DAVA SON OF BHIMJI GOHIL

v.

JOINT CHIEF CONTROLLER OF IMPORTS & EXPORTS

1962

April 16.

(B. P. SINHA, C. J., K. SUBBA RAO, N. RAJAGOPALA AYYANGAR, J. R. MUDHOLKAR and T. L. VENKATARAMA AIYAR, JJ.)

Export Control—Manganese Ore—Notifications canalising export and preventing new entrants from exporting—Constitutionality of—State Trading Corporation—Monopoly of export created in favour of—If infringes fundamental right to carry on trade—Notification dated May 26, 1958—Exports Control Order, 1958—Imports and Exports (Control) Act, 1947 (18 of 1947), s. 3—Constitution of India, Arts. 19 (1) (g) and 19 (6).

There was little internal demand for manganese ore and it was extracted mainly for exporting out of India. Though previously there was no restriction on the grant of export licences from 1956, the Central Government started controlling and restricting the export of manganese ore. On May 26, 1958, the Central Government issued a notification which contained the policy statement for the period July 1958 to June 1959 under which export quotas were to be granted only to established shippers and mineowners who had exported from 1953 onwards and to the State Trading Corporation. Mine owners, like the appellant who did not have any export performance in the earlier years were excluded from the scheme. They could sell their ore only to the established shippers are to the Corporation which they could do only at unremunerative prices. By subsequent policy statements the export was canalised entirely through the Corporation. Section 3 of the Imports and exports (Control) Act, 1947 empowered the Central Government to make orders restricting or controlling the imports and exports of goods. The Central Government made the Exports Control Order, 1958, cl. 6(h) of which empowered the Central Government and the licensing authority to refuse to grant a licence "if the licensing authority decides to canalise exports through special or specilized agencies or channels". The Notification of May 26, 1950, was issued under cl. 6(h). The appellants contended: (I) that the withholding of the right to engage in the export trade from a class of mineowners constituted an unreasonable restriction on their fundamental right guaranteed under Art, 19(1)(g), (II) that cl. 6 (h) of the order was ultra vires the Central Government as s. 3 of the Act

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permitted it to place restrictions only on goods and not on the persons who might participate in the export, and (iii) that the notification by which canalisation of exports was affected was outside the contemplation of" agency and channel under cl. 6 (h).

Held (per Sinha, C.J., Ayyangar, Mudholkar and Aiyar, JJ.) that the restrictions and control imposed on the export of manganese ore by the Central Government were legal and did not offend Art. 19(1) (g).

The restriction or control in the form of channelling or canalising the trade was not outside the limitations which might be imposed on export trading by s. 3 of the Act and consequently cl. 6 (h) of the Order permitting canalisation of exports was within the rule making power of the Central Government. The power to impose restrictions was not confined to goods but extended to persons also. The canalising of the exports through the established shippers and mine-owners was unobjectionable; canalising through the State Trading Corporation and the progressive increase through the corporation was a reasonable restriction in the interests of the general public. The object of these restrictions and control was to enable a regular supply of uniform quality of the ore to the foreign buyers so as to ensure the optimum earning of foreign exchange by the country, and this could best be attained with the Corporation as the main agency engaged in the trade. The State Trading Corporation was a "special" agency or channel as contemplated by cl. (h) and the canalising could be done through it. A special agency is one which is more likely to achieve the object than other agencies or to achieve it in a larger measure than others. Canalising necessarily implied the exclusion of some groups, and if the canalising was valid the appellant could not complain that he had been excluded from the export trade.

Per Subba Rao, J.—The Notifications and policy statements which destroyed the trade of mine owners like the appellant did not impose reasonable restrictions on their fundamental rights and violated Art. 19 (1) (g). The creation of a monopoly or near monopoly for the export of manganese ore in favour of the State Trading Corporation could only be achieved by a law made in conformity with Art. 19 (6) (ii) and not by administrative action like issuing of notifications and policy statement. The power conferred on the authorities under cl. 6 (h) of the Order to canalise exports through special or specialised agencies or channels was well within the power conferred on the Central Government by s. 3 of the Act. Further, the State Trading Corporation was a "special" agency within the meaning of cl. 6(h).

But the canalising had to be done in such manner that all persons engaged in the trade could participate in the export of the ore and no one was completely excluded.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 226 of 1961.

Appeal from the judgment and order dated October 22, 1959, of the Bombay High Court (Nagpur Bench) at Nagpur in Special Civil Application No. 63 of 1959.

A. S. Bobde, G. L. Sanghi and *Ganpat Rai*, for the appellant.

C. K. Daphtary, Solicitor-General of India, Bishan Narain and *P. D. Menon*, for the respondents.

1962. April 16. The Judgment of the Court was delivered by

Ayyangar J.

AYYANGAR, J.—This appeal comes before us by virtue of a certificate of fitness granted by the Nagpur Bench of the High Court of Bombay under Arts. 132(1) and 133(1)(c) of the Constitution. It arises out of a petition filled by the appellant under Art. 226 of the Constitution before the High Court of Bombay at Nagpur impugning the constitutional validity of certain notifications and directions issued under the Imports and Exports (Control) Act, 1947, and the Export Control Order, 1958, framed thereunder and substantially prayed that the Joint Chief Controller of Imports & Exports, Bombay impleaded as the first respondent should be directed to consider the application of the appellant for the grant of a licence to enable him to export certain manganese ore which he had won from his mines, without reference to the impugned notifications. This petition was dismissed by the learned Judges of the High Court who, however, granted the appellant is certificate which has enabled him to file this appeal.

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A few facts are necessary to be stated to appreciate the exact grievance of the petitioner and the grounds upon which the notifications etc. issued by government are stated to contravene the Constitution and in particular to infringe the freedom granted to the appellant under Part III of the Constitution. The appellant is a lessee of certain manganese mines in two areas of Madhya Pradesh. The leases are stated to have been granted to him in the years 1953 for a period of 20 years each, with an option for renewal if the appellant so desired, under the Mineral Concession Rules 1949, for a like period. It is an admitted fact that the internal demand for manganese ore in India is very inconsiderable, so that the ore is extracted mostly for the purpose of being exported out of India. Having regard to the date when the appellant obtained the mining leases, he could not have won any appreciable quantity of the metal during 1953, nor, of course, could he have exported any quantity of the ore won by him in or prior to the year 1953.

It is now necessary to set out the history of the restrictions on the export of manganese ore from 1953 up to the date relevant to the petition to understand the points sought to be made on behalf of the appellant. Prior to 1953, i. e., at a time before the appellant entered the managanese ore business, export of manganese ore was freely licensed, i. e., the commodity was subject to no restriction as regards export, nor was any control exercised by government on the allotment of wagons for the movement of manganese ore. As the export of the ore began to expand from that date, the Railways found themselves unable to meet the increased demand for wagons and were forced to regulate the appellant of such wagons. The government also took a hand in regulating the

movement of wagons by evolving a system of registration of shippers for whom priority in the allotment of wagons was ensured. It has to be added that this regulation and control over wagon allotment and wagon movement was co-ordinated with and correlated to certain changes which were effected for regulating the export of the commodity itself.

Section 3 of the Imports and Exports (Control) Act, 1947 (to be referred hereafter as the Act) enacts :

> "3. Powers to prohibit or restrict imports and exports—(1) The Central Government say, by under published in the Official Gazette, make provisions for prohibiting, restricting or otherwise Controlling, in all cases or in specified classes of cases, and subject to such exceptions if any, as may be made by or under the order :—
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> (a) the Import, export, carriage coastwise or shipment as ships stores of goods of any specified description.
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> (b) the bringing into any port or place in India of goods or any specified description intended to be taken out of India without being reserved from the ship or conveyance in which they are being carried.
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> (2) All goods is which any order under subsection (1) applies shall be deemed to be goods of which the import or export has been prohibited or restricted under section 19 of the Sea Customs Act, 1878 (VIII of 1878) and all the provisions of that Act shall have effect accordingly, except that section 183 thereof shall have effect as if for the word 'shall' there in the word 'may' were substituted.

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(3) Notwithstanding anything contained in the aforesaid Act, the Central Government may, by order published in the Official Gazette, prohibit, restrict or impose conditions on the clearance, whether for home consumption or for shipment abroad of any goods or class of goods imported into India."

Under the powers conferred by this section the Central Government issue the Exports Control Order, 1958 (or shortly the Control Order), cl. 3 of which provided that "no person shall export any goods of the description specified in Sch. I except under and in accordance with a licence granted by the Central Government or by any officer specified in Sch. II." Manganese and iron ore were specified in the first schedule. Clause 6 of this order sets out the grounds upon which the Central Government or the Chief Controller of Exports and Imports may refuse to grant a licence or direct a licensing authority not to grant a licence. In view of certain points urged before us it would be convenient to set out this clause in full :

"6. Refusal of licence.—The Central Government or the Chief Controller of Imports and Exports may refuse to grant a license or direct any other licensing authority not to grant a licence :—

(a) if the application for the licence does not confers to any provision of this Order;

(b) if such application contains any false, or fraudulent or misleading statement;

(c) if the applicant uses in support of the application any document which is false or fabricated or which has been tempered with;

(d) if the applicant on any occasion has tempered with an export licence or has

exported goods without a licence where it is necessary, or has been a party to any corrupt or fraudulent practice in his commercial dealings;

(e) if the application for an export licence is defective and does not conform to the prescribed rules;

(f) if the applicant commits a breach of the Export Trade Control Regulations;

(g) if the appellant is not eligible for a licence in accordance with the Export Trade Control Regulations;

(h) if the licensing authority decides to canalise exports through special or specialized agencies or channels;

(i) if the applicant is a partner in a partnership firm, or a director of a private limited company, which is for the time being subject to any action under clause 8;

(j) if the applicant is a partnership firm or a private limited company, any partner or director whereof, as the case may be, is for the time being subject to any action under clause 8."

The first restriction on the export of manganese and iron ore was imposed in June, 1956 when the Ministry of Commerce and Industry issued a public notice on June 26, 1956, setting out their policy as regards export during the half year July to December, 1956. After reciting that the government were convinced that the then existing trading mechanism as regards the export of ores was inadequate to code with the developments which had taken place in the purchasing countries, it went on to add that persons who entered into contracts

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with foreign buyers had been unable to fulfil their commitments which had caused incovenience to foreign buyers and so undermined the latter's confidence in the capacity of this country to maintain an assured line of supply. In order, therefore, to overcome the obstacle in the way of augmenting foreign exchange earnings from the expert of these ores, the Government declared that they would help in reorientating the trading in ores on more rational lines and that for this purpose they proposed to canalise the export of ores in a progressively increasing measure through the State Trading Corporation which would in its turn rely on the mining interests in the country and use the existing trade mechanism to the extent practicable. For these reasons, they announced that a regulation would take place of the expert of these ores during the half year July-December, 1956 through three classes of exporters:

(1) *Established shippers* who would be granted export quotas on the average of the quantities exported during the years 1953, 1954 and 1955.

(2) *Mineowners* based on a annual average of the quantity of ore on which royalty was paid during the calender years 1953, 1954 and 1955, and

(3) *The State Trading Corporation* which would be given a quota on an *ad hoc* basis. It is only necessary to mention that the State Trading Corporation which is a Corporation owned and controlled by the Union Government came into existence by registration under the Indian Companies Act in May, 1956. Rail transport facilities co-extensive with the quota granted, were also assured for those to whom quotas were granted. There were clarifications and unsubstantial variations of this Press Note to which, however, it is not

necessary to refer as they are not material to the points now in controversy.

It will be noticed that the control thus exercised and the restrictions thus imposed, mine-owners who had not entered the field before 1953 were excluded from the grant of any export quota. By a public notice dated September 4, 1956, the Ministry of Commerce, however, announced that the case of these "newcomers" was receiving their attention and that an announcement in that regard would be made in due course.

The same policy and the same basis of allocation was continued for the next half year January to June 1957. For the period July, 1957 to June, 1958, (the government having now started pursuing the policy of announcing their quotas for a year instead of for six months), a Press Note was issued on June 1, 1957, by which exporters and mineowners were allotted a quota equivalent to 60 per cent of their exports made in 1958 or 1956 to be selected by them. The quota thus released was made available for being allotted to the State Trading Corporation on an ad hoc basis and the Press Note added: "The State Trading Corporation will be allotted in adequate quota to enable them to maximise the exports of manganese ore. The Corporation are being advised to seek the co-operation of established trading and mining interest to make this effort a success". Here again, certain unsubstantial modifications were made by further Press Notes but to these we shall not refer.

As regards the next period July 1958 to June 1959, the policy-decision of the government was indicated by a Public notice issued on May 26, 1958. In the course of this Press-statement the Government of India stated that they had been keeping under constant review the working of the

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policy announced by them under the Press Notes to which we have already referred, and that they had come to the conclusion that the long-term interests of Indian Manganese ore would be better served if the export policy were to discourage fragmentation of quotas and encourage bulk contracting, movement, and shipment of ores. At the same time, the Government expressed their keenness to maintain continuity in the export arrangements to the extent practicable. Having regard to these factors, they went on to state:

> "Government have decided that for the period July 1958 to June 1959, the export of manganese ore will be regulated as follows.
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> (i) The established shippers, the mine-owner, exporters and the state Trading Corporation will be given an allotment of quota for a quantity equal to the quota for 1957-58.
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> (ii) Firms and parties whose individual allotments are small are advised to form Co-operative or limited companies."

At the date when the writ petition out of which this appeal arises was filed, the policy-statement of May 26, 1958, was in force and it was the validity of the restriction and control exercised by it that was challenged as unconstitutional in the petition filed by the appellant. The position at that date may be summarised as follows:

(1) From and after July 1956 the export of manganese ore had been controlled or restricted.

(2) The restriction had taken the form of allotment of quotas for export granted to: (a) established exporters, i.e., comprising the category of these who had exported from 1953 onwards, (b) mine-owners who had similarly exported the

ore won by them with a similar limitation as to the year when they should have exported, and (c) The State Trading Corporation which was granted an export quota on an ad hoc basis to cover every other quantity which could be exported and for which a foreign market could be found. Traders and mine-owners who had not any export performance to their credit in earlier years were excluded from the scheme and though the government were repeatedly stating in their public statements that the case of these persons termed "newcomers" would be considered, this had never been done. The appellant fell within the last category and was not eligible to any export quota and therefore could not export. The result was that the ore won by him had either to be sold (a) in the internal market which, as stated earlier, was a very restricted one, this because the steel producing concerns which were the principal or practically the only consumers of the ore in the country had their own mines from which the ore required by them was won, and (b) in the absence of an internal market the mined ore had to be sold either to established shippers or to the State Trading Corporation. In regard to established shippers, their quota of export was being progressively reduced, so that their demand for ore naturally shrank and unremunerative price had therefore to be offered by the "newcomers" to induce them to buy. The only other possible buyer was the State Trading Corporation which was being granted quotas on an ad hoc basis sufficient to enable it to get all the good ore which it might buy for which there might be a foreign buyer. In regard to the State Trading Corporation, there was an allegation made by the appellant, by reference to a circular issued by the Corporation on April 20, 1957, that the terms offered for the purchase of ore were unfair to the sellers because of the excessively large commission it demanded. It should, however, be

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stated that the State Trading Corporation was not impleaded as a party in the writ petition in the High Court, nor any relief sought on the basis of that allegation. The circumstance was relied on merely to emphasise the hardship caused to the appellant from the exclusion of those who had no expert performance in the years which were fixed as the basic years for the allotment of an export quota to mineowners. The State Trading Corporation being owned and controlled by the Central Government is an agency or instrument of government for effectuating its commercial policy. If in the performance of its duties as such public authority it acts in any improper or unfair manner it would be subject to the control of the Courts but as no relief based on such a complaint was claimed by the appellant, it is not necessary to pursue the point or examine its merits.

The case of the appellant has to be judged on the basis of two admitted features resulting from the policy statements of Government we have set out earlier : (1) That mineowners who were "newcomers", i. e., not having export performance in certain basic years, were excluded from direct participation in the export trade, but these persons had, in view of the practical absence of an internal market for manganese ore to sell their goods to others who had been granted facility for export. (2) That the category of persons to whom they could sell their ore were two (a) Established shippers, and (b) The State Trading Corporation, and with the nature of this market as already described.

The question raised for consideration by the appeal is whether the withholding of the right to engage in export trade from this class of mineowners constitutes an unreasonable restriction on their right to carry on business guaranteed by Art. 19 (1) (g) of the Constitution.

Pausing here we might put aside one matter which is beyond the pale of controversy, and that is that the constitutional validity of s. 3 of the Imports & Exports Control Act, 1947, which forms as it were the ultimate root from which the impugned notifications and executive actions spring is conceded. The points urged by learned Counsel for the appellant were two : (1) Clause 6 (h) of Exports Control Order 1958, was beyond the rule-making power under s. 3 of the Imports & Export Control Act, 1947, (2) Even if cl. 6 (h) and the "canalising" of exports through "special" or "specialised" agencies or channels be valid, the notifications by which the canalisation was effected are outside the contemplation of the 'agency or channel' under cl. 6 (h).

Before proceeding further it is necessary to mention that the constitutional validity of cl. 6 (h) of the Export Control Order 1953 was not disputed before us, the controversy in relation to it having been concluded by the decision by this Court in *Glass Chatons Importers and Users Association* v. *Union of India* (1). The argument in support of the contention that cl. 6 (h) was beyond the terms of s. 3 of the Act was briefly this : Section 3 of the Act by its language, its setting and context permits restrictions or controls only in regard to goods which are the subject-matter of export and does not permit restrictions being imposed on persons engaged in the export trade. In other words, the Central Government is enabled by a notified order under s. 3 of the Act (a) to specify the goods in respect of which the control or restriction is to be exercised, along with (b) a matter which this necessarily involves, viz., the quantities that may be exported, (c) the quality of the goods that might pass out of the country and (d) as regards the destination to which they might be exported. But the restrictions could not extend any further. An

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order under s. 3 cannot make provisions restricting the persons who might participate in export trade, restrict either their number or impose qualifications which they must satisfy before being permitted to export. Besides, even if a notified order might validly prescribe the persons who might participate in the export trade, still it did not authorise an order which would so canalise or channel the persons who might engage in the export trade as practically to create a monopoly in favour of any particular person or group which is what r. 6 (h) has effected.

The argument was put in a slightly different form by reference to the provisions of Art. 19 (6). Article 19 (1) (g), after guaranteeing to all citizens the right to carry on any occupation, trade or business, had gone on to provide in cl. (6) the restrictions which may constitutionally be imposed on the right thus guaranteed, and the clause as it now stands after the first Amendment of the Constitution reads, to quote the material words :

> "Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—
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> (i) ————————————
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> (ii) the carrying on by the State, or by corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise".

The effect of the policy statements and directions to the licensing authorities issued by virtue of the powers conferred by cl. 6 (h) of the Export Control Order, 1958 had resulted in the creation of a monopoly or a near monopoly in favour of the State Trading Corporation. It was urged that the creation of such a monopoly could on the language of Art. 19 (6) (ii) be effected only by the State making a law in relation to the matters there set out. Neither the Export & Import Control Act, 1947 nor even the notified order made there under—The Export Control Order, 1958 could be said to be "a law relating to the carrying on by the State of any trade, business, industry or service" and therefore the validity of the preferential treatment granted to the State Trading Corporation could not be justified or upheld by reference to the amendment effected to cl. (16) by the Constitution (First Amendment) Act, 1961. So much could be accepted. But this, however, leaves for consideration the question whether the provision now impugned could not be sustained as "a reasonable restriction" on the exercise of the rights conferred by sub-cl. (g) of Art. 19 (1) in the interest of the general public i. e., on the opening words of para 1 of cl. (6). But as pointed out already, the constitutional validity of cl. 6 (h) in so far as it permits the canalising or channelling of the export trade is no longer *res integra*, this having been upheld in the *Glass Chatons case* (1).

In the circumstances, the very narrow question for consideration is whether the restrictions and control for which provision might be made by s. 3 would not include a provision for canalising the trade in any particular commodity. We are clearly of the opinion that the restriction or control in the form of channelling or Canalising the trade is not outside the limitations which might be imposed on

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export trading by s. 3 and that consequently cl. 6(h) in its present form is within the rule-making power conferred on the Central Government by s. 3 of the Act. The argument that the restrictions which could be imposed or the control which might be exercised on exports by orders made under s. 3 of the Act, could not extend to restrictions on persons who might be permitted to engage in the export trade has only to be stated. If the quantum of the export in a commodity could be restricted, the control that would effectuate this must necessarily extend to the persons engaged in or desirous of engaging in the export of that commodity and this would *a fortiori* be so, if the restriction takes the form of a prohibition of exports in a commodity altogether. If therefore the control or restriction could legally extend to the persons who are engaged in the trade; it would appear to follow as a logical step that the restriction might take the form of classifying the persons who might participate in the trade and the conditions subject to which any particular class might be permitted to do so. It would be a matter of policy for the Government to determine, having regard to the nature of the commodity and the circumstances attending the export trade in it, to lay down the basis for the classification between groups and fix their relative priorities etc. When cl. 6(h) permits "canalising" or the "channelling" of exports through selected agencies it does not no more than make provision for the classification into groups etc. which but one of the modes which the "control" under s. 3 of the Act might assume.

The next point to be considered is whether the notifications issued by which (1) the export trading in manganese ore is confined to three groups of persons engaged in the trade, viz., (a) established shippers, (b) mine-owners, and (c) the State Trading Corporation, the two former being allotted quotas

based upon the export effected by them during certain basic years, (2) the progressive reduction in the quota of groups (a) & (b) with a view to enable the available export business to be handled by the State Trading Corporation, and (3) as a necessary result of the above the elimination from the export trade of the class known in the trade as "new-comers" was permitted under cl. 6(h) of the export Control Order, 1958. It would be seen from the above that there are two grievances of the appellant which are inter-related: (1) The first consists in the complaint regarding the quota allowed to the established shippers and mineowners who had an export performance during a basic year. Learned Counsel however, did not put this forward as any serious grievance because persons falling within those already in the trade and the appellant who wants to come into the export trade could not legitimately object to those already in it being allowed facilities or licences for effecting exports. In his petition before the High Court the appellant raised a complaint that the basic years fixed in the policy-statement were arbitrary but the fixation of any year must be so, and if the Government fixed as a basic year, a period three years before the announcement of the policy, i.e., took into account performance within a period of three years before that date, we do not see any uureasonableness or arbitrariness about it. (2) It was in regard to the inclusion of the State Trading Corporation among those entitled to export and the increasing quota given to it on an ad hoc basis without reference to any antecedent performance that the main attack was directed and it was this that learned Counsel stated amounted to a monopoly which was not countenanced by the law. It will therefore be sufficient for us to confine attention to the grounds upon which the successive notifications which afforded increasing facilities to the State Trading Corporation for export were challenged.

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Pausing here it would be convenient if we set out the reasons why acoording to the respondent the State Trading Corporation was preferred as a principal agency for canalising the export trade in this commodity. The vital necessity of export earnings for sustaining national economy not being a matter of controversy, the question which the government had to consider was how best to ensure the optimum earning from exports of manganese ore. India has no monopoly in the production of this ore and cousequently the price of the commodity in the foreign market is dependent on world-wide factors. Having regard to the use to which the ore is capable of being put, viz., by steel factories in the production of steel, the foreign buyers, (and in this one factor to be taken into account is that in several foreign countries external trade is conducted through State agencies), are insistent that there shall be a regular supply of ore of uniform quality. There had been complaints in early years, when the trade in the commodity was unrestricted and not under any control, that the quality of the ore supplied was not according to sample, with the result that even the trade of those who took pains to maintain their quality of supplies suffered. It was in these circumstances that government stepped in 1956 by imposing restrictions and by assuring the foreign buyers of a regular supply through the mechanism of the controls exercised in this country. These facts were not disputed.

It is with this background that the challenge to the validity of the notification has to be considered and answered. The imposition of any restriction on those entitled to engage in any trade would necessarily mean that those who do not conform to the criteria laid down would be denied the right to participate in that trade; and this would be a fortiori so if the restriction takes the form of a

canalising of the trade in a commodity, for canalising necessarily implies the exclusion of some groups. If therefore s. 3 of the Act permits a rule to be made for canalising export trade in a commodity and such canalising is not unconstitutional, it would necessarily follow that a person cannot have a legally sustainable complaint that he is eliminated from among the groups entitled to participate in the trade. The question whether the canalising has been properly done in the sense that the groups selected are no better than the groups eliminated poses a very different problem, and if that were made out a question of discrimination might conceivably arise. We should, however, hasten to point out that it is not the case of the appellant that the established shippers and the mineowners to whom quotas have been allotted in addition to the State Trading Corporation have been improperly included in the group of persons entitled to participate in the export trade, and that apart, there is a rational and very proper classification between those who have experience in the trade and the newcomers who do not possess these experience. In other commodities concerned in export or import, newcomers i.e., those with no previous experience in the export line but who have experience in other branches of the trade, have been allotted quotas, though this should depend upon the circumstances of each trade. It has not been suggested that previous experience in the export trade would not be a valuable qualification for the grant to a person or group of a quota, and even a preferential quota in the export trade in the commodity with which we are now concerned. It would thus appear that if the notifications had confined the entire export trade to those with previous experience, no legal objection could have been taken to the notifications on the arguments addressed to us by learned Counsel for the appellant. In such a state of circumstances the appellant would have been excluded but

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he could not still complain that he was illegally eliminated because this exclusion was necessary consequence of channelling or canalising of the exports through persons with previous experience in the field.

The real grievance of the appellant was that in preference to him and those like him, who win the ore to be exported, the State Trading Corporation which had no previous experience of the export trade should have been selected as the agency for canalising exports. There is no doubt that if the only test of differentiation was previous experience, the preference of the State Trading Corporation to the appellant and the others of the class to which he belongs, might not be justified, but that is not the sole test by which the matter has to be judged. We have set out earlier the grounds upon which choice of the State Trading Corporation as the agency for effecting the export trade was determined by the government and we consider that for those reasons there was nothing improper in the choice, but that on the other hand the object of the export trade, viz., the earning of foreign exchange to the maximum with benefit of a long range character for exports from this country could be expected to be attained with the State Trading Corporation as the main agency engaged in the trade. We do not therefore consider that there is any substance in the argument of the learned Counsel for the appellant that the choice of the State Trading Corporation and the granting to it if quotas on an ad hoc basis was either beyond the powers conferred upon the licensing authorities under cl. 6(h) of the Export Control Order or was otherwise open to objection.

There was one other matter that was urged in this connection to which it is necessary to refer. Clause 6(h) enables the licensing authorities to canalise exports

"through special or specialised agencies or channels". It was urged that the State Trading Corporation was neither a *special* nor *specialised* agency or channel and that on that ground the choice of the corporation was outside 6 (h). We are wholly unable to accept this argument. Whatever the term "specialised" might mean, the word "special" can not bear the construction that it must be an expert agency in that line, in the sense that it possesses a type of previous experience which cannot be claimed by others. Without going so far as to say that a special agency or channel might mean merely a designated agency, it would be proper to construe the word as meaning, an agency selected having in view the purpose for which the channeling or canalising has to take place. In other words, an agency would be 'special' if having regard to the purpose for which the canalising takes place it is more likely to achieve that objective than other agencies or achieve it in a larger measure than others. In that sense we have no hesitation in holding that the State Trading Corporation might be a "special" agency or a channel for the purpose of enabling the country to maintain and foster the continuity of its trade in the commodity by ensuring exports in adequate quantity and of proper quality.

In this state of circumstances the elimination of the class to which the appellant belongs, viz., newcomers who had no previous experience of the export trade during the basic year or earlier was the result of enforcing a permitted method of control and a type of restriction which it was legally competent to be imposed under 6 (h). In the case of other commodities, "newcomers" have been granted a quota. That however naturally depended upon the nature of the trade, the nature of the export market and other factors which it is the province of government to take into account. Having stated this legal position, we would hasten to

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add that it was not the view of the Government that the export trade in manganese ore was such that newcomers could never be permitted into that trade is clear from the several policy-statements themselves in which, from time to time, they conveyed an assurance that the allotment of quotas to the "newcomers" was under consideration. In the case of a commodity like manganese ore for which there is not much of an internal market the denial of a right to any group or we shall add, to any individual to export would in effect affect him adversely forcing him to sell to others who have been given such a facility. Persons like the appellant were being fed on hopes of some relief to them and it was a case not merely of hope deferrep making the heart sick, but of dashed hopes that led the appellant to approach the Court for relief. Though we consider that the appellant has no legal right to the relief that he sought, his grievance is genuine and it would be for the Government to consider how best the interest of this class should be protected and it is made worth their while to win the ore so as to expand, foster and augment the export trade in this valuable commodity.

Reverting to the legal points raised in the appeal, it appears clear to us that on the premises (1) that s. 3 of the Import & Export Control Act, 1947 is a valid piece of legislation, (2) that cl. 6 (h) of the Export Control Order is within the rule-making power of the Central Government and is constitutional, there is no escape from the conclusion that no legally enforceable right of the appellant has been violated for which he could seek redress under Art. 226 of the Constitution.

In this view it is unnecessary to consider whether the appellant having prayed primarily for the issue of a writ of *mandamus* to direct the licensing authorities to consider his application for

an export licence for the half year current at the date of the petition "without reference to the terms of the impugned notifications and policy statement" and that half year having long ago gone by, he could be granted any relief by the High Court on his petition or by this Court on his appeal. It is possible that in such circumstances a person situated like the appellant might be entitled to a declaration as regards the validity of the restrictions imposed which continue to be in force even beyond the half year or year to which the licence relates. It is however unnecessary to pronounce upon this question which does not really arise for consideration in view of the conclusion that we have reached that the restrictions and control to which the trade has been subjected are legal and justified by the Act and the Rules framed there under.

The result is that the appeal fails and is dismissed. There will, however, be no order as to costs.

Subba Rao J.

SUBBA RAO, J.,—This appeal by certificate is directed against the judgment of a division Bench of the High Court of Judicature for Bombay, Nagpur Bench, dismissing the application filed by the appellant under Art. 226 of the Constitution praying for the issue of an appropriate writ directing the first respondent to grant an export licence in his favour.

The facts giving rise to this appeal may be briefly stated. The appellant is the lessee of manganese mines situated in the State of Madhya Pradesh. He carries on the business of mining and selling the ore raised therefrom. There is practically no internal market for manganese, and most of the manganese produced in India is exported to foreign countries. The internal trade in regard to manganese ore being negligible, it may be ignored

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for the purpose of this case. Till about the middle of 1955, miners, including the appellant, were free to deal with foreign buyers for exporting their products and to sell them at their sidings to exporters or to carry them to any port by obtaining necessary wagon allotments from the railways. But from May 1956, the Government of India issued various notifications progressively restricting the export quotas available to the shippers and mine-owners, culminating in a stage when direct export by mine-owners and shippers was stopped and the entire trade canalized through the State Trading Corporation originally formed by the Government as a private company under the India Companies Act, 1956 and subsequently made into a public company. We shall later on consider in detail the particulars of the said process. On December 1, 1958, the appellant filed an application before the Joint Chief Controller of Imports and Exports, the first respondent herein, for granting to him an export quota and licence for export of manganese ore under cl.(4) of the Exports (Control) Order, 1958, (hereinafter called the Order), and also for the movement of the ore from the railway sidings to Bombay port. The first respondent, by his reply dated December 17, 1958, refused to comply with the said request on the ground that export of manganese ore outside India was only allowed by established shippers and established mine-owners according to the "existing" orders of the Government. Aggrieved by the said order, the appellant filed the said writ petition before the High Court of Bombay, but that was dismissed. Hence the present appeal. The Joint Chief Controller of Imports and Exports is made the first respondent and the Union of India, the second respondent to the appeal.

The argument of learned counsel for the appellant may be summarized thus: Under Art.19(1)(g) of the Constitution the appellant had a right to

carry on his business of producing and selling manganese ore and exporting it to foreign countries either directly or through exporters. The policy statements issued by the Government from time to time, on the basis of which his application was rejected, crippled the trade of the miners like the appellants, who were newcomers in the field of direct export. Clause (6) of the Order, whereunder the said policy statements were issued and which empowered the Central Government of the Chief Controller of Imports and Exports to canalize exports through special or specialised agencies or channels, is *ultra vires* inasmuch as s. 3 of the Imports and Exports (Control) Act, 1947 (XVIII of 1947), hereinafter called the Act, whereunder the said order was made, does not empower the Central Government to take for itself or confer on others such a power. Even if cl. 6(h) of the Order was valid, the said order empowers only canalizing exports through special or specialized agencies, that is, through experts in the line of export business, and it cannot be relied upon to canalize the business through the State Trading Corporation, which is in no way better than the businessmen in that line and which indeed has not get any experience in the business of export compared to other experienced exporters. In any view, the ultimate effect of the policy statements is to create a monopoly in the export trade in manganese in favour of the State Trading Corporation and other qualified exporters, and later on solely in favour of the said Corporation, without at the same time safeguarding the interests of miners like the appellant by fixing appropriate quotas or otherwise: with the result, they are compelled either not to do the business at all or put themselves at the mercy of others, who are in a position to dictate terms and who may or not buy the ore from them. The implementation of the policy to the detriment of miners like the appellant is an unreasonable restriction on their

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right to carry on their business in mining and selling manganese ore.

Learned counsel for the respondents contended that the petition filed by the appellant under Art. 226 of the Constitution should be dismissed on the ground that it has become infructuous, as the year for which the licence was asked, namely, 1959, had run out. The learned counsel also sought to support the order made by the first respondent on ground that cl.(6) of the Order was validly made and that the scheme of implementation of the policy adumberated by the Government was not only sanctioned by cl. 6(h) of the Order, but the restriction imposed on the fundamental right of the petitioner was also a reasonable one.

The first question is whether cl. 6(h) of the Order was *ultra vires* the Act. The relevant provisions may be noticed. The meterial part of s. 3 of the Act reads:

> *"Powers to prohibit or restrict imports and exports.—*
>
> (1) The Central Government may, by order published in the Official Gazette, make provisions for prohibiting, restricting or otherwise controlling, in all cases of specified classes of cases, and subject to such exceptions if any, as may be made by or under the order:—
>
> (a) the import, export, carriage coastwise or shipment as ships stores of goods of any specified description.
>
> x x x x

Clause (6) of the Order reads:

> *"Refusal of licence.*—The Central Government or the Chief Controller of Imports and

Exports may refuse to grant a licence or direct any other licensing authority not to grant a licences :—

x x x x x x

(h) if the licensing authority decided to canalize exports and the distribution thereof through special or specialized agencies or channels.

The Order was made in exercise of the powers conferred by ss.3 and 4-A of the Act. It is contended that s. 3 does not empower the Central Government to issue an order conferring on itself or another a power to canalize exports through special or specialized agencies or channels. There is no force in this argument. Section 3 of the Act empowers the Central Government to make provisions for prohibiting, restricting or otherwise controlling in all cases or in specified classes of cases the export of goods. The power conferred is very wide and it is not possible to hold that canalizing exports through special or specialized agencies or channels is not comprehended by the said words. Canalizing exports through specialized agencies or channels is one way of controlling export. It is contended that the incidence of the section is only at the point of exportation and that the said section does not authorize the conferment of a power to regulate internal trade with a view to control exports. This is putting a very narrow construction on the wording of section 3 of the Act. It is true that the Central Government cannot interfere with internal trade under the colour of regulating export, but the power to prohibit, restrict or control exports of goods carries with it, by implication, the power to do all things intimately connected with the regulation of export trade. If the power was confined only to the export point, it would defeat the purpose of the Act. The main object of regulating export trade is to assist the national economy. This

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object can be achieved only by devising ways and means to promote export and to secure favourable balance of trade. A machinery will have to be evolved to select the goods which the country can spare or may prefer to exchange for more essential foreign goods, to find suitable foreign markets for them and to take necessary steps to establish a reputation for Indian goods by securing qualitative standards, prompt deliveries and honest dealings, and to prevent avoidable hardships by allotting quotas to businessmen or equitable principles, to fix reasonable rates for their goods and to discharge similar other duties. This cannot be achieved if the control of the Central Government is confined only to the exportation point. The regulation of the export trade may have to commence even at an earlier stage; in extreme cases even at the stage of production. It is question of fact in each case whether the control exercised by the Central Government is only to regulate export trade or is a colourable exercise of controlling the internal trade under the guise of regulating export trade. I therefore, hold that the power conferred under s. 3 of the Act cannot be conferred on the authorities concerned under cl. 6(h) of the Order to canalize exports through special or specialized agencies or channels is well within the scope of the power conferred on the Central Government.

In this context another arguments of learned counsel for the appellant may conveniently be dispose of. It is said that the special or specialized agencies or channels mean export agencies or channels. The dictionary meaning of the word "special" is "for a particular purpose" and "specialise" is "set apart for a particular purpose." The said words do not necessarily convey the idea that the agency created for a special purpose should be experts in the line with certain qualifications. While the Government may be expected to select

suitable agency well versed in export trade of particular commodities for achieving maximum results, the wording of the clause does not impose any such qualifications. In this view, it is not necessary to express my opinion on the question whether the State Trading Corporation is in a better position or is a more qualified one than the experienced exporters in the line of export of manganese ore, for the selection of the agency is within the exclusive province of the Government.

Even so, it is contended that the scheme, as progressively unfurled by the Government in the shape of policy statements, infringes the fundamental right of the appellant and persons similarly situated under Art. 10(1)(g) of the Constitution. To apppreciate this argument it is necessary to notice briefly the various policy statements issued by the Central Government to ascertain the impact of the said statements on the business of the appellant. The first statement is found in the Press Note dated June 26, 1956, issued by the Ministry of Commerce and Industry, New Delhi. Before the issue of the Press Note the miners who produced manganese ore could enter into contracts with foreign buyers and export their goods subject to the export control rules. By this Press Note the Government introduced a change in its policy. The following reason are given for changing the policy: (1) The existing trading machanism is quite inadequate to cope with the developments that took place in certain countries in the matter of purchase of ores. and their effect on Indian foreign trade. (2) The pre-occupation of Control authorities with the equitable distribution of available wagon space amongst mining and trading interests has made it virtually impossible for the limited resources to be used to the maximum advantage or for economical arrangements to be made for the transportation of ores and for their

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handling at the ports. (3) The trading interests entered into large contracts and some of them were not able to fulfil them. (4) The mining industry did not have an adequate scope for development on sound lines. For the foregoing reasons, the Government propounded the following new policy :

> "Government have therefore come to the conclusion that it would be necessary for them to play a more positive role to overcome the obstacles in the way of augmenting foreign exchange earnings from the export of ores. It has accordingly been decided that Government should help in reorientating the trading in ores on more rational lines and with this object in view they propose to canalise the export of ores in a progressively increasing measure through the State Trading Corporation and will, in fulfilling its responsibility, rely mainly on the mining interests in the country and use the existing trading mechanism to the extent practicable. At the same time, limited opportunities are proposed to be provided to mining and trading interests for direct participation in the export trade within the limits of the board policy that may be laid down by the Government of India in this behalf."

Pursuant to the said policy, the Press Note informed the trading public that it had been decided to regulate the export of iron and manganese ores during the half-year July-December 1956 through established shippers, mine-owners and the State Trading Corporation and that export quotas would be granted on the following basis :

(i) Established Shippers will be given export quotas on the annual average of the quantities actually exported during the three calendar years, 1953, 1954 and 1955.

(ii) Mine owners will be given export quotas on the annual average of the quantities of ores on which royalty was actually paid (excluding quantities supplied for domestic consumption) during the three calender years, 1953, 1954, 1955. Mine owners whose mining leases had expired on 31st December 1955 and have not been renewed thereafter, will not be eligible.

(iii) State Trading Corporation will be given quotas on an *ad hoc* basis.

It was also stated that the quotas would be valid for rail transport facilities only on the section which had been used by the shipper in the past and that the quota-holders would not be permitted to move on each section more than the quantity moved by them during any of the three years 1953, 1954, 1955. Through the subsequent Press Notes issued from time to time, the policy stated in the first statement was implemented by gradually eliminating the shippers other than the State Trading Corporation. The High Court has considered all the subsequent Press Notes in detail and has accurately and succinctly summarized the various steps taken by the Government to achieve its object. In the circumstances, it would be unnecessary to consider them again in detail. The High Court narrated the said steps as follows :

(1) To begin with, the Manganese trade was controlled by a system of licensing of Export Quotas.

(2) Press Notes dated July 14, 1956, July 30, 1956, August 6, 1956, September 4, 1956, and June 1, 1957 show that the quotas granted to shippers and mineowners were with one exception progressively reduced for each successive period.

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(3) Until the fifth statement dated September 4, 1956 was made, the case of mine-owners who had no previous shipment to their credit was not within the contemplation of Government policy. In that statement Government announced that it was considering their case but at no later stage does it appear that their case was specifically provided for until the State Trading Corporation took over.

(4) During the period covered by the 7th statement, the State Trading Corporation was introduced into the picture and freely competed with private interests. During this period small quota holders were advised to form co-operatives or companies and were discouraged.

(5) Form the date of the 8th statement, viz., March 12, 1959, it is clear that the full freedom of private trading as before was virtually stopped because all orders were to be "canalized" through the State Trading Corporation. The terms and conditions on which "canalization" could take place were onerous and difficult of fulfilment by individual small interests. The State Trading Corporation itself laid down certain terms.

(6) There were no restrictions on the activities of the State Trading Corporation and its quota was unlimited.

(7) The policy was put into effect with the aid of the licensing authorities appointed under the Imports and Exports (Control) Act and Order; that port authorities and by controlling the allocation of railway wagons.

It is clear from the aforesaid summary of the various notifications that the policy decl ed in

the first statement was gradually implemented—first by confining the issue of quotas and licences only to recognized exporters and the State Trading Corporation, and later on virtually conferring a monopoly on the Sate Trading Corporation. It would also be noticed that though the Government stated in the earlier Press Notes that it was considering the case of mine-owners who had no previous shipment to their credit, during the prescribed period no attempt was made to provide for them. The result was that mine-owners, who had no previous shipment to their credit, like the petitioner, could not move manganese ore outside their mines for export, for they could not sell except to the established shippers and the State Trading Corporation till March 12, 1959, and thereafter only to the said Corporation. In the anxiety of the Government to push up export trade in manganese ore, persons who were not in the field of export trade during the prescribed period were totally ignored, with the result that their industry and business were crippled. Learned counsel for the respondents contends that the appellant filed the application for licence on December 11, 1958, for the grant of export not only to the State Trading Corporation but also to other established shippers, mineowners and exporters, and that, therefore, the appellant could not have much difficulty in selling the manganese produced by him either to the one or to the other. Apart from the validity of this argument, which we will immediately consider, it is not clear from the petition that the export licence asked for was for a period before the issue of the 8th statement dated March 12, 1959. The previous period would expire on June 1, 1959, and the 8th statement issued on March 12, 1959, provided for the period between July 1959 and 1960, during which period the State Trading Corporation had obtained a virtual monopoly in export trade in manganese. It was more likely

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that the licence and the quota asked for related to the year 1959-60. This should also be clear from the fact that the application was disposed of by the first respondent only by his order dated December 17, 1958. Be it as it may, I shall consider the argument alternatively. The argument based upon the alleged existence of a free market wherein the petitioner could sell his manganese ore to recognized exporters is not only unrealistic but also unfair to the petitioner. What was the market wherein the petitioner could sell his manganese ore for reasonable prices? Admittedly he could not sell in the internal market, for there was practically no such market. None of the recognized exporters, either the established shippers or the State Trading Corporation, was bound to purchase any quota from the petitioner or the miners in the position of the petitioner. The recognized exporters were in a position to dictate terms and even to ignore some of the mine-owners. In short, an artificial market was created for the mine-owners like the appellant wherein they could sell the manganese ore only to established shippers, if they wanted the ore and for a price dictated by them. The so-called market was further circumscribed and limited to one purchaser, namely, the State Trading Corporation, after March 1959. The appellant complains that he could not sell his manganese ore because of the said restrictions on sale and export. In his petition, the appellant alleged thus:

> "The State Trading Corporation, under the colour of impugned Notices, has been dictating its own price and has been thus in effect demanding every exorpitant commission for the purpose of giving facilities of exporting the petitioner's ore out of the unlimited quota alloted to it. The respondent No. 1 is thus bent on putting the

petitioner in heavy losses by forcing him to sell his ore to the Corporation at lesser price. The petitioner has now at hand 200 tons of manganese ore lying at his mines or sidings and valued at about Rs.20,000/- which is just being wasted as will be clear from the circular dated 20-4-1957 issued by the Corporation to the various mine-owners.

If the petitioner is not allowed to export his ore he would be stock piling about 50 tons of ore per month valued at Rs. 10,000/- without any outlet or rolling of the capital which he has already invested as also the running cost including the wage bill of about Rs.4000/- per month. If on the other hand the petitioner has to close his mines for want of sale of the ore he will have to pay a compensation running into several thousands of rupees to the workmen under the Industrial laws. Besides, he may be threatened under the Mineral Concession Rules, 1949 for cancellation of his lease for having a stopped working of his areas. The petitioner therefore submits that an impossible situation has been created by the respondent No. 1 by issue of various Notices referred to above."

These facts are not denied. Can this result, which practically destroyed the trade of the petitioner, be described as a reasonable restriction on his fundamental right ? Under the colour of canalizing exports through specialized agencies or channels, the Government conferred virtually a monopoly on a public corporation, crippling in the process the business of mine-owners like the petitioner. Such an unjust position cannot be brushed aside on a simple allegation that they can export through the Corporation. There may be some justification for this, if the Corporation, after March 1959, and, before that, the established exporters, were bound

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to some quota from the mine-owners like the appellant. The livelihood of a person cannot be made to depend upon the passing moods of an officer of a State corporation, however well-intentioned he may be in the discharge of his duties. The scheme of channelling of exports through an agency or agencies could certainly be dovetailed with that of equitable apportionment of quotas amongst persons producing or doing business in manganese ore without any detriment to the object of promoting export trade. Any scheme of canalization of exports through specialized agencies must be governed by definite rules whereunder provision is made giving stability and guarantee of fair treatment in ordinary times as well as in times of emergency. For instance appropriate rules could be framed fixing quotas for each mine-owner the expected total quantity of export, having regard to the quality and the quantity of manganese produced. It may also be necessary to appoint an expert body under the said rules not only to advise the State in fixing the quota but also for fixing reasonable prices, having regard to the relevant circumstances. Perhaps, many other methods may be evolved to achieve the said result. It is for the Government and the experts to do so. But what I emphasize is that matters shall not be kept in a vague uncertainty in the minds of, persons affected by the said scheme, but the Government should evolve definite principles by making rules, of course providing for emergencies and change of circumstances. I should not be understood to have tied down the hands of the Central Government by the said observations, for it is left to it to make appropriate rules in the light of the said observations.

At this stage, another contention of learned counsel for the appellant may be noticed. He argues that, unless a law is made by the State for carrying on the business by a corporation, owned

or controlled by the State, to the exclusion, complete or partial of citizens, a virtual monopoly brought about by administrative action under the colour of a power to canalize the trade in a particular commodity through specified channels must necessarily be an unreasonable restriction on the right of a citizen to carry on his business in that commodity. In support of this contention reliance is placed upon Art. 19(6) of the Constitution, as amended by the Constitution (First Amendment) Act, 1951, the material part of which reads :

> "Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause, shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—
>
> (i) ....
>
> (ii) the carrying on by the State, or by a corporation, owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise."

The amended article does not *propric vigore* confer any power on the State to create monopolies by administrative action. But, it is only says that if a valid law is made conferring a power on the State to carry on trade or business to the exclusion, complete or partial, of citizens, such a law will not infringe the fundamental right guaranteed under

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Art. 19 (1)(g) of the Constitution. It does not also say, as learned counsel for the appellant argues, that unless such a law is made, every interference by the State with the trade of a citizen in exercise of a power under some other law would necessarily be an unreasonable restriction: such an interference will not have the protection of the amended provision of the Constitution, but must be judged by the standard provided by the first part of Art. 19(6); it would be valid, if it was a reasonable restriction on the exercise of the petitioner's fundamental right made in the interest of the general public. The decision of this Court in *Saghir Ahmad* v. *The State of U. P.* (1) does not really help the appellant. There, this Court was considering the question whether the U. P. Road Transport Act (11 of 1951) violated the fundamental rights of private citizens guaranteed under Art. 19 (1)(g) of the Constitution, and was protected by cl. (6) of Art. 19. The question fell to be considered on the basis of the article, as it stood before it was amended by the Constitution (First Amendment) Act, 1951. This Court held that it did offend the fundamental right. In that context, this Court made the following observations:

> "It is quite true that if the present statute was passed after the coming into force of the new clause in article 19(6) of the Constitution, the question of reasonableness would not have arisen at all and the appellant's case on this point, at any rate, would have been unarguable. These are however considerations which cannot affect our decision in the present case, the amendment of the Constitution, which come later, cannot be invoked to validate an earlier legislation which must be regarded as unconstitutional when it was passed."

(1) (1955) 1 S.C.R. 707, 727.

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I do not see how these observations help the appellant. They only state the obvious, namely, that if there was a law within the meaning of the amended article, no question of infringing the fundamental right would arise. There is no force in this argument. This question anyhow does not affect my decision, as I have come to the conclusion that the Press Notes issued by the Government clearly infringed the fundamental right of the petitioner.

But, in view of the fact that the period for which licence was asked had run out, the application in respect thereof has become infructuous and, therefore has to be dismissed. In the result, the appeal is dismissed, but, in the circumstances of this case, without costs.

STATE OF WEST BENGAL

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S. K. GHOSH

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, N. RAJAGOPALA AYYANGAR and T. L. VENKATARAMA AIYAR, JJ.,)

Attached Property, Disposal of—Termination of Criminal Proceeding for scheduled offence—Order of District Judge—Validity—Forfeiture, if a penalty—Criminal Law Amendment Ordinance, 1944(38 of 1944), ss. 13(3), 12(1)3.—Criminal Law Amendment Ordinance, 1943 (29 of 1943), as amended by Criminal Law (1943 Amendment) Amending Ordinance, 1945(12 of 1945), s.10—Constitution of India, Art. 20(1)—Indian Penal Code, 1860(Act 56 of 1860), ss. 120B, 409, 53.

The respondent, who was the Chief Refugee Administrator of Burma Refugee Organisation from November, 1942, to August 25, 1944, was tried under ss. 120B and 409 of the Indian Penal Code by the Second Special Tribunal, functioning under the Criminal Law Ordinance No. 29 of 1943 as amended by Criminal Law (1943 Amendment) Amending Ordinance No. 12 of 1945. On an application made on