reply on October 13, 1983 denying that any new Undertaking was established at Lucknow and the provisions of Section 22 of the Act were violated. The respondent No. 3 thereafter served show cause notice dated November 30, 1983 upon the petitioners to show cause why penal action should not be taken under the provisions of the Act for violation of the requirements of the Act. After the petitioners gave reply, the respondent No. 2 by order dated July 20, 1984 held that petitioner No. 1 and Jansevak were interconnected undertakings in terms of Section 2(g)(i) and Explanation l(i) of the Act. The respondent No. 2 held that though there was no common ownership, the petitioner No. 1 purported to control Jansevak. It was also held that Jansevak was merely acting on behalf of petitioner No. 1. On the strength of these findings, the respondent No. 2 concluded that Section 22 of the Act is clearly applicable to the facts of the case and the action of

the Company and its Officers was in violation of the provisions of Section 22 of the Act. A copy of this order is annexed as Ex. ''M'' to the petition.

As a consequence of the finding recorded by respondent No. 2, a show cause notice dated August 4, 1984 was served by respondent No. 3 on petitioner No. 1 to show cause why penal action should not be taken against the Company and its officers under the provisions of Section 46 read with Section 53 of the Act for the violation of the provisions of the Act. The petitioner No. 1 complains that they learnt from the Officers of the respondents that the decision has already been taken to confirm the show cause notice and to proceed with the filing of the complaint and after realising that fact the petitioners have approached this Court on October 29, 1984 by filing this petition under Article 226 of the Constitution of India.

3. The petitioners claim that the expression "service" has been defined u/s 2(r) and includes service in connection with purveying of news or other information and thereby en Undertaking which performs service of publication of newspapers is brought within the sweep of the Act. The petitioners complained that the provisions of Sections 21 and 22 required that the Undertaking must seek prior permission of the Central ! Government for expansion of the Undertakings and establishment of new Undertakings and this pre-restraint on the expansion of newspapers directly affecting circulation violates Article 19(1)(a) of the Constitution of India. The petitioners also I assert that the inclusion of the Act in the Ninth Schedule in pursuance of the powers conferred by Article 31B of the Constitution of India is illegal and the Constitutional Amendment in so far as it seeks to include the Act is violative of the basic structure of the Constitution of India. The petitioners claim that Article 31C cannot save the validity of the Act as the said Article was incorporated with effect from April 20, 1972 and as the Act is pre-Article 31C, the protection of Article 31C is not available. The petitioners claim a declaration that the precisions of Sections 21 and 22 of the Act are not applicable to the Undertaking in respect of publication of newspaper. The petitioners also made an alternate claim that in case, the Constitutional challenge is not accepted, then the order passed by respondent No. 2 and copy of which is annexed as Ex. ''M'' to the petition is not correct.

4. In answer to the petition, D. J. Biswas, Regional Director, Company Law Board, Government of India, has filed return sworn on January 25, 1985 and it is claimed that the challenge to the vires of the provisions of the Act is wholly misconceived as the said Act is immune by reason of Article 31C of the Constitution of India. It is further claimed that the Act has been enacted for giving effect to the policies of the State towards securing directive principles under Article 39(b) and (c) of the Constitution of India and, therefore, the challenge to the Act is not permissible. The respondents further claim that the Act is also protected and is immune from the challenge by reason of Article 31B read with item No. 91 of the Ninth Schedule to the Constitution. The respondents further claimed that the enactment of the Legislation was with the object that the operation of the economic system does not

result in the concentration of economic power to the common detriment, for control of monopolies and for prohibition of monopolies and restrictive trade practices and the petitioner No. 1 have got themselves registered u/s 27 of the Act and as such estopped from challenging the validity of the Act. The return relies upon the decisions of American Court to claim that it is permissible for the Legislature to put restrictions or regulations on the Monopolistic Undertakings including the Newspapers and such restrictions would not violate freedom of press.

5. Before adverting to the contentions urged, it would be appropriate to make reference to some of the provisions of the Act. The Act received the assent of the President on December 27, 1969 and came into force with effect from June 1, 1970. The statement of objects and reasons sets out that the Bill is designed to ensure that the operation of the economic system does not result in the concentration of economic power to the common detriment. The preamble of the Act sets out that the Act was enacted to provide that the operation of the economic system does not result in the concentration of economic power to the common detriment, for the control of monopolies, for the prohibition of monopolistic and restrictive trade practices and for matters connected therewith or incidental thereto. Section 2 is a definition section and Section 2(4) defines expression "service" as follows :

" "Service" means service of any description which is made available to potential users and includes the provision of facilities in connection with Banking, financing, insurance, transport processing, supply of electrical or other energy, board or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service."

The expression "undertaking" is defined u/s 2(v) of the Act and, inter alia, means an enterprise which is engaged in the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind. The expression "inter-connected undertakings" is defined under. Section 2(g) of the Act and means two or more undertakings which are inter-connected With each other in the manner set out in the sub-section. Chapter III of the Act deals with the subject of Concentration of Economic Power and is divided in three parts, Part A covering Section 20 to Section 26. Section 20 prescribes that Part A shall apply to an undertaking if the total value of the assets of the undertaking or the assets of such undertaking together with the assets of its inter-connected undertakings is not less than twenty crores of rupees. Section 21 of the Act prescribes that where the owner of an undertaking to which this Part applies proposes to substantially expand the activities, then such owner shall before taking any action to give effect to such expansion, shall give to the Central Government notice, in the prescribed form. Sub-section (2) of Section 21 of the Act restrains the owner of the Undertaking from giving effect to the expansion unless the proposal has been approved by the Central Government. Section 22 of the Act prescribes that no person or authority, other

than Government, shall establish any new undertaking which, when established, would become an inter-connected undertaking of an undertaking to which this part applies, or add any new unit or division to an undertaking to which this Part applies except under, and in accordance with the previous permission of the Central Government. Section 26 of the Act demands that the undertaking to which this Part applies shall register with the Central Government. Section 28 in Part "C" of Chapter III deals with matters to be considered by the Central Government before according approval, for expansion of undertaking or establishment of an undertaking, and Section 55 of the Act provides that any person aggrieved by the decision or order made by the Central Government under Chapter III can file an appeal within 60 days from the date of the order to the Supreme Court on one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908. In other words, an appeal is provided on a substantial question of law against the order refusing approval for expansion of undertaking or setting up of a new undertaking.

6. Shri Venugopal, learned counsel appearing on behalf of the petitioners, submitted that the provisions of Sections 21 and 22 of the Act read with Section 2(r) of the Act require undertakings connected with publications of newspapers and purveying of news and other information to seek prior approval of the Central Government for expansion of the existing undertaking or establishment of the new undertaking and thereby infringes on the fundamental rights conferred under Article 19(1)(a) of the Constitution of India. The learned counsel argued that the freedom of press is the basic feature of the Constitution of India and cannot be truncated on any ground other than for the purposes mentioned in Article 19(2). It was urged that requiring the petitioners to seek prior approval of the Central Government imposes pre-restraint on the expansion of the newspaper and thereby directly affects its circulation and hence violates Article 19(1)(a) of the Constitution of India. The learned counsel urged that the Act is legislation passed in public interest for preventing concentration of economic power and not for any purposes mentioned in Article 19(2) and, therefore, the restrictions may be valid and permissible under Article 19(6) in respect of right under Article 19(1)(g), but cannot be sustained in respect of right under Article 19(1)(a). The learned counsel urged that the question is no longer res Integra, as three decisions of the Supreme Court have concluded the issue.

7. Article 19(1)(a of the Constitution of India ensures that all citizens shall have the right of freedom of speech and expression. The freedom of press does not find express mention in Clause (a), but it is well settled that freedom of the press is part of the right of speech and expression and is covered by Article 19(1)(a). The freedom of the press is nothing but an aspect of freedom of speech and expression and it partakes of the same basic nature and character and is indeed an integral part of free speech and expression. Freedom of press is the most cherished and valued freedom in a democracy and the democracy cannot survive without a free press. In absence of a free and independent press, free debate and open discussion is not

possible and so also the process of generating thoughts Would be stifled. The fundamental right of freedom of press is not absolute and is subject to restriction set out under Article 19(2) of the Constitution of India which reads as under :

"Nothing in Sub-clause (a) of Clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relation with foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence."

8. It is well-settled that there could not be restrictions on the enjoyment of right of freedom of speech and expression save and except to achieve the object set out under Article 19(2) of the Constitution of India. Article 19(1)(g) confers a fundamental right to practice any profession, or to carry on any occupation, trade or business. Article 19(6) prescribes that nothing in Sub-clause (g) shall affect the operation of any existing law in so far as it imposes reasonable restrictions on the exercise of the right. It is not in dispute that it is permissible for the State to make any law to impose restriction on the enjoyment of fundamental right conferred under Article 19(1)(g) if such restriction is in the interest of general public. It is, therefore, open for the State to enact legislation to impose restriction on the right to carry out trade or business, even in respect of running a news publication undertaking, provided such restriction is in the interest of general public. It is now well-settled that the fundamental right of freedom of press conferred under Article 19(1)(a) cannot be controlled or fettered with, with reference to the provisions of Article 19(6) of the Constitution of India.

9. With this background, it would not be appropriate to refer to three decisions of the Supreme Court, which according to the petitioners settle the issue about the Constitutional validity of Sections 21 and 22 of the Act in relation to the newspaper industry. The first decision of the Supreme Court is in the case of Sakal Papers (P) Ltd. and Others Vs. The Union of India (UOI), where the Constitutional validity of the Newspaper (Price and Page) Act, 1956 and Daily Newspaper (Price and Page) Order, 1960 was questioned. The newspaper "Sakal" which had a net circulation of 52,000 copies on week days and 56,000 copies on Sundays, used to publish daily edition of six pages for five days in a week and four pages on one day and this daily edition was priced at 7 np. The Sunday edition consisted of ten pages and was priced at 12 np. About 40 per cent of the space in the newspaper was taken up by advertisements and the rest was devoted to news, articles, features, views etc. The effect of the Act under challenge and of the impugned order was to regulate the number of pages according to the price charged, prescribe the number of supplements to be published and prohibit the publication and sale of newspapers in contravention of any order made under the Act. The Act also provided for regulating by an Order, the sizes and area of advertising matters contained in a newspaper.

Penalties were also prescribed for contravention of the provisions of the Act or Order. The restrictions imposed by the Act and the order were challenged as violative of the Constitutional guarantee conferred under Article 19(1)(a) and the challenge was resisted on behalf of the State claiming that the prices charged for newspaper in relation to their pages were regulated to prevent unfair competition amongst newspapers as also to prevent the rise of monopolistic combines, so that newspapers may have fair opportunities of freer discussion. The State while admitting that by the operation of the impugned order, a limitation is placed on the space which a newspaper would be able to devote to the propagation of its ideas and to news, claimed that it would be open to the newspapers to increase the space by raising the price. The State also claimed that even if the circulation is adversely affected, the fundamental rights guaranteed by Article 19(1)(a) will not be infringed. The challenge was also resisted on the ground that the legislation in question does not directly or indirectly deal with the subject of freedom of speech and expression, and that consequently question of violation of provisions of Article 19(1)(a) does not arise. The Supreme Court unanimously turned down the contentions urged on behalf of the State. The Supreme Court relying upon its earlier decision in the case of Brij Bhushan and Another Vs. The State of Delhi, observed that restrictions on freedom of press are permissible only under certain circumstances set out in Article 19(2) and the impugned Act and the Order could not be justified by any of the circumstances set out in that clause. The Supreme Court observed :
"The right to propagate one''s ideas is inherent in the conception of freedom of speech and expression. For the purpose of propagating his ideas every citizen has a right to publish them, to disseminate them and to circulate them. He is entitled to do so either by word of mouth or by writing. The right guaranteed thus extends, subject to any law competent under Article 19(2), not merely to the matter which he is entitled to circulate, but also to the volume of circulation. In other words, the citizen is entitled to propagate his views and reach any class and number of readers as he chooses subject of course to the limitations permissible under a law competent under Article 19(2)."

Mr. Justice Mudholkar, speaking for the Court, further observed in Paragraph 29 of the Judgment that the Court must interpret the Constitution in the manner which would enable the citizen to enjoy the rights guaranteed by it in the fullest measure subject, of course, to permissible restrictions. It was then observed :

"Bearing this principle in mind it would be clear that the right to freedom of speech and expression carries with it the right to publish and circulate one''s ideas, opinions and views with complete freedom and by resorting to any available means of publication, subject again to such restrictions as could be legitimately imposed under Clause (2) of Article 19. The first decision of this Court in which this was recognised is Romesh Thappar Vs. The State of Madras, There, this Court held that freedom of speech and expression includes freedom of propagation of ideas and

that this freedom is ensured by the freedom of circulation. In that case this Court has also pointed out that freedom of speech and expression are the foundation of all democratic organisations and are essential for the proper functioning of the processes of democracy. There and in other cases this Court pointed out that very narrow and stringent limits have been set to permissible legislative abridgment of the right of freedom of speech and expression. In State of Madras Vs. V.G. Row, , the question of the reasonableness of restrictions which could be imposed upon a fundamental right has been considered. This court has pointed out that the nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed the extent and scope of the evil sought to be remedied thereby, the disproportion of the imposition and the prevailing conditions at that time should all enter into the judicial verdict. In Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others, , this Court has pointed out that in construing the Constitution it is the substance and the practical result of the act of the State that should be considered rather than its purely legal aspect. The correct approach in such cases should be to enquire as to what in substance is the loss or injury caused to the citizen and not merely what manner and method has been adopted by the State in placing the restriction. In Virendra Vs. The State of Punjab and Another, this Court has observed at p. 319 (of SCR) : (at p. 900 of AIR), as follows :

"It is certainly a serious encroachment on the valuable and cherished right of freedom of speech and expression if a newspaper is prevented from publishing its own or the views of its correspondents relating to or concerning what may be the burning topic of the day."

While dealing with the.contention of the State that there were two aspects of the activities of the newspapers -- the dissemination of the news and views and the commercial aspect and these two aspects are different from one another and restrictions can be placed on the latter right under Clause (6) of Article 19 of the Constitution in the interest of general public, the Supreme Court held that it may well be within the power of the State to place, in the interest of general public, restrictions on the rights on a citizen to carry on business, but it is not open to the State to achieve this object by directly and immediately curtailing any other freedom of that citizen guaranteed by the Constitution and which is not susceptible of abridgment on the same grounds as are set out in Clause (6) of Article 19. The right of freedom of speech cannot be taken away with the object of placing restrictions on the business activities of the citizen and if a law directly affecting it is challenged, it is no answer that the restrictions enacted by it are justifiable under Clauses (3) to (6) of Article 19. The scheme of Article 19 is to enumerate different freedoms separately and then to specify the extent of restrictions to which they may be subjected and the objects for securing which this could be done. A citizen is entitled to enjoy each and every one of the freedoms together and Clause (1) does not prefer one freedom to another. It follows from this that the State cannot make a law which directly restricts

one freedom even for securing the better enjoyment of another freedom.

The question before the Supreme Court was whether the impugned enactment directly infringes on the guarantee of freedom of speech and expression and the Supreme Court observed :

"It would directly infringe on this freedom either by placing restraint upon it or by placing restraint upon something which is an essential part of that freedom. The freedom of a newspaper to publish any number of pages or to circulate it to any number of persons is each an integral part of the freedom of speech and expression and the restraint placed upon either of them would be a direct infringement of the right of freedom of speech and expression."

The Supreme Court then observed that the object of the impugned legislation is to regulate something which is directly related to the circulation of a newspaper, and since circulation of a newspaper is a part of the right of freedom of speech, the Act must be regarded as one affecting that freedom. The Act has selected the fact or thing which is an essential and basic attribute of the concept of the freedom of speech, viz., the right to circulate one''s views to all whom one can reach or care to reach for the imposition of a restriction. The Supreme Court observed that the law in question was made upon the recommendation of the Press Commission but since its object is to directly affect the right of circulation of newspapers which would necessarily undermine their power to influence public opinion, it can be regarded as a dangerous weapon which is capable of being used against democracy itself. Finally, dealing with the contention that the object of the Act was to prevent monopolies, the Supreme Court observed :

"It was argued that the object of the Act was to prevent monopolies and that monopolies are obnoxious. We will assume that monopolies are always against public interest and deserve to be suppressed. Even so, upon the view we have taken that the intendment of the Act and the direct and immediate effect of the Act taken along with the impugned order was to interfere with the freedom of circulation of newspapers the circumstance that its object was to suppress monopolies and prevent unfair practices is of no assistance."

10. The second decision of the Supreme Court on which strong reliance was placed on behalf of the petitioners is in the case of Bennett Coleman and Co. and Others Vs. Union of India (UOI) and Others, , where the challenge was to the Import Policy for Newsprint for the year April 1972 to March 1973. The import of newsprint was restricted under 1955 Import Order and its restriction was challenged as violative of Article 19. Justice Ray, as he then was, speaking for the Majority, referred to the earlier decisions of the Supreme Court including Sakal Papers (P) Ltd. and Others Vs. The Union of India (UOI), and observed that publication means dissemination and circulation and the press has to carry on its activity by keeping in view the class of readers, the conditions of labour, price of material, availability of advertisements,

size of paper and the different kinds of news comments and views and advertisements which are to be published and circulated. The law which lays excessive and prohibitive burden which would restrict the circulation of a newspaper will not be saved by Article 19(2). In paragraph 39 of the judgment, the Supreme Court accepted the contention that the tests of pith and substance of the subject matter and of direct and of incidental effect of the legislation are relevant to questions of legislative competence but they are irrelevant to the question of infringement of fundamental rights. It was observed :

"The true test is whether the effect of the impugned action is to take away or abridge fundamental rights. If it be assumed that the direct object of the law or action has to be direct abridgement of the right of free speech by the impugned law or action it is to be related to the directness of effect and not to the directness of the subject matter of the impeached law or action. The action may have a direct effect on a fundamental right although its direct subject matter may be different. A law dealing directly with the Defence of India or defamation may yet have a direct effect on the freedom of speech. Article 19(2) could not have such law if the restriction is unreasonable even if it is related to matters mentioned therein. Therefore, the word "direct" would go to the quality or character of the effect and not to the subject matter. The object of the law or executive action is irrelevant when it establishes the petitioner''s contention about fundamental right. In the present case, the object of the newspaper restrictions has nothing to do with the availability of newsprint or foreign exchange because these restrictions come into operation after the grant of quota. Therefore the restrictions are to control the number of pages or circulation of dailies or newspapers. These restrictions are clearly outside the ambit of Article 19(2) of the Constitution. It, therefore, confirms that the right of freedom of speech and expression is abridged by these restrictions."

The Supreme Court held that various provisions of the newsprint import policy directly controls the growth and circulation of newspapers and, therefore, violates Article 19(1)(a). It was further observed in Paragraph 75 of the judgment that restriction on the newspapers that they can use their quota to increase circulation but not the page number violates Articles 19 and 14. The Government could not determine which newspapers should grow in page and circulation and which newspapers should grow only in circulation and not in pages. Freedom of press entitles newspapers to achieve any volume of circulation and though requirements of newspapers as to page, circulation are both taken into consideration for fixing their quota, the newspapers should be thereafter left free to adjust page number and circulation as they wish in accordance with the dictates of Article 19(1)(a) of the Constitution. The Supreme Court observed that it is abridgment of the freedom of expression to prevent the common ownership unit from starting a new edition or a new newspaper.

11. The third decision of the Supreme Court is reported in , Indian Express Newspapers (Bombay) Private Ltd. v. Union of India, where the imposition of import duty and the levy of auxiliary duty on newsprint was challenged on the ground of infringement of the freedom of the press by imposing a burden beyond the capacity of the industry and also affecting the circulation of the newspapers and periodicals. Mr. Justice Venkataramiah, speaking for the Bench, observed that the expression "freedom of the press" has not been used in Article 19, but it is comprehended within Article 19(1)(a) and the expression means freedom from interference from authority which would have the effect of interference with the content and circulation of newspapers. There cannot be any interference with that freedom in the name of public interest. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments. Freedom of the press is the heart of social and political intercourse. It is the primary duty of the courts to uphold the freedom of the press and invalidate all laws or administrative actions which interfere with it contrary to the constitutional mandate. The Supreme Court approved the earlier decisions in Sakal Papers (P) Ltd. and Others Vs. The Union of India (UOI), and Bennett Coleman and Co. and Others Vs. Union of India (UOI) and Others, . The question before the Supreme Court was about the power of Parliament to levy tax on newsprints used by the Newspaper industry and it was held that freedom of speech and expression should receive a generous support from all those who believe in the participation of people in the administration and on account of this special interest, the approach of the Government should be more cautious while levying taxes on matters concerning newspaper industry than while levying taxes on other matters. It is true that this Court has adopted a liberal approach while dealing with fiscal measures as they were found to be in the public interest. While examining the taxes on the newspaper industry, the Court has to reconcile the social interest involved in the freedom of speech and expression with the public interest involved in the fiscal levies imposed by the Government specially because newsprint constitutes the body, if expression happens to be the soul.

It was urged on behalf of the petitioners that these three decisions of the Supreme Court conclude that it is not permissible for the State to put any fetters on the freedom of press save and except the restrictions permissible under Article 19(2) of the Constitution of India. The decisions also settle that any legislation passed in public interest and not for the purposes mentioned in Article 19(2) could not be saved if such legislation impeaches upon fundamental rights under Article 19(1)(a) and to that extent the legislation would be void. It is also settled that if the legislation imposes pre-restraint on the expansion of the newspapers directly affecting circulation, then the legislation to that extent would be violative of Article 19(1)(a). A legislation which imposes reasonable restriction in public interest on commercial or business aspects on publication of newspapers would be valid under Article 19(1)(g) and Article 19(6) of the Constitution but would be required to be

struck down if the direct effect of the legislation is to curtail circulation or expansion.

Shri Dhanuka, learned counsel appearing on behalf of the respondents, and Shri Govilkar, learned counsel appearing on behalf of the Intervener, submitted that apart from the reasonable restrictions that could be imposed on the freedom of press under Article 19(2), there could be other limitations in exercise of that freedom. It was urged that where a law is designed to regulate press as a business or as a Commercial undertaking or to curb the monopoly, such a law protects the freedom guaranteed under Article 19(1)(a) and there is no abridgment of freedom of speech and expression even if such law affects volume of desired circulation or unlimited circulation. It was urged that the impact of such legislation upon freedom of press is secondary and indirect. Shri Dhanuka also urged that where economic and tax measures like law of Monopoly and Restrictive Trade Practices, Labour and Social Welfare Legislations are enacted for industries as a whole including newspaper industry, then such legislation does not constitute abridgment of freedom of press. It is not possible to accept this line of argument advanced on behalf of the State in view of the dictum laid down by the Supreme Court in Sakal''s case. The Supreme Court clearly held that if a law directly affecting freedom of press is challenged, it is no answer that the restrictions enacted by it are justifiable under Clauses (3) to (6) of Article 19. It was also held in Sakal''s case that the object of legislation is to suppress monopolies and prevent unfair practices is not enough to save the legislation, if it interferes with the freedom of circulation of newspaper. In my judgment, the submission urged on behalf of the State cannot be entertained in view of the three decisions of the Supreme Court noticed hereinabove.

It was also urged by Shri Dhanuka that the provisions of the Act are regulative in character and the object of the Act, as set out in preamble, is to provide that the operation of the economic system does not result in the concentration of economic power to the common detriment and such legislation would not offend freedom of press. It was contended that Sections 21 and 22 of the Act affect only those undertakings whose assets are not less than twenty crores of rupees and if the legislation prescribed that such undertakings should secure prior permission of the Central Government before giving effect to the expansion of an undertaking or setting up of a new undertaking, then such regulation would not be unreasonable or arbitrary. It was further contended that Section 28 of the Act prescribes the guideline to be borne in mind by the Central Government before according approval for expansion or setting up of a new undertaking and Section 55 of the Act provides for an appeal to the Supreme Court against the order passed by the Central Government. These provisions, says Shri Dhanuka, merely regulate the operation of monopolistic undertakings and were not intended to encroach upon the freedom of press and would not directly affect the exercise of freedom. The submission urged by the learned counsel cannot be accepted. The Act is undoubtedly enacted with the object of controlling the economic system so as not to result in concentration of economic power to the common detriment and there was undoubtedly a need for

such legislation. The Act provides that monopolistic undertakings should not expand or should not set up a new establishment without the prior approval of the Central Government and this is undoubtedly a pre-restraint on such undertakings. The important question which requires determination is whether such pre-restraint to expand or circulate, in case of newspaper industry, is violative of Article 19(1)(a) and in determining this question, it is wholly irrelevant whether the Act is regulative in character or otherwise. It is undoubtedly true that the object and the subject of the impugned provisions is to regulate growth but in achieving that object, if legislation commits an inroad on the fundamental rights of freedom of press, then any such pre-restraint would be violative. The fact that the exercise of regulative powers is permitted only in accordance with the guidelines given under the statute and is also subject to an appeal is not enough to claim that it is unlikely that freedom of the press would be in danger. The question is not whether such powers would be exercised bona fide or otherwise, but whether existence of such powers and compulsion to submit to the power encroaches upon freedom of press. The answer is in affirmative. The decision in Bennett Coleman and Co. and Others Vs. Union of India (UOI) and Others, was approved in the case of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, and Mr. Justice Bhagwati, as he then was, observed in paragraph 68 of the judgment after referring to the Bennett Coleman''s case :

"The majority took the view that it was not the object of the newsprint policy or its subject matter which was determinative but its direct consequence or effect upon the rights of the newspapers and since "the effect and consequence of the impugned policy upon the newspapers" was direct control and restriction of growth and circulation of newspapers, the newsprint policy infringed freedom of speech and expression and was hence violative of Article 19(1)(a). The pith and substance theory was thus negatived in the clearest terms and the test applied was as to what is the direct and inevitable consequence or effect of the impugned State action on the fundamental right of the petitioner. It is possible that in a given case the pith and substance of the State action may deal with a particular fundamental right but its direct and inevitable effect may be on another fundamental right and in that case, the State action would have to meet the challenge of the latter fundamental right. The pith and substance doctrine looks only at the object and subject matter of the State action but in testing the validity of the State action with reference to fundamental rights, what the Court must consider is the direct and inevitable consequence of the State action. Otherwise, the protection of the fundamental rights would be subtly but surely eroded."

12. It is now necessary to ascertain whether the provisions of Sections 21 and 22 of the Act have a direct effect of violating the freedom of press. It was urged on behalf of the petitioners that prior approval is required to be secured for expansion of an Undertaking, as well as setting up of new undertaking, and though the guidelines are set out in Section 28 of the Act for consideration of the application for approval, it is open for the State to decline permission and thereby limit the circulation of the

newspaper or the growth of the newspaper. It was urged that requiring the newspaper to approach the Central Government for exercise of the fundamental right puts serious fetter on the newspaper. The submission is of considerable merit. The freedom of expression has various social purposes to serve. It helps an individual to attain self fulfilment, it assists in the discovery of truth, it strengthens the capacity of an individual in participating in decision-making and, it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. The concept of freedom of speech is not restricted to confirmation of a right upon the newspaper industry but also includes the people''s right. If the people are expected to participate in the administration, then any restraint on freedom of press should be looked down. In my judgment, the pre-restraint imposed by Sections 21 and 22 of the Act as far as the newspaper undertaking is concerned directly affects the circulation and growth and thereby violates the freedom of press. It is open for the State to enact legislation to curb monopolies and prevent concentration of economic power, but when such legislation has direct effect of infringing the freedom of press, then such legislation is required to be declared invalid in relation to the newspaper industry.

Shri Dhanuka relied upon certain observations in the Report of Second Press Commission, but in my judgment, those observations cannot save the vice of the Act in question. In my judgment, the submission urged on behalf of the petitioners that Section 2(r) and Sections 21 and 22 of the Act directly affect the expansion of the newspapers and, therefore, their circulation and infringes Article 19(1)(a) of the Constitution of India is correct and deserves acceptance.

13. Shri Dhanuka then urged by reference to certain American decisions that in United States of America, the Anti Trust Laws directed against restrictive and monopolistic practices in trade and commerce have been applied to newspaper. The United States of America Supreme Court held in Associated Press v. United Trust (1945) U. S. 325 that Anti-trust laws do not conflict with the freedom of the press guaranteed by the 1st amendment as that freedom does not confer the freedom to combine to keep out others from publishing newspapers. It was urged that if there is no exemption for the Newspaper Industry in United States of America and United Kingdom, then there is no justification for exempting the newspaper industry from the provisions of the Act in this country and the Court should not take out the newspaper from the ambit of the Act on alleged violation of the freedom of press. It is not possible to accept the submission of the learned counsel for more than one reason. In the first instance, it must be remembered that in United States of America, there is no prohibition to the growth of an industry as doctrine of laissez faire holds field, while in our country an unchecked and unregulated growth is not permitted as we are striving to achieve welfare society. A reference can be usefully made to the passage on Page 691 of the American Jurisprudence, 2nd Edition, Volume 54 :--

"There is no monopolization under 15 USC 2 if the defendant''s monopoly power grows or develops as a consequence of a superior product, business acumen, or historical accident. A corporation does not violate the Sherman Act by securing a dominant position as the result of the ability, ingenuity, intelligence, and industry of those who direct its activities, such as by offering a better product and furnishing better customer service."

Our Constitution desires to achieve the welfare Society and in achieving that object, some restrictions are called for but such restrictions cannot limit enjoyment of fundamental rights, unless specifically permitted by Constitution. Secondly, the Supreme Court has pointed out the danger of relying on American decisions while dealing with the exercise of fundamental rights including one under Article 19(1)(a) and reference can be usefully made to two decisions of the Supreme Court.

In the case of Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another, , it was observed in paragraph 21 of the judgment :

"The preamble to our Constitution, Article 13 and the language in which the fundamental rights have been enacted lead to one conclusion and one conclusion only that whatever be the position in America, no distinction can be drawn here, as has been attempted in the United States of America, between the fundamental rights which may be said to have been enacted for the benefit of the individual and those enacted in public interest or on grounds of public policy. Ours is a nascent democracy and situated as we are, socially, economically, educationally and politically, it is the sacred duty of the Supreme Court to safeguard the fundamental rights which have been for the first time enacted in Part III of our Constitution. The limitations on those rights have been enacted in the Constitution itself, e.g., Articles 19, 33 and 34. But unless and until we find the limitations on such fundamental rights enacted in the very provisions of the Constitution, there is no justification whatever for importing any notions from the United States of America or the authority of cases decided by the Supreme Court there in order to whittle down the plenitude of the fundamental rights enshrined in Part III of our Constitution."

In Kameshwar Prasad and Others Vs. The State of Bihar and Another, while dealing with the ambit of Article 19(1)(a), Mr. Justice Ayyangar, speaking for the unanimous Court, observed in paragraph 8 after citing the American decisions :

"As regards these decisions of the American Courts it should be biome in mind that though the First Amendment to the Constitution of the United States reading "Congress shall make no law .... abridging the freedom of speech ....." appears to confer no power on the Congress to impose any restriction on the exercise of the guaranteed right, still it has always been understood that the freedom guaranteed is subject to the police power --the scope of which however has not been defined with precision or uniformly. It is on the basis of the police power to abridge that freedom that the constitutional validity of laws penalising libels, and those relating

to sedition, or to obscene publications etc., has been sustained. The resultant flexibility of the restrictions that could be validly imposed renders the American decisions inapplicable to and without much use for resolving the questions arising under Article 19(1)(a) or (b) of our Constitution wherein the grounds on which limitations might be placed on the guaranteed right are set out with definiteness and precision."

It also cannot be overlooked that the conditions existing in the developed countries like United States of America and United Kingdom are not on par with the conditions in this country. In our country, radio and television -- the two important medias of communications are under the control of the State, and the only media of communication free from control, available to the citizens is the newspaper. In United States of America and United Kingdom, the radio and television are not under the absolute control of the State and these medias of communications reach the people and educate them, so also inform them of the news and views which are not necessarily favourable to the Government. In our country even the newspapers find it extremely difficult to reach every nook and the corner, and the people, majority of whom are below the poverty line, find it difficult to purchase the newspapers and educate themselves with what is happening all around them. In Indian Express Newspaper''s case. , Mr. Justice Venkataramiah observed that the purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments. The newspapers are purveyors of news and views having a bearing on public administration and very often carry material which would not be palatable to Governments and other authorities. Over the years, Governments in different parts of the world have used diverse methods to keep press under control, and laws providing for pre-censorship, seizures, interference with the transit of newspapers, imposition of restriction on the price of newspapers, on the number of pages of newspapers and the area are enacted. It is with a view to checking such malpractices which interfere with free flow of information, democratic constitutions all over the world have made provisions guaranteeing the freedom of speech and expression laying down the limits of interference with it. The Supreme Court held that it is, therefore, primary duty of all the national courts to uphold the said freedom and invalidate all laws or administrative actions which interfere with it, contrary to the constitutional mandate. In face of the dictum laid down by the Supreme Court, it is futile for the State to claim that reliance should be placed on the practice prevailing in United States of America and United Kingdom and ignore the violation of freedom of press brought about by provisions of Sections 21 and 22 of the Act in connection with the newspaper undertakings. Shri Dhanuka sounded an apprehension that the monopolistic undertakings having economic power and strength would misbehave and thereby endanger the democracy. The apprehension of the learned counsel is without any foundation and, in any event, it would be inappropriate for the State to overlook what Pandit Jawaharlal Nehru has observed :

"I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed or regulated press."

14. Shri Dhanuka then urged that the Act was enacted to achieve directive principles incorporated in Article 39(c) which requires the State to direct its policy towards securing that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. The learned counsel argued that as the Act was enacted to give effect to the policy of the State towards securing the principles laid down in Article 39(c), the legislation has got a protective umbrella of Article 31C and it is not open for the petitioners to claim that the legislation or part of it is void on the ground that it abridges the rights conferred under Article 19. It is not possible to accept the submission of the learned counsel. Article 31C was inserted by the Constitution (Twenty-fifth Amendment) Act, 1971, and came into operation with effect from April 20, 1972. The Monopolies and Restrictive Trade Practices Act, 1969 received assent of the President on December 27, 1969 and came into force on June 1, 1970 and, it is, therefore, obvious that the protective umbrella of Article 31C was not available on the date when the Act came into force. It is now well-settled that if the legislation is void being violative of the rights conferred by Article 14 or Article 19 on the date of its enactment, then the vice cannot be overlooked by reference to Article 31C which was not available on the date of enactment of the legislation. A reference can be usefully made in this connection to two decisions of the Supreme Court. In the case of Mahendra Lal Jaini Vs. The State of Uttar Pradesh and Others, while examining the doctrine of eclipse, it was held :

"Article 13(2) on the other hand begins with an injunction to the State not to make a law which takes away or abridges the rights conferred by Part III. There is thus a constitutional prohibition to the State against making laws taking away or abridging fundamental rights. The legislative power of Parliament and the Legislatures of States under Article 245 is subject to the other provisions of the Constitution and therefore subject to Article 13(2), which specifically prohibits the State from making any law taking away or abridging the fundamental rights. Therefore, it seems to us that the prohibition contained in Article 13(2) makes the State as much incompetent to make a law taking away or abridging the fundamental rights as it would be where law is made against the distribution of powers contained in the Seventh Schedule to the Constitution between Parliament and the Legislature of a State. Further, Article 13(2) provides that the law shall be void to the extent of the contravention. Now contravention in the context takes place only once when the law is made, for the contravention is of the prohibition to make any law which takes away or abridges the fundamental rights. There is no question of the contravention of Article 13(2) being a continuing matter. Therefore, where there is a question of post-constitution law, there is a prohibition against the State from taking away or abridging fundamental rights and there is a further provision that if the prohibition is contravened the law shall be void to the extent of the contravention. In view of this

clear provision, it must be held that unlike a law covered by Article 13(1) which was valid when made, the law made in contravention of the prohibition contained in Article 13(2) is a stillborn law either wholly or partially depending upon the extent of the contravention. Such a law is dead from the beginning and there can be no question of its revival under the doctrine of eclipse."

In the case of Excel Wear and Others Vs. Union of India (UOI) and Others, it was held that Article 33(c) merely saves the law enacted after coming into force of the said Article and the advantage of Article 31C would not be available to a legislation which was still born because of violation of Articles 14 and 19 on the date of its enactment. This decision also approves the earlier two decisions of the Supreme Court in the case of Keshavan Madhava Menon Vs. The State of Bombay, and in the case of Deep Chand Vs. The State of Uttar Pradesh and Others, In view of these decisions, it is obvious that protection of Article 31C is not available to Sections 21 and 22 of the Act which were enacted in the year 1969 and came into force from June 1, 1970.

15. Shri Dhanuka then urged that the Act was introduced in the Ninth Schedule at Item No. 91 on August 10, 1975 and was, therefore, entitled to enjoy the protection of Article 31B of the Constitution and it is not permissible for the petitioners to claim that the provisions of the Act are inconsistent with or take away or abridge any of the rights conferred by Chapter III of the Constitution of India. In answer to the submission, it was urged on behalf of the petitioners that freedom of speech including freedom of press forms part of the basic structure of the Constitution and, therefore, violation of that fundamental right is open to challenge. Reference was made to the decision of the Supreme Court in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, where the majority held that though by Article 368 of the Constitution of India, the Parliament is given power to amend the Constitution, that power cannot be exercised so as to damage the basic features of the Constitution and so as to destroy its basic structure. In Keshavanand Bharati''s case, illustrations have been given to indicate what are the basic features of the Constitution and Mr. Justice Mathew has summarised them in paragraph 264 of his judgment in the case of Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another,
The learned Judge observed :

"In His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, (hereinafter referred to as ''Bharati''s case''), a majority of seven Judges held that the power conferred under Article 368 of the Constitution was not absolute. They took the view that by an amendment, the basic structure of the Constitution cannot be damaged or destroyed. And, as to what are the basic structures of the Constitution, illustrations have been given by each of these Judges. They include supremacy of the Constitution, democratic republican form of Government, secular character of the Constitution, separation of powers among the legislature, executive and judiciary, the federal character of the Constitution, Rule of Law, equality of status and of opportunity; justice, social, economic and political; unity and integrity of the

nation and the dignity of the individual secured by the various provisions of the Constitution. There was consensus among these Judges that democracy is a basic structure of the Constitution. I proceed on the assumption that the law as laid down by the majority in that case should govern the decision here, although I did not share the view of the majority."

It is, therefore, clear that Keshavananda Bharati''s case lays down that democracy is a basic structure of the Constitution. Shri Venugopal submitted that press is an important ingredient of democracy and in support of this submission relied upon observations made by the Supreme Court in several cases. In the case of Romesh Thappar Vs. The State of Madras, Mr. Justice Patanjali Sastri, speaking for the majority, observed :

"Thus, very narrow and stringent limits have been set to permissible legislative abridgment of the right of free speech and expression and this was doubtless due to the realisation that freedom of speech and of the press lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the processes of popular Government, is possible."

In the case of Brij Bhushan and Another Vs. The State of Delhi, it was held that it must be recognised that freedom of speech and expression is one of the most valuable rights guaranteed to a citizen by the Constitution and should be jealously guarded by the Courts. It must also be recognised that free political discussion is essential for the proper functioning of a democratic Government and the tendency of modern jurists is to deprecate censorship. The observations of the Supreme Court in Paragraph 42 in Sakal Papers (P) Ltd. and Others Vs. The Union of India (UOI), also support the contention that the press is an important ingredient of democracy. In Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, Mr. Justice Bhagwati, as he then was, observed in paragraph 77 of the judgment :

"Now, it may be pointed out at the outset that it is not our view that a right which is not specifically mentioned by name can never be a fundamental right within the meaning of Article 19(1). It is possible that a right does not find express mention in any clause of Article 19(1) and yet it may be covered by some clause of that Article. Take for example, by way of illustration, freedom of press, it is the most cherished and valued freedom in a democracy, indeed democracy cannot survive without a free press. Democracy is based essentially on free debate and open discussion, for that is the only corrective of governmental action in a democratic set up. If democracy means government of the people, by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matter is absolutely essential. Manifestly, free debate and open discussion, in the most comprehensive sense, is not possible unless there is a free and independent press. Indeed the true measure of the health and vigour of a

democracy is always to be found in its press. Look at its newspapers -- do they reflect diversity of opinions and views, do they contain expression of dissent and criticism against governmental policies and actions, or do they obsequiously sing the praises of the government or lionize or deify the ruler? The newspapers are an index of the true character of the Government -- whether it is democratic or authoritarian. It was Mr. Justice Potter Stewart who said : "Without an informed and free press, there cannot be an enlightened people." Thus freedom of the press constitutes one of the pillars of democracy and indeed lies at the foundation of democratic organisation and yet it is not enumerated in so many terms as a fundamental right in Article 19(1), though there is a view held by some constitutional jurists that this freedom is too basic and fundamental not to receive express mention in Part III of the Constitution."

The observation of the Supreme Court in paragraph 32 of the Indian Express Newspaper case also reiterates this view. Shri Justice A. P. Sen in the case of Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, observed in paragraph 75 of the judgment :

"I would only like to stress that the freedom of thought and expression, and the freedom of the press are not only valuable freedoms in themselves but are basic to a democratic form of Government which proceeds on the theory that problems of the Government can be solved by the free exchange of thought and by public discussion of the various issues facing the nation. It is necessary to emphasize and one must not forget that the vital importance of freedom of speech and expression involves the freedom to dissent to a free democracy like ours. Democracy relies on the freedom of the press. It is the inalienable right of everyone to comment freely upon any matter of public importance. This right is one of the pillars of individual liberty -- freedom of speech, which our Court has always unfailingly guarded."

It is, therefore, clear that it has been consistently held by the Supreme Court that the press is an important ingredient of the democracy and, therefore, freedom of press conferred by Article 19(1)(a) must be considered as a basic structure of the Constitution.

It is also settled by the decisions of the Supreme Court that a legislation is open to challenge and is liable to be struck down even if it is included in the Ninth Schedule, in case, it affects the basic structure of the Constitution. It is not necessary for the Courts to strike down the entire legislation and it is permissible to strike down any provisions thereof which violate Article 19 or Article 14 of the Constitution of India. A reference can be usefully made to the decision of the Supreme Court in the case of Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others, where the entire Urban Land (Ceiling and Regulation) Act, 1976 was challenged as suffering from vice of Articles 14 and 31. The Act received the assent of the President in February 1976 and was enacted in furtherance of the directive principles contained in Article 39(c) and (d) respectively. The Act was also put in the Ninth Schedule by the

Constitution (Fortieth Amendment) Act, 1976 conferring the benefit of protective umbrella under Article 31B. The majority held that the entire Act is valid save and except Section 27(1) in so far as it imposes restriction on transfer of any urban or urbanisable land with a building or of a portion of such building, which is within the ceiling area. The Supreme Court struck down the provisions of Section 27(1) of the Act in spite of the Act enjoying the protective umbrella of both Articles 31B and 31C. It is, therefore, obvious that in case, enactment destroys or damages the basic structure of the Constitution, then in spite of its being included in the Ninth Schedule would not oust the jurisdiction of the Courts from striking down the enactment or any provisions thereof, if it violates fundamental rights under Articles 14 and 19 of the Constitution. The petitioners are, therefore, entitled to claim that the provisions of Sections 21 and 22 of the Act are violative of Article 19 in so far as they concern the newspaper undertakings.

16. Shri Dhanuka countered the submission urged on behalf of the petitioners by contending that Article 39(b) and (c) are part of the basic structure and, therefore, it is not possible to claim that any legislation for achieving the object under Article 39(c) would damage or destruct the basic structure of the Constitution. It was claimed that not only the legislation would not damage or destruct the basic structure, but, on the other hand, it would fortify the legislation. It was also urged by the learned counsel that the directive principles contained in Articles 39(b) and (c) have supremacy over fundamental rights guaranteed by Chapter III. In support of the submission, reliance was placed on the observations of the Supreme Court in the case of Waman Rao and Others Vs. Union of India (UOI) and Others, and in the case of Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others, In Waman Rao''s case, the validity of Article 31C as it stood prior to its Amendment by 42nd Amendment Act, 1976 was questioned claiming that it damages basic or essential features of the Constitution or its basic structure. Chief Justice Chandrachud, speaking for the majority, turned down the contention and in paragraph 55" of the judgment observed :

"The unamended portion of Article 31C is not like an uncharted sea. It gives protection to a defined and limited category of laws which are passed for giving effect to the policy of the State towards securing the principles specified in Clause (b) or Clause (c) of Article 39. These clauses of Article 39 contain directive principles which are vital to the well-being of the country and the welfare of its people. Whatever we have said in respect of the defined category of laws envisaged by Article 31A must hold good, perhaps with greater force, in respect of laws passed for the purpose of giving effect to Clauses (b) and (c) of Article 39. It is impossible to conceive that any law passed for such a purpose can at all violate Article 14 or Article 19. Article 31 is now out of harm''s way. In fact far from damaging the basic structure of the Constitution, laws passed truly and bona fide for giving effect to directive principles contained in Clauses (b) and (c) of Article 39 will fortify that structure."

In Bhim Singhji''s case, Mr. Justice A P. Sen in paragraph 81 after referring to the decision of Mr. Justice Chandrachud in the case of Smt. Indira Gandhi observed :

"According to him, the pillars of the Constitution are Sovereign Democratic Republic, Equality of Status and Opportunity, Secularism, Citizen''s right to religious worship, and the Rule of Law. With respect, I would add that the concept of social and economic justice -- to build a Welfare State -- is equally a part of the basic structure or the foundation upon which the Constitution rests."

Reliance was also placed on the observation made by Mr. Justice Palekar in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, that Article 31C merely removes the restrictions of Part III from any legislation giving effect to the directive principles under Article 39(b) and (c). Relying on these observations, Shri Dhanuka contended that Articles 39(b) and 39(c) are part of basic structure and, therefore, it is futile for the petitioners to claim that the Act which was legislated for securing the object of Article 39(c) would affect the basic structure.

Before examining the contention advanced by Shri Dhanuka, it is necessary to point out that the Supreme Court did not accept the claim in Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, that the directive principles would have supremacy over fundamental rights in Chapter III. The majority held that the fundamental rights occupy a unique place in the lives of civilized societies and have been variously described in judgments of the Supreme Court as "transcendental"; ''inalienable'' and "primordial". It was observed that the fundamental rights constitute the ark of the Constitution and to destroy the guarantees given by Part III in order to achieve the goals of Part IV is plainly to subvert the Constitution by destroying its basic structure. The Indian Constitution is founded on the bed-rock of the balance between Parts III and IV and to give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the Constitution. The goals set out in Part IV have to be achieved without the abrogation of the means provided for by Part III. It is in this sense that Parts III and IV together constitute the core of our Constitution and combine to form its conscience. Anything that destroys the balance between the two parts and ipso facto destroy an essential element of the basic structure of our Constitution. In view of the dictum laid down by the Supreme Court, it is not possible to accept the submission of Shri Dhanuka that Articles 39(b) and 39(c) have primacy over Article 19 in Chapter III and, therefore, the Act enacted with the object of securing the requirement of Article 39(b) cannot be declared unconstitutional or violative of Article 19.

17. The submission on behalf of the State that Articles 39(b) and 39(c) are part of basic structure and, therefore, the legislation passed with the object of securing those principles can never damage or destroy the basic structure was seriously controverted by Shri Venugopal. The learned counsel urged that the observations of

Chief Justice Chandrachud in Waman Rao and Others Vs. Union of India (UOI) and Others, that it is impossible to conceive that any law passed for such a purpose can violate Article 14 or Article 19 are obiter or in any event were made without full argument on the point. The learned counsel gave an illustration in support of this submission that a law passed for achieving the purpose of Article 39(c) could very well violate Article 19. It was urged that the State may nationalise the newspaper industry by claiming that it is necessary to secure the operation of the economic system to prevent concentration of wealth and would claim that the Nationalisation Act was enacted for achieving the object of Article 39(c). It was submitted that such a legislation though enacted with the object of securing directive principles under Article 39(c) would directly result into destroying the freedom of press and thereby the existence of the democracy. The learned counsel wondered whether the Chief Justice would have made the observation in the case of Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, if such contingency was brought to the notice of the learned Chief Justice. There is considerable merit in the submission of the learned counsel It is not difficult to conceive a legislation which the State would enact for achieving the directive principles set out in Articles 39(b) and 39(c) and still such legislation or any provision thereof would directly have the effect of destroying the fundamental rights guaranteed under Articles 14 and 19. In my judgment, it is not possible to accept the submission urged on behalf of the State that once it is established that the Legislation was enacted for securing the object set out in Article 39(c), then it is not open for the Court to enquire as to whether such legislation damages or destroys the basic structure of the Constitution. In my judgment, the area of enquiry on this aspect is not closed though it is possible that in large number of legislations, the basic structure would be fortified if the object of the legislation is truly and bona fide for giving effect to directive principles contained in Article 39(b) and (c) of the Constitution. In my judgment, even if the legislation is enacted with the object of achieving the directive principles under Article 39(c), it should not damage or destroy the basic structure of the Constitution and then and then only the harmony between fundamental rights and directive principles would be maintained. In my judgment, applying this principle, it will have to be held that the provisions of Sections 21 and 22 of the Act in so far as they apply to the newspaper industry affect the basic structure and, therefore, the challenge to those provisions as violative of Article 19 is available in spite of insertion of the enactment in Ninth Schedule.

18. In view of the conclusion that the provisions of Sections 21 and 22 read with Section 2(4) of the Act as far as newspaper undertakings are concerned, infringe Article 19(1)(a) of the Constitution and, therefore, void, it is not necessary to examine the alternate submission of the petitioners that the finding recorded by respondent No. 2 that the petitioner No. 1 and their Officers have acted in violation of the provisions of Section 22 of the Monopolies and Restrictive Trade Practices Act, 1969 is erroneous, but I propose to consider that submission also to complete the

judgment. The impugned order, the copy of which is annexed as Ex. "M" to the petition, was passed by respondent No. 2 on July 20, 1984. The respondent No. 2 held that petitioner No. 1 controlled Jansevak and the agreement entered into by petitioner No. 1 with Jansevak amounted to establishment of a new undertaking at Lucknow for publication of Lucknow edition of Times of India and Navbharat Times. The respondent No. 2 recorded this conclusion on the strength of finding that the Editor of Times of India, Bombay, was also acting as an Editor of Lucknow Edition and is under the control of Board of Directors of petitioner No. 1 but not the Jansevak. Secondly, the agreement specifically provided that Jansevak shall follow the same policy and editorial norms and standards for the Lucknow editions of the paper as followed by other editions of the respective papers. The third reason recorded by respondent No. .2 is that petitioner No. 1 had materially assisted the new undertaking --Jansevak -- in establishing printing and publishing undertakings, and the last ground is that the perusal of the agreement entered into between petitioner No, 1 and Jansevak shows that Jansevak was merely acting for and on behalf of the Company. Shri Venugopal challenged the impugned order by submitting that the show cause notice dated November 30, 1983, a copy of which is annexed as Ex. "H" to the petition, alleges that petitioner No. 1 controls Jansevak which is an inter-connected undertaking within the meaning of Section 2(g)(iii)(a) and (c) and Section 2(g)(vi) read with Explanation I (ix) but the final order of respondent No. 2 does not specifically records that Jansevak was inter-connected undertaking. It is not possible to accept the submission of the learned counsel. It must be remembered that respondent No. 2 is not a Judicial Officer but was exercising quasi-judicial powers and it would not be fair to read the impugned order as it is a judgment delivered by a Civil Court It is necessary to read the order as a whole and on perusal of the same, it is clear that respondent No. 2 did come to the conclusion that Jansevak is an inter-connected undertaking under the absolute control of petitioner No. 1. Shri Venugopal then urged that the reasons given by respondent No. 2 for recording that finding are not correct. It was urged that the Editor is never under the control of the Board of Directors of the newspaper undertaking but the editor is independent and is entitled to determine as to how the paper should be conducted. The only control of the Board is laying down of the policy and execution is left to the editor and in that sphere the Board of Director cannot interfere. Reliance is placed in support of the submission on the decision of the Delhi High Court reported in K.K. Birla Vs. The Press Council of India and Others, It was also urged that respondent No. 2 was in error in assuming that the advance of large amount is indicative of the fact that petitioner No. 1 had materially assisted the new undertaking. It was urged that the amount advanced was Rs. 7.56 lakhs, but the same was given on condition of payment of interest at 18% and the amount along with interest was repaid by Jansevak. The finding of respondent No. 2 that Jansevak was merely acting as an agent is also challenged on the ground that the agreements between petitioners and Jansevak were on the basis of principal to principal and the ingredients of agency were absent. It is not possible to accept the

submission of the learned counsel. It must be remembered that this Court is not sitting in appeal against the order of respondent No. 2 and it is not permissible to disturb the finding recorded on reappreciation of evidence. It is not possible to hold that the order suffers from any serious infirmity and no reasonable man would have come to the conclusion on the basis of material available. Indeed, the three agreements dated July 30, 1982, June 4, 1983 and October 1, 1983 indicate that petitioner No. 1 had control over the running of the newspaper establishment at Lucknow and that control was in respect of material aspects. In these circumstances, in my judgment, it is not possible to hold that the order is erroneous or invalid. Shri Dhanuka, in this connection, very rightly pointed out that the statutory appeal is provided against the impugned order and the petitioners ought to have approached the Supreme Court by filing that appeal in accordance with the provisions of Section 55 of the Act. In my judgment, it is not possible to disturb the order passed by respondent No. 2 in the present proceedings. The issuance of the notice, a copy of which is annexed as Ex. ''N'' to the petition calling upon the petitioners to show cause why penal action should not be taken for contravention of the provisions is only a sequester to the finding recorded by respondent No. 2 that petitioner No. 1 had acted in contravention of Section 22. The said notice is legal, but for the finding that the provisions of Sections 21 and 22 are void in so far as the newspaper undertakings are concerned.

19. That leaves me with the question of what reliefs should be granted to the petitioners Shri Dhanuka very rightly submitted that it is not necessary to declare that the entire Act is void in respect of newspaper industry. In fact, Shri Venugopal very fairly stated that the petitioners are not challenging all the provisions of the Act, but are merely seeking a declaration that the provisions of Sections 21 and 22 read with Section 2(r) of the Act are void in so far as its application to newspaper industry are concerned. It is now well-settled that the Court in exercise of writ jurisdiction can mould the reliefs which could be given to the petitioners and, in my judgment, it is necessary to mould the reliefs so as not to exclude application of other provisions of the Act to the newspaper industry.

20. Accordingly the following relief is granted :

(1) It is declared that Sections 21 and 22 of the Monopolies and Restrictive Trade Practices Act, 1969, are void and of no effect, in so far as its application to the newspaper undertaking.

(2) The respondents are restrained by a writ of prohibition from in any manner applying the provisions of Sections 21 and 22 of the Monopolies and Restrictive Trade Practices Act, 1969 to the petitioners'' publication of the newspapers and periodicals and establishment of printing press for the said purposes.

(3) The respondents are restrained by a writ of prohibition from giving effect to the order dated July 20, 1985 passed by respondent No. 2 and the copy of which is

annexed as Ex. ''M'' to the petition and from prosecuting the petitioners or any of their Officers for the violation of Section 22 of the Act.

In the circumstances of the case, there will be no order as to costs.