

(1961) 02 CAL CK 0009
In the Calcutta High Court
Case No : Matter No. 11 of 1960

Asit Ranjan Majumdar

APPELLANT

Vs

Calcutta Dock Labour Board and Another

RESPONDENT

Date of Decision : 03-02-1961

Acts Referred:

Calcutta Port Act, 1890 — Section 126, 126(3), 126(4)
Constitution of India, 1950 — Article 19(1)

Citation : AIR 1961 Cal 365

Hon'ble Judges : D.N. Sinha, J

Bench : Single Bench

Advocate : R. Chowdhury, for the Appellant; E.R. Meyer, for the Respondent

Final Decision : Allowed

Judgement

D.N. Sinha, J.—The petitioner carries on business inter alia as a stevedore, and is a member of the Calcutta Port Stevedores Association. He had in the past, worked as a stevedore while being connected with Messrs. Liners (Agency) Ltd. and Messrs, B. Chose and Co. Private Ltd. registered stevedores. Now he wants to set up as a stevedore himself. In 1948, was enacted the Dock Workers (Regulation of Employment) Act, 1948 (Act No. IX of 1948) being an Act, the object of which was to provide for regulation of the employment of dock workers. Under this Act, a Dock-Labour Board has been constituted and a Scheme is to be made for the registration of dock workers with a view to ensuring greater regularity of their employment. Such a Scheme has been framed,, called the Calcutta Dock Workers (Regulation of Employment) Scheme, 1956. Certain provisions in clause 15(1) of the said Scheme is of importance and are set out below:

"15. Maintenance of Registers etc. -- (I) Employers" Register:-

(a) There shall be a register of employers.

(b) In so far as the application of the Scheme to stevedore labour is concerned,

every stevedore or stevedoring firm who on the date of enforcement of the Scheme is already registered under the Calcutta Dock Workers (Regulation of Employment) Scheme, 1951 shall be deemed to have been registered under this Scheme.

(c) Persons or firms other than those who are deemed to have been registered under item (b) shall not be registered as stevedores unless the Board considers it expedient and necessary to do so and in no case shall a person or a firm be registered -until he or it has been licensed in that behalf by the Port Authority."

2. It will be observed that Sub-clauses (b) and (c) deal with the case of stevedores. Under Sub-clause (b), those stevedores who were already registered under the 1951 Scheme, continue to be registered under the 1956 Scheme. The petitioner was not so registered and, therefore, his case comes under Sub-clause (c). This Sub-clause requires a licence to be obtained from the Commissioners for the Port of Calcutta, which is a statutory body constituted under the Calcutta Port Act, 1890 (Bengal Act, III of 1890). At the time when this Scheme came into operation, there was no provision made under the Calcutta Port Act or any Bye-law made under it, to issue any licence to stevedores. The 1956 Scheme came into operation on or about the 8th October, 1956. On 8th August, 1957 a Bye-law numbered 4A, framed by the Commissioners for the Port of Calcutta, was published in the Calcutta Gazette. This Bye-law, which shall presently set out, dealt with the question of the issuance of licences to stevedores. On or about 28th January, 1959 the petitioner applied to the Port Commissioners for the issue of a stevedore's licence, and on 2nd February, 1959 the petitioner made an application to the Dock Labour Board for registration as a stevedore employer. Although the Bye-law No. 4A was published in August, 1957, even in 1959 the Port Authorities were blissfully ignorant of it. On the 17th February, 1959 the Traffic Manager actually wrote to the petitioner that the matter of issuance of licences to stevedores by the Commissioners was "still under consideration". On the 28th February, 1959 the petitioner wrote to the Calcutta Dock Labour Board and referred to this letter of the Traffic Manager and claimed that there was no existing practice of issuing licences by the Port Authorities and, therefore, the petitioner's name should be registered, even without a licence. On the 19th/20th February, 1959 the Secretary to the Dock Labour Board replied to this by referring to Clause 15(c) of the 1956 Scheme, and stated that no person or firm could be registered unless licensed by the Port Commissioners and that the Board could not take any action "until the matter is disposed of by the Calcutta Port Commissioners". On the 2nd March, 1959 the Traffic Manager wrote to the petitioner stating that he should approach the Secretary, Dock Labour Board "for necessary information". On the 29th April, 1959 the Deputy Chairman of the Calcutta Dock Labour Board was informed by the Ministry of Labour and Employment, New Delhi that the Commissioners for the Port of Calcutta had already prescribed rules for the issuing of licences to stevedores under the Bye-law No. 4-A, Thereupon, the Secretary to the Calcutta Dock Labour Board, informed the petitioner that such a Bye-law existed and subsequently the Dock

Labour Board has again taken the position that the petitioner could not be registered as an employer under Clause 15(1)(c) unless he has been licensed by the Calcutta Port Commissioners. The Port Commissioners, who are respondents before me, have not granted the application of the petitioner for the issue of a licence. While the application was being heard I had suggested that the petitioner's application for a licence might be dealt with and disposed of, because if a licence is granted, then there is no further necessity of proceeding with the application. The respondent No. 2, however, does not propose to grant a licence to the petitioner because, it is said, that the petitioner has failed to comply with the provisions of the Bye-law No. 4-A. The petitioner has in this application finally taken the stand that the Bye-law No. 4-A is bad, because it constitutes an unreasonable restriction on the fundamental right granted to the petitioner for carrying on business, under Article 19(1)(g) of the Constitution. As a necessary corollary it is argued that the provision of Clause 15(1)(c) of the 1956 Scheme is also bad, because it also constitutes an unreasonable restriction on the fundamental right granted to the petitioner to carry on business under Article 19(1)(g) of the Constitution. According to the petitioner, if these two provisions of law are out of the way, his application would have to be considered under Clause 15(1)(a), as laid down by me in Matter No. 61 of 1959 *Kesab Lal Banerjee and Another Vs. Calcutta Dock Labour Board and Another*, .

3. I have already set out the relevant provisions of Clause 15(1)(c) of the Scheme. I shall now proceed to consider the Bye-law No. 4-A. Before I set out the relevant provisions of the said Bye-law, I must mention that pending the disposal of this application, the old Bye-law No. 4-A has been substituted by another Bye-law. This Bye-law was proposed by the Commissioners for the Port of Calcutta, and the proposal was published in the Calcutta Gazette Dated March 31, 1960. It was confirmed by the Central Government on 29th July, 1960 and the proposal as confirmed was published in the Calcutta Gazette on August 18, 1960. If this procedure is in accordance with law, then, of course, the Bye-law No. 4-A framed in August 1957 stands repealed, and we have to consider the new Bye-law No. 4-A and not the old one. In my opinion, however, the new Bye-law No. 4-A has not been framed in accordance with law and, therefore, is invalid. The power to frame Bye-laws has been conferred upon the Commissioners for the Port of Calcutta u/s 126 of the Calcutta Port Act. Under Sub-section (1) of the said section, the Commissioners have been granted the power to make Bye-laws. Under Sub-section (2) they may, from time to time, repeal, alter or add to any Bye-law so made. Under Subsection (3), no Bye-law, repealed or altered shall have effect until the same is confirmed by the Central Government. Under Sub-section (4) no Bye-law and no repeal or alteration of, or addition to any Bye-law, shall be confirmed until the same has been published for two weeks successively in the Official Gazette and until fourteen days have expired from the date on which the same has been first published in that Gazette. The proposal for the new Bye-law No. 4-A, in substitution of the existing Bye-law mentioned above, was published in the Calcutta Gazette dated March 31, 1960. On the 18th August,

1960 the Bye-law No. 4-A as confirmed was published in the Calcutta Gazette. It appears, however, that the Bye-law No. 4-A as confirmed by the Central Government is substantially different to the proposal made by the Port Commissioners as published in the Calcutta Gazette of March 31, 1960. I shall now proceed to point out how this is so. Under the proposed Bye-law it was stated that the grant of stevedoring licences shall be subject to the applicant's fulfilling certain conditions. One of the conditions was as follows: "(a) That the applicant has in his employ such number of qualified and fully trained permanent staff, to execute proper supervision of work on board vessels, as is considered essential by the Commissioners and stipulated by them....." This condition, as confirmed by the Central Government and published in the Calcutta Gazette on August 18, 1960 reads as follows:

"(a) That the applicant has in his employ such number of qualified and fully trained staff, to execute proper supervision of work on board vessels, as is considered essential by the Commissioners and stipulated by them....."

4. There is a substantial difference between these two terms. In the proposal, the applicant had to employ qualified and fully trained permanent staff. The word "permanent" has been omitted in the Bye-law as confirmed. The result is that according to the Bye-law as confirmed, the applicant may appoint or have in his employ, staff which is not permanent but temporary. The law requires that the Bye-law should be framed by the Port Commissioners and confirmed by the Central Government. The confirming authority can either confirm or reject. It cannot alter or amend the proposal. Since the proposal made by the Port Commissioners has been published in the Official Gazette as also the Bye-law upon confirmation, one must presume that the proposal was contained in the publication dated March 31, 1960 and the Bye-law as confirmed by the Central Government appeared in the publication dated August 18, 1960 and in the succeeding week. It is clear, therefore, that the Central Government, in confirming the proposal, has altered and/or amended the proposal. Two other alterations have been brought to my notice. One is in Clause (iii), but this is a mere alteration or omission of words, without altering the sense, and I do not attach any importance to the same. In the publication of August 18, 1960 an "explanatory note" was added, which "explanatory note" is not to be found in the proposal. It is doubtful whether this "explanatory note" can be said to be a part of the Bye-law, and I do not think that any importance should be attached to the same. The difference in Clause (ii) (a) however is material. The Bye-law No. 4-A lays down several conditions upon the fulfilment of which a licence is to be granted. These conditions are cumulative. Therefore, if one of the conditions is found to be invalid, then the whole Bye-law must fail, because it is not possible to uphold part of the conditions prescribed and strike down one condition. The result is that this altered Bye-law No. 4-A as published on August 18, 1960 is invalid, as violative of the provisions of Sub-sections (3) and (4) of Section 126 of the Calcutta Port Act. The position is either that the old Bye-law No. 4-A continues or no such Bye-law exists at all because the Commissioners have

evinced the intention of altering the same. I shall however assume that the old Bye-law No. 4-A subsists. It will, therefore have to be considered whether the provisions of this Bye-law and that of Clause 15(1)(c) of the 1956 Scheme are violative of the fundamental rights of the petitioner under Article 19(1)(g) of the Constitution. In order to do so, it is necessary to set out the Bye-law No. 4-A:

"(i) The Commissioners shall, from year to year, issue licences to certain firms and individuals approved by the Commissioners granting such firms and individuals permission to perform the work of stevedoring vessels in the "Port and no stevedore shall be allowed to work on board any vessel in the port without holding such a licence. The Commissioners may without assigning any reasons revoke, cancel, suspend any such licence at any time they think fit and proper or refuse to renew such licence.

(ii) Applicants for issue of stevedoring licences have to satisfy the Commissioners on the following points and furnish the following proofs before their applications are entertained by the Commissioners:

(a) That the Staff proposed to be employed by the applicants direct, is sufficient in number, fully trained and qualified, and the staff booked by the applicants through the Dock Labour Board are sufficient in, number.

(b) Production of a certificate from an authority considered by the Commissioners to be competent, to the effect that the applicants possess proper gear for the due performance of their works.

(c) Production of documentary evidence that a Steamship Company is prepared to enter into a contract with the applicants for stevedoring of its vessels.

(d) Financial ability to meet obligations to labour employed, on account of wages, and levy under the Dock Workers" (Regulation of Employment) Scheme 1956, and compensation payable under the Workmen"s Compensation Act."

5. I shall now consider the validity of Bye-law No. 4-A. The first reason why the petitioner states that the said Bye-law constitutes an unreasonable restriction on his fundamental right to carry on business, is that the provisions of the Bye-law, read with Clause 15(1)(c) of the Scheme, are completely unworkable and impossible of performance. The matter is developed by Mr. Deb as follows: Sub-clause (a) of Clause (ii) as set out above, lays down that the applicant for the issue of a licence must satisfy the Commissioners that the staff proposed to be employed by the applicant direct was sufficient in number, fully trained and qualified. If the matter stood there, the only argument that could be advanced was that there was no specification for the words "fully trained" or "qualified". But in addition to this, the applicant must satisfy the Commissioners that the staff booked by the applicant through the Dock Labour Board was sufficient in number. Under the Scheme, no staff can be booked through the Dock Labour Board by an employer (Clause 39) unless he is on the register of employers. In order to be registered as an employer; a stevedore is required to get a licence,

and in order to get a licence he is required to do something which, he cannot do unless he is registered as an employer. It is obvious, therefore, that the whole thing is utterly unworkable. Next, let us come to Sub-clause (d) of Clause, (ii). Under this an applicant for a licence has to satisfy the Commissioners of the financial ability to meet his obligations to labour employed, on account of wages, and levy under the Dock Workers' (Regulation of Employment) Scheme, 1956 and compensation payable under the Workmen's Compensation Act. This has to be done at a point of time when the stevedore has not yet been registered as an employer and, therefore, cannot employ any labour. At that point of time, he cannot know what labour will be employed for future work and what their wages will be. The levy mentioned is under Clause 52 of the Scheme. This again, does not come into the picture at all until the stevedore is registered as an employer. Until he has been registered as an employer and has actually employed labour, the levy does not become payable and cannot be calculated. Then again, compensation under the Workmen's Compensation Act can only arise where the workman meets with an accident and the compensation has to be then calculated according to the facts and circumstances of the case. How is it possible for an applicant to satisfy the Commissioners as to how much he will have to pay for compensation, before the accident has occurred, or how can he say whether any accident will occur at all within the period of computation? It is clear to me, therefore, that Sub-clause (d) of Clause (ii) is completely unworkable. The next point taken is that the conditions that have been imposed by the Bye-law are so vague and uncertain that they are incapable of performance, I have already pointed out that the words "fully trained" and "qualified" occur in Sub- Clause (a) of Clause (ii), but it has not been stated as to what the: qualification or training should consist of. The training or qualification relates to the "staff proposed to be employed. The "staff* may consist of technical hands or non-technical hands. Take the case of. a clerk. What is the qualification that a clerk should possess? It has certainly not been laid down or even indicated in the Bye-law. The provisions of Sub-clause (b) of Clause (ii) are even more vague. It requires that a -certificate should be produced,-- "from an authority considered by the Commissioners to be competent". It has not been indicated as to which authority the Commissioners consider to be competent. No particulars are given and no schedule is appended to the Bye-law. How then can the Bye-law be complied with by the applicant? Then again, the certificate must be to the effect that the applicant possesses, "proper gear" for the due performance of his work. No particulars are given as to what constitutes "proper gear". This is, therefore, not possible of performance.

6. The next point taken is that the provisions of this Bye-law are entirely arbitrary. In other words, it gives an arbitrary and unregulated power to an executive authority, depending on his subjective satisfaction, and therefore, the Bye-law constitutes an unreasonable restriction" on the fundamental right of the petitioner to carry on business. I shall presently consider the authorities which lay down the proposition that such a named and arbitrary power constitutes an

unreasonable restriction on the fundamental rights of the petitioner under Article 19(1)(g) of the Constitution. I shall first examine the provisions to "find out whether they are arbitrary and unregulated. In Clause (i) it has been laid down that the Commissioners may revoke, cancel or suspend any licence at any time they think fit and proper or refuse to renew such a licence, without assigning any reason. I do not think that there can be a better instance of a naked and arbitrary power than this. In fact, there has been no attempt on behalf of the respondents to argue that such a power is not a naked or arbitrary power, I have already pointed out that in Sub-clauses (a) and (b) of Clause (ii) no particulars are given about the training required, or the qualification necessary, or about the "proper gear that the applicant must possess, or of the authority which the Commissioners consider to be competent to grant a certificate. All this is therefore left to the subjective satisfaction of the Commissioners. In the absence of rules or specifications in that behalf, the power must be considered to be arbitrary. The applicant does not know as to what training or qualification of his staff would be acceptable to any particular body of Commissioners, or whether a certificate produced by him would be considered as competent, or whether the gear possessed by him would be considered, as proper. In my opinion, there can be no doubt that the Bye-law contains naked and arbitrary powers, without specification and without any regulation. The law on this point seems to be well-settled by the decisions; of the Supreme Court, and I shall briefly refer to the same.

7. The first case cited is the well-known "Bidi" case, -- Chintaman Rao Vs. The State of Madhya Pradesh, . This was one of the earliest cases decided by the Supreme Court, in which the phrase "reasonable restriction" as used in Article 19 came to be explained, Mahajan, J. said as follows:

"The phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the right should not be" arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word "reasonable" implies independent care and deliberation, that is the choice of a course which reason dictates. The legislation which arbitrarily or excessively invades the right cannot be said to contain in the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed under Article 19(1)(g) and the social control permitted by Clause (6) of Article 19, it must be held as wanting in that quality." .

8. The next case cited is the State of Madras Vs. V.G. Row, . In that case what fell to be considered was the constitutionality of Sec. 15(2)(b) of the Criminal Law Amendment Act (1908), as amended in Madras by the Criminal Law Amendment (Madras) Act, 1950. By this law, as amended, the State Government could, by notification in the Official Gazette, declare any association of persons to be unlawful on grounds mentioned therein. Briefly the grounds were, danger to public peace and security and the administration of law. The Government was not bound to disclose facts which it considered to be against the public interest to

disclose. All that the association, could do was to make a representation to an Advisory Board constituted by Government. This law was held to be violative of the fundamental rights conferred by Article 19(1)(c). Patanjali Sastri, C. J. said as follows;

"The formula of subjective satisfaction of the Government or of its officers, with an Advisory Board thrown in to review the materials on which the Government seeks to override a basic freedom guaranteed to the citizens, may be viewed as reasonable only in very exceptional circumstances within the narrowest limits, and cannot receive judicial approval as general pattern of reasonable restriction on the fundamental rights." In *Thakur Raghubir Singh Vs. Court of Wards, Ajmer and Another*, it was held that when a law deprives a person of possession of his property for an indefinite period of time merely on the subjective determination of an executive officer, such a law can on no construction be "reasonable" or described as coming within that expression, because, it completely negatives the fundamental right by making its enjoyment dependent on the mere pleasure and discretion of the executive. Citizens affected having no right to have recourse for establishing the contrary in a civil court.

9. The next Case cited, and the most important one, is *Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others*, . In that case, certain provisions of the Uttar Pradesh Coal Control Order, 1953 were challenged on the ground that they violated the fundamental rights of the petitioner guaranteed under Article 19(1)(g) of the Constitution. Under the impugned provisions of the said Order, the carrying on of business in coal could be restricted by imposing the necessity of taking out a licence. The licensing authority had been given absolute power to grant or refuse to grant, review or refuse, suspend, revoke, cancel or modify any licence under the order. It was held that the power of granting or withholding licences or of fixing the prices of goods, would necessarily have to be vested in any public officer or body, and they would certainly be left with some amount of discretion in the matter. But a law or an order, which confers arbitrary or uncontrolled power upon the executive in the matter regulating trade or business in normally available commodities, cannot but be held to be unreasonable. It was pointed out that the impugned legislation did not lay down any rules or regulations regulating the power of the District Magistrate and that the power was naked and arbitrary. The relevant provision in the said order was struck down. In *The State of Rajasthan Vs. Nath Mal and Mitha Mal*, the last portion of Clause 25 of the Rajasthan Foodgrains Control Order of 1949 was struck down on the ground that the Clause as it was worded, left it entirely to the Government to requisition stocks at any rate fixed by it, and to dispose of such stocks at any rate in its discretion, while the dealer would have to buy in the market at controlled rates. This power was held to be "naked and arbitrary and constituted an unreasonable restriction, violative of Article 19(1)(g) of the Constitution and was, therefore, declared void. In *Ganpati Singhji v. State of Ajmer*, (1055) SCR 1065: ((S) AIR 1955 SC 188), Section 40 of the Ajmer Laws Regulation of 1877 (III of 1877) was struck down as violative of the fundamental

rights under Article 19(1)(g). Under the Regulation, nobody could hold a fair except under a permit issued by the District Magistrate who was empowered to revoke any such permit without assigning any reason or giving any previous notice. This was held to be an arbitrary and unregulated power and, therefore, an unreasonable restriction.

10. In my opinion, applying the tests laid down in these decisions of the Supreme Court I must come to the conclusion that the Bye-law No. 4-A confers naked and arbitrary powers upon executive officers, which is not regulated or canalised in any way. As I have mentioned above, an applied cant for a licence has to satisfy the, Commissioners on various headings. Some of these headings are so vague and unspecified that it is almost impossible for an applicant to comply with them. There being no norm or standard, the matter would entirely rest upon the subjective satisfaction of an executive officer, without any indication being given as to how they should use such a discretion. Then again, the Commissioners may, without assigning any reason revoke, cancel or suspend such a licence or refuse to renew the licence. This is a naked and arbitrary power and, therefore, constitutes an unreasonable restriction on the fundamental rights of the petitioner granted under Article 19(1)(g) of the -Constitution. In my opinion, for the reasons. aforesaid the Bye-law No. 4-A cannot satisfy the test of constitutionality and must be held to be violative of the fundamental rights granted to the petitioner under Article 19(1)(g) of the Constitution and, is, therefore, void.

11. Mr. Choudhury appearing on behalf of the port Commissioners has not really tried to argue that the Bye-law No. 4-A does not confer naked or arbitrary powers, or that it constitutes a reasonable restriction. He has framed: his objection in the following manner. He argues that the question of fundamental rights does not arise at all. According to him, the Calcutta Port Act constitutes the Commissioners for the Port of Calcutta and confers upon them certain rights of property and power of administration. Section 55 of the Calcutta Port Act confers upon the Commissioners the power to acquire and hold Immovable or moveable properties and to deal with the same. u/s 58 they can acquire land and buildings required for the purpose of the Act. Section 81 empowers the Commissioners to provide public landing places from which the public shall be permitted to embark and to land. Section 90 confers power, upon the Commissioners to provide for landing etc. of goods from sea-going vessels. Mr. Choudhury argues that the docks, jetties and wharves, and indeed, the land flanking the river Hoogly, constituting the Port of Calcutta, all belong to the Port Commissioners and are vested in them. He argues that as such, the Port Commissioners can allow whomever they like to enter into and to carry on business upon the land or buildings belonging to the Port Commissioners and have power to exclude anybody they like. Therefore, if they say that they will allow stevedores to enter, into their lands etc. on any terms they please, no question of fundamental right is involved. It is like a house-holder, who can allow whomever he likes to enter into his house and the question of arbitrariness does

not come into the picture. In other words, it is argued that a person has a fundamental right to carry on the business of his choice, but not to carry on that business within the property belonging to another. So far as the bare principle is concerned, this cannot be disputed. If the area within which the petitioner seeks to carry on his business belongs to the Port Commissioners as private property, having all the incidences of private property, then unless there is some law to the contrary, it would be entitled to impose any condition it likes for any person to enter therein and carry on his business. For this purpose, an elaborate argument was advanced upon the question as to whether it could be said that the area within which the petitioner intends to carry on his business as a stevedore, belongs to the Port Commissioners. There is no doubt that the dock area does so belong to the Port Commissioners. Of course, in an application of this description I can not enter into any disputed question of title, but I did give an opportunity to the respondents to place further materials upon affidavits. The operation of stevedoring is carried on in ships moored on the river, either at the docks or along the river bank leading therefrom and includes ships lying in midstream. Mr. Deb has pointed out that it is not absolutely essential that the petitioner should enter into the docks for carrying on his business of stevedoring. He could gain access to the ships in other ways. It is very curious that although the Commissioners for the Port of Calcutta are an important, public body, the materials placed before me were not complete and satisfactory. It is to be regretted that a body like the Port Commissioners should not be ready at all times to show their title to the lands occupied by them. Be that as it may, the argument advanced by Mr. Deb satisfactorily shows that all this investigation" has been to no purpose. Assuming that the area within which the petitioner proposed to operate belongs to the Port Commissioners, still, that body, for the purpose of this legal point, cannot be placed in the same category as an individual citizen holding property. The fundamental rights guaranteed by the Constitution are contained in Part III of the Constitution, containing Article 12 to Article 35. Article 12 lays down that unless the context otherwise required, "the State" includes the Government or Parliament of India and the Government and the Legislature of each of the States and of local or other authorities within the territory of India or under the Control of the Government of India. Article 367 of the Constitution lays down that, unless the context otherwise required, the General Clauses Act, 1897 is to be applied for the interpretation of the Constitution. The word "local authority" has been defined, in Sec. 3(28) of the General Clauses Act and means a Municipal Committee, District Board, Board of Port Commissioners or other authority legally entitled to, or entrusted by the Government, with the control or management of a municipal or a local fund. Therefore, for the purpose of Part III of the Constitution, dealing with fundamental rights the word "State" includes the Port Commissioners. Consequently, all the provisions as to fundamental rights are attracted, including Article 19(1)(g). Article 13(2) lays down that the "State" shall not make any law which takes away or abridges the rights conferred by Part III, and any law made in contravention of this Clause shall, to the extent of contravention be

void. Under Clause S(a) of Article 13, the word "law" includes a Bye-law. The result is that the Port Commissioners can not make a Bye-law which abridges the right conferred under Article 19(1)(g) of the Constitution unless of course it is saved by Article 19(6), as a reasonable restriction. It is, therefore, not a valid objection to say that the Port Commissioners can make a Bye-law which abridges such a right, because it relates to property which belongs to the Port Commissioners, I should not be taken to hold that the State, including the Port Commissioners, can not hold property or can not use the same in the same manner as an individual. But there is a restriction in regard to the making of a Bye-law, which restriction would not apply to the case of an individual. An individual can not make a law or Bye-law relating to his property, while the Port Commissioners has been authorised by law to frame a Bye-law. Such Bye-law comes within the net of fundamental rights and it is open to challenge on the ground that it is violative of it. The petitioner therefore is entitled to challenge the Bye-law No. 4-A on the ground that it is violative of his fundamental rights to carry on his business under Article 19(1)(g) of the Constitution. I have held above that he has successfully done so. I now return to Clause 15(1)(c) of the Scheme framed under the Act No. IX of 1948, namely the 1956 Scheme, which I have set out above, Clause 15(1)(c) requires stevedores, who have not been registered under the previous Scheme, to be registered as employers, before they can carry on their business. In order to be registered, two things are necessary. First of all, the Port Commissioners must consider it expedient and necessary to effect such a registration, Mr. Deb has argued that the words "expedient and necessary" are vague. I am unable to accept this contention. These particular words have to be taken in the background of the facts necessitating the promulgation of Act, IX of 1948, its object and the preamble. These make it clear that the said Act was promulgated because it was expedient to provide for regulating the employment of dock workers. In other words, the employment of workers was to be equated with the work available, the object being to see that all workers got a fair chance of employment, including compensation during the time when no work could be obtained. In this background, the words "expedient and necessary" do not seem to be vague or unspecified. It appears that under the old Scheme, about 29 stevedores have already been registered and are carrying on the work of stevedoring at the Port of Calcutta. Mr. Deb has strongly argued that the object of all these rules and regulations restricting the business of stevedoring, is with the object of creating a monopoly of work for these 29 stevedores. Whether this is so or not can not be decided upon the materials placed before me. It may well be that the volume of work at the Port of Calcutta requires that the number of stevedores carrying on work therein should be severely restricted. It does appear that attempts are being made to regulate any increase in the number of stevedores, but I can not say that this effort is without justification. The matter, however, does not rest there. Clause 15(1)(c) of the Scheme lays down that there is another condition to be fulfilled in all cases. It is laid down that "in no case shall a person or a firm be registered until he or it has been licensed in that behalf by the Port Authority". It is now found that,

either there exists no Bye-law enabling the Port Authority to issue such licences, or that the only provision therefor, namely the old Bye-law 4-A is invalid, and should be considered as non-existent. What then, is the result? Upon this point Mr. Deb has referred me to a decision of the Supreme Court, *The State of Bombay Vs. R.M.D. Chamarbaugwala*, . In this case the question of the severability of a statute or a statutory provision, has been considered, and the law on the point has been summarised at page 950. One of the tests is the intention of the legislature. The test to be applied is whether the legislature would have enacted a valid provision had it known that the rest of the statute was invalid. Secondly, if the valid or invalid provisions are so inextricably mixed up that they can not be separated, then the whole is bad. In other words, if after striking out what is invalid, what remains is in itself a complete code, independent of the invalid portion, then it may be upheld, otherwise the whole becomes unenforceable. Thirdly, if the two parts form part of a single scheme intended to be operative as a whole, then the invalidity of a part must result in the failure of the whole. Briefly put, the problem before us is as follows: Under Clause 15(1)(c) of the scheme, stevedores who are not registered or deemed to be registered under the scheme shall not be registered as stevedores unless the Board considers it expedient and necessary to do so. If the matter stood there, there appears to be no difficulty at all. Where an application is made by a stevedore not yet registered under the scheme, then the Port Commissioners would have to consider as to whether such registration was "expedient or necessary", I have already stated above that these words, taken in the background of the Act and the particular evil which it is intended to remedy, are not vague or unspecified. The trouble, however, is that there is another condition laid down, namely, that in each case the applicant must produce a licence by the Port Authority. The words "in that behalf" are very inappropriate because the Port Authority cannot issue a licence for registering a firm under this scheme. It only issues a licence permitting a stevedore to carry on his work within the dock area or such an area belonging to the Port Commissioners within which a stevedore carried on his work. In any event, this is a pre-condition laid down by the scheme, to be applied to every application made under Clause 15(1)(c) by a stevedore for registration. If we find that this condition cannot be fulfilled, the problem is as to whether the first part of Clause 15(1)(c) of the scheme remains valid or can be given effect to. In other words, can the Dock Labour Board be called upon to consider the application for registration without the condition being fulfilled. That is to say, whether the Board can be compelled to consider the application merely on the ground of expediency or necessity. This involves the question as to whether, if the condition about procurement of the licences is found to be invalid, the other part of Clause 15(1)(c) remains valid. Here we have to apply the test of severability laid down in the Supreme Court decision, *The State of Bombay Vs. R.M.D. Chamarbaugwala*, . Mr. Choudhury argues that the two parts are severable. He cites the case of *Virendra Vs. The State of Punjab and Another*, where the provisions of the Punjab Special Powers (Press) Act, 1956 were held constitutional except with regard to one Section of the Act,

namely, Section 3. In that case, however, Section 3 was found severable and, therefore, throws very little light on the problem we are facing in this case.

12. It will, therefore, appear that the question of severability will have to be considered on the facts of each case. If it was provided in Clause 15 (1)(c) that the Board would consider the application for registration on the two grounds of expediency and necessity, that would be one thing. The scheme, however, compels the Board in each case to consider the existence of a licence by the Port Authority to the applicant as an essential pre-condition in each case. Therefore, without such a licence the Board has not got the jurisdiction under Clause 15(1) (c) to effect any registration. In my opinion, the two things are inextricably mixed up and cannot be separated. The scheme which has been framed by Government is a piece of delegated legislation.. It has a statutory force. The Board which is a creature of statute can only act in conformity with the rules embodied in this scheme. Therefore, if the scheme says that registration can be effected only if there is a licence from the Port Authority, the Board has no jurisdiction to effect the registration without such a licence. If such a licence cannot be obtained, the Clause becomes unworkable and cannot be given effect to at all. We do not know what rules the Government would have framed if it knew that the conditions as to the issue of a licence cannot be fulfilled. It might have imposed other conditions. There is no profit in such a speculation. Briefly put, the position is that if a rule is subject to a condition which condition is invalid or impossible of performance then the rule is bad. The same conclusion can be arrived at from another point of view. If a rule affects the fundamental rights of a person to carry on his business under Article 19(1)(g), and if that rule lays down a condition which is impossible of performance, being either unworkable or invalid in law, then the rule itself must be held to be an unreasonable restriction on the fundamental rights. In other words, if an attempt is made to impose a restriction on the fundamental right of a person to carry on his business, as is conferred by Article 19(1)(g), it can only survive the test of constitutionality if the restriction is reasonable. But if the restriction is invalid in law or unworkable, then it is unreasonable and cannot be saved. Where something has still to be done to make a statute workable," it cannot be given effect to until that thing has been done. See *Narendra Kumar and Others Vs. The Union of India (UOI) and Others*, . Therefore, in any event, until proper Bye-laws are made by the Port Commissioners for issue of licences, the provisions of Clause 15(1)(c) of the scheme cannot be given effect to and remains invalid. The position, therefore, is as follows: Clause 15(1)(c) provides that an application by a stevedore for registration as an employer can only be made if he produces a licence from the Port Authority. The only provision for issuing such licences is Bye-law No. 4-A, which upon examination is found to be invalid in law. Therefore, until and unless a valid Bye-law is promulgated under which such a licence can be procured, the restriction imposed by Clause 15(1)(c) of this scheme constitutes an unreasonable restriction on the fundamental rights of the petitioner, under Article 19(1)(g) and is, therefore, invalid and must be declared

to be so.

13. The result is that the Board cannot insist upon applying Clause 15(1)(c) to the case of the petitioner until and unless there is a valid Bye-law promulgated by the Port Commissioners for the issue of a licence. The petitioner cannot be asked to wait indefinitely for the promulgation of such a Bye-law. In my opinion, the petitioner is entitled to compel the Board to deal with the application for registration as if Clause 15(1)(c) did not exist in the scheme.

14. The result is that this Rule must be made absolute and there will be a writ in the nature of mandamus commanding the Calcutta Dock Labour Board the respondent No. 1 to deal with the application of the petitioner for registration, as if Clause 15(1)(c) did not exist in the scheme, and in accordance with law. Interim orders, if any, are vacated. There will be no order as to costs. I make it clear however that the position would be different if a valid Bye-law is promulgated by the Commissioners for the port of Calcutta for the issue of licences. The operation of this order is stayed for 3 weeks. Any further stay must be obtained from the Court of appeal if an appeal is preferred. Let the order be drawn up expeditiously.