

(1984) 11 BOM CK 0030

In the Bombay High Court

Case No : Writ Petition No. 3063 of 1983

Escorts Ltd. and another

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 09-11-1984

Acts Referred:

Banking Regulation Act, 1949 — Section 35A

Companies Act, 1956 — Section 10E, 10E(6), 111, 111(2), 165

Foreign Exchange Regulation Act, 1973 — Section 19, 19(1), 19(4), 19(5), 21

Citation : (1985) 57 CompCas 241

Hon'ble Judges : K. Madhava Reddy, C.J.; D.M. Rege, J

Bench : Division Bench

Judgement

Madhava Reddy, C.J.—The questions that arise for consideration in this writ petition filed by Escorts Ltd. and its shareholder and managing director are quite unique and important. The decision thereon may affect not only the petitioner-company but the entire corporate sector and the public financial institutions. Naturally, this writ petition has attracted considerable public attention both lay and legal. Quite a few facts are required to notice to appreciate the issue canvassed in this case. Though inferences sought to be drawn and the conclusions sought to be pressed by the parties from the facts leading to the filing of this writ petition differ, the facts themselves in the ultimate analysis are not very much in dispute.

2. Till 1980, among the non-residents, only individuals of Indian nationality origin were given the facility to invest in Indian Industries; not the companies. The Government of India was eager to attract larger foreign remittances into India. In a report of the Working Group of Foreign Remittances into India by India nationals resident abroad and foreign nationals of Indian origin, a view was expressed that this facility should be extended to companies, partnership firms, trusts, societies and other corporate bodies owned predominately by non-residents of Indian nationality/origin. However, with a view to safeguard the interests of the Indian companies and investors, it was suggested that "the

criteria for such predominate ownership should be that at least 51% of the ownership of the companies, partnership firms, trusts, societies and other corporate bodies should be with non-resident Indians." Certain other suggestions were also made. Basing on this report and the policy decision indicated in 1982-83 Budget Speech of the Union Finance Minister, the Reserve Bank of India (for shorter referred to as "the RBI"), in exercise of the powers conferred on it under s. 73(3) of the Foreign Exchange Regulation Act, 1973 (for shorter "the FERA"), issued Circular No. 9, dated April 14, 1982, (Exh."G"), liberalising the policy in respect of "investment by non-residents of Indian nationality/origin." The Circular was addressed to all authorized dealers in foreign exchange. Basically, the facility which was available only to individuals and largely without repatriation benefits, was extended under this Circular to overseas companies and other corporate bodies predominately owned by non-residents of Indian nationality/origin and full repatriation benefit were also allowed. The non-resident Indian individuals and these foreign companies would now hereinafter referred to as "NRI" and "NRI companies" and wherever both are intended to be referred compendiously as "NRI investors". The portfolio investment scheme facility with full repatriation benefits made available to entities other than individuals was subject to the condition that "at least 60% of interest therein was owned by these bodies and the shares were purchased through the stock exchange." A non-resident investor could make investments not exceeding Rs. 1 lakhs in face value of 1% of the paid-up share capital of the company, whichever was lower, the payments for such investments were to be either by fresh remittances from abroad or out of the funds held in the Non-resident (External) Account/FCNR Account with a bank in India. They were also required to submit a certificate in the prescribed OAC forms form an Overseas Auditor/Chartered Account/Certified Public Account though designated banks authorized banks authorised to deal in foreign exchange for purchase of shares. The non-resident Indians could appoint residents in India as their agents with appropriate powers of attorney. For the purpose of this Circular, "a person of Indian origin" was defined to mean "a person holding an Indian passport or a person either of whose parents or grant-parents was an Indian resident in undivided India."

3. This scheme was amended by RBI Circular No. 15 dated August 20, 1982 (Exh."H"), removing the monetary limit of investment of Rs. 1 lakhs but retaining the limit of 1% of the paid-up share capital of the company. By other Circular No. 27 dated December 10, 1982 (Exh "I"), the shares were required to be purchased at the ruling market price as determined on the floor of the stock exchange by normal bid and offer method only.

4. While that was the position with regard to the facilities provided for NRI investors for investment in India companies with full repatriation benefits, letter were addressed by the Caparo Tea Co. Pvt. Ltd., the Empire Plantations and Investment Ltd. and Assam Frontier Tea Holding Public Ltd. Co., respondents Nos. 5, 6 and 7 herein, to stock exchange brokers, M/s. Rajaram Bhasin & Co., respondent No. 20 herein, instructing them to purchase shares in Delhi Cloth

Mills (DCM) and in Escorts Ltd. with full repatriation benefits and intimating them that the Punjab National Bank ("PNB" for short), respondent No. 3 herein, was been authorised to advance to the extent of Rs. 2 lakhs in each case to cover margins payable to the stock exchange. It also authorised PNB to pay the full purchase price of the share to M/s. Rajaram Bhasin & Co., to be adjusted on final delivery of shares. In February, 1983, the PNB granted rupee loan to the Caparo Group Ltd., respondent No. 4 herein, and these amounts were made available to M/s. Rajaram Bhasin & Co., for the purchase of shares in India companies with full repatriation benefits. Remittances in all aggregating to Rs. 8.93 crores were received by the PNB from the Caparo Group Ltd., respondent No. 4 between March 9, 1983, and April 28, 1983, for the purpose of purchasing shares in the names of thirteen companies, respondents Nos. 4 to 16. The PNB disbursed these amounts to the stock brokers, M/s. Rajaram Bhasin & Co., "at the entire risk and responsibility of respondents Nos. 4 to 17 and their agents/brokers." M/s. Rajaram Bhasin & Co., in turn, purchased shares in two companies, namely DCM and Escorts Ltd., for the Caparo of companies, respondents Nos. 4 to 16 herein. The purchase of shares commenced on and from March 2, 1983. According to the statement filed with the PNB by the brokers, respondent No. 20, between March 2, 1983, and March 15, 1983, 22,08,850 shares in the DCM and 1,05,600 shares in Escorts Ltd., were purchased for the thirteen Caparo group of companies. On March 16, 1983, the RBI received a letter March 4, 1983, from the PNB forwarding three applications made by respondents Nos. 5 to 7 in form RPC seeking permission to make investments in India companies with full repatriation benefits. On March 18, 1983, the RBI received yet another letter dated March 12, 1983, from the PNB forwarding ten more applications in form RPC from respondents Nos. 4 and 8 to 16 seeking permission to make investments in shares. All these application were accompanied by auditors' certificates which disclosed that these companies were not directly owned by individuals of Indian nationality/origin though they appeared to have been owned to the extent of not less than 60% by individuals of Indian origin indirectly of Indian origin indirectly. According to the respondents, firm commitments for purchase of the shares were made by April 29, 1983, while according to the petitioners, they were purchased even after May 2, 1983, till August, 1983. However, even by August, 1983, permission under s. 29 of the FERA for the purchase of shares was not obtained from the RBI, by its letter dated April 29, 1983, required the PNB to furnish information as to whether non-resident individuals of Indian nationality/origin were holding at least 60% interest in that company and whether the shares were already purchased. The RBI also required the PNB to furnish particulars in the prescribed form OAC duly signed by overseas auditors. The PNB, in its letter dated May 6, 1983, informed the RBI that it had been advised that Swraj Paul, respondent No. 17, and his family trust held 61.6% of the share capital of the Caparo Group Ltd. (respondent No. 4) and the Caparo Group Ltd., in turn, held 100% of the share capital of the other companies except Caparo Properties Ltd., in which it had 98% of ownership stock. It was stated that a certificate of overseas auditors in form OAC had

already been submitted along with the application. As regards the details of the purchase of the share in the Indian companies for and on behalf of the Caparo group of companies, the PNB stated that "The same would be supplied when the purchases are complete."

5. Pursuant to the policy statement made in Parliament by the Union Finance Minister, the RBI issued Circular No. 12 dated May 16, 1983, subjecting the existing scheme of portfolio investment by non-residents of Indian nationality/origin and by overseas bodies, to an overall ceiling of 5% of the total paid up equity capital of the company concerned. The purchases, subject to overall ceiling of 5% were to be monitored by the RBI Central Office with the assistance of the designated bankers of non-resident Indians. These banks were required to submit to the RBI a daily consolidated statement of total purchases and sales on the next working day. The statement was to include all purchases and sales for which a firm commitment had been made in the form of broker's contract notes irrespective of whether deliveries were effected or not. The RBI was required to notify the designated banks as soon as the aggregate purchases in any one Indian company reached 4%. The designated banks were to purchase, thereafter, only after obtaining further specific clearance from the RBI issued a press release on May 17, 1983, reiterating and clarifying the contents of Circular No. 12 of May 16, 1983.

6. The books of the petitioner-company were being closed on May 14, 1983. By that date, 2,88,390 shares were lodged for transfer in the name of Harish Bhasin and 1,73,947 were lodged for transfer in the name of Bharat Bhushan, neither of whom was a non-resident foreign investor.

7. Further correspondence between the PNB and the RBI was exchanged with regard to the purchase of shares in the petitioner-company by the Caparo group of companies seeking particulars and especially as to how the consideration for the purchase of shares of Indian companies was paid to the Indian sellers when "permission for purchase of shares on benefit of 13 overseas companies has not yet been granted to you". On May 27, 1983, the petitioner-company addressed letters to Harish Bhasin and Bharat Bhushan enquiring whether the shares has been acquired on behalf of the non-resident Indian whether permission had been acquired on behalf of the non-resident Indian, whether permission had been obtained from the RBI for such purchases had been received from the bank and the particulars thereof. To this enquiry, the PNB replied stating that beneficial interest in the Caparo Group Ltd. was 61.6% in the family trust of Swraj Paul (respondent no. 17) as stated in the RPC form and that the certificate in form OAC was already filed. The members of the family trust of Swraj Paul (respondent No. 17) were all stated to be non-resident of Indian origin having interest in the trust to the extent of 61.6%. The PNB asserted that, in its view, after submission of the applications, it was required to await the permission of the RBI that since remittances from Caparo Group Ltd. were made in favour of M/s. Rajaram Bhasin & Co., their designated brokers and power of attorney holders,

the same were executed by the PNB through NRI (External) Account on various dates up to April 23, 1983, and also, therefore, conforming to the bye-laws and regulations of the Delhi Stock Exchange. On May 27, 1983, the petitioner-company addressed letters to respondents Nos. 20 and 21, calling for particulars; but in their replies dated May 31, 1983, they declined to furnish the information. The PNB, in its letter dated May 31, 1983, stated that it had been advised by M/s. Rajaram Bhasin and Co. respondent No. 20, that until April 28, 1983, 75,000 equity shares of the petitioner-company had been purchased by it for each of the thirteen companies and that a large number of shares had been lodged from the purpose of transfer only in the name of Harish Bhasin and Bharat Bhushan. In response to its letter dated April 29, 1983, the PNB further informed the RBI by its letter dated May 31, 1983, that it had been advised by the brokers, M/s. Rajaram Bhasin & Co., that up to April 28, 1983, they had purchased 80,000 equity shares of DCM and 75,000 shares of the petitioner-company on behalf of and for the benefit of each of the Coparo group companies, Although 5,12,663 shares were purchased by May 14, 1983, only 4,63,000 shares were lodged with the company for registration of transfer.

8. On June 1, 1983, the petitioner-company enquired of the PNB whether any permission had been granted by the RBI to the PNB to purchase shares on behalf of the thirteen respondent companies of Caparo group. The PNB refused to furnish the particulars requested. It also refused to disclose whether permission was granted or not by the RBI.

9. M/s. Rajaram Bhasin & Co. sent a letter dated April 30. 1983, to the PNB to allocate total remittances received till April 28, 1983, from Caparo Group Ltd. on pro-rate basis to the account of the thirteen companies, respondents No. 4 to 16. Upon the letter, the PNB opened twelve NRI (External) Accounts for the said overseas companies, respondents No. 5 to 16. Permission for this was not obtained from the RBI. The PNB debited the NRI (External) Accounts of Caparo Group Ltd. and credited the account equally into the NRI (External) Accounts of each of the respondent No. 5 to 16. Thus, the amount of Rs. 1.60 crores received from respondent No. 4 was allocated to all thirteen accounts and then transferred to M/s Rajaram Bhasin & Co.

10. The board of directors of the petitioner-company refused registration of transfer of shares lodged in the names of the two brokers, namely, Harish Bhasin and Bharat Bhushan (respondents Nos. 20 & 21), on June 9, 1983, and as required under s. 111 of the Companies Act, 1956, gave them notice of rejection on June 13, 1983. It also intimated its decision to the PNB on June 14, 1983. Because by May 14, 1983, only 44,62,337 scrips had been lodged with the petitioner-company, the petitioner-company enquired of the PNB whether the bank was holding back 5,12,663 scrips. By another letter dated June 20, 1983, the petitioner-company requested the PNB to advise it as to whom 4,62,337 scripts should be returned. The PNB asked the petitioner-company to address the brokers who had lodged these shares with it. In view of the press release of the

RBI dated June 10, 1983, the petitioner-company communicated to the RBI through its letter dated June 14 1983 (Exh. "AA"), the several illegalities committed by respondents Nos. 4 to 16 in the purchase of these shares. The RBI initiated an enquiry on June 8, 1983, regarding the eligibility of Caparo group of companies to purchase shares under the liberalised portfolio scheme. Dr. H. K. Sengupta, Joint Secretary (investments) Ministry of Finance, Department of Economic Affairs, sent a telex to the RBI on June 8, 1983, requesting it to enquire into the details of purchases made by respondents Nos. 4 to 16 and whether they were valid without prior approval of the RBI. On June 11, 1983, the RBI wrote to the PNB that prior permission under s. 29(1)(b) of the FERA was required for any NRI investor to purchase shares in India companies and that the provision specifically prohibited ever non-resident from purchasing shares of India companies except under a general or special permission of the RBI and that none of the thirteen respondent-non-resident companies and the PNB had till then been permitted to purchase shares. The RBI called upon the PNB to explain how it had allowed debit to NRI to explain how it had allowed debit to NRI (External) Accounts of Caparo Group Ltd. in contravention of the provisions of paragraph 28B. 9 of the Exchange Control Manual. It also directed the PNB not to make any payments of those accounts until specific permission of the RBI was granted. A copy of that letter dated June 11, 1983, the RBI requested the PNB for further particulars of the purchases stated to have been made by respondents Nos. 4 to 16. A copy of this letter was also forwarded to Dr. Sengupta, Joint Secretary (investments), Ministry of Finance, with reference to his telex dated June 8, 1983. The RBI issued instruction to the PNB on June 15, 1983, to freeze the accounts of the Caparo group of companies and of to release any further amounts therefrom.

11. The RBI obtained legal advice specifically with regard to the purchase of shares by respondent-companies and confirmed to the Ministry of Finance that in the opinion of the RBI none of the Caparo group of companies were eligible to make investments under it was also obligatory for them to have obtained prior permission of the RBI for the purchase of these shares by applying in the prescribed form through the designated banks. The petitioner-company by its letter dated June 20, 1983, informed the RBI that in none of the thirteen companies of the Caparo group, the non-resident individuals of Indian nationality/ origin held 60% of the shares. The PNB furnished particulars of foreign remittances and release of funds and purchase of shares to the RBI on June 23, 1983. On July 23, 1983, the legal advisers of the petitioner-company, M/s. J. B. Dadachanji addressed a letter to the Governor of the RBI drawing its attention to the several illegalities committed in the purchase of the above shares.

12. Ultimately, on June 28, 1983, the PNB refused to take delivery of the shares on the plea that it had no authority to accept delivery of unregistered shares on behalf of the party lodging the same. In response to further letters of the petitioner-company requesting for particulars of these transactions, The PNB, by its letter dated August 24, 1983, asked the petitioner-company to address all

future correspondence to the persons who had lodged the share with it.

13. Between 19th and 22nd August, 1983, transfer deeds on respect of shares aggregating to 3,68,463 shares in the names of respondents Nos. 4 to 16 were lodged with the petitioner-company. These transfer deeds were executed between 9th and 12th August, 1983, and they showed the rates of purchase prevailing on the respective dates of purchase. On August 29, 1983, the board of directors of the petitioner-company in its meeting at which the representatives of all financial institutions including the LIC, respondent No. 18, were present, unanimously resolved to reject the transfer of shares. As required under s. 111 of the Companies Act, intimation of this rejection was given to the transfers. None of respondents Nos. 4 to 16 sought reasons for rejection of the registration. They neither questioned the rejection by preferring appeals under s. 111 of the Companies Act nor did they initiate any other proceedings. The petitioner-company, by its letter dated September 5, 1983, also informed the Governor of the RBI the illegalities committed in the purchase of shares and the action taken by the petitioner-company in rejecting the transfer. These facts were reiterated with full particulars by the petitioner in its letter dated September 17, 1983. The RBI forwarded to the PNB a copy of each of the two letters dated September 5, 1983, and September 17, 1983, addressed by the petitioner-company to the Governor of the RBI and the Union Finance Minister and requested the PNB to submit its detailed report. However, on September 17, 1983, the RBI issued a press release (Ex." A ") at New Delhi stating that the Government of India has since clarified that :

"It was their original intention that facilities of direct and portfolio investments in shares/debentures of Indian companies and deposits with public limited companies be available to overseas companies, partnership firms, trusts, societies and other bodies in which the ownership/beneficial interest is indirectly but ultimately held to the extent to at least 60% by non-resident individuals of Indian nationality or origin.

The Government have also clarified that each overseas body is eligible to invest up to 1% of the paid-up value of each series of convertible debentures under the portfolio investment scheme irrespective of whether the ultimate ownership/beneficial interest in such body is in the hands of one or more non-resident individuals of Indian nationality/origin, subject, however, where investment is made after May 2, 1983, to an overall ceiling of 5% of the total paid-up equity capital/paid up value of each series of convertible debentures issued."

14. On September 19, 1983, the RBI issued a Circular AD (MA series) No. 18 (Ex."B") purporting to give effect to the policy declared in the said press release. The forms in which the applications were to be submitted for obtaining permission were also appended to this Circular. That very day, Exchange Control Department of the RBI, addressed a letter No. CCO FY 1D (ii) /344-82/83 dated September 19, 1983, to the Chief Manager, PNB, New Delhi, (Exh."C"). In that letter, while drawing attention of the PNB to Circular No. 18 dated September 19,

1983, and specifically referring to the applications of respondents Nos. 4 to 16, the RBI advised the PNB that in view of that Circular, all those thirteen companies "are eligible to make investments in the shares of Indian companies subject to the ceiling laid down therein and the terms and conditions set out in paragraph 4 below. Accordingly, each of these 13 applicant-companies have the approval to make investments in and hold shares of the DCM and Escorts Ltd. to the extent of 1% of the paid-up capital of the respective companies subject, where the purchase has been made after May 2, 1983, to an overall ceiling of 5% of the paid-up capital of each of the investor company". The letter also clarified that "purchases made up to an inclusive of May 2, 1983, would not be subject to the 5% ceiling". In the note, it was further clarified that "purchase of shares shall be deemed to have taken place up to and inclusive of May 2, 1983, if purchase commitments as evidenced by brokers' contract notes had been entered into up to and inclusive of that date and the shares had been taken delivery of pursuant to such firm commitments at the prices mentioned in the relevant brokers' contract notes". This permission was to be operative for a period of three years from September 18, 1983, and was subject to conditions (a) to (h) mentioned therein.

15. On receipt of this letter, the PNB communicated by its letter dated September 27, 1983, to the RBI the particulars of the shares purchased by the said thirteen companies. The PNB also informed the RBI that no purchases were made by these companies after May 2, 1983. On October 8, 1983, M/s. Rajaram Bhasin & Co. (respondent No. 20) forwarded to the petitioner-company a copy of the PNB's letter dated September 27, 1983, and requested its board of directors to reconsider its refusal to transfer shares in view of the approval given by the RBI under Exh."C". The petitioner-company, by its letter dated October 13, 1983, informed M/s. Rajaram Bhasin & Co. that the decision of the board not to register the shares continued to hold good. On December 27, 1983, the PNB wrote to the RBI that the stock brokers, M/s. Rajaram Bhasin & Co., had informed it that there was no illegality in the purchase of shares made by them on behalf of the said thirteen companies. While the matter stood thus, in a speech delivered on December 24, 1983, at Calcutta, the Union Finance Minister is alleged to have sounded a warning to all those companies which were withholding registration of share certificates in the names of non-resident Indians.

16. Questioning the validity of the purchases of the Escorts' shares by the respondent-companies through the PNB and M/s. Rajaram Bhasin & Co., the stock brokers, and also of the correctness of the press release dated September 17, 1983 (Exh."A"), and the letter dated September 19, 1983, addressed to the PNB (Exh."B"), and the letter dated September 19, 1983, addressed to the PNB (Exh."C"), the Escorts Ltd. and one of its shareholders, who is also the managing director of the said company, filed this writ petition on December 29, 1983, inter alia, seeking a declaration that the said press release (Exh."A"), Circular (Exh."B"), and the letter (Exh."C"), are ultra vires the provisions of FERA and violative of arts. 14 and 19 of the Constitution of India and that, in any event,

they cannot validate the purchase of shares by respondents Nos. 4 to 16 so as to entitle them to get the same transferred or registered in their names and for a writ of mandamus to restrain the respondents from giving effect to the same. It is necessary to refer in detail to the reliefs claimed in the writ petition, for, rule nisi was refused in regard to reliefs prayed for in prayer cl. (d) of the writ petition and arguments were addressed at length that in view of such refusal, the writ petition itself was not maintainable. In this writ petition, as originally framed, the petitioners sought the following reliefs :

"(a) for a declaration that the said Circular No. 18 dated September 19, 1983, and the consequent sanction contained in the letter dated September 19, 1983, are illegal and void and ultra vires the provisions of the FERA.

(b) for a declaration that the impugned Circular No. 18 dated September 19, 1983, issued by the RBI, respondent No. 2, and the permission contained in the letter dated September 19, 1983, addressed by the RBI to the PNB in purported exercise of its statutory powers under s. 73(3) of the FERA are arbitrary and issued for collateral purposes and constitute an abuse of statutory powers and authority.

(c) for a declaration that the said impugned Circular No. 18 dated September 19, 1983, read with the press release dated September 17, 1983, as also the issue of the letter dated September 19, 1983, by the RBI to the PNB are in violation of the provisions of art. 14 and or art. 19(1)(c) and art. 19(1)(g) of the Constitution of India.

(d) for a declaration that the purchase of shares made by or on behalf of respondents Nos. 4 to 17 are illegal and violative of the provisions of the FERA, the provisions of the RBI circulars issued from time to time and the provisions of the Securities Contracts (Regulation) Act, 1956, and of the bye-laws of the stock exchange.

(e) or a writ of mandamus or in the nature of mandamus or other appropriate writ, order or direction directing respondent No. 2 to cancel and withdraw the impugned Circular dated September 19, 1983 (Exhibit "B"), and the impugned letter dated September 19, 1983 (Exhibit "C"), and further directing respondents Nos. 1,2 and 3 to forbear from implementing the said impugned Circular dated September 19, 1983, and the letter dated September 19, 1983.

(f) for a writ of mandamus or a writ in the nature of mandamus or other appropriate writ or directions under art. 226 of the Constitution of India directing respondents Nos. 1,2 and 3 not to implement the Circular dated September 19, 1983, or the letter dated September 19, 1983.

(g) for a declaration that the impugned Circular No. 18 dated September 19, 1983, does not and cannot in law operate with retrospective effect and that respondents Nos. 1 and 2 did not have the power or authority to bring into operation the said impugned circular with retrospective effect, so as to validate

the purchase of shares made by or on behalf of respondents No. 4 to 16.

(h) for a declaration that the impugned Circular No. 18 dated September 19, 1983, is beyond the permissible limits of delegated legislation."

17. To this writ petition were joined only seventeen respondents, the Union of India, the RBI and the PNB being respectively respondents Nos. 1, 2 and 3. The Caparo Group Ltd. and the other twelve companies whose shares were held by Caparo Group Ltd. were impleaded as respondents Nos. 4 to 16. Swraj Paul, who holds the major interest in all the respondent-companies, was arrayed as respondent No. 17.

18. Even at the admission stage, notice was directed to be issued to the respondents. It is stated that the petitioners' advocates sought to serve the notice of the writ petition on the standing counsel of the Union of India even before it came up for admission but as it was refused, it was delivered at his office on the evening of December 28, 1983, and filed in the court the next day. The hearing of the writ petition was to be taken up for admission by the learned single judge on January 15, 1984. The matter was, however, adjourned to January 31, 1984, to enable the respondents to file affidavits-in-reply by January 28, 1984. Respondents Nos. 1 and 2 filed affidavits-in-reply before rule nisi was ordered; but none was filed on behalf of the PNB and the other respondents-companies. The writ petition, which could not be taken up on January 31, 1984, for hearing because of "Bombay Bandh", was adjourned to February 15, 1984. While so, the Life Insurance Corporation of India, which is one of the financial institutions holding 30% shares in the petitioner-company, delivered a notice at the registered address of the petitioner-company on February 13, 1984, requisitioning an extraordinary general meeting of the company to consider a resolution to remove all the non-executive directors, nine in number, and to appoint in their place, nine permanent employees of the financial institutions as non-executive directors of the petitioner-company. In the explanatory statement annexed to the requisition notice, it was stated thus :

"The directors proposed to be removed named in resolutions Nos. 1,3,5,7,9,11,13,15 and 17 are not whole-time directors nor in active management of the company and the requisitionist does not wish them to continue as directors.

In the place and stead of the directors whose names are specified in resolutions Nos. 1,3,5,7,9,11,13,15 and 17 who are sought to be removed, the requisitionist proposes to appoint as directors, the following persons whose names are specified in resolution Nos. 2,4,6,8,10,12,14,16 and 18, respectively."

19. Faced with this developments, the petitioners sought leave of the court to amend the writ petition. Pursuant to the permission accorded by the learned single judge at the stage of admission of the writ petition, the petition was amended impleading the LIC as respondent No. 18 and permitting one Kishore Paral Ghia, who had in the meanwhile challenged the order refusing to register

the shares before the Company Law Board, to be impleaded as respondent No. 19, M/s. Rajaram Bhasin & Co. and Bharat Bhushan & Co., the stock brokers, through whose medium the shares in question were purchased, as respondents Nos. 20 and 21 and Shirin Khushi Mehta and Anandlal Hiralal Sheth, two of the transferors of the shares in question as respondents Nos. 22 and 23 representing themselves and other transferors of the shares purchased by respondents Nos. 4 to 16. The petitioners were also permitted to amend the averments in their affidavit enabling them to seek further relief of a declaration that the action of the LIC in issuing the notice requisitioning an extraordinary general meeting by its letter dated February 13, 1984, was illegal, ultra vires, unconstitutional and violative of arts. 14 and 19 of the Constitution of India and to restrain and prohibit the LIC from taking any steps or action in furtherance of the said requisition/notice. In support of the prayer, the petitioner-company averred that this requisition of the LIC is intended to victimise the petitioners for not registering the transfer of shares in the names of respondents Nos. 4 to 16 and for having filed the present writ petition questioning the legality and validity of the purchase of shares by respondents Nos. 4 to 16. It is asserted that the resolution is calculated to take over the effective control and management of the petitioner-company by replacing nine out of fifteen directors with full-time employees of the financial institutions. The requisition is said to be the culmination of the pressure exerted upon the petitioner-company for registering the Escorts' shares purchased by respondents Nos. 4 to 16.

20. The details of the alleged acts of pressure were stated by way of amendment. It is averred that the petitioner-company intended to repay the entire loan due from it to the financial institutions and towards this end sent a cheque of Rs. 61.50 lakhs to the IDBI. Curiously enough, the IDBI refused to accept prepayment and, after deducting the installment amount due, intimated the petitioner-company that a surplus amount was received. The petitioner-company's proposal for merger of Goetze (India) Ltd. with Escorts was also kept pending without any decision. The petitioner-company's proposal to issue debentures was also not agreed to and pressure was sought to be brought on the managing director of the company to agree to register transfer of "at least some shares". This was moved by Patel of the Union Trust of India ("UTI" for short), one of the financial institutions and later by Punja, Chairman of the IDBI. When the writ petition was filed, D. N. Davar, one of the directors of the petitioner-company representing all the financial institutions, pressed for withdrawal of the writ petition. The Government of India issued a letter dated July 28, 1983, addressed to the executive directors and the presidents of the stock exchanges in the country stating that "it had been recently observed that the board of directors of some companies have been rejecting transfer of shares lodged by non-resident Indians and such a move negated the object of the Government to encourage non-resident Indian investors to invest in Indian companies". The presidents of the stock exchanges were requested to circulate that letter to all the companies. The petitioners aver that though this letter was in general terms,

at that particular point of time, the shares of no other company except that of the petitioners were involved. The petitioner-company, therefore, addressed a letter to the Union Finance Minister on September 17, 1983, bringing to his notice the several contraventions committed in the purchase of shares by respondents Nos. 4 to 16 and complaining that directly or indirectly pressure was being brought upon it through financial institutions to register the shares notwithstanding the illegalities. A meeting of the financial institutions was called on October 18, 1983. In the absence of Punja, Chairman, Industrial Development Bank of India (IDBI), who was out of the country, Davar presided over that meeting. At that meeting, where representatives of the financial institutions, viz., UTI and LIC, were also present, petitioner No. 2 was asked as to why the shares purchased by respondents Nos. 4 to 16 were not being registered. He was also told that majority of the shares in the petitioner-company were held by the financial institutions and they could, at their own will, remove the management/board of directors. Petitioner No. 2 explained to them the reasons for refusal to register the transfer of shares. By another letter dated October 20, 1983, Punja, chairman of the IDBI, summoned petitioner No. 2 for a meeting and told him that the explanation given at the meeting on October 18, 1983, was not satisfactory, and insisted that at least some shares be registered. At this meeting, it was decided that the lawyers of the petitioner-company should check the legality of the refusal to register the transfer of the said shares. About that time, the request made by the petitioner-company for the merger of Goetze-Escorts was pending clearance and approved by the financial institutions. The petitioner-company, in its letter dated October 25, 1983, requested the financial institutions including the LIC to accept prepayment of loans of Rs. 2 crores. At the juncture, a report appeared in the press on November 6, 1983, and November 7, 1983, that Swraj Paul's camp was putting pressure on the financial institutions to get the shares registered and also that "In the unlikely event of the management resisting the financial institutions, notice of an extraordinary general body meeting should be given by the financial institutions". At the luncheon meeting held on November 9, 1983, between Punja and petitioner No. 2, Punja asked petitioner No. 2 to "register at least some shares" and petitioner No. 2 requested Punja that the long pending proposal for prepayment of loans and merger of Goetze-Escorts be accepted. Punja told that, in principle, the proposals were accepted for clearance by all financial institutions, but, final and formal clearance was withheld as Punja wished to have some talk with petitioner No. 2. On November 10, 1983, in a telephonic talk between N. K. Sengupta, the then Controller of Capital Issues and Commissioner of Non-resident Investments and petitioner No. 2, Sengupta insisted that some shares at least must be immediately registered. In view of several illegalities in the purchase of these shares, petitioner No. 2 could not agree to this request. Once again, at a meeting of the lawyers of the petitioner-company, Sengupta insisted that the petitioner-company should register at least some shares. The UTI requested petitioner No. 2 through its letter dated November 2, 1983, to immediately induct its nominee, M. S. Shankar, DGM, UTI, as a director of the petitioner-company. "As there is no

vacancy at present", petitioner No. 2 promised to get him elected at the next annual general meeting. At a meeting of the financial institutions held on December 13, 1983, at Bombay, Punja pressed upon petitioner No. 2 to register some shares. In the meantime, the petitioner company sent a cheque on December 27, 1983, to the IDBI towards prepayment of the IDBI's loan of Rs. 61.50 lakhs and interest. The IDBI, by its letter dated December 24, 1983, refused prepayment of loans by sending back to the petitioner-company the payment in excess of the installment then due. It was alleged that on December, 24, 1983, the Union Finance Minister made a statement at Calcutta referring to the financial institutions' dominant position that :

"I have a very effective instrument under my command to end the uncertainty."

21. This was widely reported in the press and the petitioners allege that it was meant to be a warning to all companies refusing to register shares of non-resident Indians. On December 29, 1983, a wireless message was sent to petitioner No. 2 asking him to come to Bombay for a meeting with Punja, chairman of the IDBI, on that day. A request by petitioner No. 2 for a very short postponement of the meeting was refused. At that meeting, the financial institutions insisted that the nominee of the UTI be taken on the board of the petitioner-company forthwith. He was also told that this could not wait till the annual general meeting and that he should be nominated immediately "even if it meant removing a sitting director or convening an extraordinary general meeting." Petitioner No. 2 agreed to find a solution and requested that the proposals made by the petitioner-company be cleared immediately. The petitioner-company sent cheques to all financial institutions towards prepayment of loans on December 31, 1983. At a meeting of the board of directors of the petitioner-company, D. N. Davar of the Industrial Finance Corporation of India (IFCI), representing all financial institutions insisted : (i) that the petitioner-company should recall the cheques lodged with the financial institutions towards prepayment of the loans; (ii) that the board should not take notice of the correspondence exchanged between the petitioner-company and the financial institutions with respect to the prepayment of loans; and (iii) that the petitioner-company should withdraw this writ petition. This suggestion was made on the basis of three notes typed and signed. Petitioner No. 2 suggested to the UTI on January 6, 1984, that M. S. Shankar of the UTI be appointed as an alternate director to Dr. Irmler, the director appointed by the collaborator. The financial institutions accepted prepayment on January 9, 1984, but the question of merger of Goetze-Escorts and debenture issue was not agreed to and was kept in abeyance. While the matter stood thus, the notice dated January 11, 1984, requisitioning an extraordinary general meeting ("EGM" for short) to remove the nine directors and appoint nine full-time employees of the financial institutions was issued by the LIC, respondent No. 18 herein.

22. The petitioners allege that respondent No. 18 took this step in concert with and at the behest of respondents Nos. 1 and 2 to pressurise and compel the

petitioner-company to register the transfer of shares of respondents Nos. 4 to 16 and to withdraw the writ petition. The nine part-time directors were sought to be removed because they did not succumb to the pressure and opposed the registration of transfer of shares. The requisition is intended "to achieve two objects indirectly, that is, (a) preventing the final hearing of the petition and an adjudication of the various important points raised therein, and (b) to compel the petitioner-company through its intended reconstituted board of directors to register the shares of respondents Nos. 4 to 16 notwithstanding the illegality of the impugned Circular". This is alleged to be a "step taken as threatened by the Hon"ble Finance Minister". It was alleged that the Hon"ble minister referring to the dominant position held by the financial institutions had openly and categorically stated that he had "a very effective instrument under my command to end the uncertainty," virtually supporting the comments made at about the same time by Swraj Paul in Calcutta about the conduct of the RBI relating to the transfer of shares. It is the case of the petitioners that this was in fact a sequel to the petitioner-company refusing to register the transfer of shares. It was intended to punish the directors for not bowing to the wishes of the financial institutions. The petitioner-company being firmly of the view that the shares purchased by respondents Nos. 4 to 16 not only did not conform to the scheme of liberalised non-resident investments in Indian companies but positively were in contravention of the FERA, refused to register these shares. After obtaining an adjournment of the hearing of the writ petition on January 16, 1984, the financial institutions holding 52% of the shares of the petitioner-company of which the LIC holds 30% requisitioned an extraordinary general meeting of the petitioner-company. The resolutions appended to the notice merely stated that these nine directors are only part-time directors and they propose to replace them by nine other directors named in the resolutions. It is pointed out that this act of respondent No. 18 is contrary to its own previous conduct in appointing and reappointing these directors in view of their exemplary work. Even now nothing is alleged against these nine directors. In fact, the management of the petitioner-company has received encomiums for the steady progress of the company. Its performance can very well be gauged from the fact it has been consistently paying 20% dividend for the last few years and the investments of the financial institutions had earned them phenomenal profits. The petitioners submit that the action of the LIC is mala fide, arbitrary and unsustainable. The act of the financial institutions led by respondent No. 18 is unprecedented and extraordinary and shakes the confidence of the promoters of all Indian companies. It is alleged that respondent No. 18 has acted at the behest of respondent No. 1 and is intended to benefit the non-resident investor, Swraj Paul.

23. In the amended writ petition, the petitioners seek "(i) a declaration that the action of respondent No. 18 in issuing the requisition notice for convening an extraordinary general body meeting was arbitrary, illegal and violative of the fundamental rights guaranteed to the petitioners and an order, (ii) to restrain the holding of such a meeting in pursuance of the said requisition". They also sought

an interim injunction to restrain respondent No. 18 from proceeding with the requisition.

24. In spite of service of notice of the writ petition, respondents Nos. 4 to 16, the non-resident Indian companies which had purchased the shares in questions, and Swraj Paul, the non-resident national of Indian origin who is said to hold controlling interest in these companies, respondent No. 17 herein, have chosen to remain ex parte. Respondents Nos. 22 and 23 have not entered appearance and filed any affidavit-in-reply. Respondents Nos. 1 to 3 and 18 to 21 have filed affidavits in reply. Only respondents Nos. 1 to 3 and 18 have really contested the matter.

25. The pleas taken by these respondents in their affidavits in reply in detail we will refer later. Suffice it to notice at this stage that the contesting respondents contend before the court that the intention of respondent No. 1 in liberalising the policy under Circular No. 9 of April 14, 1982 (Exh."G"), in regard to non-resident investment even from the inception was, among others, to permit all foreign companies irrespective of whether non-residents of Indian nationality/origin held ownership or beneficial interest directly or indirectly up to or above 60% to invest through foreign remittances in shares of Indian companies with full repatriation benefits. But as doubts were expressed in some quarter and the RBI had taken a particular stand, the intendment of that Circular was clarified by respondent No. 1. Pursuant to that clarification, the RBI issued a press release (Exh."A") on September 17, 1983. The RBI itself accordingly issued Circular No. 18 dated September 19, 1983 (Exh."B"), clarifying the position. The same day the RBI addressed a letter (Exh."C") to the PNB, with whom respondent No. 4 had opened an NRI (External) Account for the purpose of purchasing the shares declaring that respondents Nos. 4 to 16 were eligible to purchase the shares in question and all shares purchased before May 2, 1983, would qualify for registration of transfer of shares and after May 2, 1983, they would be qualified subject to a ceiling of 5%. That permission was valid for a period of three years from September 19, 1983, onwards subject to the conditions mentioned therein.

26. The respondents denied the allegation that these clarifications were issued to benefit respondent No. 17 and the group of companies (respondents Nos. 4 to 16) controlled by him and that they were vitiated by mala fides. They pleaded that these clarifications were issued only to remove the doubts entertained and with a view to attract and conserve the foreign exchange so badly needed for the country. They denied that any pressure was sought to be put on the petitioners either directly or indirectly. They claim that prior permission was not required to be obtained under s. 29 of the FERA for valid purchase of shares by an NRI investor; it could be secured even after the shares were purchased. In any event, the letter dated September 19, 1983 (Exh."C"), validates the purchases of shares made by respondents Nos. 4 to 16.

27. The LIC pleaded that the extraordinary general meeting was requisitioned in bona fide exercise of the power vested in it as a shareholder. The financial

institutions which hold 52% of the shares cannot be placed in a disadvantageous position as compared to the other shareholders in the matter requisitioning an EGM of the company. The exercise of that right cannot be construed as exerting undue pressure on the board of directors and that for any collateral purpose. They thus pleaded that the impugned Circular, the impugned letter and the requisition for convening an EGM of the company were perfectly in order and no writ, order or direction could issue.

28. We will refer to the factual averments made in the petition and the pleas taken in defence by each of the contesting respondents in detail while dealing with their respective contentions. The above facts would be sufficient to appreciate the submissions made on the several legal issues raised in this case.

29. We may at this stage notice that the learned single judge by his order dated March 15, 1984, directed rule nisi only in so far as prayer cls. (a), (b), (c) and (e) to (k) and permitted inclusion of the prayer cls. (ia) to (id) by way of amendment. Prayer cl. (d) in regard to which rule nisi was refused reads as follows :

"(d) for a declaration that the purchase of shares made by or on behalf of respondents Nos. 4 to 17 are illegal and violative of the provisions of the FERA, the provisions of the Reserve Bank of India particulars issued from time to time and the provisions of the Securities Contracts (Regulation) Act, 1956, and of the bye-laws of the stock exchange."

30. No appeal was preferred against that order. In view of the refusal of rule nisi in regard to prayer cl. (d), it was argued that it was not necessary to go into the question of validity of the impugned Circular and the impugned letter.

31. The principal questions raised for our consideration were :

(1) Whether for valid purchase of shares in Indian companies by a non-resident Indian investor under the portfolio investment scheme covered by Circular No. 9 of April 14, 1982 (Exh. "G"), prior permission of the RBI is required under s. 29(1)(b) of the FERA ?

(2) Whether the press release (Exh."C") are valid, and if so, do they operate so as to cover shares purchased prior to September 19, 1983 ?

(3) Whether Exhs."A", "B" and "C" are vitiated by mala fides ?

(4) Whether the notice of requisition issued by respondent No. 18 contravenes the provisions of s. 284 of the Companies Act, and/or any principles of natural justice and deserves to be quashed ?

(5) Whether the LIC acted contrary to the provisions of s. 6 of the LIC Act or the scope and intendment of its provisions ?

(6) Whether the requisitioning of the EGM by the LIC is vitiated by mala fides and/or the scope and intendment of its provisions ?

(7) Is the writ petition maintainable -

(a) on behalf of the company ?

(b) in view of the alternative remedy ?

(c) in view of misjoinder of parties and causes of action ?

(d) in view of refusal of rule nisi in regard to prayer cl. (d) ?

(8) Is there is live issue ?

(9) Are the petitioner entitled to the relief of declaration and a writ of mandamus as prayed for ?

32. While dealing with these crucial issues, several other aspects impinging upon these issues were presented and argued at great length which we would deal with in the appropriate context.

33. Before we proceed to address ourselves to the first three principal legal issues referred to above, it will be convenient to notice some facts which we find as established by the record placed before the court. According to the statement filed with the PNB, the purchase of shares under the portfolio investment scheme with full repatriation benefits by the Caparo group of companies, respondents Nos. 4 to 16, commenced on March 2, 1983, and by March 9, 1983, 70,200 shares in DCM and 65,000 shares in Escorts were purchased. These shares were purchased without obtaining the permission of the RBI and in fact even before any application for permission under s. 29 of the FERA was filed by any of these companies. By March 9, 1983, the PNB did not receive any foreign remittance from any of the respondents. None of respondents Nos. 4 to 17 opened NRI (External) Account in India. The first remittance of Rs. 1,35,36,000 was received from Caparo Group Ltd. by the PNB, New Delhi, on March 9, 1983. The NRI (External) Account was opened with the PNB, New Delhi, only in the name of respondent No. 4 company, i.e., Caparo Group Ltd. This amount was released to M/s. Rajaram Bhasin and Co., the stock brokers, respondent No. 20, who purchased shares for and on behalf of respondent No. 4 company. NRI (External) Account was opened in the names of respondents Nos. 5 to 16 companies much later. For the first time, the PNB sent a letter forwarding applications of respondents Nos. 5, 6 and 7 companies dated March 4, 1983, in Form RPC seeking permission of the RBI. These applications were received by the RBI only on March 16, 1983. The applications of the rest of the respondent companies were sent only on March 12, 1983, and they were received by the RBI on March 18, 1983. In all these applications it was mentioned that permission was being sought for purchase of shares with funds remitted from overseas. Through the letters accompanying these applications, the PNB sought permission to open Non-Resident (External) Accounts of these 13 companies.

34. The second installment of foreign remittance equivalent to Rs. 1,31,38,681 was made only by Caparo Group Ltd., respondent No. 4, on March 24, 1983, and

it was credited to its NRI (External) account with the PNB. That amount was also released to respondent No. 20.

35. Between March 9, 1983, and March 24, 1983, 2,94,350 shares in DCM and 45,300 shares in Escorts were purchased towards which a sum of Rs. 1,37,56,025 was paid, but the foreign remittances received by that date fell short by Rs. 1,23,79,000. The question would arise wherefrom these funds came and how was the consideration adjusted. It could only be from rupee account and not from foreign remittances.

36. Between March 25, 1983, and April 11, 1983, additional shares in DCM and Escorts of the total value of Rs. 1,87,95,000 were purchased. The total funds invested in excess of the funds actually received in foreign remittances by now came to Rs. 3,21,74,000.

37. The third installment of foreign remittance of Rs. 2,36,59,000 came on April 12, 1983, from Caparo Group Ltd. and further purchase of shares of Escorts of the Value of Rs. 16.24 lakhs was made. Even after the receipt of this foreign remittance, the investment was still in excess of these remittances by Rs. 1,01,39,000.

38. On April 13 and 14, 1983, share of DCM and Escorts of the value of Rs. 18.60 lakhs were purchased and the total amount invested in excess of the foreign remittances rose to Rs. 1,19,99,000.

39. On April, 13 and 14, 1983, the fourth installment of foreign remittance amounting to Rs. 76,35,000 was received and some more shares of the total value of Rs. 15,79,000 were purchased. After adjusting the funds received subsequent to the purchase, deficit overseas remittances to the tune of Rs. 59,43,000 remained outstanding.

40. Between April, 19 and April 27, 1983, shares of the value of Rs. 6,18,31,000 were purchased while the total foreign remittance fell short by Rs. 6,77,74,000.

41. The fifth installment of foreign remittance of Rs. 3,13,50,000 came only on April 28, 1983, and further shares of the total value of Rs. 9,61,000 were purchased by that date, leaving a deficit overseas remittance of Rs. 3,73,85,000. According to respondents Nos. 4 to 16, no further shares of DCM or Escorts were purchased after this date.

42. Later, three more foreign remittances were received; a sum of Rs. 1,60,96,579 on June 1, 1983, another sum of Rs. 78,58,541 on June 9, 1983, and a further sum of Rs. 1,07,22,610 on June 15, 1983. None of these remittances were made by respondents Nos. 5 to 16-companies; they were made only by respondent No. 4-company. While all the funds remitted by respondent No. 4-company were credited to the NRI (External) Account opened in the name of respondent No. 4 on March 9, 1983, with the PNB, New Delhi, they were transferred to the NRI (External) Accounts opened in the names of respondents Nos. 5 to 16-companies with the PNB on June 2, 1983, to the extent

required for paying the consideration for the purchase of shares in their names. It is the amounts so credited that were drawn and paid to M/s. Rajaram Bhasin & Co., respondent No. 20.

43. The petitioners contend that shares could not have been purchased in the names of respondents Nos. 5 to 16-companies with the remittances made by respondent No. 4. It is their further case that up to March 9, 1983, the shares were not purchased with any foreign remittances. Even from March 9, 1983, onwards, shares were purchased in advance of the remittances, obviously on rupee payment. Prior permission of RBI was not obtained by any of the respondents for the purchase of any of these shares which commenced on March 2, 1983, and ended on March 25, 1983. Some of the purchases were made even before an application for grant of permission was made by any of the respondents for the purchase of any of these shares which commenced on March 2, 1983, and ended on March 25, 1983. Some of the purchases were made even before an application for grant of permission was made by any of the respondent-companies; of these the first three applications were filed on March 16, 1983, and the rest of them on March 18, 1983. The purchases were not made through a designated bank. These purchases were thus made in contravention of the provisions of the FERA and in violation of the conditions laid down under Circular, Exh."G"). The respondents plead that on the respective dates, only firm commitments for purchase of shares were made and they were actually purchased as per the sale notes filed by them.

44. Out of the shares so purchased, only 4,62,337 shares were lodged with the petitioner-company in May, 1983 for registration of transfer in the names of the two stock brokers, respondents Nos. 20 and 21 herein. The board of directors of the petitioner-company at their meeting held on June 9, 1983, for reasons duly recorded refused to register the transfer of shares. The minutes recording this rejection read as follows :

"... 4. To note report dated Resolved that the report dated June 8, 1983, of Share Scrutiny June 8, 1983, of the Share and Transfer Committee of directors. Scrutiny and Transfer Committee of directors The board, vide resolution No. 4 constituted, vide resolution dated May 13, 1983, constituted No. 4 dated May 13, 1983, Share Scrutiny and Transfer Com- placed before the directors mittee of directors to consider and initialled by the chairman applications for transfer of very for the purpose of large number of shares lodged with identification be and is the company including transfer of hereby noted. 2,88,390 equity shares lodged for transfer by Mr. Harish Chander Bhasin and 1,73,947 equity shares lodged for transfer by Mr. Bharat Bhushan. Report dated June 8, 1983, of the Share Scrutiny and Transfer Committee of directors approving transfer of shares specified therein and recommending refusal of registration of transfer of 2,88,390 and 1,73,947 equity shares lodge for registration in the names of Mr. Harish Chander Bhasin and Mr. Bharat Bhushan respectively was placed before the directors in meeting, and its contents were discussed and noted. 5. To

consider transfer of The board considered the 2,88,390 equity shares lodged for report of the Share Scrutiny and Transfer Committee Bhasin and 1,73,947 equity shares of directors. The board lodged for transfer by Mr. Bharat Bhushan further considered exhaustively all aspects of the matter, all the materials which were gathered and placed before the board and all legal opinions and records of legal advice which had been secured by the company on the points in issue. The board further considered whether - having regard to the provisions of the FERA and FERA regulations and other relevant laws including the Company law, the Stamp Act, the Public Securities Act and other regulations relating to the stock exchange and transfer of shares - requirement of law have been complied with. The board further considered the various statements reported in the press and made by the non-resident concerned, as also by his associates in Delhi which are contradictions to the policy of the Government underlying the liberalized scheme for "portfolio investment" by eligible non-residents. The board further considered whether the purchases of the shares in question would qualify as "portfolio investment" as envisaged under the RBI schemes. The board further considered whether it is in the interest of the company and its shareholders to approve of the proposed transferees as shareholders. Upon full discussion of the Share Scrutiny and Transfer Committee's Report, the board in acceptance thereof adopted the same. Further, after a full discussion of the Share Scrutiny and Transfer Committee's Report and in the light of the said Committee's recommendations and further on account of the view of the board of directors that it would not be in the interest of the company or shareholders to register the and on account of the board's view that the transferees in question could not be approved for purposes of admitting them as members in view of the facts and circumstances taken note of by the boards of directors, the board decided to refuse registration of the shares under consideration. Accordingly it was - Resolved that the transfer of 2,38,390 equity shares of Rs. 10 each fully paid-up lodged by Mr. Harish Chander Bhasin and 1,73,947 equity shares of Rs. 10 each fully paid-up lodged by Mr. Bharat Bhushan as per distinct annexures A and B, respectively, placed before the directors and initialled by the chairman for the purpose of identification be and is hereby refused. Further resolved that Mr. Charnjit Singh, vice-president and secretary of the company, be and is hereby authorised to give and send notice of the refusal to the transferors and the proposed transferees under s. 111(2) of the Companies Act, 1956, and take such and appropriate in the matter of the above resolution. The resolution was passed with all the 13 directors (out of a total of 15 directors of the company) present and voting for the resolution excepting Mr. D. N. Davar, who did not take part in the discussion and voting on the resolution. There was no dissenting vote."

45. This resolution was communicated to respondents Nos. 20 and 21. These shares, admittedly, were not purchased by respondents Nos. 20 and 21. Again Rs. 3,68,463 shares were lodged with the petitioner-company on August 19 and

22, 1983, for registration of their transfer in the names of the 13 Caparo Group of companies, respondents No. 4 to 16. The sale notes bearing different dates show that some of these shares were purchased in May, 1983, a few in June, 1983, a few more in July, 1983, and the rest in August, 1983. If the case of respondents Nos. 4 to 17 is accepted, then these purchases having been made after May 2, 1983, must conform to the ceiling of 5% imposed under the portfolio investment scheme with full repatriation benefit. They, however, constitute more than 5%; they actually constituted 9%. Either they were purchased between March 2, 1983, and March 25, 1983, as alleged by the petitioners or only firm commitments were made then and they were actually purchased after May 2, 1983, as pleaded by the respondents. The fact remains that they were purchased before September 19, 1983, the date when the impugned Circular and letter were issued which according to the respondents amounts to according permission with retrospective effect.

46. At the meeting held on August 29, 1983, the board of directors, approving the report of the Share Scrutiny and Transfer Committee of the directors dated August 29, 1983, rejected the request to register the transfer of shares. The Committee had reached the following conclusions :

"... The above purchase of shares would, therefore, be in contravention of the peremptory provisions of the FERA. This view of the Committee is based upon opinions that have been given to this company by Mr. N. A. Palkhivala, senior advocate, Mr. F. S. Nariman, senior advocate, Mr. P. R. Mridul, senior advocate, Mr. Soli Sorabjee, senior advocate, Mr. J. B. Dadachanji, advocate and Mr. Rajive Sawhney, advocate. Copies of these legal opinions are attached hereto as annexure II."

47. The Committee took note of the press reports that the RBI had initiated an enquiry into the purchase of shares by these 13 companies and have further blocked their account and frozen funds to the tune of about Rs. 1.07 crores in mid-June, 1983. The Committee also took note of the fact that Mr. H. C. Bhasin, the stock broker/attorney of these 13 companies has subsequent to the RBI's above action stated that on account of the said action of RBI, he had not been able to withdraw the NRI funds for making payments for shares of this company purchased by him and that he was making arrangements to pay for them. The Committee has noted that a non-resident cannot purchase shares except from funds remitted from overseas or from a NRI account. A non-resident cannot purchase shares from funds raised in India by way of loans, etc., unless the RBI expressly approved of such a transaction.

48. The Committee has also taken note of the fact that from information and material collected by this company, which is now on its records (copies of which are attached hereto as annexure III), it is clear that in none of the 13 foreign non-resident companies, are 60 per cent. of the shares held by any persons of Indian origin or nationality. None of these 13 foreign companies has filed with this company any documents to show that 60% of the shares are held by

persons of Indian nationality/origin. Hence, in the opinion of this Committee, it appears that none of these 13 foreign nonresident companies are eligible to make investment in shares of Indian companies under the non-resident portfolio scheme. No doubt this matter regarding the eligibility or non-eligibility of the 13 foreign non-resident companies under the non-resident portfolio investment scheme is required to be determined by the RBI. In the absence of any approval having been obtained from the RBI, this Committee cannot help but come to the conclusion that the companies are not eligible to make investments in view of the fact that the companies are not eligible to make investments in view of the fact that almost the entire share capital in each of the companies is owned by the foreign companies ...

49. The Committee has taken note of the fact that Punjab National Bank by its letter of May 31, 1983, had informed the company that they had been advised by M/s. Rajaram Bhasin & Co., that they had purchased 75,000 shares for each of the 13 overseas companies up to April 28, 1983. However, up to the closing of the company's books on May 14, 1983, only Rs. 4,62,337 shares were lodged for registration of transfers. Now, on the closing of the books on August 23, 1983, a further Rs. 3,68,463 shares have been lodged. The secretary has reported that the transfer deeds covering these shares bear dates subsequent to April 28, 1983. On some transfer deeds, the stamp of the Registrar of Companies is dated some time in May, 1983, on others it is in June, 1983, July, 1983 and August, 1983. The Committee has taken note of the secretary's observation that the shares under consideration were not purchased prior to April 28, 1983. The Committee has, therefore, taken note of the fact that an incorrect statement has been made by the attorney of the 13 overseas companies very evidently to circumvent the provisions of FERA and RBI circulars ...

50. Upon due consideration of the report of the secretary and of all the facts and circumstances and after due consideration of the legal opinions obtained and other information/material and records obtained, collected and available with the secretary, the Committee has come to the following conclusions :

1. that the shares in question have been purchased by the 13 foreign non-resident companies without any permission of the RBI under s. 29 of the FERA;
2. that the said purchase of shares violates the provisions of the FERA and of the circulars of the RBI;
3. that in the absence of the permission of the RBI, this company is prohibited by the provisions of s. 19(5) of the FERA from registering the transfer of the said shares;
4. that there has been an apparent attempt to mislead the company the PNB and the RBI by the 13 foreign non-resident companies surprising and withholding material and relevant information and by making incorrect statements;
5. that an attempt has been made by the 13 foreign non-resident companies to

circumvent the provisions of the RBI circulars and the scheme for portfolio investments by non-residents Indians;

6. that the shares in question do not appear to have been purchased as bona fide investment under the NRI scheme and not for purposes of earning a fair return by way of dividends. On the contrary the said shares appear to have been purchased for speculative purposes;

7. that there is every likelihood that in the event of the registration of these shares, the company, its management and shareholders may be involved in protracted disputes and litigations;

There are serious possibilities that in the event of the registration of the said shares, the company, its management and shareholders may be hampered and the company may be put into a state of confusion and chaos;

That all such attempts would hamper the further growth and development of the company and may jeopardizes the various projects under implementation and contracts entered into between the company and third parties and in particular the company's bankers;

8. that it would not be in the interest of the company to register the transfer of shares.

For each of the aforesaid reasons, the Committee did not consider it in the interest of the company to register the transfer of shares and is, therefore, placing this matter before the full board of directors for their due consideration.

The Committee is placing along with this report the report of the secretary dated August 27, 1983, along with all documents/material and information collected by the company."

51. After this rejection, respondents Nos. 4 to 16, through their power of attorney-holder, respondent No. 20, once again requested the petitioner-company in their letter dated October 8, 1983, to review its earlier decision in view of Ex."B" and "C". The petitioner-company in its letter dated October 13, 1983 (Ex."AM"), Informed them that the board do directors of the petitioner-company were of the review that the decision of the board of directors "continued to hold good" notwithstanding Exs."A", "B" and "C" and refused to accede to their request the transfer. The question, therefore, that squarely falls for consideration is whether the purchases of shares made without prior permission of the RBI are valid, whether the letter dated September 19, 1983 (Ex."C"), addressed by the RBI to the PNB constituted permission and, if so, whether it constituted permission with retrospective effect, operating from the dates of the respective purchases so as to validate those purchases.

52. The Foreign Exchange Regulation Act, 1973 (Act No. 46 of 1973), hereinafter referred to as "the FERA", is :

"An Act to consolidate and amend the law regulating certain payments, dealings

in foreign exchange and securities, transactions indirectly affecting foreign exchange and the import and export of currency and bullion, for the conservation of the foreign exchange resources of the country and the proper utilisation thereof in the interests of the economic development of the country."

53. Towards this end, subject to certain conditions, it permits purchase of shares in Indian companies by non-residents of Indian nationality/origin and by certain companies not incorporated under any law in force in India and proceeds certain facilities for such purchase. Section 29 of the FERA, In so far as it is relevant for our present purposes, read as follows :-

"29. Restrictions on establishment of Place of business in India. - (1) Without prejudice to the provision of section 28 and section 47 and notwithstanding anything contained in any other provision of this Act or the provisions of the Companies Act, 1956 (1 of 1956), a person resident outside India (whether a citizen of India or not) or a person who is not a citizen of India but is resident in India, or a company (other than a banking company) which is not incorporated under any law in force in India or in which the non-resident interest is more than forty per cent. or any branch of sub-company, shall not, except with the general or special permission of the Reserve Bank, - (a) carry on in India, or establish in India a branch, office or other place of business for carrying on any activity of a trading, commercial or industrial nature, other than an activity for the carrying on of which permission of the Reserve Bank has been obtained u/s 28; or

(b) acquire the whole or any part of any undertaking in India of any person or company carrying on any trade, commerce or industry or purchase the shares in India of any such company.

(2) (a) Where any person or company (including its branch) referred to in sub-section (1) carries on any activity referred to in clause (a) of that sub-section at the commencement of this Act or has established a branch, office or other place of business for the carrying on of such activity at such commencement, then such person or company (including its branch) may make an application to the Reserve Bank within a period of six months from such commencement or such further period as the Reserve Bank may allow in this behalf for permission to continue to carry on such activity or to continue the establishment of the branch, office or other place of business for the carrying on of such activity, as the case may be.

(b) Every application made under clause (a) shall be in such form and contain such particulars as may be specified by the Reserve Bank.

(c) Where any application has been made under clause (a), the Reserve Bank may, after making such inquiry as it may deem fit, either allow the application subject to such condition, if any, as the Reserve Bank may think fit to impose or reject the application :

Provided that no application shall be rejected under this clause unless the parties

who may be affected by such rejection have been given a reason able opportunity for making a representation in the matter.

(d) Where an application is reflected by the Reserve Bank under clause (c), the person or company (including its branch) concerned shall discontinue such activity or close down the branch, office or other place of business established for the carrying on of such activity, as the case may be, on the expiry of a period of ninety days or such other later date as may be specified by the Reserve Bank from the date of receipt by such person or company (including its branch) of the communication conveying such rejection.

(e) Where no application has been made under clause (a) by any person or company (including its branch), the Reserve Bank may, by order direct such person or company (including its branch) to discontinue such activity or to close down the branch, office or other place of business established for the carrying on of such activity, as the case may be, on the expiry of such period as may be period as may be specified in the direction :

Provided that no direction shall be made under this clauses unless the parties who may be affected by such direction have been given a reason able opportunity for making a representation in the matter :

(3) Notwithstanding anything contained in sub-section (2), the Reserve Bank may, having regard to -

(i) the fact that any person or company (including its branch), referred to in sub-section (1), is carrying on any activity referred to in clause (a) of that sub-section at the commencement of this Act or has established a branch, office or the place of business for the carrying on of such activity at such commencement, in either case, in pursuance of any permission or licence granted by the Central Government; and

(ii) in the nature of the activity which is being, or intended to be, carried on by such person or company (including its branch),

by order, exempt -

(a) such person or company (including its branch); or

(b) any class of such persons or companies (including their branches), in the order, from the operation of the provision of sub-section (2) subject to such condition as may be specified in the order :

Provided that the Reserve Bank shall not make any order under this sub-section in a case where the activity which is being, or intended to be, I carried on is solely of a trading nature.

(4)(a) Where at the commencement of this Act any person or company (including its branch) referred to in sub-section (1) holds any shares in India of any company referred to in clause (b) of that sub-section, the, such person or

company (including its branch) shall not be entitled to continue to hold such shares unless before the expiry of a period of six month from such commencement or such further period as the Reserve Bank may allow in this behalf such person or company (including its branch) has made an application to the Reserve Bank in such form and containing such particulars as may be specified by the Reserve Bank for permission to continue to hold such shares.

(b) Where an application has been made under clauses (a), the Reserve Bank may, after making such inquiry as it may deem fit, either allow the application subject to such conditions, if any, as the Reserve Bank may think fit to impose or reflect the application :

Provided that no application shall be rejected under this clauses unless the parties who may be affected by such rejection have been given a reasonable opportunity for making a representation in the matter.

(c) Where an application has been reflected under clauses (b), or where no application has been made under clause (a), the Reserve Bank may, if it is of opinion that it is expedient so to do for the purpose of conserving the foreign exchange, direct such person or company (including its branch) to sell or procure the sale of such shares :

Provided that no direction shall be made under this clause unless notice of such direction for a period of not less than ninety days has been given to the person or company (including its branch) to be affected by such direction.

Explanation. - For the purposes of this section, "company" has the same meaning as in clause (b) of the Explanation to section 28."

54. The Act further regulates under s. 19 transfer of securities. It prohibits transfer or registration of any shares in favour of any non-resident Indian outside India. Sub-s. (4) of s. 19 prohibits a company from making any entry of any transfer of shares in the name of any non-resident Indian company except with the permission of the RBI. Section 19(4) reads as follows :

"(4) Notwithstanding anything contained in any other law, no person shall, except with the permission of the Reserve Bank, -

(a) enter any transfer of securities in any register or book in which securities are registered or inscribed if he has any ground for suspecting that the transfer involves any contravention of the provisions of this section, or

(b) enter in any such register or book, in respect of any security, whether in connection with the issue or transfer of the security or otherwise, an address outside India except by way of substitution for any such address in the same country or for the purpose of any transaction for which permission has been granted under this section with knowledge that it involves entry of the said address, or

(c) transfer any share from a register outside India to a register in India."

55. Under s. 75, the Central Govt. is invested with the power to issue such general or special directions as it thinks fit to the RBI with a view to augment foreign exchange resources of the country. The RBI also is empowered under s. 73(3) to issue directions for the purpose of securing compliance with the provisions of the Act and of any rules, directions or orders made thereunder. In exercise of these powers, the RBI issued Circular No. 9 dated April 14, 1982 (Exh."G"), addressed to all dealers in foreign exchange to regulate investment by non-residents of Indian nationality/origin. Before this circular was issued, certain facilities were available to non-resident individuals of Indian nationality/origin for investment in shares in Indian companies subject to prior approval of the RBI. Those facilities were sought to be liberalised and also simplified under this circular. This circular, among other : (i) lays down the conditions of eligibility of non-resident Indian and other bodies to invest; (ii) requires permission of the RBI; (iii) permits purchases only with foreign remittances; (iv) enjoins opening of Non-Resident (External) Account or ordinary Non-Resident Account in Indian banks; (v) obligates purchases to be made only through designated banks and authorised brokers; (vi) prescribes the limits of such investments.

56. This circular was slightly modified by Circular No. 5 dated August 20, 1982, and other circulars referred to above. Finally, the impugned press note (Exh."A"), the impugned Circular (Exh."B") and the impugned letter (Exh."C") were issued.

57. Presently, it is not necessary to deal with the circumstances that led to the release of this press note, this circular and this letter. What we are now concerned with is, whether for valid purchase of shares under the portfolio investment scheme envisaged by Circular No. 9 of April 14, 1982, obtaining of prior permission of the RBI under s. 29(1)(b) of the FERA is mandatory; whether the impugned Circular operates prospectively or also covers transactions completed before the date of its issue and whether the impugned letter constitutes permission envisaged by s. 29(1)(b) of the FERA and covers purchases of shares made earlier by the respondent-companies.

58. Mr. Nariman, learned counsel for the petitioners, contended that s. 29(1)(b) lays down that a non-resident Indian investor shall not purchase shares in Indian companies under the portfolio investment scheme except with the prior permission of the RBI. Any purchase made without such prior permission was prohibited from registering the transfer of the shares in the names of such purchasers.

59. The learned Advocate-General, appearing for respondents Nos. 1 and 2, submitted arguments in the alternative on this issue. Firstly, he contended that s. 29 did not stipulate prior permission of the RBI for valid purchase of shares under the portfolio investment scheme. On that footing, he urged that Circular No. 18 of September 19, 1983, was issued merely to clear the doubt raised in some quarters as to whether only those NRI investing companies in which non-residents of Indian nationality/origin held 60% interest directly or even those in which such interest was held indirectly were entitled to invest. The RBI clarified

that even the entities in which such interest is indirectly but ultimately held by non-residents of Indian nationality/origin were entitled to invest under this scheme. He also urged that this letter only declares the eligibility of respondents Nos. 4 to 16 companies to make investments with full repatriation benefits under the portfolio investment scheme envisaged by Circular No. 9 dated April 14, 1982, as amended from time to time. Alternatively, he contended that the letter addressed by the RBI to the PNB on September 19, 1983, read with the Circular itself constitutes permission envisaged by s. 29(1)(b). According to him, permission could be validly granted even after the purchases were complicated and once such permission is granted, no infirmity attaches to such purchase.

60. The question whether prior permission of the RBI is required for the purchases of shares by a non-resident investor in an Indian company must primarily be decided upon the interpretation of s. 29 of the FERA and, if necessary, in the context of the other provision of the FERA. There is no dispute that purchase of the shares in an Indian company by an NRI investor requires permission of the RBI under s. 29 of the FERA. The controversy is only whether this permission should necessarily be obtained before purchasing the shares, or whether such permission could validly be granted even after the purchases are made. Section 29 in terms does not stipulate prior permission; it speaks of only "permission". It is argued by Mr. Nariman, learned counsel for the petitioners, that the language of s. 29 is clear enough to hold that permission contemplated by s. 29 must be obtained before the shares are purchased. On the other hand, the learned Attorney-General referred us to the several provisions of the FERA and points out that wherever the Legislature intended that permission should be secured before a particular act was done, it employed the words "prior permission" in contradistinction to the word "permission" used in s. 29. He argues that whereas the Legislature has deliberately used two different expressions in the same enactment, they must necessarily cover different meanings and when the expression "prior permission" does not occur in s. 29, such a requirement should not be imported by any process of interpretation.

61. The FERA is an enactment which, while permitting inflow, while permitting flow of foreign exchange into India, seeks to regulate and monitor it. It is abundantly clear from the various provisions of the FERA that unrestricted and indiscriminate investment of funds out of foreign remittance to India is not allowed. Any such unregulated investment may have a crippling effect on certain industries and companies in a developing country such as ours. The FERA, therefore, seeks to regulate the investment of such funds through its several provisions. Section 29 is one such provision. It is calculated to control the purchases of shares in an Indian company by an NRI investor. It lays down that a non-resident Indian investor "shall not" "except" with the general or special permission of the RBI purchase shares in India of any such company. There is, of course, a distinction between the actual purchase of shares and an agreement for purchase of shares. This provision only prohibits purchase; it does not prohibit an NRI investor from entering into an agreement for purchase of shares

and setting the terms of any such agreement for purchases. The words "shall not" are mandatory; they enjoin a prohibition. Even if the consequences of contravening such a mandatory provision are not provided, the prohibition is imperative. The negative language used in this provision is intended to emphasize the imperative nature of the prohibition.

62. In *Mannalal Khetan v. Kedar Nath Khetan* [1977] 47 Com Cas 185, the upreme Court dealing with s, 108 of the Companies Act, which lays down that "a company shall not register a transfer of shares" except on production of an instrument of transfer, declared (at p. 191) :

"The words "shall not register" are mandatory in character, The mandatory character is strengthened by the negative from of the language. The prohibition against transfer without company with the provisions of the Act is emphasised by the negative languages. Negative language is worded to emphasize by the negatives language of companies with the provisions of the Act ... Negatives words are clearly prohibition an are ordinarily used as a legislative devise to make a statutory provision imperatives."

63. In *Sharif-ud-din Vs. Abdul Gani Lone*, , the Supreme Court, discussing the difference between an mandatory rule and a directly rule, declared that if the object of a law is likely to be deferred a by non-complains with it, it has to be regarded as mandatory, The Supreme Court further observed (p. 306) :

"Where, however, a provision of law prescribes that a certain act has to be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which covers an immunity on another when such act is not done in that manner, the former has to be regarded as a mandatory one."

64. The Supreme Court concluded (p. 306) :

"Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that a failure to comply with the said requirement dead to a specific consequence, it would be difficult to hold that the requirement is not mandatory land the specified consequence should not follow."

65. There can, thereafter, be no doubt that s. 29 is mandatory and permission must be obtained. Without permission, NRI investor may purchases shares in an Indian company.

66. Still the question remains whether this permission may be obtained even after the purchase or musts it necessary be obtained prior to the purchases. It is true, as contended by the learned Attorney-general, that the word "permission" is a work of side import as laid down in *Manohar Nathurao Samarth Vs. Marotrao and Others*, In that cases, the Supreme Court was concerned with construing regln. 25(4) of the Life Insurance Corporation of India (Staff) Regulations, 1960, in the context of a member of the LIC Staff contesting an election to the Nagpur Municipal Corporation. That provision read as follows (p. 1086) :

"25(4) No employees shall canvass or otherwise interfere or use his influence in connection with or take part in an election to any Legislature or local authority :

Provided that - ...

(iii) the chairman may permit an employee to offer himself as a candidate for election to a local authority and the employee so permitted shall not be deemed to have contravened the provision of this regulation."

67. It is in that context their Lordships observed (Page 1088) :

"Permission " is a word of wide import and may even survive the death of the person who permits ... Equally clearly, whereas a statute does not necessarily insist on previous permission, it may be granted even later to have retrospective effect."

68. It must be noticed that their Lordships themselves clearly stated That this matter "related to the rationale of election law" and "eligibility of an employee of the LIC to be a member of the local authority". Their Lordships also noticed that it deals with "stipulation an ineligibility for candidature". Their Lordships further took note of the fact that the chairman is given power to permit an employee to participate in the election depending upon the circumstances of each case and the further proviso that the chairman may grant permission to the employees even subsequently in which even he shall not be deemed to have contravened the provision of that regulation. It is in that context that the word "permission" was deemed to be of wide import and can never imply prior permission was deemed to be of wide import and did not necessarily mean previous permission. It was one laid down that word occurred, that would necessarily be of wide import and can never import permission. In fact, the reasoning of the judgment would give an indication that whether permission envisaged by a particular statute meant prior permission or subsequent enforcement of permission or subsequent permission or could be either prior or subsequent, must be ascertained from the context in which that word occurs.

69. Reliance was also placed upon the decision of the Supreme Court in *Dhanrajam Gobindram Vs. Shamji Kalidas and Co.*, which arises under the FERA, 1947. Interpreting s. 21 of the Act, the Supreme Court observed that :

"The effect of the provisions of s. 21 is to prevent the very thing which is claimed here, viz., that the Foreign Exchange Regulation Act, 1947, arms persons against performance of their contracts by setting up the shield of illegality. An implied term is engrafted upon contract of parties by the second part of sub-s. (2), and by sub-s. (3), the responsibility of obtaining the permission of the Reserve Bank before judgment, decree of court, is transferred to the decree-holder."

70. This provision is somewhat analogous to s. 47 of the FERA and not s. 29. Dealing with such a provision, the Supreme Court observed that permission could be obtained subsequent to the contract and cannot be enforced before obtaining permission. While observing that the word "permission" is a word of wide import, the

Supreme Court held (p. 1290) :

"Permission" in this section means only leave to do some act which but for the leave would be illegal. In this sense, exemption is just one way of giving leave. If one went only by the word and search for those sections where the word "permission" is expressly used, ss. 21(2) and (3) are likely to prove a dead letter. This could not have been intended, and the very elaborate provision in those sub-section show that those matters were contemplated which are the subject of prohibition in s. 5."

71. In our view, this judgment in fact supports the contention that the word "Permission" implied prohibition and if permission has to be obtained for purchase at all. By making permission an implied terms of the contract, the provision enjoins the parties to obtain permission before doing the thing prohibited. The fact that this provision makes obtaining permission an implied terms of the contract, in our view, far from leading to the conclusion that such permission could be obtained subsequently, makes it clear that whatever may have been the intention of the parties, permission must be obtained before the contract is performed. Even if they had not made it specific terms of the contract, s. 21 by its own force (corresponding to s. 47 of the FERA) makes it a terms of their contract, In the result, an agreement to purchases shares may be completed only after obtaining permission and not before, for s. 47 lays down that it "shall not be done unless such permission is granted". The contract may be performed only after obtaining such permission.

72. Holding otherwise would be ignoring the prohibition against purchase contained in s. 29(1) of the FERA. That the prohibition is with respect to purchases and not merely to hold or get the shares transferred is further clear from sub-s. (4) of s. 29 of the FERA. Under sub-s. (4), any non-resident Indian investor holding shares in an Indian company at the company commencement of the FERA is declared not entitled to continue to hold such shares unless, before the expiry of the period of six months from such commencement or such further period as the RBI may allow, he has made an application to the RBI is empowered to direct such shares. If permissions is refused, the RBI is empowered to direct such person to sell or procure to sell all such shares. Section 29 itself thou rests intrinsic evidence that permission envisaged by s. 29(1) is one which must be obtained before the shares are purchased and not one which could be obtained after the purchases are completed.

73. That the intention of the Legislature is to require NRI investors to obtain permission of the RBI before the shares are actually purchased is made further clear from other provisions of the FERA as well. A strict compliance of s. 29 is sought to be made mandatory by rendering the act of such purchase liable for enabling in departmental proceedings under s. 50 and also liable for punishment by way of prosecution under s. 56 of the FERA. The Prosecution could be launched without prejudice to any penalty that may be imposed under any other provisions of the Act and in addition thereto. Further, if it were to be held that

permission may be obtained even after the transaction of purchase is completed, buyers, may not apply for permission at all. In any event, there is no knowing when they would apply. In the words, obtaining of permission envisaged by s. 29 would be left to the sweet will of the purchasers. No NRI investor could never be accused of purchasing shares without permission; penalties prescribed under the FERA for failure to obtain permission under s. 29 could never be imposed. Those contravening could always plead that they would apply for and obtain permission. In the result, it would be impossible for the RBI and other authorities to regulate or monitor transactions involving foreign exchange and foreign remittances. That could never have been the intention the Legislature.

74. Under s. 29(2)(c) of the FERA, the RBI, while according permission, is authorised to impose such conditions for the purchases as it may deem fit. Imposing any conditions in giving post facto approval to purchase already made would be superfluous; in any event enforcing compliance of such conditions would be difficult, if not impossible. That would also create a very anomalous situation. The non-resident Indian investors would have purchased shares in the hope of getting permission and if permission were to be refused or if certain conditions which could not be compelled by such investors were to be imposed, the purchasers would be exposed to penal consequences.

75. The learned Attorney-General, however, pointed out that prosecution for contravention of the provisions of the FERA is not a matter of course and no one excepts the authorities referred to in s. 61(2) could initiate them. The court is prohibited from taking cognizance of certain offences, including contravention of s. 29 read with s. 56 of the FERA, except with the sanction of the authorities mentioned in s. 61(2). According to him, when an application for permission is made, any purchases made, while such application is for permission is made, any purchases made, while such application. If the application is ultimately granted, it would relate back to the date of the application and permission would cover the purchases made during the interregnum. If it is refused, even then prosecution does not necessarily follow. This, in our opinion, does not render any assistance in construing s. 29 and offers little consolation to non-resident Indian investors. Whether a prosecution is launched or not, administrative action could be taken under ss. 50 and 57 of the FERA. In any event, having invested funds, the NRI investor would be at the mercy of the authorities. Parliament could never have intended to permit a transaction under one provision of the FERA and exposes the parties to the transaction to risk of prosecution by another provision of the same enactment. It may also be noticed that the FERA does not contain any provision to apply for granting permission after the shares are purchased; nor is there a provision for validation of the purchases made without prior permission. It would be of interest to note that the scheme of the FERA is substantially the same as that of the Exchange Control Act in force in England, The English enactment which also lays down that shares may be purchased only with permission, made a provision in ss. 8 and 9 for validation of the purchases made without obtaining prior permission. There is no corresponding provision in

the FERA. This significant deviation further supports the condition that the Indian Legislature intended that NRI investors should obtain prior permission of the RBI and that it sought to enforce compliance of this provision by making purchase made without obtaining prior permission liable for prosecution. If there were to be a provision for validating purchase of shares without prior permission, perhaps, there would have been some scope for contending that it was not obligatory to obtain prior permission. The absence of such a provision is a sure indication of the legislative intent that permission was to be obtained prior to the purchase and could not be sought at any time thereafter.

76. The learned Attorney-General argued that the statute must be construed as a whole and where different words are used, they must mean differently, and relied upon the ratio of the judgment of the Supreme Court in *The Member, Board of Revenue Vs. Arthur Paul Benthall*, . There can be no quarrel with this principle. Reliance was also placed on the judgment of the Supreme Court in *Municipal Corporation of City of Hubli Vs. Subha Rao Hanumatharao Prayag and Others*, , for supporting the contention that the court is bound to consider all the provision of the FERA and construe them as a whole. The Supreme Court laid down (p. 1402) :

"It is a well-settled rule of interpretation that the court is "entitled and indeed bound, when construing the terms of any provisions found in a statute, to consider any other parts of the Act which throw light on the intention of the Legislature, and which may serve to show that the particular provision ought not to be construed as it would be alone and apart from the rest of the Act". The statute must be read as a whole and every provision in the statute must be construed with reference to the context and other clauseds in the statute so as, as far as possible, to make a constituent enactment of the whole statute, Obviously, therefore, session 78 to 81 must be so construed as to harmonises with section 82. They must be read together so as to form part of a connected whole."

77. The principle enunciated in this decision itself proceeds on the footing that if a provision is not sos read, that provision would conflict with some other provision and in order to avoid such a conflict, it is necessary to read the statute as a whole. This rule of interpretation cannot be made applicable to a situation whereas the plain meaning of the word "permission" in s. 29 of the FERA read by itself does not come into conflict with any other provision of the FERA. In *Gramophone Company of India Ltd. Vs. Birendra Bahadur Pandey and Others*, dealing with the purport of the word "import" occurring in s. 53 of the Copyright Act, 1957, the Supreme Court held :

"But the same word may mean different thing in different enactment and in different contexts. It may even mean different things at different place in the same state. It all depends of the sense of the provision where it occurs. Refers to dictionaries is hardly of any avail, particularity in the case of word of ordinary parlance with a variety of well Know meanings, Such words take colour from the context. Appeal to the latin root won't help. The appeal must be to the sense of

the statute."

78. We have not been shown as to with which other provision s. 29 would conflict if it is interpreted to mean "prior permission". In fact, in our view, if the word "permission" occurring in s. 29 is not construed as meaning prior permission, it would defeat the very purposes for which it was devised. No doubt, the statute has to be read as a whole, but the subject and the context in which the particular word occurs cannot be given a go-by. In our view, recourse to any aid of interpretation would be necessary only when the words in the context in which they occur are susceptible of more than one meaning and where the provision is very clear, reference to any other provisions of the Act of which it is a part, is unnecessary. Merely because in some other provision of the same Act, words "prior permission" are used, it does not necessarily follow that wherever the word "permission" is not preceded by the word "prior", permission may be obtained even subsequently.

79. The learned Attorney-General referred us to s. 30 of the FERA in which the words "Previous permission" occur. That section lays down that "No national of a foreign State shall, without the previous permission of the Reserve Bank take up any employment in India, ...". No doubt, this provision expressly requires previous permission. Section 18(9) enables the RBI to issue a notification requiring a person to comply with any the condition mentioned in sub-section (9) of section 18 "prior to the export of the goods". These provisions, in our view, do not necessarily lead to the conclusion that wherever the word "prior" or "previous" does not precede the word "permission" in any section. The Act contemplates that permission may be obtained either before or after the event envisaged by that provision occurs. If that were so, the same should hold good under s. 13, which imposes restriction on import and export of certain currency and bullion. Just as s. 29, s. 13 also lays down that "No person shall, except with the general or special permission of the Reserve Bank, ... Bring or send into India any gold or silver or any foreign exchange or any Indian gold or silver or any foreign exchange or any Indian currency". If the contention that since this provision does not lay down in so many words that permission of the RBI would be obtained before importing or exporting gold, silver or bullion, permission may be applied for and obtained later, is accepted, what serious consequences would flow could very well be visualized. It would result in authorising smuggling of gold, silver and foreign or Indian currency into or out of India. That the Legislatures could never have permitted import or export of bullion and currency without prior permission is too obvious to call for any further comment or elaboration.

80. In fact, s. 47 of the FERA prohibits any contract or agreement being entered into, which directly or indirectly results in evading or avoiding the operation of any provision of the Act or rule, direction or order made thereunder. Sub-s. (2) of S. 47 lays down that even if there is no specific stipulation in any agreement between the parties that prior permission shall be obtained in respect of anything

that is prohibited from being done except with the previous permission of the Central Govt. or the RBI, it shall be deemed to be a term of the contract and that it shall not be done unless such permission is granted. Section 47, in so far as it is relevant to the present discussion, reads as follows :

"47. Contracts in evasion of the Act. - (1) No person shall enter into any contract or agreement which would directly or indirectly evade or avoid in any way the operation of any provision of this Act or of any rule, direction or order made thereunder.

(2) Any provision of, or having effect under, this Act that a thing shall not be done without the permission of the Central Government or the Reserve Bank, shall not render invalid any agreement by any person to do that thing, if it is a term of the agreement that thing shall not be done unless permission is granted by the Central Government or the Reserve Bank, as the case may be; and it shall be an implied term of every contract governed by the law of any part of India that anything agreed to be done by any term of that contract which is prohibited to be done by or under any of the provisions of this Act except with the permission of the Central Government or the Reserve Bank, shall not be done unless such permission is granted.

(3) Neither the provisions of this Act nor any term (whether express or implied) contained in any contract that anything for which the permission of the Central Government or the Reserve Bank is required by the said provisions shall not be done without that permission, shall prevent legal proceedings being brought in India to recover any sum which, apart from the said provisions and any such term, would be due, whether as debt, damages or otherwise, but -

(a) the said provisions shall apply to sums required to be paid by any judgment or order of any court as they apply in relation to other sums;

(b) no steps shall be taken for the purpose of enforcing any judgment or order for the payment of any sum to which the said provisions apply except as respects so much thereof as the Central Government or the Reserve Bank, as the case may be may permit to be paid; and

(c) for the purpose of considering whether or not to grant such permission, the Central Government or the Reserve Bank, as the case may be, may require the person entitled to the benefit of the judgment or order and the debtor under the judgment or order, to produce such documents and to give such information as may be specified in the requisition.

(4) Notwithstanding anything contained in the Negotiable Instruments Act, 1881 (26 of 1881), neither the provisions of this Act or of any rule, direction or order made thereunder, nor any condition, whether expressed or to be implied having regard to those provisions, that any payment shall not be made without permission under this Act, shall be deemed to prevent any instrument being a bill of exchange or promissory note."

81. Thus, even if there were to be an agreement for purchase of shares which did not specifically provide for obtaining permission of the Government of India or the RBI prior to purchase, the agreement is made binding on the parties by making obtaining of such permission an implied term of the contract under s. 47(2) of the FERA. The provisions contained in sub-ss. (3) and (4) of s. 47 would further show that parties to an agreement are not prevented from bringing legal proceedings to recover any sum under a contract in respect of anything done which required permission under the provisions of the FERA. It prohibits every non-resident Indian investor from purchasing, but makes an exception in favour of such persons who have a general or special permission of the RBI. Purchase is an act which involves a seller and buyer. Unless the buyer and seller are ad idea in regard to the terms of the agreement, there cannot be a transaction of sale. Section 47(2) makes obtaining of prior permission one of the terms of all such agreements. Even if the parties have not specifically stipulated that permission shall be obtained, it would be deemed to contain the mandatory stipulation envisaged by s. 47(2). This statutory term of the contract obligates the parties that the act of purchase "shall not be done unless such permission is granted". Section 47(1) and (2) apply to all such provisions of the FERA that lay down that "the thing shall not be done without the permission of the Central Govt. or the Reserve Bank". In other words, whenever a non-resident Indian investor intends to purchase shares in an Indian company, s. 47(2) automatically is attracted and the condition of obtaining prior permission of the RBI would become an implied term of every such contract. Unless that term is complied with, i.e., unless such permission is granted, that transaction of sale and purchase cannot be completed. If permission envisaged by s. 29 could be obtained even after the purchase of the shares was completed, obtaining of such permission would not have been made a term of contract of the agreement of purchase under s. 47(2). Holding otherwise would render s. 47(2) otiose. While s. 47 refers to an agreement of sale, s. 29 prohibits purchase of shares by NRI investors except with the general or special permission of the RBI; that necessarily leads to the conclusion that permission envisaged by s. 29 is permission which must be obtained prior to purchase.

82. That the intention of the Legislature is that the parties should obtain prior permission is further evident from s. 19 of the FERA, which so far as it is relevant for our present purpose, reads as follows;

"19. Regulation of export and transfer of securities. - (1) Notwithstanding anything contained in section 81 of the Companies Act, 1956 (1 of 1956), no person shall, except with the general or special permission of the Reserve Bank -

(a) take or send any security to any place outside India;

(b) transfer any security, or create or transfer any interest in a security to or in favour of a person resident outside India;

(d) issue, whether in India or elsewhere, any security which is registered or to be

registered in India, to a person resident outside India;

(4) Notwithstanding anything contained in any other law, no person shall, except with the permission of the Reserve Bank, -

(a) enter any transfer of securities in any register or book in which securities are registered or inscribed if he has any ground for suspecting that the transfer involves any contravention of the provisions of this section, or

(b) enter in any such register or book, in respect of any security, whether in connection with the issue or transfer of the security or otherwise, an address outside India except by way of substitution for any such address in the same country or for the purpose of any transaction for which permission has been granted under this section with knowledge that it involves entry of the said address, or

(c) transfer any share from register outside India to a register in India."

83. It would be seen that while enacting a prohibition against transfer of any security in favour of a resident outside India except with the general or special permission of the RBI, the companies in which shares have been purchased in contravention of the provisions of the FERA, are themselves prohibited from entering "any transfer of securities in any register or book in which securities are registered or inscribed if he has any ground for suspecting that the transfer involves any contravention of the provisions of this section". Thus, while a person purchasing shares without obtaining permission of the RBI so denied the right to obtain the transfer of shares registered in the books of the company and is exposed to departmental penalties and prosecution in court, the companies are also liable to be proceeded against if they were to register these transfers. These provisions operate "notwithstanding anything contained in the Companies Act or any other law". The intention of the Legislature is thus made abundantly clear that permission envisaged by s. 29 must be obtained by NRI investors before purchasing the shares.

84. The learned Attorney-General strongly pressed before us that the object of the FERA and the policy decision taken by the Government of India liberalising the portfolio investment scheme permitting investment in share of Indian companies of specified category must not be lost sight of in interpreting the provisions of this Act. The object of the FERA and the policy decision of the Government are calculated to attract inflow of the much needed foreign remittances. Any interpretation that is likely to deter or scare away foreign investors should, therefore, be avoided. Laws relating economic matters and policies governing financial matters and especially earning of foreign exchange should be viewed with greater latitude than laws concerning civil rights such as freedom of speech and religion, etc., as held in *R.K. Garg and Others Vs. Union of India (UOI) and Others*, and as observed by Holmes J. (at p. 255) : "Legislature must be allowed some play in the joints ...". If a provision in an enactment like the FERA is susceptible of more than one interpretation, that

which advances this object of the enactment should be adopted. This principle as enunciated is unexceptionable. For that matter, interpretation of the provision of any enactment must be made to advance the object of the enactment; not to defeat it. However, the object of the enactment, to our mind, is not merely to attract foreign exchange but also to regulate, monitor, control and limit the inflow of foreign remittances and investment of foreign funds in India and also outflow of foreign investment and profits from India and to conserve foreign exchange in accordance with the provisions of the FERA. The FERA does not envisage free flow of foreign exchange for the purpose of investment. While any such unregulated foreign remittances may result in accumulation of foreign exchange, they may also have an adverse effect on the economic growth of the country and on the nascent Indian industry, trade and commerce. That is why a wide and effective control is sought to be exercised by the Government through the various provisions of the FERA and allied Regulations which empower it to take stringent action, both administrative and penal, against those contravening its provisions. The object of the Act, to our mind, is not earning foreign exchange for the country at any cost and by any means; much less does it postulate earning it in contravention of the specific provisions of the statute. Merely because non-resident Indian investor would make foreign remittances, it is not the intendment of the FERA that they should be allowed to invest, without any restriction. The fact that such investment is required to be made through designated banks and through registered brokers and only up to a ceiling of 5% of the paid-up capital of the Indian company even after eligibility of such investor is ascertained by the authorities constituted by the FERA, is a sufficient indication of the intention of the Legislature and formulators of the scheme that only those that fulfilled the prescribed criteria and were eligible should be permitted to invest. That object could be achieved only if prior permission is required to be obtained under s. 29. If it were otherwise, then after purchases of shares, on permission being refused, what would be the fate of such investments? Would not the purchaser be exposed to penal consequences? Or could it be that the Act postulated that permission should necessarily be granted; if the former, the provision would be self-defeating for no one would take the risk; if the latter, it would be an empty formality which no statute could be expected to lay down. Howsoever liberally we may construe s. 29, we are unable to find that parliament had ever envisaged attracting foreign exchange or permitting investment by NRI investors in purchasing shares in Indian companies without obtaining prior permission of the RBI.

85. It was also contended that if a provision were susceptible of two interpretations and penal consequence of particular contravention of that provision were laid down, that interpretation which does not make it penal must be accepted. The Full Bench decision of the Calcutta High Court in *The Jay Engineering Works Ltd. Vs. M.G. Wagh and Others*, was relied upon in support of this contention. That was a case in which s. 12(2) of the FERA, 1947, came up for consideration. Sub-s. 12 authorised the Central Govt. to prohibit by a

notification the taking or sending out by land, sea or air of any goods or class of goods specified in the notification unless a declaration is furnished by the exporter to the prescribed authority that the amount representing the full export value of the goods has been or will be paid in the prescribed manner. Sub-s. (2) provided as follows (at p. 415) :

"(2) Where any export of goods has been made to which a notification under sub-section (1) applies, no person entitled to sell, or procure the sale of, the said goods shall, except with the permission of the Reserve Bank, do or refrain from doing any act with intent to secure that - (a) the sale of the goods is delayed to an extent which is unreasonable having regard to the ordinary course of trade, or (b) payment for the goods is made otherwise than in the prescribed manner or does not represent the full amount payable by the foreign buyer in respect of the goods subject to such deductions, if any, as may be allowed by the Reserve Bank, or is delayed to such extent as aforesaid :

Provided that no proceedings in respect of any contravention of this sub-section shall be instituted unless the prescribed period has expired and payment for the goods representing the full amount as aforesaid, has not been made in the prescribed manner."

86. Any contravention of this provision was made penal. Dealing with that provision, the court held that this provision applied to "sale which are to take place in future and not sales which have already taken". The court went on to observe (p. 418) :

"It is, at all events, reasonable to presume that the same meaning is implied by the use of the same expression in every part of an Act and from the general presumption that the same expression is presumed to be used in the same sense throughout an Act, or a series of cognate Acts, there follows the further presumption that a change of wording denotes a change in meaning. In the instant case, the same expressions have been introduced, both in section 12(2) and in section 12(3) and if it is clear from section 12(3) that these expressions refer to future transactions, it is safe to presume that they refer to future transactions in section 12(2) as well. Thirdly, if we say that the expression "no person entitled to sell" includes a person who has already sold, we shall be travelling beyond the plain meaning of the words. This plain meaning can, inter alia, be derived from the association of words in this sub-section, namely, "entitled to sell or procure the sale of". Fourthly, if two meanings are equally possible in a penal statute, it is well known that the court leans in favour of the subject."

87. In that view of the matter, the court held that the transactions in that appeal were not hit by the provisions of sub-s. (2) of s. 12 of the FERA, 1947, and, as such, the notice issued to the appellant on the basis of this sub-section must be struck down. It is in that context that the Full Bench observed that "prior" permission is not necessarily contemplated by the enactment and the provision

being susceptible of two interpretations, the one which does not make it penal should be accepted.

88. The learned Attorney-General pointed out that whether permission is granted under s. 29, prior to the purchase or subsequent to the purchase, would not affect any third party; hence that section must be liberally construed so as to authorise granting of permission subsequent to the purchase. That, according to him, would advance public interest. Any interpretation that advances public interest as laid down in *Commissioner of Income Tax (Central) Vs. B.N. Bhattacharjee and Another*, must be adopted. He also referred us to s. 28 of the FERA and sub-s. (2) thereof which declares that anything done in contravention of sub-s. (1) of s. 28 shall be void; but the transactions covered by s. 29 are not declared to be void if not backed by prior permission. It is argued that even though permission is required to be obtained before a particular act is done, unless that act, if done without obtaining such permission, is declared void, permission may be obtained even subsequently. The decision in *Shekh Zafarbhay Guljarbhay Vs. Chhaganlal Aditram Gandhi*, , on which reliance is placed in this behalf arose out of a lease of the wakf property granted by a Muslim mutawalli. It must be remembered that a mutawalli is competent to lease out wakf property; he is merely required to take permission of the court. Dealing with such a lease, the learned single judge held :

"Such permission can be granted even after a suit is brought to set aside the lease, and it can be granted by any civil court".

89. The principle that governs the grant of a lease by an authority competent to grant such leases with the leave of the court can hardly apply to a situation where an express prohibition against purchase except with the permission of the RBI is enjoined and any purchase in contravention thereof is made penal by the statute. Further, in that decision, the court did not lay down that in all cases wherever sanction is required to be obtained, it can always be obtained subsequent to the act.

90. The decision in *Shah Dahyabhai Premchand v. Mohanlal Pitambardas* [1977] 18 Guj LR 1018 where the second proviso to s. 35(1) of the Bombay Public Trusts Act, 1950, came up for consideration, as also relied upon in this context. In that case, the learned single judge observed that the investment made by the trustees of public trust funds without the permission of the Charity Commissioner otherwise than as provided by sub-section (1) of section 35 is not invalid or void *a initio*. That provision is intended to safeguard the trust property. The trustees are empowered to invest the trust funds. In fact, if they do not immediately invest, they are liable to be prosecuted under s. 66 of that Act. Any such act of investment obviously cannot be void for failure to obtain prior permission of the Charity Commissioner.

91. The learned Attorney-General urged that where an enactment merely imposes a penalty without declaring an act to be void or illegal, it does not

necessarily imply a prohibition, especially where the object of the enactment is merely the protection of the revenue. The decision in *Smt. Janki Bai Chunnilal Vs. Ratan Melu and Another*, , which was referred to in this behalf, was rendered in a matter arising under the C.P. and Berar Money-lenders Act, 1934. Under that Act, a money-lender who failed to obtain a registration certificate was precluded from recovering the loan by instituting a suit. Construing that provision, the court held that the contract entered into by such money-lender was not void. It only prohibited institution of a suit for recovery of such a loan until the money-lender registered himself and obtained a certificate. Any person carrying on money-lending business without registering himself as such is exposed to penalties; but the debt itself is not extinguished. Section 11H of that very Act, on the other hand, provided that an unregistered money-lender could register himself subsequently and then institute a suit. It is having regard to these other provisions, the court held that failure to get himself registered before carrying on money-lending business did not render the transaction void and such registration could be obtained even just prior to the suit.

92. It is significant to note that there is no specific provision for granting permission subsequent to the purchase of the shares. That itself makes all the difference.

93. Arguments were also addressed that in the interpretation of s. 29 of the FERA, the contemporaneous exposition made by the RBI, which is the authority empowered to administer the FERA and empowered to issue directions under s. 73(3) for better implementation, must prevail. In *Desh Bandu Gupta & Co. v. Delhi Stock Exchange Association* [1980] 50 Com Cas 84 their Lordships, referring to the principle of contemporaneous exposition, applied the said principle to the documents issued by the Government almost simultaneously with the issuance of the notification explaining the manner in which the transactions stated in the notification were intended to be closed or liquidate. The court observed that such documents could be looked at for finding out the true intention of the Government in issuing the notification in question. That was not a case of interpreting the provisions of a statute by the court. So far as statutes are concerned, even in that judgment, their Lordships referred with approval to the observations of Mukerjee J. in *Baleshwar Bagarti v. Bhagirathi Dass* ILR [1908] 35 Cal 701, which are as follows (at p. 713) :

"I do not suggest for a moment that such interpretation has by any means a controlling effect upon the courts; such interpretation may, if occasion arises, have be disregarded for cogent and persuasive reasons, and, in a clear case of error, a court would without hesitation refuse to follow such construction."

94. The learned Attorney-General rightly pointed out that, as laid down by the Supreme Court in *The Senior Electric Inspector and Others Vs. Laxmi Narayan Chopra and Others*, , this principle of contemporaneous exposition would not apply to the construction of modern statutes. The maxim, fully stated, reads thus (at p. 159) :

"Contemporaneous" expositio est optima et fortissimo in league (contemporaneous exposition is the best and strongest in law)."

95. This maxim was applied in construing ancient statutes and not for interpreting Acts which are comparatively modern."In a modern progressive society it would be unreasonable to confine the intention of a Legislature to the meaning attributable to the word used at the time the law was made, for a modern Legislature making laws to govern a society which is fast moving must be presumed to be aware of an enlarged meaning the same concept might attract with the march of time and with the revolutionary changes brought about in social, economic, political and scientific and other fields of human activity." (at p. 159)

96. The FERA enacted in 1973 being a modern statute, the above principle cannot be applied. We are of the view that a statutory interpretation cannot depend upon its understanding by the authorities that the required to implement it and conform to its provision in the discharge of their duties under that enactment. Interpretation of a statute is the exclusive province of the court. When a dispute as to the true meaning of a provision becomes the subject-matter of controversy, this principle may serve as one of the aids to interpretation in respect of an ancient statute. This principle may hold good with regard to any administrative order or policy decision which is not of a statutory character. It may govern departmental proceedings, but certainly not the interpretation of a statute, and especially a statute the provisions of which expose citizens to penal consequences.

97. Even if this principle were to apply, it would appear from the regulations made by the RBI under s. 73(3) for the due compliance of the Act, that it intended that permission under s. 29 should be obtained before the shares were purchased. Paragraph 24A.1 of Chapter 24 of the Exchange Control Manual, Volume I, 1978 edition, issued by the RBI, which deals with foreign investment in India, reads as follows :

"24A.1 Purchase of shares and securities by non-residents. - In terms of section 29(1)(b) of the Foreign Exchange Regulation Act, 1973, no person resident outside India whether an individual, firm or company (not being a banking company) incorporated outside India can acquire shares of any company carrying on trading, commercial or industrial activity in India without prior permission of Reserve Bank. Also u/s 19(1)(b) and 19(1)(d) of the Act, the transfer and issue of any security (which includes) shares in favour of or to a person resident outside India require prior permission of Reserve Bank. When permission has been granted for transfer or issue of shares to a non-resident investor u/s 19(1)(b) or 19(1)(d), it is automatically deemed to be permission u/s 29(1)(b) for purchase of shares by him. Non-resident Indians are, however, permitted to invest freely in securities of Central and State Governments, units of Unit Trust of India and National Savings/Plan Certificates of Government of India (see paragraph 24 B. 2). All other investments require specific permission of Reserve

Bank."

98. The above paragraph expressly declares that no NRI investor shall purchase shares of any company without obtaining prior permission under s. 29(1)(b) of the FERA.

99. We agree with the learned Attorney-General that if s. 29 does not enjoin obtaining of prior permission for valid purchase of shares, such a meaning ought not to be given to s. 29 only because regln. 24.1 so provides. However, such a contention hardly befits the RBI which, in exercise of its powers under s. 73(3) of the FERA, has itself declared that such an obligation was imposed by s. 29.

100. The provisions of the FERA which lay down that permission must be obtained should primarily be examined on their own phraseology and, if necessary, understood having regard to the object of the enactment. Having regard to the language of s. 29 and the consequences provided for the contravention of that provision, the mischief sought to be arrested by it and the juxtaposition of s. 29 with the other provisions of the FERA, we have no hesitation in holding that what is contemplated by s. 29(1)(b) is that NRI investors, intending to invest in shares in Indian companies, must obtain prior permission of the RBI.

101. In our view, there is yet another aspect of this matter which also makes it obligator for an NRI investor to obtain prior permission of the RBI to purchase shares in an Indian company. The RBI, which is a statutory authority, if with a view to advancing the object of the FERA and for better enforcing of its provisions, has imposed the obligation to obtain prior permission upon every non-resident Indian investor, we are unable to see how it would be ultra vires or invalid. That, in our view, is precondition validly imposed and it is obligatory upon every investor intending to benefit from such facility to comply with that requirement. Every public authority, much more so the RBI, which is a statutory authority, having laid down under regln. 24.1 framed in exercise of the powers vested in it under s. 73 of the FERA that the prior permission should be obtained, is under an obligation to observe it strictly. It cannot choose to insist upon prior permission being obtained in some cases as being required under regln. 24.1 and in other cases grant permission units arbitrary discretion even after the purchases of shares are completed on the plea that s. 29 enables grant of permission even subsequent to the purchase also. Even in a case where no such requirement is laid down by statute that every public authority having laid down certain norms is obliged to act, according to the said norms, is now a well-established principle of administrative law enunciated in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, . That is recognised as a principle of fairness and equity and calculated to exclude arbitrary action by public authorities. The Supreme Court declared (p. 1650) :

"..... both having regard to the constitutional mandate of article 14 as also the judicial evolved rule of administrative law, the first respondent (Airport Authority,

which was held to be a "State" within the meaning of article 12) was not entitled to act arbitrarily in accepting the tender of the fourth respondents, but was bound to conform to the standard or norm laid down If there was no acceptable tender from a person who satisfied the condition of eligibility, the first respondent could have rejected the tenders and invited fresh tenders on the basis of a less stringent standard or norm, but it could not depart from the standard or norm prescribed by it and arbitrarily accept the tender of the four respondents."

102. When, even where there is no statutory requirement, a public authority having prescribed certain norms is bound to adhere to them and cannot deviate therefrom as laid down in the above case, it is all the more bound to strictly comply with the statutory mandate contained in s. 29 and regn 24.1 issued under s. 73(3) of the FERA. Paragraph 24A.1, which enjoins prior permission and which is calculated to advance the object of the FERA requiring prior permission could also be deemed to be the contemporaneous exposition made by the RBI itself. Without such prior permission, no person is entitled to purchase shares, nor can the RBI, which has itself issued these regulations, grant permission after the purchases are made in contravention of s. 29 of the FERA and in contravention of the regulations framed by itself. We are unable to agree that paragraph 24A.1 of the Exchange Control Manual is an administrative instruction and was only directory and not mandatory. We are also unable to accept that although obtaining prior permission was not the requirement of s. 29 of the FERA itself, the RBI made regn. 24.124. enjoining prior permission so as to avoid embarrassment to non-resident Indian investors. If they were merely administrative directions, undoubtedly, as laid down in *Raman and Raman Ltd. Vs. The State of Madras and Others*, where directions issued by the Government under s. 43A of the M.V. Act, 1939, came up for consideration, they would not be law regulating the rights of the parties. Just as any scheme not conforming with s. 68C of the M.V. Act, 1939, would be invalid as held in *C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation*, if regn. 24.1 were administrative in nature, it must give way to s. 29. But, as held above, these regulations are issued under s. 73(3) of the FERA and are intended to better enforce the provisions thereof and are not in derogation of s. 29 itself. This regulation is statutory and not administrative. This regulation only further reinforces the conclusion reached by us on an interpretation of s. 29 itself that it contemplates prior permission.

103. The forms prescribed under s. 73(3) for obtaining permission also would disclose that any non-resident Indian investor intending to purchase shares in an Indian company under the portfolio investment scheme with repatriation benefits must obtain prior permission from the RBI under s. 29(1)(b) of the FERA

104. As stated in Circular No. 9, dated April 14, 1982, individuals of Indian nationality or origin were permitted under the Exchange Control Regulations until then to make investment in shares of Indian companies subject to the prior

approval of the RBI : (i) with non-repatriation of capital invested and income earned there on irrespective of whether the Indian company is engaged in industrial, trading, or any other business activity as per paragraphs 24B.3 and 24B.4 of the Exchange Control Manual, (ii) investment up to 20% of new equity issues of such new companies with benefits of repatriation of capital invested and income earned thereon provided the invest company is engaged in an industry which is not included in the "negative" list of industries under paragraph 24B.6 of the Exchange Control Manual, and (iii) equity investment with repatriation benefits up to 74 per cent. of the new issues of companies which are engaged in priority industries referred to in paragraph 24B.7 of the Exchange Control Manual. Circular No. 18, dated April 14, 1982, was issued with a view to provide further incentives to residents of Indian nationality/origin for investment in shares of Indian companies.

105. Paragraph 4 of this Circular deals with facilities for investment with repatriation benefits under the portfolio investment scheme as under :

"4. Investment with repatriation benefits.

(a) Portfolio investment in shares.

Under the liberalised policy, non-residents of Indian nationality or origin will be permitted to make portfolio investment in shares quoted on stock exchanges in India with full benefits of repatriation of capital invested and income earned thereon provided, (a) the shares are purchased through a stock exchange, (b) the purchase of shares in any one company by each non-resident investor does not exceed Rs. 1 lakh in face value or 1% of the paid-up equity capital of the company, whichever is lower, and (c) payment of such investments is made either by fresh remittances from abroad or out of the funds held in the investor's Non-resident (External) account/FCNR account with a bank in India. If the non-resident investor has already acquired shares in a particular company with repatriation benefits under any other investment scheme referred to in this circular to the full extent of or exceeding the value limit mentioned under (b) above, he will not be eligible to purchase further shares of that company through a stock exchange with repatriation benefits. He can, however, acquire additional shares on non-repatriation basis, under the facility referred to in paragraph 3(a) above.

As in the case of portfolio investment in shares without repatriation benefits, the Reserve Bank will grant permission to designated banks authorised to deal in foreign exchange for purchasing shares through a stock exchange on behalf of their non-resident customers of Indian nationality/origin, subject, inter alia, to the limits and conditions mentioned above, Applications for permission may be made in the attached Form RPI to the Controller, Exchange Control Department, Reserve Bank of India, Central Office (Foreign Investment Division), Bombay-400 023.

Note :

To facilitate co-ordination and smoothness in investment operations, non-residents of Indian nationality/origin may designate only one bank in India for making investments in shares through a stock exchange on repatriation basis"

106. The facilities of investment with repatriation benefits were further extended under paragraph 5 of the Circular to overseas companies and other corporate bodies. Paragraph 5 of the Circular to overseas companies and other corporate bodies. Paragraph 5 of the Circular reads as follows :

"5. Investment by overseas companies and other corporate. -

Another significant relaxation in the existing policy is that the entire gamut of the facilities of direct and portfolio investments as outlined in paragraphs 3 and 4 above will now be extended to overseas companies, partnership firms, trusts, societies and other corporate bodies owned predominantly by non-resident individuals of Indian nationality/origin. The criterion for determining such predominant ownership is that at least 60% of the ownership of these entities should be with non-residents of Indian nationality/origin. It would be necessary for such entities to submit a certificate in this regard in the prescribed Form OAG from an overseas Auditor/Chartered Accountant/Certified Public Accountant, along with their applications for investment in shares, to the RBI either through the designated banks authorised to deal in foreign exchange or the Indian companies offering new issues, as the case may be. A pro forma of the certificate is enclosed.

Applications from these entities for permission to designated banks for purchasing shares through a stock exchange on non-repatriation basis may be made in the enclosed Form NRC to the office of the Reserve bank within whose jurisdiction the bank is functioning, and those for investments with repatriation benefits should be submitted in the attached Form RPC to the Controller, Exchange Control Department, Reserve Bank of India, Central Office (Foreign Investment Division), Bombay 400 023. Similarly, applications for issue of shares to the above entities on no repatriation basis should be made by the Indian company offering shares in Form ISD to the office of the Reserve Bank under whose jurisdiction the head/registered office of the company is situate, and where investments in new issues are to be made on repatriation basis, applications in the same form may be submitted to the Bank's Central office at Bombay."

107. Paragraphs 8, 9 and 10 of the Circular, which lay down these conditions, read as follows :

"8. In some cases non-resident investors may wish to appoint residents in India (other than authorised dealers) as their agents with appropriate power of attorney to arrange purchase/sale of shares and securities. Such agents could include recognised stock exchange brokers. These agents may attend to the work relating to the investments of the non residents investors. Permission for

investment in shares on behalf of such investors will, however, be granted only to the designated banks authorised to deal in foreign exchange since these banks would be responsible for compliance with the relevant exchange control requirements. Proper coordination and understanding between the designated bank and the investor's agents would be necessary for handling the investment procedures efficiently.

9. (i) Where non-residents of Indian nationality/origin intend to subscribe to new issues of Indian companies, it will be in order for authorised dealers to allow payment of subscription (application money) from the applicant's Non-resident (External) account/FCNR account or Ordinary non-resident account, as the case may be, without seeking prior approval of the Reserve Bank. If the subscription or any portion thereof is refunded by the company, authorised dealers may allow the amount to be recredited to the applicant's same account from which it was withdrawn earlier.

(ii) Similarly, where subscriptions to new issues were remitted from abroad by non-residents of Indian nationality/origin to the company in India or to the bankers to the issue who are authorised to deal in foreign exchange, it will be in order for such bankers to remit refunds or excess subscription amounts to the concerned beneficiaries. A consolidated statement showing the name and address of the concerned Indian company, name and country of residence of each non-resident beneficiary, amount of subscription received from abroad, total value of shares issued (if any) to the beneficiary, amount of excess subscription refunded and remitted abroad and reference to the "R" return in which the remittance has been reported, should be submitted (in duplicate) by the bankers to the issue, to the office of the Reserve Bank to whom "R" returns are submitted by that bank.

10. As authorised dealers are aware, transfer of shares of Indian companies from non-residents to other persons, whether resident in India or not, requires the approval of Reserve Bank under s. 19(5) of the FERA, 1973. In order to facilitate expeditious sale and transfer of shares by shareholders of Indian nationality/origin through a stock exchange in India, a consolidated application may be made to the Reserve Bank by letter furnishing full particulars of their holdings in quoted shares and approvals obtained from the bank for acquiring or holding such shares. Where investment in shares was made on non-repatriation basis, the application may be made to the concerned regional office of the Reserve Bank, where as for sale/transfer of shares which were acquired with repatriation benefits, application should be submitted to the Controller, Exchange Control Department, Reserve Bank of India, Central Office (Foreign Investment Division), Bombay. Permission granted for sale and transfer of shares in such cases will be made valid for a period of one year at a time. If any of the shares covered by the permission originally granted could not be sold for any reasons during the period, the Reserve bank would renew, on request, its permission for a further period of one year, so as to avoid frequent references to it for sale and transfer of such

shareholdings. This facility will not, however, be available for sale/transfer of shares by non-resident shareholders by private arrangements with the purchasers or transferees; each case of this type would need to be referred to Reserve Bank of specific approval, as hitherto."

108. As to who would be deemed to be of Indian origin is stated in paragraph 12 of the Circular as follows :

"12. For the purposes of the facilities of investment in shares and securities, the term "a person of Indian origin" has been defined. The definition is as under :

"A person shall be deemed to be of Indian origin, if -

(i) he, at any time, held Indian passport, or

(ii) he or either of his parents or any of his grandparents was an Indian and a permanent resident in undivided India at any time.

A wife of a citizen of India or of a person of Indian origin shall also be deemed to be of Indian origin even though she may be of non-Indian origin."

109. It was expressly stated in paragraph 15 that "the directions contained in this circular have been issued under s. 73(3) of the FERA, 1973, and any contravention or non-observance thereof is subject to the penalties prescribed thereunder." Under that Circular, the forms in which the applications were to be made for obtaining permission of the RBI were also prescribed. These applications were to be accompanied by certificates of the auditor/chartered accountant of that NRI investor company. It also prescribed the form of power of attorney required to be executed by the non-resident Indians. The auditor/chartered accountant had to certify that he had verified the register of shareholders or members of partnership/trustees and that the information and particulars given in the application forms were in accordance with such books and records maintained by it and that they are true and correct to the best of his knowledge and belief. They were to further certify that the ownership interest of persons of Indian nationality/origin in the above mentioned companies, societies, partnership firms, is 60% or above of the total ownership interest on the particular date. In the case of a trust, it was to be further certified that the extent of the beneficial interest in that trust was held irrevocably by persons of Indian nationality/origin. The particulars required to be given in the application were, apart from the name and address, the total issued and paid-up capital of the company, the paid-up value of shares held by the person of Indian nationality or origin, percentage of holding, details of the corpus in the case of a trust, capital owned by the trust, the extent/percentage of beneficial interest in the corpus. This investment was permitted provided, inter alia : (a) the shares are purchased through a stock exchange, (b) the purchase of shares in any one company by each non-resident investor did not exceed Rs. 1 lakh in face value or 1% of the paid-up equity capital of the company, whichever is lower, and (c) payment for such investment is made either by fresh remittances from abroad or

out of the funds held in the investor's Non-Resident (External) Account/FCNR account with a bank in India. If the non-resident investor had already purchased shares in a particular company with repatriation benefits under any other investment scheme referred to in the circular to the full extent or exceeding the value limit mentioned above, he was not eligible to purchase further shares of that company through a stock exchange with repatriation benefits. The Reserve Bank was to grant permission to designated banks authorised to deal in foreign exchange for purchasing shares through a stock exchange on behalf of the non-resident Indian customers of Indian nationality/origin. Applications for permission were to be made to the Controller, Exchange Control Department, Reserve Bank of India, Central Office (Foreign Investment Division), in Form RPC attached to the Circular. So far as overseas companies and other corporate bodies are concerned, they are also extended the benefit of such investment, provided, however, these bodies are owned predominantly by non-residents of Indian nationality/origin. The criteria for determining such predominates ownership was that "at least 60% of the ownership of these entities should be with non-residents of Indian nationality/origin. It was necessary for such entities to submit a certificate in this regard in the prescribed Form OAC from an overseas auditor/chartered accountant/certified public accountant along with their applications for investment in shares to the Reserve Bank of India. A pro forma certificate was enclosed. The applications for permission were to be submitted through designated banks. Along with Circular No. 9 of April 14, 1982, the form in which a non-resident Indian investor should make the application for grant of permission and the form of the certificate which he must submit along with that application are also prescribed. Applications for permission by overseas companies intending to avail of the benefit of repatriation of the capital invested and income earned thereon under the portfolio investment scheme are required to be made in Form RPC. In support of the information furnished in regard to such ownership, a certificate from an overseas auditor in the prescribed Form OAC is required to be submitted along with the application. The first paragraph of that form states that it is an application "to purchase" shares and to qualify for permission to invest in shares, at least 60% ownership of the applicant company/firm/society should be with non-residents of Indian nationality/origin. In the case of overseas trust/s, at least 60% of the beneficial interest must be irrevocably held by persons of Indian nationality /origin. Column No. 2 of that application requires the name and address of the bank in India through whom the applicant "desires" to purchase shares. If permission could be obtained even subsequently, the applicant would have been required to state through whom the applicant had already purchased the shares and not through whom he "desires" to purchase shares. In column No. 3, the source of funds from which payment for purchase of shares "will" be made and not the source from which he had already paid is to be stated. Column No. 4 reads :

"Any shares in Indian company with benefits of repatriation and give particulars thereof"

and these particulars are to be as on the date of application. The applicant is required to make a further declaration that "if the ownership/interest of the person of Indian nationality/origin in the company/firm/society falls below the level of 60% at any time in future, he shall inform such change to the designated bank mentioned in column No. 1 of the application and the RBI promptly". It is on the basis of the particulars so furnished that permission is granted "to purchase" shares. That form also includes the following further undertaking to be given by the applicant :

"We undertake to ensure that shares "will be purchased" through reorganised stock exchanges in India in conformity with the relevant exchange control regulations and we "shall comply" with the terms and conditions as may be stipulated by the RBI "while granting its permission to purchase shares" on behalf of the applicant."

This, in our view, clinches the issue.

110. It was argued for the respondents, that as the shares are purchased through brokers at the stock exchange, it is not possible to state all the particulars required by the pro forma application before they are actually purchased. It is said that the seller would not know for whom the broker was purchasing. It is pointed out that if prior permission is necessarily required to be obtained, the scheme itself cannot be implemented. We are unable to accept this contention. Permission is required to be obtained not by the seller but by the purchaser. While the seller, when selling through a broker, may not know to whom he is selling, the purchaser, whether he is purchasing directly or through authorised brokers, would certainly know all the material particulars required to be mentioned. In fact, it is only armed with the permission granted by the RBI that the authorised broker may purchase at the stock exchange from any seller for an undisclosed non-resident Indian investor. So long as he gets the price he demands, it is not necessary for the seller to know to the whom he is selling the shares. No penalty is imposed on the seller if a non-resident Indian purchases the shares without obtaining prior permission under s. 29 of the FERA. It is precisely to enforce compliance with the provision of s. 29 that under Circular No. 9 of April 14, 1982. Non-resident Indian investors are required to send their foreign remittances to the designated banks and purchases only through authorised brokers and pay the consideration for the shares purchases through their NRI (External) Accounts with the designated banks. The forms prescribed for obtaining permission unmistakably lead to the conclusion that it must be obtained before the shares are actually purchased.

111. It is true that the forms appended to the schedule by themselves are dangerous guides to the interpretation of the statute as held in *Ma Tin v. Maung Aye* AIR 1941 Rang 135 As held in *Sarveswara Rao v. Umamaheswara Rao* AIR 1941 Mad 152 the meaning of the statute cannot be deduced with reference to the forms which are in fact meant to carry out the object and the purposes of the Act and forms cannot control the provisions objects and the purpose of the Act

and forms cannot control the provisions of the statute. Any such forms or scheduled must give way to the Act, as held in *Muneshwara Nand Vs. State*, The forms, referred to above, are forms prescribed under the regulations framed by the RBI in exercise of the power conferred upon it under s. 73(3) of the FERA. The regulations are framed by the RBI For the purpose of securing compliance with s. 29 of the FERA. Regulations could properly prescribe as to when an application for permission under s. 29 may be made whether before or after the purchase. If, in exercise of the powers so vested, the RBI, with a view to better control foreign remittance and better monitor purchase of shares in Indian companies by NRI investors, has laid down that prior permission should be obtained and for this purposes has prescribed the forms in which the applications are to be made, that would certainly be in furtherance of the object of the Act and for ensuring strict compliance of the FERA and it becomes imperative for the intending investor to conform to such requirement. At least so far as the forms go, they clearly contemplate that permission of the RBI should be obtained by the NRI investor intending to purchases shares. In Indian companies, especially with full repatriation benefits.

112. Lastly, it was argued that an administrative authority such as the RBI will have to apply the law as it stands to pending proceeding. After the clarification under the impugned Circular, when it is found that the respondent-companies are eligible to invests under portfolio investment scheme with repatriation benefits, it could grant permission even after the shares were purchased. Reliance for this contention is placed upon the decision of the Supreme Court in *State of Tamil Nadu Vs. Hind Stone and Others*, On the strength of this decision, it is argued that none has a vested right to require disposal of an application on the basis of the rule as it was when it was made.

113. As discussed above, any requirement as to obtaining prior permission for the purchase of shares in Indian companies by a NRI investor is a requirement laid down by s. 29 of the FERA and not merely by any scheme framed under it. Any scheme formulated under the FERA must conform to s. 29 and cannot make any provision ignoring it; it could not permit purchase of shares without prior permission and authorise grant of permission subsequent to the to the purchases of shares. Since there is no provision in the FERA to grant permission subsequent to the purchase of shares, the permission granted subsequent to the purchases cannot relate back to the date of application for grant of permission. The purchases having been already made without obtaining prior permission, Exhs."A" and "B" cannot validate such purchases and permission purported to be granted under Exhs."B" and "C" cannot save them.

114. Although it is argued that the RBI was only questioning the eligibility of the respondent-companies to make investment under the liberalised portfolio investment scheme with full repatriation benefits and did not insist upon prior permission, it is clear from the correspondence that it was inquiring into the eligibility without stating that permission could be granted to the purchases

already made. The Circular that was ultimately issued itself speaks both of eligibility and permission. Further, the fact that all disbursements were directed to be withheld and the and the account of the respondent-companies with PNB was frizzed, established that the RBI was of the view that prior permission was required for purchase of shares. If any doubt was left, it is cleared by the letters dated March 4, 1983, and April 29, 1983, addressed by the RBI to the PNB.

115. We have, therefore no hesitation in holding that obtaining of prior permission of the RBI under s. 29(1) of the FERA is mandatory for any NRI investor to purchase shares under the portfolio investment scheme envisaged by Circular No. 9 dated April 14, 1982. Any purchases made without such prior permission would exposes him to action under ss. 50 and 57 and prosecution under s. 56. Such purchases would be illegal. There in no provision under the FERA to grant permission after the purchases or to validate such purchases. Obtaining prior permission is also made mandatory under raglan. 24.1 issued by the RBI. The shares in question weirs all purchased by the respondent-companies prior to September 19, 1983, before any permission was granted. These purchases contravene s. 29 of the FERA and raglan. 24.1 issued by the RBI as also the conditions stipulated by Circular No. 9 dated April 14, 1982. The petitioner-company was, therefore, statutorily prohibited from registering the transfer of these shares and it was justified in law in refusing registration of shares.

116. We may now examine the liberalised portfolio investment scheme with full repatriation benefits introduced by Circular No. 9 of April, 14, 1982 (Exh."G"), under which the respondent companies haves purchases shares and the purport and effect of the press note of September 17, 1983 (Exh."A"), Circular No. 18 of September 19, 1983 (Exh."B"), and RBI's letter of even date to PNB (Exh."C") impugned in this writ petition.

117. Circular No. 9 dated April 14, 1982 (Exh."G"), while permitting NRI companies to purchase shares in Indian companies, required that the application should be made inform RPC along with OAC certificate, That circular even in its opening paragraph records that "up to date such facility was subject to the prior approval of the RBI ", but does no relax that condition. It still insists that permission referred to therein is permission under s. 29(1)(b) of the FERA which, I as held above, is prior permission. The permission to purchases shares is to be for in form RPC. Instructions in the RPC form lay down :

"To qualify for necessary permission for investment in shares, at least 60% ownership of the applicant company/firm/society should be with non-residents of Indian nationality/origin. In the case of an overseas trust, at least 60% of the beneficial interests musts irrevocably be held by person of Indian nationally/ origin."

118. Non-resident Indians should be holding at least 60% interest in that company or corporate body; it their holding falls below 60%, the permission

granted would lapse. One of the essential conditions for the permission granted under the scheme to subsist is that the non-resident Indians should continue to hold 60% interest in the company of on the day it purchases the shares. The applicant is required to give a specific undertaking that he would bring to the notice of the RBI in form RPC any change in his holding or beneficial interest in the following words :

"We further undertake that if the ownership interest of the person of Indian nationality/origin in the company/firm/society falls below the level of 60% at any time in future, we shall inform such a change to the distinct bank mentioned in column 2 of the application at the RBI promptly."

119. In the case of a trust, this undertaking would relate to any change in the beneficial interest of persons of Indian nationality/origin as declared under item No. (iv) (b) of column No. 1 of the application.

120. Although the Circular does not expressly state that the ownership or beneficial interest should be held directly or indirectly, from a reading of the Circular (Ex."H"), it would appear that only if such interest is held directly by NRI, could investment under the portfolio scheme be made. The Circular prescribed the form in which the application for permission has to be made. These applications are to be submitted through designated banks supported by a certificate of an overseas auditor. So far as individuals are concerned, their difficult addresses and passport numbers are to be mentioned. No difficulty arises if the individual himself is directly in vesting. However, if a company or other legal entity sought to take advantage of the liberalised portfolio investment scheme, it is required to produce a certificate that interest the extent of 60% or the above is held by a non-resident Indian. Under the Indian Law, the question of indirectly owning or holding interest in a company does not arise. It could be held only directly. When, by an Indian law or the directions or circulars issued thereunder, investment by a company in which NRI hold interest up to 60% or above is permitted, obviously it could not take within its ambit companies in which the interest is held indirectly. The fact that a company registered in England is governed by the English law which makes provision for such indirect holding as well, may create some doubt in the minds of the non-resident investors. When the non-resident investor is permitted under Circular No. 9 of April 14, 1982, to make an investment in Indian which does not recognise holding of indirect ownership or beneficial interest in companies, that may require clarification. The RBI, however, was clearly and constantly taking the view that under that Circular, such companies or corporate bodies in which non-residents of Indian nationality/origin held only indirect interest were not eligible to invest.

121. That Circular was issued by the RBI in discharge of its statutory function under s. 73(3) of the FERA albeit to give an effect to the policy decision taken by the Government with a view to attract foreign remittances. It is argued that if any clarification of the intention of Circular No. 9 was necessitated, it should have been issued by the RBI itself and not by Government. It may be stated that

prior to September 17, 1983, the RBI did not entertain any doubt that only those NRI companies in which ownership or beneficial interest up to 60% or above was held directly by non-resident Indian, were eligible to invest under this scheme. The lengthy correspondence that ensued which ultimately culminated in the issuance of Circular No. 18 of September 19, 1983(Ex."B"), clearly establishes that was the firm view of the RBI. The clarification now issued (Exs."A" and "B") that it was always the intention of the RBI that even a company in which NRI held ownership or beneficial interest indirectly was eligible came to be published for the first time under the press note dated September 17, 1983 (Ex."A"). As Circular No. 9 dated April 14, 1982 (Ex."G"), in terms does not stipulate that 60% interest should be held either directly or indirectly, different views were possible on this question. Though the RBI was of the firm view that only such companies in which the ownership or beneficial interest was held directly by non-resident Indians were eligible to invest, yet, if on the advice of its own legal adviser or after discussion with the Central Govt. empowered to issue directions under s. 75 of the FERA to the RBI, which it is bound to comply in discharge of its statutory functions, veered round to the view that even those companies in which the non-resident investors held indirect interest up to 60% or above were eligible, it could not be said that it was necessarily vitiated by mala fides, especially when there is divergence of legal opinion commanding highest respect. There could be an honest difference of opinion on such issues. Further, as rightly contended by the learned Attorney-General, this matter pertains not merely to the sphere of legal interpretation but was closely inter linked with the economic policy of the Government and has far-reaching impact on the foreign exchange earning of the country, its trade, commerce and industry both in public and private sectors. The policies of the RBI are calculated not only towards argument on of foreign exchange resources of the country but also to protect trade commerce and industry. If in a matter such as this, the RBI changed its view, though after adhering to it over a long period with some conviction, an inference of mala fides cannot necessarily be drawn. Of course, as rightly conceded by Mr. Nariman, learned counsel for the petitioners, mala fide in the petition, cannot be proved by direct evidence, oral or documentary. It has invariably to be a matter of inference to be drawn from proved circumstances; but, months less, it must be an inescapable inference and exclude all other hypothesis.

122. The main allegation of mala fides against respondent Nos. 1 and 2 in issuing the impugned press release, the circular and the letter, (Exs."A", "B" and "C" retrospectively) is that they were intended to benefit respondents 4 to 16, companies, controlled by Swraj Paul, respondent No. 17. It was not a bona fide exercise of power. According to the petitioners, though it is very clear from Circular No. 9 of April 14, 1982, that only companies in which the non-residents of Indian nationality/origin directly held 60% ownership or beneficial interest therein, were eligible to invest under that scheme, as respondent No. 17 or his family members did not hold 60% interest in respondents Nos. 4 to 16-companies directly and yet these companies had purchased shares in the

petitioner-company, respondent Nos. 1 and 2 sought to make these companies eligible by purporting to declare that even originally their intention was that the benefit hitherto given to non-residents of Indian nationality/origin should be extended to all foreign companies in which non-residents of Indian nationality/origin held 60% interest, irrespective of whether it was held directly or indirectly. It is their further allegation that although both under s. 29 of the FERA and Circular No. 9 of April 14, 1982 (Ex."G"), the intention was clear that no NRI investors could purchase shares in Indian companies without prior permission of the RBI, since respondents Nos. 4 to 16 had purchased the shares without such prior permission, they issued the clarification to benefit respondent No. 17 in particular. In paragraph 4 of the petition, the petitioners allege that Exs."A", "B" and "C" are not only contrary but also ultra vires the express provision of the FERA, 1973, and have been purposefully and deliberately designed to protect" respondents Nos. 4 to 17 from penal action "and further to arbitrarily confer ex post facto substantial benefits to a group of foreign non-resident investing companies, being respondents Nos. 4 to 16 hereto which are in effect controlled by one single British National, viz., Swraj Paul, being respondent No. 17". It is alleged that although "the purchases of this lot of shares is in excess of the limit of 5% imposed by the Reserve Bank for purchases subsequent to May 2, 1983, permissible to non-residents out of foreign remittances" and although "a substantial portion of these shares are purchased and shown to the authorities to have been purchased out of substantial Indian rupee funds and not out of any foreign remittance yet have been confirmed, repatriation benefits, not envisaged in any of the circulars". It is also the petitioners' case that "none of the 13 Caparo group of companies, viz., respondents Nos. 4 to 16, were eligible to make investments in shares of Indian companies under the liberalised non-resident portfolio scheme in view of the fact that in none of these 13 companies were 60% of the equity shares held or owned by non-resident person of Indian origin/nationality". Applications for transfer of registration of 4,62,337 shares so purchases were lodged in the names of two stock brokers of respondents Nos. 4 to 16 and 3,68,463 shares were lodged in the names of respondent Nos 4 to 16 stating that these companies were controlled by respondent No. 17. As necessary particulars were not furnished by respondents Nos. 4 to 16 or their stock-border and attorneys (respondents Nos. 20 and 21) or their distinguished banker, respondent No. 3, and as these purchases appeared to be in contravention of the FERA and the circulars governing such purchases, the board of directors at their meeting held on June 9, 1983, declined to register the shares in the names of the two stock-brokers and in the names of respondents Nos. 4 to 16 at their meeting held on August 29, 1983. These decisions were taken after obtaining legal advice. It is alleged that respondent No. 2 itself incited investigation and, after obtaining legal advice regarding the validity of these purchases, directed respondent No. 3, the PNB, to freeze the accounts of the 13 companies and not to release any further amounts therefrom. It is further alleged that even the Government of India" acquiesced in the stand taken by respondent No. 2. mentioned above, since as is clear from press reports, the

Union of India had been advised by its own law officer that the 13 companies were not eligible to make investments in shares in the existing Indian companies under the Liberalised portfolio scheme for Non-resident Indians. This being unpalatable to respondent No. 17 and his group of 13 companies, as rejected in the press, he criticized the actions of the Governor of the RBI. The petitioners aver :

"As further appears from the press reports, however, since respondent No. 17 and his group of companies had privately consulted the then Attorney-General of India and obtained a written opinion which was an opinion not given to the Union of India but to a private party, it was sought to be used and, thereafter, acted upon by the Union of India as representing the correct legal position and notwithstanding that another law officer of the Union of India of equally high status had opined to the contrary when specific reference of the legal position was made to him by the Ministry of Law, Justice and Company Affairs of the Government of India. It was only to purportedly give legal sanctity to transacted transactions that were not only patently illegal but which were patently advised as illegal that the impugned directions of September 17 and 19, 1983 have come to be issued under the guise of clarificatory circular."

123. Though respondents Nos. 4 to 17 have not chosen to enter appearance, these allegations are stoutly denied by respondents Nos. 1 and 2. In the very first affidavit, filed on behalf of respondent No. 1, dated May 16, 1984. It was stated :

"..... the entire super structure for the submissions made (by the petitioners) is based on assumption that the transactions of purchase of shares between the parties concerned are illegal."

124. It is asserted :

"..... repatriation benefits flow from the portfolio investment scheme for the investments covered thereunder the Government of India formulated its policy and issues broad guidelines from time to time. It is not necessarily for respondent No. 1 to comment on the dated of transfer deeds lodged by the share borders concerned with petitioners No. 1. The relevant date is the date when border's contract notes were signed and firm commitment is made."

125. It was asserted that the Government of India had at no stage intended to preclude the companies indirectly owned by non-resident individuals of Indian nationality/origin and that respondent No. 1, was not concerned with the various speeches supposed to have been made by Swraj Paul, the correctness of which is not admitted.

126. On behalf of the RBI, Shobha Singh Thakur, Controller of Exchange, RBI, filed the affidavit-in-reply taking the stand :

"It is for the Government and this respondent in the light of Government policy to decide to what extent investments should be permitted by non-resident

Indians in the shares of Indian companies. If, having regard to the objective of the policy laid down by Government, it is decided that a body owned, directly or indirectly, by a non-resident Indian should be considered as eligible for making investment in the shares of an Indian company, neither the Indian company nor any of its shareholder can claim that such investment should be permitted only up to a particular extent."

127. It was pleaded that the petitioners have no right to call in question the "administrative policy" of the RBI in the matter of allowing investments in Indian companies by non-resident Indians, as such policy pertains to the foreign exchange policies of the country, which is based on economic consideration formulated by the Government of India. It was further pleaded :

"The first petitioner, as a company, is only concerned with the registration of shares transferred by a shareholder to another pray While the absence of this respondent's permission under s. 29(1)(b) of these FERA, 1973, would be bar to a non-resident investor in the shares of an Indian company, such a bar is removed when this respondent grants its permission *in facto*. The grant of such permission discharges the obligation of the company to obtain this respondent's permission for registration of the shares under s. 19(4) of the FERA."

128. It is their case that once the Reserve Bank grants the requisite permission to a non-resident investor, the Indian company has no right to call in question the permission granted by the RBI. It is stated that applications dated March 4, 1983, and March 12, 1983, of respondents Nos. 4 to 16 forwarded by the PNB, respondent No. 3, for permission to make investment in the shares of Indian companies under the portfolio investment scheme were received by the RBI. It found from the auditors' certificate attached thereto that "the investor companies were not directly owned by individuals of Indian origin though it was apparent that each of them was indirectly owned to the extent of not less than 60% by individuals of Indian origin. However, this respondent asked for further information and clarification from the third respondent regarding the exact percentage of shareholdings of (i) Mr. Swraj Paul and other non-resident individuals of Indian origin, (ii) family trusts, and (iii) other separately in respect of each of respondents Nos. 4 to 16-companies. This respondent also requested the third respondent to state whether any shares of Indian companies had already been purchased by or on behalf of their client and if so their details". After some particulars were furnished, "as it appeared that these purchases of shares of the Indian companies had been made without first obtaining permission of this respondent, this respondent by its letter dated June 11, 1983, to the third respondent objected to the same and directed that no further payments for purchase of shares should be made out of the non-resident accounts unless and until this respondent's specific permission for purchase of the shares on behalf of the 13 overseas companies was obtained and their applications were, therefore, kept under consideration". It sought further option in respect of the

said 13 companies. Then it referred to the correspondence that passed between the RBI, PNB and the petitioner-company and stated :

"..... this respondent examined the question of eligibility of respondents Nos. 4 to 16 invest in the shares of Indian companies in accordance with the aforesaid circulars issued by them. As the shares of respondents Nos. 4 to 16-companies were not immediately and directly held by non-resident individuals of Indian nationality/origin, this respondent was of the view that respondents Nos. 4 to 16-companies were not eligible to make investments under the non-respondents portfolio investment scheme as formulated in the existing circulars of this respondent. However, as the said circulars were based upon the policies formulated by the Government of India, this respondent referred the matter to the Government of India, and as stated above, pending consideration of these application, this respondent directed the third respondent not to make any further payment from the non-resident account of the applicants for the purchase of shares. The Government of India, thereafter, viz., that having regard to the objectives of the schemes for investment by non-respondents of Indian nationality/origin and the consideration which had with held in their formulation as also Government's intentions, it had been the original intention of Government that facilities of direct and portfolio investment in shares of public limited companies, should be available to the overseas companies, and other bodies in which ownership/beneficial interests was indirectly but ultimately held to the extent of at least 60% by non-resident individuals of Indian nationality/origin that investment so made after May 2, 1983, would be subject to an overall ceiling of 5% of the paid-up equality capital of the invest Indian company. In the light of this purchase clarification given by the Government, this respondent issued a press releases on September 17, 1983, embody in the respondent issued a press releases on September 17, 1983, embodying the clarification issued by the Government. This respondent also issued a further circular No. 18 date September 19, 1983, embodying the Government's clarifications.

"In the light of the above clarification issued this respondent did not feel any need to calls for any information in the new Form OAC-1 as all the requisite information supported by the auditors' certificate was available with this respondent showing of Indian Companies in the light of Government's said clarification ... As the application of respondents Nos. 4 to 16 involving large investment had been pending since March, 1983, and this respondent is obliged under the scheme to clear the applications expeditiously and as the Government's clarifications had been obtained, there was no reason thereafter to hold up consideration of the applications of the 13 companies."

129. The RBI took up the stand :

"Under s. 29 of the FERA, this respondent is not precluded from giving its permission after a non-resident purchases shares in an Indian company. Accordingly, by this respondent's letter dated September 19, 1983, to the third

respondent, this respondent gave its approval to make investments in and hold the shares of the first petitioner to the extent of 1% of the paid-up capital of the company subject, where the purchase had been made after May 2, 1983, to overall ceiling of 5% of paid-up equity capital of each of the invest companies. The letter further stated that purchases made up to and inclusive of May 2, 1983, would not be subject to the 5% ceiling."

130. As regards the allegation that a portion of the purchases was made with Indian rupee funds and not out of any foreign remittances, the same was one admitted as correct and it was also denied that the purchases were made after May 2, 1983, Respondent No. 2 also averred :

"It is denied that the purchase of shares by respondent Nos. 4 to 16 is in excess of the limit of 5% imposed by Circular dated May 16, 1983, as the third respondent has reported that all shares had been purchased before May 2, 1983."

131. The RBI also denied that the petitioners had refused registration for valid reasons and that Exhs."A" "B" and "C" were steps taken in order to assure that respondents Nos 4 to 16 with respondent No. 17, as their head, acquired control of a substantial lot of shares in the petitioner company. It also denied that "respondents Nos. 3 to 17, or any of them had failed to comply with the provision of the non-resident portfolio investment scheme." It, however, admitted :

"It is true that this respondent had taken the view that what was contemplated, according to circulars No. 9 dated April 14, 1982, was only to permit a non-resident company, whose shares, to the extent of at least 60% are directly held by individuals of Indian nationality or origin to invest in Indian Companies. However, since the first respondent clarified that there was no intention to exclude from the eligibility for investment, companies indirectly owned by non-resident of Indian nationality or origin, this respondent issued these circulars dated September 19, 1983."

132. It was asserted that "the validity or inter portfolio of circular, Exh. B or Exh. G, to the petition does not depend upon the form prescribed for application for permission from time to time". The respondents took strong exception to the reference to the legal advice received and pointed out that "the petitioners are indulging in impermissible exercise of making all sorts of averments Petitioner No. 1 is prying into these briefs of respondent No. 1 without any justification."

133. The learned Attorney-General, in our view, was right in taking exception to the reference made by the petitioners to the legal advice said to have been received by respondent No. 1 or respondent No. 2 with regard to the positioning under the Circular (Exh."G") and s. 29 of the FERA. Mr. Nariman, the learned counsel for the petitioners, readily conceded that part of it was a mistake and he would not refer to it. He did not refer to that petitioner's case. At a later stage, however, there was some argument about whether the respondents could justify their action as bona fide on the strength of the legal advice received by them and, if so, whether the petitioners are entitled to call upon them to produce

the legal advice tendered to respondents Nos. 1 and 2. We shall to make it very clear even at the outset that legal advice received by either of the parties is confidential professional communication by the legal adviser to their clients. Though it is open to the parties concerned to produce the same in support of their pleas, neither the court nor the opposing parties are entitled to call upon any one to produce in court such written legal advice tendered to it. If produced, it would certainly be taken into account. But since communication between the parties and their legal advisers are privileged communications, neither the court on one side or the other side is entitled to insist upon its production; nor can they call upon the court to draw any adverse inference against a party for failure to produce before the court the record of legal advice.

134. The petitioners allege that the theory of original intention is sought to be pressed into service by the respondents only to save the investment made by respondents Nos. 4 to 17 after releasing that 60% ownership or beneficial interest in those companies was not held by them directly but was only sought to be held indirectly by non-residents of Indian nationality/origin. We are unable to hold that even on the facts alleged, leave alone proved, this is the investment capable of conciliation to be reached in the circumstances of this case. Matters of policy when translated into statutes or notifications may not fully bring out the intent of the Legislature or the authorities may not fully bring out the intent of the Legislature or the authorities, as the case may be. The loopholes in the statute or the policy may come to light in the course of their implementation. When, in the working of a statute or policy, a particular instance of hardship or untoward consequence comes to light, that would legitimately be an occasion for the authority concerned to apply its mind pointedly to the issue and make the authority concerned to apply its mind pointedly to the issue and remedy the situation by appropriate amendment or clarification. It is not uncommon to find that an enactment is understood in one way and taken as valid; but when a particular provision of that Act is challenged in a court of law after elaborate discussion at the Bar, a different intention manifests itself. If that be the result of judicial process, there is no reason why statutory or administrative authorities administering a particular enactment should not be permitted to clarify whether original intention was when the Act specifies a case their attention is focused on the particular issue. When someone makes a grievance in a particular case and the issue is examined in more detail, it may be found that the policy itself required to be reviewed, modified or clarified. The mere fact that any sub-clarification or review would benefit the individual whose case necessitated the administrative authority to force its attention by itself, cannot be sufficient to conclude that the clarification itself was intended to benefit that individual. That case may have only occasioned the clarification but may not be the object of the clarification. It is not uncommon to find that circulars are issued by various administrative departments, including judicial department, as and when certain issues present themselves. But while acting on such circulars in a

particular a case, difference in the circular may come to light requiring immediate clarification on the administrative side. In fact, in some of the systems of administration, for better appreciation of the clarifications issued, the particular case that occasioned the re-examination of the issues in some detail and necessitated the issues of the clarification is specifically stated.

135. Another circumstance that has been pressed before unto hold that the press note (Exh."A") and the Circular (Exh."B") are not issued bona fide by the RBI but were issued at the dictation of the Central Govt. is that it was done in great haste. The Government of India, Ministry of Finance, Department of Economic Affairs, wrote to Dr. Manmohan Singh, Governor, Reserve Bank of India, on September 17, 1983, to the effect that "in order to remove any doubt regarding eligibility of the companies, it is clarified, that overseas bodies, whether owned directly or indirectly, are eligible to invest under the scheme so long as it is clear that the ultimate ownership to the extent of at least 60% is in the hands of non-residents of Indian nationality/origin. Each such applicant company is eligible to make investment subject to the existing ceiling of 1% irrespective of whether the ultimate ownership is in the hands of one or more individuals". In that letter, it was further stated :

"Since this clarification merely reflects the original intention of the Government, the investment made by the applicants (respondents Nos. 4 to 17) before May 2, 1983, but pending for approval should not be subjected to 5% ceiling. Pending applications may be disposed of accordingly."

136. On September 17, 1983, the letter was delivered to the Government, RBI. The Governor, RBI, in turn, made an endorsement in the margin of that letter that very day as follows :

"I have discussed this case with F.S. and F.M. This matter has been approved by CCPA. As such, we should faithfully carry out consequential actions. I have discussed with F.S., F.M. and personal secretary to P.M., the issue of press note regarding clarifications given by the Government regarding the NRI scheme. It has been agreed that the press note will be issued at 6.30 p.m. by the RBI in Delhi itself.

Sd/- Manmohan Singh 17-9-83".

137. September 18, 1983, being Sunday, Circular No. 18 (Exh."B") was issued on September 19, 1983, giving effect to the intendment of the press releases. Purporting to act in accordance with that Circular, the impugned letter, (Exh."C") was issued by the RBI to the PNB on September 19, 1983, itself declaring the respondent companies eligible to make portfolio investments with full repatriation benefits without being subjected to an overall ceiling of 5% of the paid-up equity capital of each of the invest companies. Only purchases made after May 2, 1983, were subject to the 5% ceiling. That letter further stated :

"These thirteen companies have the approval to make investments in and hold shares in Escorts Ltd. ..."

138. This permission was subject to the conditions specified in paragraph 4(a) to (h). Such-paragraph (h) reads as follows :

"The permission will remain valid so long as at least 60 per cent. of the beneficial interest in the investor company is held by non-residents of Indian nationality/ origin either directly or indirectly. You may, therefore, obtain from each company a certificate form OAC/OAC 1 duly completed and signed by Overseas Auditor/ Chartered Accountant/Chartered Public Accountant on an annual basis."

139. In our view, if, from the wording of Circular No. 9 of April 14, 1982, it was clear that even if a NRI held over 60% interest indirectly in any company, that company was eligible to invest, any such clarification was wholly unnecessary. It is only because the circular does not ex facie disclose that intention that the clarification was necessitated. May be that this was the original intention also but was not clearly expressed in the circular. It may even be that the Circular No. 9 of April 14, 1982, if correctly read, would not make companies in which 60% interest is held by NRI indirectly eligible to invest. But that cannot preclude either the author of the policy or the author of the circular which was required to be translated to a Statutory order by the RBI from clarifying its original intention. The RBI, which is bound under s. 75 of the FERA, to carry out the directions of the Government of India in administering the FERA issued the press release (Exh."A") and the circular (Exh."B") and directed that the action should be taken as stated in the letter. We are unable to impute lack of any bona fides in such a clarification; much less do we think it legitimate to attribute by any legal or factual mala fides either to the RBI or to the Government of India in this regard. To say that the Circular (Exh."G") does not make the companies in which NRI "A", "B" and "C" as vitiated by mala fides or lack of bona fides is another. The mere fact that this was accomplished within two days is by itself no ground to conclude otherwise. As the matter concerned foreign remittances and foreign exchange earnings of the country and large amounts of NRI investments were at stake, may be the Political Affairs Committee of the Cabinet also thought it necessary to discuss the matter and the Governor, RBI, thought it fit to consult this various authorities referred to therein. Although some oblique motive was imputed during the course of the arguments and some reference was sought to be processed on the basis of the endorsements made by the Governor, RBI, we do not find any legal basis for any of them. If a high dignitary, such as the Governor, RBI has had thought it necessary in the discharge of his duties to consult the Government of India and its various authorities and committees through which it functions, no adverse inference could be drawn either against the RBI or its Governor or the Central Government.

140. To refute this allegation the petitioners that only to protect the respondent-companies in the midst of the hearing of the arguments, and affidavit of S. S. Thakur, Controller of Exchange, was filed on behalf of respondent No. 2. in which

it was averred :

"..... that the Reserve Bank of India has in the past in several cases given permission under s. 29(1)(b) and s. 19(1)(d) of the FERA, 1973, after the shares had been purchases by the applicants or as the case may be, after shares had been issued by the company."

141. To that affidavit was annexed a list of nine instances marketed Exh."A" to show that the impugned permission was not a case of favouring the respondent-companies. In that list, nine instances of permissions granted were between 1974 and 1981, after the shares were purchased. In the affidavit-in-reply filed by petitioner No. 2, it is stated that these instances "do not establish any pattern at all". It was also further placed :

"Each of the cases now cited show that they relate to permission that ought to have been obtained under s. 29(1),(b), i.e., prior permission and which is given post facto under the impression that it is open to the authorities administering the Act to condone the breaches of the Act and to regulars the shares purchased in contravention of s. 29(1)(b)."

142. Therein it was further emphasised :

"... in none of the 9 cases had the question of whether it is at all permissible in law to grant such ex-post facto permission ever arisen or been properly considered."

143. It was also pointed out that in all the nine cases, "the capital invested in the shares as well as the dividend income that may accrue thereon would not be allowed to be remitted outside India at any time in the future. In fact, all the nine cases, the applicants were required to furnish an undertaking of non-reorganization in the second respondent's regular rising the proposes ... In none of the nine cases listed were shares sought to be acquired with repatriation benefits as in the present case." It was also alleged :

"... that the nine instances refereed to Exh."A" to the said affidavit are (not) "illustrative cases" ... The depend has avoided disclosing if these are the only cases where such post facto approval has been granted and the number of cases where applications for permission made subsequent to the acquisition of the shares have been rejected though this was specifically pointed out by counsel for the petitioner ..."

144. In our view, it is not necessary to given the details of these purchases or the circumstances in which post facto permission granted or into the rival contentions raised in this regard. Suffice it to note that post facto permission granted earlier in the nine instance can neither alter the position of law, nor a practice which can be upheld in derogation of law. These few instances do establish that post facto permission was not being granted to responded-companies alone now for the first time, but was also granted to others much earlier to the present controversy. That would certainly militate against the

allegations of mala fides made by the petitioners.

145. The allegation of the petitioner that the impugned clarification contained in the press release (Exh."A"), the impugned circular (Exh."B") or the impugned latter (Exh."C") is vitiated by mala fides on the part of either the Central Govt. or the RBI or any of its functionaries is unsubstantiated and is accordingly rejected.

146. It is urged by Mr. Nariman, the learned counsel for the petitioners, that the intention, if any, behind the circular (Exh."G") should have been clarified by the RBI which issued it and not by the central Govt. If it is a mere interpretation of the circular, surely since the RBI had issued it, But as to what the policy of the Government was with regard to permitting non-resident Indian investor-companies to invest under the portfolio investment scheme with full repatriation benefits, is a matter which only government of India could clarify. The RBI purporting to translate the policy having issued the circular (Exh."G") may have been of the view that NRI companies would be eligible only if ownership or beneficial interest is held by NRI directly, but the Government which formulated the policy may holding a contrary view. If the clarification given by the Government of its own policy weighted with the RBI and the RBI issued the clarification, RBI could not be accused do any mala fide action. The RBI is a statutory body required to formulate policies subject to the direction of the Government. When the RBI purported to translate Government policy with regard to the portfolio investment by companies predominantly owned by non-resident Indians, we do not see anything wrong if it subsequently changed its view and issued the circular to translate the avowed intention of the Government as now clarified by it. That is what the press note (Exh."A") and the circular (Exh."B") purport to do. A change of opinion on a legal issue or issuing a circular to translate the Government policy by a body such as the RBI, cannot on this ground alone be treated as a mala fide action so as to render the press note, circular and the letter based, thereon wholly illegal and void.

147. Any clarification of the original intention by a subsequent press release such as Exh."A" or circular such as. Exh."B", however, cannot have the legal effect of amending the previous circular with retrospective effect even if the original intention was, as is now clarified. If Circular No. 9 of April 14, 1982 (Exh."G"), itself does not make companies in which non residents of Indian nationality/origin did not directly hold 60% ownership or beneficial interest, the clarification issued under the impugned documents in September, 1983, cannot have any retrospective effect from April 14, 1982. Administrative orders or orders in the nature of subordinate legislation cannot have any retrospective effect. In fact, this subsequent circular of September 19, 1983, does not at all purport to be an amendment of circular No. 9 of April 14, 1982. It only states that that was original intention and that should be given effect to.

148. So far as the power to issue such a circular prospectively is concerned, there cannot be any doubt. The portfolio scheme was formulated in exercise of the powers vested under s. 73(3) by the RBI itself. If, in formulating the scheme,

the RBI could permit investment by companies, in which interest of non-resident of Indian nationality/origin was held directly, it could as well permit investment by companies in which these investors had ownership or beneficial interest indirectly up to 60% or more. If, however, Circular No. 9 of April 14, 1982, itself did not entitle companies or other bodies in which non-resident of Indian nationality/origin did not hold 60% interest to invest, then purchase of the shares by all such companies would be in contravention of that circular. Consequently, the provisions of the FERA would expose them to prosecution and render the transactions illegal. As a result, the companies in which shares are purchased would be debarred from registering the transfer of such shares in the names of the purchasers. That legal consequence cannot be nullified by decreeing under the subsequent circular (Exh."B") that that was the original intention or purport of Circular No. 9 of April 14, 1982. Circular No. 9 being a statutory circular issued under the FERA which does not authorised subordinate legislation with retrospective effect, it could not be amended with retrospective effect under the guise of clarifying the original intention. While these documents cannot have any retrospect effect, they are certainly valid prospectively. Ownership or beneficial interest in the respondent companies was not held directly up to or over 60% by non-resident Indians when the shares in Escorts Ltd. were purchased by them.

149. In the affidavit of petitioner No. 2 dated July 5, 1984, it was alleged that the shares of Caparo Group Ltd. were actually held by the Bank Hofmann A.G., Zurich, in the name of the National Bank (Branch Office Nominees) Ltd. and, therefore, 61.6% shares in respondent-companies were not held even indirectly by any non-resident Indian; they were held by a foreign Bank. As such, the respondent-companies were not entitled to purchase any shares under the portfolio investment scheme (Exh. "G"). In the affidavit-in-reply filed on behalf of the RBI, objection was taken to the filing of an affidavit by the petitioners at this belated stage and making allegations which required verification of facts. It was also pleaded in the affidavit-in-reply that :

"... if the petitioners desire to make any submission as to the consequence of the said disclosure it was incumbent on them to make such a submission and not leave the matter at large to be dealt with by oral arguments."

150. Thereafter, copies of the documents received by them were filed. The RBI and PNB filed copies of the correspondence between them and Swraj Paul and also the correspondence that passed between Swraj Paul, his chartered accountants and Bank Hofmann A.G., Zurich and the National Bank (Branch Office Nominees) Ltd. in this behalf. The copy of the latter addressed by the Bank Hofmann A.G., Zurich, states :

"This is to confirm that we are holding shares of CAPARO GROUP LIMITED on behalf of Mr. Swraj Paul and family for safe custody as his trustees. These shares were issued on April 15, 1983, in the name of Bank Hofmann itself and from May 4, 1984, they were changed and issued in the name of National Bank (Branch

Office Nominees) Ltd. as nominees for Bank Hofmann. We confirm that these shares are held by us for Mr. Swraj Paul and family and we have not advanced any money on them whatsoever, and they are free from any lien."

151. The National Bank (Breach Office Nominees) Ltd. also confirmed that position by their letter dated July 18, 1984. The chartered accountants of Swraj Paul, Stoy Hayward & Co., in their letter dated July 10, 1984, with reference to the affidavit filed by petitioner No., 2 on July 5, 1984, commented :

"... under the U.K. law the registered holders of shares, as shown in a company's annual return, are not necessarily the beneficial owners of the shares. It is quite common for the beneficial owners of share to use a nominee's name as the registered holder. Furthermore, the fact that the registered holder is a nominee does not require to be shown in the company's annual return.

This is exactly the situation you have in Caparo Group Ltd. where Bank Hofmann A.G. are correctly shown in the annual return as the registered holders, but are nominees for you and your family's beneficial shareholdings."

152. From this correspondence, it would be clear that non-resident Indians did not directly hold interest in the respondent-companies. Whether they at least held interest indirectly or not, we do not think it necessary to go into, in this writ petition. Suffice it to hold that in the annual return filed on September 19, 1983, by the Caparo Group Ltd. (being the 14th day after the date of the annual general meeting for the year 1983), Bank Hofmann A.G. is shown as the holder of the shares. Under the portfolio investment scheme in force on the date when the shares in question were purchased by the Caparo Group Ltd. in the petitioner-company, the non-resident Indians did not directly hold 61.6% or more of shares in the NRI company so as to make them eligible for purchasing shares. They were not, therefore, eligible to purchase share under the said scheme. The subsequent clarification cannot make them eligible retrospectively from the date they purchased the shares.

153. In this view of the matter, we are unable to accept the plea of respondents Nos. 1 and 2 that even in formulating the original policy and issuing the Circular (Exh."G") it was the intention of either the Government or of the RBI that companies in which NR Indian had more than 60% interest even indirectly should be given the benefit of investment with full reparation benefits. Any such clarification of the intention under Exhs."A", "B" and "C" cannot enlarge the scope of the circular (Exh."G"); much less can it enlarge its scope with retrospective effect. It can only operate prospectively from the date of its issue, i.e., September 19, 1983. The letter (Exh."C") also states :

"The permission granted hereby will initially be valid for a period of three years from the date of this letter. In case the permission is required to be renewed for further period, you may place make a request in this regard by a letter be behalf of the non-resident investor company to enable up to take necessary action."

154. This permission operates only from September 19, 1983, onwards. Respondents Nos. 4 to 16 would be entitled to purchase share from that date, if in fact they even indirectly 60% interest in the NRI company, for the letter specifically states :

"The permission will remain valid so long as at least 60 per cent. of the beneficial interest in the investor company is held by non-residents of Indian nationality/origin either directly or indirectly."

155. It is within the province of the Government and RBI to formulate policy in this regard. The question as to who should be permitted to make investment in Indian companies and subject to what conditions they should be permitted is a matter of policy, which the RBI can lay down subject only to the direction of the Government. So long as such policy does not contravene any statute and in particular the provisions of the FERA or the Securities Contracts (Regulations) Act 42 of 1956, and the RBI Act, 1934, it must be given effect to. We do not find anything in the policy formulated under the impugned press release and the circulars (Exh."A" and "B") to be illegal or ultra vires the provisions of any enactment. If the Government and the RBI could declare NRI companies in which 60% interest is held by non-residents of Indian nationality/origin directly, they could as well permit investments by companies in which the investments by companies in which the interest is held indirectly by NR Indians. Exhibits "A", "B" and "C", which declare even the companies in which non-residents of Indian origin hold 60% and above interest indirectly eligible, are, therefore, valid from the date on which they were issued. It is also not the contention of the petitioners that criteria of eligibility could not be validly laid down or carried by the Government of India or prescribed by RBI for September 19, 1983 onwards. The objection is only to its retrospective operation and that objection, in our view, must be sustained.

156. As we see it, neither Exh."A" nor Exh."B" declares that prior permission under s. 29 of the FERA is not necessary for valid purchases of shares. They only deal with the question of eligibility of the companies in which non-resident Indians hold 60% interest indirectly. Whether permission could be validly granted even subsequent to the purchases of shares is a question of law, the interpretation of which cannot depend upon the view taken either by the Government or by RBI; that must depend on the interpretation of s. 29 by the court. We have already discussed this aspect and held that for any company eligible to make investment under the portfolio scheme promulgated under the circular (Exh."G") or even under the circular (Exh."B"), the obtaining of prior permission of the RBI under s. 29 of the FERA for purchasing shares in Indian companies is a precondition. If without obtaining prior permission shares are purchased, they would be contravening the provision of s. 29 and would be exposing themselves to administrative action under s. 50 and penal action under s. 56 of the FERA.

157. The letter of the RBI, addressed to the PNB, dated September 19, 1983

(Exh."C"), does not in terms state that permission is granted with effect from the date the shares were purchased or with effect from the date on which the applications were made by respondents Nos. 4 to 16 for grant of permission. It may be recalled that applications were made by respondents Nos. 4 and 8 to 16 on March 12, 1983. The impugned letter (Exh."C") only declares the eligibility of these 13 respondent companies "to hold" the shares, if purchased prior to May 2, 1983, up to 1% in each company and subject to a ceiling of 5% of the paid-up capital of the Indian May 2, 1983. Though it does not in terms read as a permission granted under s. 29 of the FERA to purchase shares, inasmuch as it allows respondents Nos. 4 to 16 to hold shares already purchased, it in effect amounts to permission with retrospect effect is as to validate the purchases made by these companies. In so far as Exh."C" seeks to accord permission to the purchases already made, it is illegal and without jurisdiction and can neither validate the purchases nor authorise the holding of the shares by the respondent companies. The RBI has taken the stand that it is empowered to grant permission under s. 29 of the FERA even after the shares are purchased and purchases supported by such subsequent permission would be immune from attack. That, in our view, is an assumption which is not warranted by law. There is no specific provision for granting such post facto permission and the RBI under s. 29(1)(b) of the FERA. The clarification (Exh."A"), the Circular (Exh."B") and the letter (Exh."C") are, however, valid prospectively and the profit in vestment scheme with full repatriation so long as NRI of Indian nationality/origin continue to hold at least 60% interest and the permission subjects.

158. We may now turn to consider the petitioners case with regard to the notice issued by the LIC requesting an EGM of the petitioner company.

159. The requisition notice dated February 11, 1984, issued by the LIC, respondent No. 18, calls upon the petitioners to convene an EGM of the petitioner-company for the purpose of considering and passing, with or without modifications, the ordinary resolutions set forth therein. The resolutions seek to remove nine out of fifteen directors of the petitioner-company before expiry of their term and in their place seek to induct nine whole-time employees of the financial of their term and in their place seek to induct nine whole-time employees of the financial institutions. The statement appended to the requisition notice cryptically states :

"The directors proposed to be removed named in resolution Nos. 1, 3, 5, 7, 9, 11, 13, 15 and 17 are not whole-time directors nor in active management of the company and the requisitionist does not wish them to continue as directors.

In the place and state of directors whose names are specified in resolutions Nos. 1, 3, 5, 7, 9, 11, 13, 15 and 17 who are sought to removed, the requisitionist proposes to appoint as directors, the following persons whose names are specified in resolutions Nos. 2, 4, 6, 8, 10, 12, 14, 16 and 18 respectively."

160. Pursuant to this notice. as bound in law, notices covering the GEM were

issued by the company.

161. It is the contention of the petitioners : (i) that this requisitionist is not in conformity it provisions of the Companies Act and in particular contravenes s. 284 of that Act; (ii) that it is beyond the scope and against the intendment of the provisions of the LIC Act; and (iii) that it is issued for a collateral purpose and it is a mala fide and arbitrary action of the LIC taken at the behest of respondent Nos. 1 and 2.

162. Mr. Nariman, learned counsel for the petitioners, referring to the first ground, drew our attention to the provisions of s. 284 of the Act and contended that whenever a resolution is moved to remove a director, "he is entitled to be heard on such resolution at the meeting" as laid down therein. he director concerned is entitled to make representation in writing and request must the company to notify to the members of the company. That request must the complied with and a copy of the representation must be sent to every member of the company. If such representation is not notified, without prejudice to his right to be heard orally, the director concerned may required his representation to be read at the meeting. It is argued by Mr. Nariman, learned counsel for the petitioners, that the intendment of s. 284 is that the director once elected shall have a fair opportunity to make his representation to all the members of the company before they chose to exercise their vote to remove him. It also secures to the shareholders the right to know why a particular director is sought to be removed and what the director himself has to say about it. Thought the ultimate decision rests with the majority shareholders, since the appointment of a director is sought to be terminated by one of the shareholders before the expiry of the normal term of his office, these rights are secured decision. Unless the reason for removal of an elected director is stated, the director concerned would not be in a position to make an effective representation; must less would the members of the company be in a position to make up their mind and take a decision at the EGM. It is, therefore, Obligatory for the requisitionist to state in the notice the reasons for proposing a resolution to remove a director. Any requisition which does not give reasons for removal of a director would net be a valid requisition. It would offend all principles of natural justice and would constitute an arbitrary exercise of power. According to Mr. Nariman, the LIC, which is a statutory body and public authority, cannot act arbitrarily and without reason. Any such arbitrary action of a public authority like LIC must be restrained by an appropriate writ.

163. The learned Attorney-General, Mr. Parasaran, however, urged that the court ought not to impose a greater obligation upto the requisitionist than what is expressly enjoined by the statute. Section 284 does not obligate and requisitionist to give reasons in the notice or in the resolution for the removal of any director. All that sub-ss. (3) and (4) of s. 284 assures an opportunity to the directors concerned to make a representation in writing to the company. The directors concerned may also make an oral representation at the EGM, He is also entitled to have his written representation read at the meeting. The learned

Attorney-General contended that the shareholders have a right to remove a director without any reason whatsoever and what any private shareholder can do, the LIC cannot be prevented from doing. That right, according to the learned Attorney-General, springs from LIC's position as a shareholder and the provisions of the Companies Act and not on account LIC, being a statutory body, constituted under the LIC Act. Merely because the LIC happens to be a statutory body, it cannot be deprived of the right which it is entitled to exercise as a shareholder of the company. This requires us to consider the question whether the LIC may exercise the same unfettered right which an ordinary shareholder may exercise the same unfettered right a statutory body it must conform to the provision of LIC Act also. To this aspect we would advert after dealing with the question whether in the juxtaposition of the director being given a right make a written representation and also the right to be heard orally against his removal, the shareholders of the company entitled to vote at the EGM may require reasons to be given in the notice of requisition and failure to give reasons renders the notice invalid.

164. It is true that if a director is removed, the shareholders as such are not directly affected; but it cannot be said that they have no interest whatsoever in the matter. A shareholder is certainly interested in seeing that the company is managed by duly elected directors and they are not removed on extraneous grounds. In any case, they are certainly entitled to see that directors who have been unanimously elected and against whom no allegation is made, are not removed arbitrarily; much less removed so as to pass on the effective management of the company to certain persons who are elected merely by the majority without due regard to the larger interests of the company. When the EGM is held, at that meeting they are certainly entitled to call upon the requisitionist to state the reasons. The director concerned is entitled to represent why he should not be removed. He may also orally state at the EGM as to why a certain section of shareholders is bent upon removing him. That being so, the members perhaps cannot complain of not being given sufficient opportunity to consider the matter before casting their vote on a resolution to remove a director. However, that is not all; that is only one aspect of the matter.

165. The directors concerned too have been given a right by the statute to make written representations against their proposed removal. The failure to give reason for removal would wholly disable the directors from making any effective representations. The right of representation given by the statute cannot be thus rendered an empty formality. Further, the notice of the EGM given to members of the company must be accompanied by a copy of the resolution and an explanatory statement. If no reasons for the removal are given in the requisition notice, obviously the explanatory statement cannot enlighten the members as to why certain directors are sought to be removed. The directors concerned, and much more so the members, would be groping in the dark as to the reasons for proposing their removal. If the EGM is required to consider the representation, the EGM also must know why a particular director is sought to be removed. If the

EGM is entitled to know that, must more so, the director concerned is entitled to be informed of the reasons that prompted the requisitionist to move for his removal before he is required to make a representation. Section 284(3) gives the directors the right to make a written representation even before the meeting is concerned and much before the members are given notice of the meeting. That written representation of the director is required to be sent to the shareholders. Obviously therefore, reasons must be given by the requisitionist before the notice EGM is given. If the requisitionist do not state the reasons in their notice of requisitions, the company cannot of its own device divine those reasons and communicate them to the members. As a corollary to the right of representation given to the detainee by the Preventive Detention Act, obligation to furnish grounds to detain to enable effective and intelligible representation being made was implied by the Supreme Court in *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, in the following words (headnote) :

"The conferment of the right to make a representation necessarily carries with it the obligation on the part of the detaining authority to furnish the grounds, i.e., materials on which the detention order was made."

166. When s. 284 of the Companies Act gives a right of representation to the director sought to be removed, the obligation to give reasons must be implied as a necessary corollary.

167. It is argued that when for electing a director no reason need be given by the shareholders, reasons cannot be insisted upon for removal. That, in our view, does not really answer the point. Though both the selection of the director and removal of a director may be determined by a majority of vote, the consequences of such vote are different. The former is a matter of induction into office, while the latter is the termination of the right to continue in office for the full term. Removal cuts short the terms of office of an elected director. It is precisely for this reason that s. 284 enjoins notice to the director concerned and vests him with the right to make representations. Though giving reasons for proposing removal of a director is not an express statutory mandate, we should think that it must be implied as a necessary corollary to the right of representation expressly conferred on him by s. 284 of the Companies Act.

168. In our view, even on the principles of natural justice, it would appear that reasons must be given by the requisitionist while proposing removal of a director.

169. The learned Attorney-General contended that when the statute prescribes a particular procedure to be followed and gives a limited right of representation, as is done under s. 284(4) of the Companies Act, a further obligation to give reasons for requisitioning a meeting to remove the directors cannot be imposed upon the requisitionist by invoking any principle of natural justice. The learned Attorney-General referred us to the decision in *Russell v. Duke of Norfolk* [1949] 1 All ER 109. That was a case in which the dancer's licence was sought to be withdrawn without any enquiry at all under the powers vested in the stewards if

the race course. The court held (headnote) :

".... assuming that the application for a licence and the licence itself together constituted a contract to permit the trainer to act as such, the stewards had power under the contract in their unfettered discretion to withdraw the trainer's licence without any inquiry at all, and it was impossible consistently with an unfettered and absolute discretion to imply a term in the contract that an inquiry, if held, should be in accordance with natural justice,"

170. Denning L.J. entered a cast against this principle, but came to the conclusion on evidence that the principles of natural justice were not violated and agreed with the ultimate order. The right of the licensee in that case was based on a contract and the power to terminate was not sought to be exercised by any statutory body like the LIC. The question of arbitrariness was to be determined with reference to the contract between the parties and not with reference to any statute. Their Lordships were not concerned with the fundamental right guaranteed under sec. 14 of the Constitution and enjoined upon every statutory authority. If the stewards were performing a statutory duty and not enforcing a contractual right, their Lordships would, in all probability, have improved the principles of natural justice even in that case as well. That decision rests on the terms of the contract and proceeds upon the footing that under the contract, an unfettered discretion was vested in the licensing authority to withdraw the licence. The principle of that case cannot apply to the exercise of any right by the LIC, a body which cannot claim to have an unfettered and unguarded power or discretion in discharge of its functions.

171. *Malloch v. Aberdeen Corporation* [1971] 1 WLR 1578: [1971] 2 All ER 1278, also was a case where it was held that the dismissal without hearing of a teacher who was appointed during the pleasure of the Scottish authority was not violative of the principles of natural justice. The court held by majority (p. 1279) :

"Had the status of such Scottish teachers been governed purely by common law, a teacher like the appellant, holding public office during the pleasure of a public authority would not be entitled to a hearing before being dismissed; the position, however, was different where, as here, the common law position had been fortified by statute and the framework and context of the employment to see additional protection given. In such a case, the court should examine the framework and context of the employment to see whether elementary rights were conferred on the employee either expressly or by necessary implication. The right of a man to be heard in his own defence was the most elementary protection of all and where a statutory form of protection would be less effective if it did not carry with it the right to be heard, it was not difficult to imply that right.

In the present instance, the implication to be drawn from the requirement in the 1882 Act that three weeks' notice of a meeting to consider a motion for dismissal should be given to a teacher and the prohibition against dismissal

without due deliberation was that a teacher was in appropriate circumstances accorded the right to be heard; the relevant provisions of that Act were only explainable on that basis; there could be no reason for the giving of notice unless it was to afford the teacher an opportunity to prepare his defence; without affording the teacher a hearing, a responsible public body could not be said to reach a fair decision. Although the 1882 Act had been repealed and replaced by later Acts, there was nothing in those subsequent Acts which could reasonably be interpreted as taking away that elementary right."

172. The court finally observed :

"Where an employer failed to take the preliminary steps which the law regarded as essential he had no power to dismiss and any purported dismissal was a nullity;"

173. In that case, the court held that the appellant had shown not only that his position was such that he had in principle the right to make representations before the decision to dismiss was taken, but also that if admitted to state his case, he had a case of substance to make. His appeal was allowed and remitted to the Court of Session with a direction to reduce the resolution for dismissal and the consequent letter of dismissal.

174. It would be seen that in that case the principles of natural justice even though not made applicable by the statute, the court implied an obligation to observe those principles having regard to the pre-existing law and the person's right to make a representation against his removal which is the situation in the present case. Section 284 of the Companies Act gives a specific right of representation to a director whose terms were sought to be curtailed by requesting an EGM of the company. The principles of natural justice even in a case governed by the statute were themselves enlarged so as to require reasons to be stated for dismissal.

175. In *Gaiman v. National Association for Mental Health* [1970] 2 All ER 362 the Church of Scientology of California, or, more popularly known as the Scientologists, sought to expel some of its members. The court held (p. 364) :

"There were no grounds for the court to intervene to prevent an alleged abuse of power by the council since the power to deprive a member of his membership was a direct power and the evidence did not disclose that it had been exercised otherwise than in good faith and in what were believed to be the best interests of the association and members as a whole

The principles of natural justice did not apply to the expulsion of members so as to afford them a right to be heard before expulsion, because there were circumstances sufficient to prevent the application of the principles, in that (a) the council owed the association a duty to exercise their powers bona fides in the interests of the association; this duty might require a power to be exercised at great speed ...; this in itself indicated that the council was intended to be

exercise its powers unfettered by the principle of natural justice; (b) the right of the association, a company limited by guarantee, to expel members could not be less than that of a company limited by shares, ... since, in general, the elements of expropriation were lacking from an expulsion; a person becoming a member of the association did so on the terms, inter alia, ... and his right to membership was accordingly subject to termination by the council acting bona fide in what they believed to be in the interest of the association;"

175. The learned Attorney-General contends on the strength of this decision that in the removal of a director, there is no element of expropriation. It is pointed out that unlike a shareholder, a director has no right as such to continue if the majority wishes otherwise. We, however, think that, while the majority shareholders exercising the right of vote may remove a director, they must exercise that right in accordance with the provisions of the Act. That this right must be exercised bona fide and in the interests of the company as a whole is now well recognised. Even before the will of such majority can be allowed to operate, the court is empowered to consider, on a complaint, whether it is so exercised. This decision too recognises that right. It would be seen that even in this decision, stress was laid on the council acting bona fide, which implies, "for some good reason". The application of the principles of natural justice in those circumstances were held to be somewhat limited. But, if there were these rights to make a representation is conceded to a director under s. 284(4) of the Companies Act, the representation to be effective must be in respect of something put against him for removal. The principles of natural justice cannot be put into a strait jacket. They must be adequate to meet the requirements of the particular situation. Their amplitude must depend upon the requirements of the case caused by the non-observance of these principles. In such a case, the wider concept of natural justice requiring reasons to be given must be wider concept of natural justice requiring reasons to be given must be implied and held to be obligatory. If the statute itself has laid down that reason should be given, there would not be any occasion to invoke any principle of natural justice. Then that would be a statutory requirement of a valid requisition notice and if reasons were not given, the notice would have failed for not complying with that statutory requirement. The necessity to invoke the principles of natural justice arises only because there is no such express statutory stipulation. Even in the absence of such a statutory requirement, because of the director having been given the statutory right to make his representation, in our view, the obligation to observe the principles of natural justice must be imported as the necessary implement of the statute itself. The stating of reason in a requisition notice for removal of director must follow as a necessary corollary and must be enjoined on principles of natural justice. The principle of his decision obviously cannot apply to the activities of a public authority governed by the Statute like the LIC. Act.

176. The learned Attorney-General contended that in order that the principles of natural justice may be invoked, there must be invoked, there must be a judicial situation and ruled upon the decision in *Hounslow London Borough Council v.*

Twickenham Garden Developments Ltd. [1971] 1 Ch 233 and conceded that even a general body meeting of thus shareholders does not create a judicial situation much less can a judicial situation be demands to exists at the stage when the shareholders assessed notice requesting an EGM. He argues that there is no is between the parties which calls for the application of principles of natural justice. Reliance was also placed upon the discussion in *Gaiman v. National Association of Mental Health* [1970] All ER 362 in this behalf where it was held that the principles of natural justice do not apply to matters arising under the Company law. The court held that in the case of a company, a new legal entity comes into being. The directors have duties towards members and corporate personality. Principles of natural justice do not apply in the field of corporate law. The provisions of the Company law and the articles of association apply. There is no judicial situation. Basing on that, it is argued that no property rights or livelihood or reputation were involved in removing a director. In *Law v. National Greyhound Racing Club* [1983] 1 WLR 1302: [1983] 3 All ER 300 the disciplinary procedure derived from contract between trainer and the domestics body controlling greyhound racing was held not subject to judicial review. It was further held that the jurisdiction which the court had under RSC, Ord 53, to grant an injunction or a declaration on an application for "judicial review was confined to the review of activities of a public natures as opposed to those of a purely private or domestic nature and section 31 of the 1981 Act (Supreme Court Act, 1981) had not extended that jurisdiction". Though the court had jurisdiction to issue infection where it was just and convenient to do so, it could not be extended to include the decision of private or domestic tribunals. In view of the that the stawards" authority to suspend the plaintiff"s licence was derived solely from the contract between him and the defendants and no public element in their jurisdiction as such was involved, their decision was held to be not reviewable and no complaint of non-observance of the was held to be not reviewable and no complaint of non-observance of the principles of natural justice arose. Lastly, reliance is also places on the decision in *Russell v. Duke of Norfolk* [1949] 1 All ER 109 that in removing a director it is not a judicial power of expulsion but an administrative power vested in the general body that is invoked and hence the principles of natural justices would not apply. The general principles of natural justice may not be invoked to (sic) in the case every notice requisitioning an EGM is valid. Still, when a direct is sought to be removed and for this purpose a requisition notice is given and s. 284 of the Companies Act itself requires notice of such a resolution being given to the director sought to removed and affords that director and opportunity to make a representation in writing and also further informs these convert of the meeting to place the some before the general body and also gives that director a right to be heard by the EGM, in our view, the obligation to give reason for removal follows as a necessary corollary and the right to be furnished to the reasons must be implied on the principles of natural justice. When an elected director is sought to be removed, a judicial situation similar to a is between the parties may not exist. But, the fact that a director elected for a certain terms is sought to be removed before the expiry of the that terms is itself

reorganised by s. 284 of the Companies Act as vesting him with a right of representation vested in him by statute, in our hearing. That right of represent vested him with a right to make his written representation and an oral hearing. That right of representation vested in him by statue, nor view, itself post statues a further rights to know why he is sought to be removed before the expiry of his term. That is implicit in the right of representation given to him and that calls for invoking the principles of natural justice. None of the above diocesan excludes the applicability of the principles of natural justice to such a situation. These principles cannot be confined to traditional disputed; but must in our view be extended wherever a right is sought to be curtailed or cut short.

177. It was argued that if reasons are required to be given for requesting a meeting for removing a director, it will interfere with the power of control vested in the shareholders and exercisable by them through these general meeting of the company. The directors are elected by majority and are removable by majority vote; such removal schist's no stigma on the directors. They continue only so long as this majority has confidence in them. When the majority of the members choose to remove them, they cannot be compelled to give reasons. The learned Attorney-General draws a paralleled between the company at an EGM removing the directors, and refers us to the decision of the Federal Court in AIR 1945 25 (Federal Court) in which it was held (at p. 114) :

".... it is not open to the court to speculate as to what is likely to have been in the minds of the members of these Council of State when they dealt with the Bill."

178. It is urged that it is not open to the court to question the shareholders as to what prompted them to exercises their vote in a particular manner or to issue a requisition notice for convening a meeting. Here the question is not as to why these shareholders are voting for removal or retraction of the directors; the issue is whether the notice of requisition is in accordance with the requirement and intendment of s. 284 of Companies Act.

179. Reliance is also placed on the decision of a Division Bench of this court in Ramkrushna Gangaram Rathi and Another Vs. Kisan Zingraji Madke and Others, wherein it was held that for requisitioning a special meeting for removing president under the Maharashtra Municipalities Act, 1965, the requisition need not state the grounds on which he is sought to be removed. Only signatures of not less than one-fourth councillors are required for a valid requisition. The reasons given for this conclusion are stated thus (at p. 313) :

".... the tenure of the office of the president if wholly at the pleasure and the will of the majority of the councillors and he can stick to that office only so long as the enjoys the confidence of the majority. As soon as he loses the confidence of the majority, he is not entitled to continue in his office. It may be that the president is not guilty of any misconduct in his discharge of his duties or is not guilty of any disgraceful conduct. He may be an honest man or a man of integrity

and may be very able, competent and efficient in his work, but still there could be honest policy differences between president and the majority of the councillors; and the majority might not be able to carry on their policy or programme, if the president were to hold different or opposite views, thought honestly."

179. That case turned upon the specific provision of s. 55 of the Maharashtra Municipality Act, 1965, which did not vests any statutory right in the president to make any written representation before the motion of no confidence was discussed. Though he was elected for a fixed terms, he was removed by a motion of no confidence for which a specific procedures is prescribed. In those circumstances, the notices of requisition was held to be valid even if it did not state the reason for moving a resolution of no confidence against the president. That was a totally different situation from the present one where even before the meeting is held, the directors sought to be removed are given a right by the statutes to make a written representation. Which we think can be effective and meaningful only if reasons are given. Of course, if the meeting is properly convened, the will of the majority prevails and the majority is not bound to gives reasons.

180. Reliance was also placed by the learned Attorney-General upon *Isle of White Railway Co. v. Tahourdin*, [1884] 25 Ch. 320 wherein it was held that under s. 91 of the Companies Caused Act, a general meeting has power to remove directors, that a notice of a proposal to remove "any of these director" was sufficiently distinct, that the general meeting could at all event fill up vacancies in the board if all the directors were removed. In that view the requisitionist were declared entitled to call a meeting and accordingly discharged the infection and allowed the meeting to go on. It would be noticed that Lindley L.J., in that case, however, recognised (p. 333) :

"It appears to me that it must be a very stone case indeed which would justify this court in restraining a meeting of shareholders. I do not mean to say of courses that there could not be a case in which it would be necessary and proper to exercise such a power, I can conceives a case in which a meeting might be called under such a notice that noting legal could be done under it. Possibly in that case an injection to restrain the meeting might be granted. I do one say that it would; that case may be dealt with even it arises. In the present case, it must be observed that the notice is not a notice of particular resolutions-it is a notice stating objects which the requisitionist wish to accomplish by any legal means. That is these only notice which they need give, according to the terms of the Act of Parliament. One of their affidavits is to remove the directors. In may opinion, when we look at section 91 of the Companies Claused Act. there can be no doubt that a general meeting has power to do this."

181. It would be observed that even in that case the Lord justice envisaged a situation where a meeting could be restrained through these particular case they were dealing with was not found to be one such.

182. In *Andrew Inderwick and Alfred Cowan v. Henry Snell* (42 English Rep 83 at P. 85), the court dealt with the 27th clauses of a deed which provided "that an extraordinary general meeting specifically called for the purpose may remove from his office any director or auditor for negligence, misconduct in office, or any other reasonable cause" and stated :

".... The argument for the plaintiffs rested on the allegation that the general cause of removal referred to in the clause being expressed to be reasonable prevents the power referred to from being a power to remove at pleasure arbitrarily or capriciously, and made it requisite that the proceeding for exercising the power should be in its nature judicial, and that the reasonable cause should be such as a Court of Justice would consider good and sufficient. If thus argument could be sustained, all proceedings at such meetings would be subject to the review of the Courts of Justice, which would view reasonably, whether the charges were bona fide brought forward, whether they were sustained by evidence as the nature of the case requires, and whether the conclusion was come to upon a due consideration of the charge and evidence."

183. The court held that "reasonable cause" would mean "such causes as in the opinion of the shareholders duly assembled shall be deemed reasonable". The court proceeded to hold :

"In a moral point of view, no doubt every charge of a cause of removal ought to be bona fide, substantiated by sufficient evidence, and determined on a due consideration of the charge and evidence; and those who act on other principles may be guilty of a moral offence : they may be very unjust, But the question, is whether by this deed the shareholder duly assembled at a general meeting might not, or had not a right to, remove a director for a cause which they thought reasonable, without its being incumbent upon them to prove to this or any other Court of Justice that the charge was true and the decision just, or that the case was substantiated after a due consideration of the evidence and charge

All such meetings are liable to be misled by false or erroneous statements, and the amount of error or injustice thereby occasioned can rarely if ever, be appreciated. This court might inquire whether the meeting was regularly held ..."

184. It would be seen that this decision proceeds to consider the resolution adopted at the meeting and was not concerned with the anterior stage as to whether the requisition itself was properly made and the meeting was duly convened. In fact, it recognised that while the decision at the meeting itself may not be gone into once it is arrived at by majority, if the meeting itself is not duly convened and regularly held, it would be otherwise. Further, when the impugned action is taken by an authority which is a "State" within the meaning of art. 12 of the Constitution, whether that authority has requisitioned the meeting arbitrarily and without any reasonable causes or for collateral purpose, as discussed hereinafter, would become germane. That the general body has a right

to adopt a resolution without disclosing the reasons in support body has a right to adopt a resolution without disclosing the reasons in support of that resolution, cannot clothe an authority such as the LIC to requisition a meeting arbitrary and without any reasonable cause or for collateral purpose.

185. All these decisions deal with the question as to whether a resolution passed at the general body meeting of the company could be invalidated. They do not deal with the validity of a requisition notice and whether if on any of the ground it is vitiated whether the notice could be quashed and the discussion taken at the meeting held invalid. None of these discussions lays down that whatever be the irregularity in requisitioning or convening or holding a meeting, if the resolutions are adopted by majority, they should not be interfered with by a writ court. On the other hand, these discussions recognise that the court could examine whether there was a valid requisition and whether there was a valid requisition and whether procedure requirements were observed for convening and holding a meeting; only it cannot examine why a particular resolution was passed what motivated the shareholders to vote in a particular manner.

186. In *Laljibhai C. Kapadia v. Lalji B. Desai* [1973] 43 Com Cas 17, the court observed (p. 38) :

"..... Section 173 (of the Companies Act, 1956) is mandatory and not directory. It is in the interest of the general body of shareholders that the Legislature has made provisions in section 173(2) requiring the notices of a meeting to set out a statement contain all material fact concerning of special item of business. A notice of meeting when it contain items of special business within the meaning of section 173(1)(b) must disclose all the material facts. All the shareholders must be in position to make up their mind in advance whether they will attend the meeting or leave it to the good sense of the majority at the meeting. Any non-compliance with this requirement will nullify the action taken at the meeting whether or not a particular notice or an explanatory statement in a given case complies with the statutory requirement is a question of fact. These are two ways in which the mandatory provisions contained in section 173 maybe contravened. It may be a case where no explanatory statement is at all appended to the time of a special business or it may be a case where the statement is incomplete, misleading or tricky. The contravention may be the result of an act of omission or an act of commission When a challenge is made in a court of law the court will have to consider at the facts and circumstances of the and then decide one way or the other."

187. In this decision, it is clearly reorganised that when a challenge is made in a court that the meeting is not properly convened and the explanatory statement does not contain all material facts, the court will have to pronounce upon the validity of such a notice and the meeting.

188. In *Firestone Tyre and Rubber Co. v. Synthetics and Chemicals Ltd*, [1971] 41 Com Cas 377, dealing with the object of an explanatory statement to be

appended to the notices sent to the shareholders to set out the nature or concern or interest of the solicitor-director in the matter of the appointment of a private company, on the facts it was held that there was no full and frank disclosure and that the shareholders were not given a full and complete opportunity. As such, the notice of the meeting bad and the resolution passed at that meeting invalid. That was case dealing with s. 301 of the companies Act which prohibited as director from taking part in any discussion of or vote on any contract or arrangement entered into or to be intercede into for and on behalf of the company if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement. The vote of such a director was declared to be void. The attack in this causes is one the validity of the requisition by the LIC, a statutory body, which also happens to be a shareholders. A statutory body like the LIC, as hereinafter discussed, cannot requisition a meeting except for a proper reason; much less can it requisition for no better reason than that it holds more than the qualifying minimum of 10% shares to requisition a meeting or that along with other financial institutions commands a majority shareholder in the petitioner-company to get the resolution proposes by it adopted at the EGM. The LIC cannot be permitted to act arbitrarily; any such act of that statutory body would be violative of article 14 of the Constitution.

189. The view taken by the House of Lord in *Ebrahimi v. Westbourne Galleries Ltd.* [1973] AC 360, answers a somewhat similar claim of the majority shareholders thus (at p. 361) :

"..... a limited company was more than a mere legal entity and the rights, expectations and obligations of the individuals behind it inter sawyers not necessarily merged in its instructive; while the "just and equitable" provision did not entitle a party to disregard the obligation which he assumed by entering a company, it enable the court to subject the exercise of legal rights to equitable considerations of a personal character arising between individuals which might make it inequitable to insist on legal right or to exercises them in a particular way;"

190. That was a case of a private company which vested power in general meeting under its articles and s. 184 of the Companies Act of 1948 to remove a directs from office by an ordinary resolution. The appellant and one N, who were initially partners, become its firs directors. That company was making good profits all of which were distributed as directors" remuneration. No dividends were ever paid. The appellant petitioned for an order under s. 210 of the Companies Act and N and G should purchase his shares in the company or sell their shares to him on such terms as the court thinks fit or alternatively for an order under s. 222(f) the that the company be wound up. Plowman J. refused to make an order under s. 210, but held that N and G had done the appellant a wrong in that it had been an abuse of power and to exclude one of them from all participation in the business on which they had embarked on the basis that all should participate in its management, and that, accordingly, these appellant had

made out a case for a winding up order under 222(f). The Court of Appeal allowed the appeal holding that in the case of a quasi partnership company excluding the opponent from participation in the management and conduct to the business did not form a ground for holding that it was just and equitable that the company should be wound up unless it was shown that power had not been exercised bona fides in the interests of the company or that the grounds for exercising the power were such that no reasonable mind could think that the removal was in the interest of the company, and that the appellant had failed to show that his removal had not been justified and it in the best interest of the company or that no man could have thought so. The House of Lords reversed that decision and held the appellant having lost his right to a share in the profits and being in that respect at the mercy of majority share holders and being unable to dispose of his interest without their consent, the proper counsel was to dissolve the association by winding up the company. We are of the opinion that when such a drastic step would be justified under the Company law, as held by these House of Lords, these initial steps taken by the LIC in issuing the requisition notice, if found to be arbitrary, could certainly be restrained by way of a writ.

191. The decision in *Clemens v. Clemens Bros. Ltd.* [1976] 2 All ER 268 supports this view that equitable considerations were sufficient to prevent the majority shareholders from acting unreasonably or for ulterior motive or where such action makes it unjust. In that case, the plaintiff and her aunt held 45% and 55% of the issued share capital of a family company which carried on a highly successful business in the building trade. Under the articles of association, a member of the company had a right of pre-emption if another member wished to transfer his shares. While the aunt was a director of the company, the plaintiff was not. There were four other directors. The company proposed to increase the share capital. The directors other than the aunt were to review 200 shares each, as the balance of 850 shares were to be placed in trust for long service employees of the company. To adopt resolutions incorporating these proposals, notice of EGM was given. At the meeting, the plaintiff proposed an adjournment, but the resolutions were adopted. In the suit filed by the plaintiff against the company and her aunt, the majority shareholders, seeking a declaration that the resolutions were oppressive of the plaintiff and an order for setting them aside, the court held (p. 268) :

"The aunt was not entitled as of right to exercise her majority votes as an ordinary shareholder in any way she pleased; her rights were subject to equitable considerations which might make it unjust to exercise them in a particular way. Although it could not be disputed that she would like to see the other directors have shares in the company and a trust set up for long service employees, the enforcement was irresistible that these resolutions had been framed in order to put complete control of the company into the hands of the aunt and her fellow directors, to deprive the plaintiff of her pre-emption rights as a shareholder with more than 25 per cent. of the votes and to ensure that she would never get control of the company."

192. Those considerations were held to be sufficient to prevent the aunt from using her majority votes as she did and the resolutions were accordingly set aside.

193. As Lord Denning put it in *Breen v. Amalgamated Engineering Union* [1971] 1 All ER 1148, the giving of reasons is one of the fundamental of goods administration. The Supreme Court ruled in *Khudiram Das Vs. The State of West Bengal and Others*, no doubt in the context of a case of termination of service of a Government servant, that there is nothing like unfettered discretion immune from judicial review ability. The court further declared :

"..... Where a charge of unfair discrimination is leveled with specificity, or improper motive are imputed to the authority making the impugned order of termination of service, it is the duty of the authority to dispel that charges by disclosing to the court the reason or motive which impelled it to take these impugned action the authority cannot withhold such information from the Court on the excuse that the impugned order is parallel administrative and not judicial, having been passed in exercise of its administrative discretion under the rules governing the conditions of service."

194. This principle should, in our view, also apply where the directors are sought to be removed and under the statute they are given a right of representation.

195. If that be so in respect of an individual owing majority shares and the resolution adopted could be quashed upon equitable considerations, a statutory authority like the LIC., which is "a State" within the meaning of art. 12 of the Constitution and is required to act for the purposes and objects of the statute, cannot claim to have unquestioned right to requisition a meeting for removing directors for no better reason than "the requisitions does not wish them to continue as directors". If no reasons are given or if the reasons given are found on the face of it to be not true, it would amount to acting without any reason whatsoever. It would be an arbitrary act. However, no person or body of person, much less a statutory body, could be assumed to be acting for no reasons at all. So far as this case is concerned, as the LIC itself has chosen to give reason in the explanatory statement to the requisition, the question whether reasons should have been given or not has in a way become academic. When the petitioners are challenging the action of the reason given by that authority, the court is bound to examine the reason given by that authority itself to see if it justifies its action. Then if the ostensible reason disclosed is not the real reason, then it must follow that the requisition is for a collateral purpose. In the explanatory statement appended to the requisition notice, what all the LIC has stated is that the nine directors proposed to be removed now "are not whole-time directors in active management of the company and the requisitionist does not wish them to continue as directors. In the place and stead of the directors whose names are specified in resolutions Nos. 1,3,5,7,9,11,13,15 and 17, who are sought to be removed, the requisitionist proposes to appoint as directors the following persons whose names are specified in resolutions Nos.

2,4,6,8,10,12,14,16 and 18 respectively". If that be the true reason, the LIC could not have proposed to appoint in their place nine whole-time employees of the financial institutions holding 52% shares in the petitioner-company. Just as the nine directors prepossessed to be removed are not whole-time directors, those sought to be inducted being whole-time employers of the financial institution also would not be whole-time directors; nor could they be in active management of the petitioner-company. Thus, the only reason given in the requisition notice does not stand a moment's scrutiny and falls to the ground.

196. Assuming, as contended for the LIC, that it was not bound to give reason for requisitioning an EGM, having chosen to give a reason, it is not open to its to contend that the court is barest from examining how far that reason is true and sustainable and how far it is as bona fide act of the LIC. Apart from the reason given, obviously there is not other reason. When that reason is for to be whole entries and untenable, and arbitrary or is for reasons extraneous and collateral which even these LIC is either unreasonable and arbitrary or is for reasons extraneous and collateral which even the LIC did not choose to disclose in its affidavits. It is not now open to the LIC to assert that there are other justifiable reason for requesting the meeting. If, in fact, there were any, they would have been stated at least in the affidavits filed in reply before this court. Any contention that the power to requisition an EGM could have been exercised for many valid reasons which need not have been disclosed and which were suggested at the Bar, cannot really be countenanced in the circumstance of the cases. If those were the real reasons that had prompted the LIC to requisition the EGM, they would have been mentioned in the requisition notice. and, in any case, in the several affidavits filed in reply in this writ petition where it was challenged as mala fide and arbitrary. In the circumstances, it must be concluded that the only reason for requisitioning the meeting is that stated in the explanatory statement appended to the requisition notice and that reason is wholly untrue and untenable. The action of the LIC would be arbitrary.

197. In *Ajit Singh and Others Vs. State of Punjab and Another*, , where the board of trustees was dissolved while the trust continued and the executive officers are retained and in place of the office whose service were depend with, some other officer were asked to take over their functions, and having secured the desired result, the trust was reconstituted but the dissolved board of trustees was not recalled. The action was held to be arbitrary and unsustainable. The court have that the conclusion is inescapable that the action was thoroughly and violative of the guarantee of equality of opportunity. That order was quashed.

198. That the nine directors sought to be removed were not whole-time directors was a fact know to the LIC for several years. Nothing is urged against these nine directors. In fact, they have been on the board of directors, admittedly, now for several years during which the petitioner company has shown consistent profit and progress. Even now, nothing is alleged against any of them. All the nine directors sought to be removed are persons holding eminent positions in various

spheres of life. As mentioned in the explanatory statement suspended to the notice of EGM, S. N. Bilgrami has been the director of the petitioner-company since 1971. He was a member of Indian Administrative Service who held various positions in the Central Government. He was the managing director of State Trading Corporation Ltd. and National Industrial Development Corporation Ltd. On the date when he was sought to be removed, he was a director of several public limited companies. He was due to retire by rotation at the annual general meeting of 1985. Parmeshwar Sahai has been the directors of several public limited companies. He was due to retire by rotation at the annual general meeting of 1985. Parmeshwar Sahai has been the director of the petitioner-company since 1977. He has held several position in the Central Govt. He was member of the Railways Board and chairman of Project and Equipment Corporation Ltd., wholly owned Government company. He was a director of several other public limited companies. He was due to retire by rotation at the annual general meeting of 1985. J. M. Shrinagesh is a retired ICS officer who has been a director of the petitioner-company since 1965. He held various positions in the Central Govt. He was the member of the Railway board chairman of Hindustan steel Ltd., a wholly owned Government company, for a number of year and was a director of several companies of the date he was sought to be removed. He was due to retires by rotation at the annual general meeting of 1986. Dr. Bharat Ram has been the director of the petitioner-company since 1964. He was due to retire by rotation at the annual general meeting in June, 1984. On the date he was sought to be removed he was the chairman and managing director, DCM Ltd. and the chairman of Andhra Cement Co. Ltd., Besides being a director in several other public limited companies. S. Ranganathan is another ICS officer who was on the board of directors of the petitioner company since 1973. He held various positions in the Central Govt., and in various financial institutions. He was on the board of IFCI and ICICI. He was the Comptroller and Auditor General of India. He was a member of the Rajya Sabha and member of the Company Law Committee and director of several reputed companies. He was due to retire by rotation at the annual general meeting in June, 1984. Prof. Ravi John Mathai, since deceased, was a director of the petitioner-company since 1972. He was a well-know economist and management expert. He was director of Indian Institute Of Management, Ahmedabad, and visiting professor at Massachusetts Institute of Technology, USA. He was director of Bharat Petroleum Corporation Ltd., a Wholly owned Government company, and several other companies. He was due to retire by rotation at the at the annual general meeting in June, 1984. Field Marshal Sam Manekshaw, MC, has been the director of the petitioner-company since 1978 and was due to retire by rotation at the annual general meeting in June, 1984. He was Chief of Army Staff an Chairman of the chief of Staff Committee. He was the recipient of Military Cross in "World War II and Padma Vibhushan, and presently direct of a number of public limited companies. S. Bhoothalingam was another ICS officer who has been the director of the Petitioner-company since 1970. He has held various positions in the Govt. He was Secretary in the Ministry

Commerce and Industry. Ministry of Steel and Ministry of Finance. He served as one-man commission appointed by the Government of India to reform the System of taxation and was Director General, National Council of Applied Economic Research. He was due to retire by rotation at the annual general meeting of 1985, and Dr. K. B. Lall was yet another ICS officer who was co-opted as a director of the petitioner-company in March, 1983, in the vacancy caused on account of the death of one of the director and was due to retire by rotation at the annual general meeting of 1985. He was founder-chairman of State Trading Corporation of India Ltd. Indian Institute of Foreign Trade and Export Credit Guarantee Corporation and held various positions as Secretary, Commerce, Chief Controller of Imports, Ministry of Commerce, Special Secretary, Ministry of Finance, Permanent Secretary Ministry of Commerce and Secretary and then Principal Secretary, Ministry of Defence. He was also Ambassador of India to Belgium. He was the chairman of several prestigious committees and chairman and director of a number of other companies. That these directors possessed the qualifications, Status and experience as described above and that they were to retire in the normal course as stated above is not disputed. It should be taken that they had brought to bear their rich and varied experience in managing the affairs of the petitioner-company and in taking policy decisions during their entire term of office principally that accounted for its steady progress and good track record. To exercise the majority vote held by the public financial institutions in this manner to remove person of such stature and proved capability and against whom nothing is alleged even now and no better reason than the LIC does not "wish to have them" on the board of the petitioner-company is, to say the least, the most arbitrary and naked exercise of brute majority power. They were last elected unanimously, supported by all the financial institution, including the LIC. Although some of them were to retire in the normal course at the annual general meeting as noted above, for reasons best known to it, the LIC though it fit not to wait till then and sought to remove them before the expiry of their term. When a statutory body acts for no reason or on a stated reason which is found to be wholly untenable, it must be held that it is acting arbitrarily. Any such arbitrary action of public authority and more so of a statutory authority like the LIC, which is a "State" within the meaning of art. 12 of the Constitution, must be held to be violative of art. 14 of the Constitution. This itself is sufficient to quash the impugned requisition notice.

199. The learned Attorney-General contends that even if there is any irregularity in convening the meeting or in the conduct of the meeting, that could be rectified by the general body; hence the court should not interfere with the decisions of the holding the meeting or its decisions. Reliance was placed by the learned Attorney-General in this behalf upon the decisions in *Brown v. La Treadwell* [1888] 37 Ch.D. 1 (CA), in which Lindley L.J. said (p. 17) :

"... I think it is most important that the court should hold fast to the rule upon which it has always acted, not to interfere for the purpose of forcing companies to conduct their business, according to the strictest rules, where the irregularity

complained of can have set tight at any moment."

200. *Bentley-Stevens v. Jones* [1974] 2 ALL ER 653 (Ch.D.), was also referred to in his regard. That was a case where the plaintiff brought an action against the defendants and applied for an interlocutory injunction restraining them from acting on the resolutions passed at meeting purported to be held by order of the board, but no board meeting of the company was in fact held. The court declared that the plaintiff was not entitled to an interlocutory injunction in respect of irregularities which could be cured by going throughout the proper processes. If, for example, the proceedings that followed the board meeting were invalid because proper notice had not been given, the in the invalidity could be cured by giving a valid notice. The dependent-company had a statutory right to remove a person from the board and the right of such director or partner shall be to apply for winding up order on the ground that it was just and equitable for the court to make such an order.

201. We must notice that the present writ petition was filed complaining about the invalidity of the requisition notice. It was filed at the earliest opportunity without any loss of time. The complaint is of violation of a statutory provision and the principles of natural justice by a statutory public authority. The complaint is that only on the strength of the decisive majority shareholding, all norms are being thrown to winds to secure the registration of transfer of shares purchased in violation of law.

202. The learned Attorney-General, in sum, pleaded that even where the statute incorporates some principles of natural justice, the court may import some more principles of natural justice by way of necessary implication; but that must be done having regard to the facts and circumstances of the case. Those circumstances do not exist in this case. He pointed out that in the context of the present case, the court has to keep in view : (i) that it is dealing with a matter concerning corporate sector in which the court should not interfere unless it is absolutely necessary for its proper functioning, (ii) that the shareholders have full control of the company and their right to control the management by the exercise of their vote should not be interfered with by the court, (iii) that the corporate sector is engaged in industry and trade and that the court should be reluctant to interfere with its activities, (iv) that wide discretion is vested in the shareholders in the matter of removing the director, (v) that by importing any principle of natural justice, the power of the shareholders to act expeditiously should not be impaired, and (vi) that if the law is widely laid permitting all the principles of natural justice to be invoked, it would affect the right of control vested in the shareholders.

203. As discussed above, in requiring reasons to be given for removing a director where there statute itself gives a right of written representation and hearing to the director and right to the shareholders to discuss the resolution at the EGM, no restriction is placed on the right of the shareholders to remove a director. Nor does it place any impediment in the exercise of their right to remove a director

expeditiously. Whether reasons are required to be stated or not, notice of the same period as prescribed under the Companies Act and the articles of association governing the particular company has to be given. Giving of reasons does not place any restriction on the right of the shareholders to exercise their vote in such manner as they deem fit. It only enables the director to make ineffective representation and the shareholders to exercise their vote after being more enlightened on the subject. Their right of control is in way lessened. In fact, a more judicious exercise of that right without in the least affecting their wide discretion is ensured. The corporate sector, at least public corporations governed by statute and the public sector which acquires certain special powers and exclusive right under a statute must not be left to act in their arbitrary discretion. They being public authorities must be answerable to some, and if it must be answerable, reasons for its actions must be stated. Requiring reasons to be stated by invoking the principles of natural justice further the object of the legislation and makes it much more effective without affecting the right of any one. Public policy dictates the invoking of the principles of natural justice to enjoin upon the requisition is to give reasons. The requisition notice must be struck down for failure to give reasons. In our view, in such a situation, the majority shareholders too must be compelled to observe the law by issuing an appropriate writ.

204. The requisition notice is assailed on the further ground that is beyond the scope and against the intendment of the LIC Act. Mr. Nariman, the learned counsel for the petitioners, that s. 6 of the LIC Act defines the functions of the Corporation. The function of the LIC is to carry on life insurance business and not to take over the management of other companies. The step taken to remove 9 out of 15 directors of the petitioner-company amounts totaling over its management. This is not authorised by the LIC Act. (Act No. 31 of 1956).

205. Section 6 of the LIC Act, 1956, details the functions of the LIC and in so far as it is relevant for our purpose, reads as follows :

"6. Functions of the Corporation. - (1) Subject to the rules, if any, made by the Central Government in this behalf it shall be the general duty of the Corporation to carry on life insurance business, whether in or outside India, and the Corporation shall so exercise its powers under this Act as to secure that life insurance business is developed to the best advantage of the community.

(2) Without prejudice to the generality of the provisions contained in sub-section (1) but subject to the other provisions contained in this Act, the Corporation shall have power -

(a) to carry on capital redemption business, annuity certain business or reinsurance business in so far as such reinsurance business appertains to life insurance business;

(b) subject to the rules, if any, made by the Central Government in this behalf, to invest the funds of the Corporation in such manner as the Corporation may think

fit and to take all such steps as may be necessary or expedient for the protection or realisation of any investment; including the taking over the of and administering any property offered as security for the investment until a suitable opportunity arises for its disposal;

(c) to acquire, hold and dispose of any property for the purpose of its business;

(e) to advance or lend money upon the security of any movable or immovable property or otherwise;

(i) to do all such things as may be incidental conducive to the proper exercise of any of the powers of the Corporation.

(3) In the discharge of any of its functions, the Corporation shall act so far as may be on business principles."

206. The primary function of the LIC as defined by s. 6 of the LIC Act is to carry on life insurance business and to exercise its powers to see that the life insurance business develops to the best advantage of the community. Without prejudice to this primary function, it is vested with certain other powers as well. Though it is also empowered to do any of the acts mentioned in sub-s. (2) as well, the primary business of the LIC is to carry on life insurance business.

207. The learned Attorney-General contended, and in our opinion rightly, that s. 6(2)(b) cannot limit the operation of s. 6(1) of the LIC Act. In our opinion, the functions of the LIC are certainly circumscribed by the LIC Act, it cannot discharge or take upon itself to discharge functions other than those mentioned in s. 6 of the Act. Section 6(1) declares that "it shall be the general duty of the Corporation to carry on life insurance business, whether in or outside India, and the Corporation shall so exercise its powers under this Act as to secure that life insurance business is developed to the best advantage of the community." That power is only subject to the rules, if any, made by the Central Govt. Though s. 6(1) empowers the LIC in general terms to carry on life insurance business and to exercise all the powers vested in it to develop the life insurance business to the best advantage of the community, it does not empower it to carry on any other business; The ambit of s. 6(1) extends to the whole gamut of life insurance business and it may take only such steps as are necessary to develop life insurance business to the best advantage of the community. However wide the ambit of section 6(1) may be, it does not extend to carrying on any other business; much less can it extend to taking over the management of other companies. That power is specifically vested to a limited extent under sub-s. (2) of s. 6. Without affecting the generality of the power vested under s. 6(1), the LIC is empowered "to take all such steps as may be or expedient for the protection or realisation of any investment including the taking over and administering any property offered as security for the investment until a suitable opportunity arises for its disposal." Clause (g) of sub-s. (2) of s. 6 only authorises the LIC "to carry on either by itself or through any subsidiary any

other business in any case where such other business has being carried on by a subsidiary of an insurer whose controlled business has been transferred to an vested in the Corporation under this Act". Clause (h) of sub-s. (2) of s. 6 also authorises only the carrying on of "another business which may seem to the Corporation to be capable of being conveniently carried on in connection with its business and calculated directly or indirectly to render profitable to the business of the Corporation." The business of the Corporation as enunciated by s. 6 is life insurance business and not any other business. While specific powers in sub-s. (2) of s. 6 may be exercised and the business mentioned therein may be carried on, it is mainly for the purpose of rendering directly or indirectly the business of the Corporation more profitable or where it is necessary to protect or realise the investment made by the Corporation and not for any other purpose. Nothing contained in sub-s. (2) of s. 6 enlarges the powers and functions of the LIC beyond what is generally stated in sub-s. (1) of s. 6 and what is specifically enumerated in sub-s. (2). Section 6(2)(b) empowers the taking over and administering only such property as is offered as security for the investment. Even if it were to be taken as meaning taking over the management of any company, it can be done only for the purpose of protection or realisation of the investment made by the LIC. It cannot take over the management of any other company or any other business for any other collateral purpose. The LIC Act advisedly places such restrictions on the LIC for it is meant to carry on only life insurance business and not any other business. If it were permitted to carry on any other business independent of or unconnected with life insurance business, this statutory Corporation, which is given the exclusive privilege of carrying on life insurance business under s. 30 of the LIC Act in the entire country, may embark up on business which may not ultimately prove profitable and the losses incurred in such business may prevent it from fulfilling its statutory obligations as the sole Corporation carrying on life insurance business in the country. The insured may be exposed to the risk of their insurance policies not being honoured on account of losses suffered by the LIC in carrying on other business or taking over the management of other companies for achieving purposes not envisaged by the LIC Act. That would defeat there very purpose of establishing the LIC. We are, therefore, clearly of the view that the LIC cannot takeover the business or management of any propriety which is not offered as security for investment or any other company except for the purpose of protecting or realising its own investment or for advancing life insurance business. All its activities must be directed to carry on life insurance business and towards advancing that business and for protecting its investment. It must not dissipate its resources and energies to takeover management of any properties or companies for any other purpose.

208. The LIC has not stated before this court in any of its affidavits that removal of the nine directors of the petitioner-company, which virtually amounts to taking over the management of the petitioner-company, was necessary for protecting the investment made by it; nor has it averred that it was necessary to move this

resolution to develop its business of the life insurance.

209. The funds of the Corporation may be invested only in accordance with the rules. It is in pursuance of this power that the LIC has invested investment in the petitioner-company. Investment in the petitioner-company has admittedly yielded rich dividends. The LIC may also take all steps as may be necessary and expedient for the protection or realisation of the investment including the taking over and administering the property offered as security for the investment. But taking over other companies and administering other properties is not the business of the Corporation. In the discharge of its functions, the LIC is required under s. 6(3) of the LIC Act to act, so far as may be, as a business concern. The LIC, being a statutory body, has to function in furtherance of the statutory duties imposed upon it and not for any other purpose. The Corporation is empowered to carry on that other business only for the purpose of protecting or realising the investment already made by it. Even the Corporation does not purport to move the resolution to remove the nine directors for the purpose of taking over the management of the company, nor does it allege that the investment which the LIC has made in the petitioner-company is in jeopardy. The original investment of the LIC in the shares of the petitioner-company cost it only Rs. 102.22 lakhs. From the right shares which it earned, the investment of the LIC rose to Rs. 16.02 crores. By December, 1983, the value of its investment appreciated to more than Rs. 26 crores. For the last over five years the petitioner-company has been paying a minimum dividend of 20% as a result of which the LIC has been resolving a return of over Rs. 85 lakhs per year on its original investment of Rs. 102.22 lakhs. Further, the petitioner-company maintained a consistently good track record. The petitioner's averments that the sales of the company rose from Rs. 223.18 crores in 1982 to Rs. 280 crores in 1983; that the profits before tax rose from Rs. 11.92 crores to Rs. 17.50 crores and after payment of tax from Rs. 3.15 to Rs. 11.70 crores; there serves from Rs. 26.01 crores to Rs. 33.73 crores and the investment and fixed assets from Rs. 8 crores to Rs. 35 crores, remain undisputed. When such is the consistently good record of the company, the LIC could never validly assert that its investment was in jeopardy, but on the contrary, it proved to be very profitable. No step was, therefore, required to be taken for protection of or realisation of its investment, much less to remove any of the directors who maintained such enviable record of progress.

210. Thus, s. 6(2)(b) of the LIC Act authorise the LIC even to take over the management of the companies only for protecting its investment. However, it is not the case of the LIC that its investment was in jeopardy and that this step was necessitated with a view to safeguard its investment. It is not pleaded by the LIC that the requisition notice convening the EGM to replace nine directors who happened to have opposed the registration of transfer of shares, with the nominees of the financial institutions, was issued with the intention of taking over the management of the petitioner-company. In fact, this allegation of the petitioners the LIC emphatically deadens and stoutly refuse this installation.

211. The petitioners rightly contended that it was the avowed and declared policy of the Government, the directions of which are to be carried out by LIC, that in making the investment, it is not the intention of the LIC or other public financial institutions to take over the management of companies. The petitioners assert that that statement was made on the floor of Parliament. Petitioner No. 2, in his affidavit, filed on February 27, 1984, in reply to the affidavit of Ganesan Chidamber on behalf of respondents No. 18, also specifically admitted that the public policy announced by the Union Government as can be discerned from the Lok Sabha debate was not to disturb the existing managements of companies. Petitioner No. 2 asserted in his affidavit that the Finance Minister had in reply to a question stated in Parliament :

"the financial institutions which have a significant holding in many important companies will play a establishing role by firmly supporting managements with a proven track record."

212. The Finance Minister also spelt out the criteria broadly applied by the LIC for nominating directors on boards of private sector companies. To a categorical question whether it is a fact that in about 115 public limited companies, the public sector funds amounted to more than 50% of the capital and whether the Government have any proposal under their consideration to take over all such companies, the Government laid on the table of the House on November 15, 1983, a statement, which disclosed that there were 27 companies in which the LIC and other State Financial institutions held more than 50% of shares; the Escorts Ltd. was one such. The Finance Minister also stated :

"There is no proposal under consideration of the Government, at present, to take over the companies in which the financial institutions together hold more than 50% of the share capital."

213. These averments are not denied. They are fully supported by the extracts of the parliamentary proceedings placed before this court, the correctness of which is not disputed by any one. We, therefore, hold that even respondents Nos. 1 and 2 never intended that public financial institution should take over the management of companies in which they had made heavy investments. So far as the investment in the petitioner-company is concerned, it is an admitted fact that with the shares of the total face value of Rs. 698.20 lakhs which constitute 52.18% of the total equity shares, the LIC and other state and public financial institutions in Escorts Ltd. is the highest. The LIC invested in Rs. 3,23,886 equity shares between 1960 and 1967. The average cost of each share when purchased was only Rs. 12.24. As on March 31, 1984, the value of each share of the face value of Rs. 10 had risen to Rs. 56. Over the period, with the huge profits earned by the company, the LIC acquired right shares and bonus shares ten times its original holdings. The LIC now holds 40,13,113 equality shares in the petitioner-company earning 20% dividend per annum. The investment of LIC in the petitioner-company far from being in jeopardy has increased manifold and is paying such rich dividends as no other company is so consistently paying. There

was, therefore, no justification for removing any of the nine directors managing the affairs of the petitioner-company; much less was there any ground to initiate any step to take over the management of the petitioner-company.

214. The provisions of the LIC Act do not authorise the taking over of other companies only because the LIC by itself or along with other financial institutions, happened to invest considerable sums of money or hold over 50% of the shares in the borrowing company; nor does the policy decision of the Union Government authorise them to take over the management of another company. That can be done only for the purpose of safeguarding the investment made by it. Though it is asserted that removal of nine directors does not amount to taking over the management and it is pointed out that the petitioner No. 2 who is the promoter-managing director is allowed to continue as managing director, it is not difficult to see how this would operate in actual practice. Once the nine directors are replaced by the nominees of the financial institutions, the financial institutions will have a virtual strange hold on the management of the company. The officers of the financial institutions who are proposed to be put on the board of directors of the board of directors would necessarily be taken by majority. Under the articles of association and the provisions of the Companies Act, the management of a limited company vests in the board of directors. The managing director may be still continue, but he has only to carry out the decisions taken by the board of directors. If this is not taking over of the management, we fail to see what else could it be. The resolution proposed in the requisition notice, with the support of all the financial institution for whom Davar spoke, is certain of being adopted. That would logically result in virtually taking over the management of the petitioner-company.

215. Mr. Attorney-General referred to the observations in "Take over and Mergers" by M. A. Weinberg, M. V. Blank and A. L. Creystoke, Fourth edition, paragraph 206, page 16, to urge that even if it amounts to take over, the recent trend is to permit financial institutions to take over management of companies where they have made investments. The observations relied are :

".... While it is generally the policy of the institutions not to interfere in the management of a company so long as the management is acting against the interest of shareholders, there are signs that this attitude is starting to change."

216. But any such recent trend cannot override the statute which governs the LIC and its activities. Even from the policy of the Government, which has constituted some of these financial institutions, as discussed above, it is clear that their shareholding strength is not meant to be exercised for taking over the management of other companies. A statutory corporation such as the LIC cannot be permitted to take any step for taking over the management of another company like the petitioner-company. If that is the logical consequence, it must necessarily be restrained by the issue of writ.

217. It is also not alleged either in the correspondence, which proceeded the

filing of the writ petition or in any affidavit filed before this court by the LIC, that any of the nine directors for whose removal it has requisitioned the EGM were acting against the interest of the company or particularly against the interest of the LIC which was a substantial shareholders in the petitioner-company. In spite of the petitioners alleging that the LIC "in concert" with the other financial institutions had, for the collateral purpose of punishing petitioner No. 2 and the other nine directors who had opposed the registration of the transfer of shares and with the object of virtually taking over the management had moved this resolution, the LIC was content with merely denying this allegation. It did not choose to give any reason why is sought to move this resolution. None was suggested in the affidavit filed in reply. At the Bar it was argued that no reasons need to be given for moving such a resolution. Just as any other shareholder cannot be compelled to give reasons for moving such a resolution, the LIC too, which was only exercising its right as a shareholder, could not be compelled to give reasons. It is argued that this matter lies in the realm of contract and not of statute and, therefore, even the court could not compel the Corporation to state the reasons for requisitioning an EGM. It is a matter concerning internal management of the company and it has to be decided by the majority of shareholders at the meeting and that the court cannot go into the reasons why the majority voted in a particular manner. This argument, attractive as it is, oversimplifies the issues and ignores the special stature of the LIC and the financial institutions, the statutory constraints and constraints due to their special status under which they have to function. The issue requires to be examined in the proper perspective.

218. That the LIC is an agency of the Government and statutory authority, which must act in conformity with art. 14 of the Constitution, is now laid down by the Supreme Court in *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, .* The Supreme Court, on an examination of the provisions of the Act, held (at p. 1345) :

"The structure of the Life Insurance Corporation indicates that the Corporation is an agency of the Govt., carrying on the exclusive business of life insurance. Each and every provision shows in no uncertain terms that the voice is that of the Central Government and the hands are also of the Central Government."

219. This statutory body is an authority within the meaning of art. 12 of the Constitution and "wherever a man's rights are affected by decision taken under statutory powers, the court would presume the existence of a duty to observe the rules of natural justice and compliance with rules and regulations imposed by statute."

220. It is true that a shareholder is not required to give reasons for exercising his vote at an extraordinary genera meeting one way or the other. He is free to act as he likes. But, to out mind, the LIC which is a statutory corporation and a

public authority does not have the same license. It is well settled that a public authority does not cannot act arbitrarily or mala fide. A statutory body like the LIC has to act within the four corners of the stature under which it is constituted. The statue not only constitutes it but also defines the limits of its authority and control its activity. It must, therefore, necessarily conform to the stature and any transgression on its part may be interdicted by a writ. Even where no statutory limitation is placed on the activity of such a statutory body or public authority, it must act reasonably and for the furtherance of the object the enactment under which it is constituted. It cannot act arbitrarily.

221. In *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, even a society running an Engineering college was held to be an "authority" and, therefore, "State" within the meaning of art. 12, from which must follow that it is subject to the constitutional obligation under art. 14. The court also pointed out that the content and each of art. 14 must not be confused with the doctrine of classification and that article has highly activist magnitude and embodies a guarantee against arbitrariness. In what context interfered with approval to the observations in *E.P. Royappa Vs. State of Tamil Nadu and Another*,

"The basic principle which, therefore, informs both articles 14 and 16 is equality and inhibition against discrimination From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of article 14, and if it affects any matter relating to public employment, it is also violative of article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment."

222. The court also referred with approval to the observations in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*,

"Wherever, therefore, there is arbitrariness in State action whether it be of the Legislature or of the Executive or of an "authority" under article 12, article 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution."

223. In view of this well-settled principle of law, the LIC which is a statutory body and "an authority" within the meaning of art. 12 must act not only in conformity with the statue which creates it and governs its business, but must also conform to the larger principle enunciated in art. 14 of the Constitution. All its acts must be reasonable and must be devoid of arbitrariness. When any statute governs a particular activity, both the citizen as well as the authorities concerned with the matters governed by the statute, are required to conform to it. If they act contrary to the statute, the action is liable to be quashed as being

contrary to the statute. Such as an act may also violate art. 14 of the Constitution and could be sustained.

224. Even where the activity is not governed by statute and the authorities constituted under the statute themselves lay down certain norm for the performance of their functions, the authorities are bound to conform to the norms they have set for themselves and held out to others that they would be observed; if they fail to do so, the parties would be entitled to approach the court complaining about the deviation and requiring the court to compel the authorities to conform to the norms. Failure to conform to the norms prescribed by such authorities themselves may amount to discrimination or arbitrary action violating the fundamental right of the citizen under the art. 14 of the Constitution.

225. Even where no statute governs the field and the public authority has not laid down any norms to govern its particular field of activity, still a public authority, which is an instrumentality of the State, being a "State" within the meaning of art. 12 of the Constitution, would be required to act justly and fairly; it cannot be permitted to act arbitrarily. Such arbitrary action would be violative of art. 14 of the Constitution and liable to be struck down by the court in exercise of its jurisdiction under art. 226 of the Constitution.

226. The action of respondent No. 18 in issuing the requisition notice has to be judged in the light of these well recognized principles. The LIC, though a shareholder, unlike private individual shareholder is required to function within the four corners of LIC Act. One may not be entitled to question the act of a private individual shareholder; but the same action, if by a statutory body like the LIC can be assailed if it infringes the provisions of the statute by which it is bound. Being a public authority, it cannot act arbitrarily, capriciously or reasonably. If an individual chooses to act arbitrarily, no person may be entitled to move a writ petition against him; if the action of an authority like the LIC is shown to be arbitrary, it cannot be allowed to stand and must be struck down in properly constituted writ petition.

227. The learned Attorney-General contended that merely because the LIC is a statutory corporation and is an "authority" within the meaning of art. 12 of the Constitution, every act of the Corporation is not amenable to writ and certainly the act which is in the realm of contract cannot be questioned is a writ petition. The contention runs thus :

The right of the LIC to move a resolution for the removal of the directors is being exercised by it as a shareholder. That right springs from the provisions of the Companies Act and the articles of association which constitute a contract between the shareholder and the company. This right is not referable to the LIC Act under which the LIC is constituted. This is a private right acquired by the LIC just as it is acquired by any other shareholders in the petitioner-company by purchasing the shares of that company. This is right founded in contract and not in statute. The requisition notice issued by the LIC in exercise of the this right is,

therefore, not amenable to the writ jurisdiction. Once the LIC, in exercise of the power conferred on it under s. 6(2)(b), has invested its funds in purchasing shares, the right it acquires as a shareholder is no longer governed by the LIC Act; the right so acquired is in the realm of contract. The petitioner could not complain of unreasonableness or arbitrariness in exercise of the right vested in the LIC under contract.

228. In support of this contention, the learned Attorney-General referred us to the decision of the Supreme Court in *Radhakrishna Agarwal and Others Vs. State of Bihar and Others*, In that case, dealing with the contention that the action of the Government was violative of article 14, the court observed (at p. 1500) :

"At this stage, on doubt, the State acts purely in its executive capacity and is bound by the obligations which dealings of the State with individual citizens import into every transaction entered into in exercise of its constitutional powers. But, after the State or its agents have entered into the field of ordinary contract, the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines rights and obligation of the parties inter se. No question arises of violation of articles 14 or of any other constitutional provision when the State or its agents, purporting to act within this field, perform any act. In this sphere, they can only claim rights conferred upon them by contract and are bound by the terms of the contract only unless some statute steps in and confers some special statutory power or obligation on the State in the contractual field which is apart from contract."

229. That was a case in which the court found that the contracts do not contain any statutory terms and/or obligations which could attract the application of art. 14 of the Constitution. In that decision the court declared that cases of alleged breaches of obligations by the State of its agents could be divided broadly into three categories as follows : (at p. 1500)

"(i) Where a petitioner makes a grievance of breach of promise on the part of the State in cases where one assurance or promises made by the State he has acted to his prejudice and predicament, but the agreement is short of a contract within the meaning of article 299 of the Constitution;

(ii) Where the contract entered into between the person aggrieved and the State is in exercise of a statutory power under certain Act or Rules framed thereunder and the petitioner alleges a breach on the part of the State; and

(iii) Where the contract entered into between the State and the person aggrieved is non-statutory and purely contractual and the rights and liabilities of the parties are governed by the terms of the contract, and the petitioner complains about breach of such contract by the State."

230. In that case, the court held that when a contract is sought to be terminated by the officers of the State purporting to act under the terms of agreement between the parties and such action is not taken in purported exercise of a

statutory power at all, it fell in the third category of case referred to above. When a contract is sought to be terminated by the officers of the State purporting to act on alleged breach of contract, such action is not taken in propriety exercise of statutory power. If a case falls under category (ii), referred to above, then obviously, a writ could be issued.

231. We may also here take note of the fact that the decision of the Supreme Court in this case, *Radhakrishna Agarwal and Others Vs. State of Bihar and Others*, was taken at a time when art. 14 of the Constitution was suspended under a Presidential order by virtue of the promulgation of emergency. What the court would have ruled if it were required to consider the contention that the act of the State would be violative of art. 14, as it is contended now, one cannot postulate. That case, therefore, may not be of much assistance in resolving the issue now raised.

232. The learned Attorney-General placed reliance upon a decision of Supreme Court in *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, and contended that right to vote according to the will of the shareholder is property and no limitation could be placed on the enjoyment or exercise of that right. After the investment is made, the contract is entered into and LIC became a shareholder; its act of requisitioning the EGM is not governmental or State action; it is the action of a contracting party and it should be judged as such. This again is a case which was not governed by any statute and the question whether in giving a contract to a particular party the Government acted in violation of art. 14 did not arise.

233. *Premji Bhai Parmar and Others Vs. Delhi Development Authority and Others*, was also relied upon by the learned Attorney-General in support of this contention. That was a case in which fixation of the price of the flats constructed by the Delhi Development Authority was questioned as violative of art. 14 of the Constitution. The court repelling that contention observed in p. 743 :

"Conceding ... that the authority has the trappings of a State or would be comprehended in "other authority", for the purpose of article 12, while determining price of flats constructed by it, it acts purely in its executive capacity and "is bound by the obligations which dealing of the State with the individual citizens import into every transaction entered into in the exercise of its constitutional powers. But after the State or its agents have entered into the field of ordinary contract, the relations are no longer governed by the constitutional provision but by the lawfully valid contract which determines rights and obligations of the parties inter se. No question arises of violation of article 14 or of any other constitutional provision when the State or its agents, purporting to act within this field, perform any act.

234. The decision in *Divisional Forest Officer Vs. Bishwanath Tea Co. Ltd.*, where a company tries to enforce through a writ petition the right to remove timber

without the liability to pay royalty was relied upon in this context. The Supreme Court held that (head note) "the company was not enforcing its right under rule 37 of the Assam Land and Revenue and Local Rates Regulation, but was seeking to enforce a contractual right under the specific terms of a contract of lease agreed to between the company and the Government. Such contractual right, therefore, could not be enforced in a writ petition." The court constructed it to be in substance a suit for refund of a royalty alleged to be an authorised recovered and that could not be entertained in exercise of the writ jurisdiction. The right to refund the royalty, as stated therein, arose out of the terms of the contract and not out of any obligation imposed on the authority to conform to any particular statute.

235. In *Railway Board Representing The Union of India (UOI) Vs. Niranjan Singh*, the Supreme Court rules that there is no fundamental right for anyone to hold meetings in Government premises. The fact that those who work in a public office can do so does not confer on them the right of holding a meeting at that office even if it be the most convenient place to do so. In that context the court held : (at p. 989 of AIR 1969 SC and at p. 39 of 36 FJR) : "The fact that the Indian Railways are State undertaking does not affect the right of Northern Railway to enjoy their properties in the same manner as any private individual may do subject only to such restrictions as the law of the usage may place on them." Even in this decision, it is recognised that a public authority may enjoy its own property as any individual would enjoy subject to law and usage.

236. The Madhya Pradesh High Court in *Smita Conductors Pvt. Ltd. and Another Vs. Madhya Pradesh State Electricity Board*, on which reliance was placed by the learned Attorney-General. Held that a writ petition was not maintainable where the contract for supply of conductors to the electricity board was suspended by the board under a clause of contract and enforcement of the same was sought by the other contracting party. The writ petition was held to be not maintainable for the reason that it sought enforcement of a contractual obligation. The distinction between that case and this is obvious. The petitioners do not seek to enforce any contractual obligation; they require the LIC to conform to the provisions of the LIC Act and the objectors of that enactment in issuing the notice of requisition as per EGM. That is a duty cast upon the statutory body by virtue of its constitution and by virtue of the fact that it has in exercise of the power conferred on it under s. 6(2)(b), invested its funds and became a shareholder in the petitioner-company. The right so acquired through exercisable as a shareholder can be exercised only for the purpose of the LIC Act.

237. In *Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others*, where the action of the Custodian termination of a manager appointed under s. 10(2)(b) of the Administration of Evacuee Property Act, 1950, was in question, the court held that the Custodian could lawfully terminate the services of the power of appointment and is exercised as an incident to or in consequence of that power. In that context, the court observed (headnote) :

"A writ of mandamus may be granted only in a case where there is a statutory duties imposed upon the officer concerned and there is a failure on the parts of that officer to discharge that statutory obligation. The chide function of the writ is to the writ is to compel the performance of public duties prescribed by statute and to keep the limits of their jurisdiction, any duty or obligation falling upon a public servant out of a contract entered into by him as such public servant cannot be enforced by the machinery of write under article 226 of the Constitution."

238. The appointment of a person as a manager by the Custodian by virtue of his power under s. 10(2)(b) of the Administration of Evacuee Property Act, 1950, was held to be contractual in nature and there was no statutory obligation as between the latter and the former. In that view, the manager was held not entitled to move the High Court for grant of a writ in the Nature of Mandamus under art. 226 of the Constitution. That was one of those earlier cases where a narrow view of the scope of art. 226 of the Constitution and a writ of mandamus was taken.

239. The expanding horizons of the writ jurisdiction in case of arbitrary action of not only State but other authorise which are "State" within the meaning of are. 12and the principles initiated in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, and *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, now govern our jurisdiction. Even a right flowing from a contract when exercised by a statutory a public authority which is a "State" within the meaning of art, 12 must conform to the statute; if it acts beyond the limit imposed by the statue or for an object not envisaged by the statue of it the impinged action smacks of arbitrariness it would be violative of art, 14 and could be interdicted by a writ issued under art. 226 of the Constitution.

240. In *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, , the contention that the State in the matter of a contract cannot be placed under a grater disability than an individual, was also replied by the Supreme Court. The act was assailed as a mala fide and arbitrary act, that is created monopoly in favour of respondent No. 2 therein who was a private individual and that it was not public interest. Following the authority in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , the Supreme Court held (at p. 1999) :

"The discretion of the Government has been held to be not unlimited is that the Government cannot give largess in its arbitrary discretion or at its sweet will or on such terms as it chooses in its absolute discretion. There are two limitations imposed by law which structure and control the discretion of the Government in this behalf. The first is in regard to the terms on which may be granted and the other, in regard to the person who may be recipients of such largess."

241. The court held (at p. 1999) :

"So far as the first limitation is concerned, it flows directly from the thesis that, unlike a private individual, the State cannot act as it pleases in the matter of giving largess. Though ordinarily a private individual would be guided by economic consideration of self-gain in any action taken by him, it is always open to him under the law to act contrary to his self-interest or to oblige another in entering into a contract or dealing with his property. But the Government is not free to act as it like in granting largess such as awarding a contract or selling or leasing out its property. Whatever be its activity, the Government is still the Government and is, subject to restraints inherent in its position in a democratic society. The constitutional power conferred on the Government cannot be exercised by it arbitrarily or capriciously or in an unprincipled manner; it has to be exercised for the public good. Every activity of the Government has public element in it and it must, therefore, be informed with reason and guided by public interest. Every action taken by the Government must be in public interest; the Government cannot act arbitrarily and without reasons and it is so does, its action would be liable to be invalidated. If the Government award a contract or leases out or otherwise deals with its property or grants any other largess, it would be liable to be tested for its validity on the touchstone of reasonableness and public interest and if, it fails to satisfy either test, it would be unconstitutional and valid."

242. In Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., the Supreme Court reiterated that the Gujarat State Financial Corporation would be "other authority" within the meaning of art. 12 and held a writ of amends could be issued directing the Corporation to perform its statutory duties. There the Corporation has entered into a solemn contract in discharge and performance of its duty and the respondent had acted upon it. The Supreme Court held that statutory corporation cannot be allowed to act respondent so as to cause harm and injury flowing from its own conduct to the respondent. In such a situation, the court is not powerless; it can certainly hold the appellant to its promise and by a writ of mandamus compel the performance of its statutory duty.

243. The contention that the matter being in the realm of contract and not amenable to write jurisdiction the court cannot compel performance of statutory duty was repelled in no uncertain terms in Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., The court declared (headnote) :

"It is too late in the day to contend that the instrumentally of the State which would be "other authority " under article 12 of the Constitution can commit breach of a solemn undertaking on which other side has acted and then contend that the party suffering by the breach of contract may sue for damages but cannot specific performance of the contract."

244. There, under the State Financial Corporation Act, 1951, the Corporation entered into a contract agreeing to advance loan of Rs. 30 lakhs to the write

petitioner to set up 4-star hotel. The court (headnote) :

"The agreement to advance the loan entered into in performance of the statutory duty case on the corporation by the state under which it was created and set up. On its solemn promise, evidenced by the aforementioned two documents, the respondent incurred expenses, suffered liabilities to set-up a hotel ... Thus, the principle of promissory estoppel would certainly stop the corporation from backing out of its obligation arising from a solemn promise made by it to the respondent. The respondent acting upon the solemn promise made by the appellant incurred huge expenditure, and if the appellant is held to its promise, the respondent would be put in very disadvantageous position and, therefore, also the principle of promissory estoppel can be invoked in this case."

245. Then court went on to hold (at p. 852) :

"Now if appellant entered into a solemn contract in discharge and performance of its statutory duty and the respondent acted upon it, the statutory corporation cannot be allowed to act arbitrarily so as to cause harm and injury, flowing from its unreasonable conduct, to the respondent, In such a situation, the court is not powerless from holding the appellant to its promises and it can be enforced by a writ of mandamus directing it to perform its statutory duty, A petition under article 226 of the Constitution would certainly lie to direct performance of a statutory duty by other authority as envisaged by article 12."

246. This completely answers the respondent's contention that when the question before the State or the authority which is deemed to be a "State" within the meaning of art. 12 is who should be chosen for awarding the contract or largess, and art. 14 applies, but once that threshold is crossed, the matter enters the realm of contract and any breach of the contract or exercise of a right under contract cannot be questioned by way of writ. Here, the investment by the LIC is authorised by virtue of s. 6(2)(b) read with s. 30 of the LIC Act. The right to remove a director can be exercised by the LIC no doubt as a shareholder; but for the purpose of achieving the object of the LIC Act and its discharges of the function governed by s. 6 of the Act and not for any other purpose. This case falls covered by (ii) and not in category (iii) of the cases referred to in *Radhakrishna Agarwal and Others Vs. State of Bihar and Others*, The power exercisable by the LIC is not purely contractual but referable to a statute, which defines the limitation of its authority. The LIC while it may exercise its vote as any other shareholder and requisition an EGM as any other shareholder, it can do so only for the purpose of or in discharge of its function under s. 6 and for the objects of the LIC Act and not for any other purpose. While the right to requisition an EGM vests in the LIC as in any other shareholder, the exercise of this right by the LIC is restricted to the object and purpose defined by the LIC Act and not for any other purpose. The LIC being a statutory body fills the character of an authority against whom a writ could be issued.

247. The learned Attorney-General argued that every shareholder has an

unrestricted right vested in him to seek removal of a director. It amounts to the exercise of a mere vote by the shareholder, The notice of requisition is merely a step towards the exercise of this right. That right cannot be hind to the LIC.

248. Before we proceed to examine what the various decisions have held on this aspect, we may notice the Principles of Modern Company Law as they have emerged.

249. Gower in "Principles of Modern Company Law", 4th edition, notes (at pp. 614, 615, 616) :

"Scattered through the reports are statements that members must exercise their votes "bona fide for the benefit of the company as a whole", a statement which suggests that they are subject to precisely the same rules as directors. But it is clear this is highly misleading, and that the decisions do not support any such rules a general principle. On the contrary, it has been repeatedly laid down that votes are proprietary rights, to the same extent as any other incidents of the shares, which the holder may exercise in this own selfish interests even if these are opposed to those of the company. He may even bind himself by contract to vote or not to vote in a particular way and his contract may be enforced by injunction As a result, the activities of general meeting may indirectly extend over the whole sphere of the company's operations, and ultimate control revert to shareholders who are frees from duties of good faith to which the directors are subject.

What is more startling still is that the directors themselves, even though personally interested, can vote in their capacity of shareholder at that general meeting.

Clearly, therefore, some restraint must be put on the power of those able to command a majority vote. And in fact it is clear that, in some circumstance, the court will intervene to annul the resulting resolution and to restrain what is generally described as a fraud on the minority."

250. It was recognised (p. 622) :

".... the court could only interfere if they had not acted in good faith. If the resolution were such that no reasonable man could consider it for the benefit of the company as a whole, this might be a ground for finding lack good faith."

251. The learned author elaborates (p. 623)

"Just as the fiduciary duties of directors impose upon them certain objective restraints to which they are subject irrespective of subjective good faith on their part, so, it seems, do the so-called fiduciary obligations of the members when voting ... They cannot exercise their powers so as to expropriate the company's property, or so as to relieve the directors of their duties of subjective good faith, or perhaps, so as to expropriate the shares of the minority ... The decisions, however, purport to be examples of an alleged general principle that the majority

must always exercise their power "bona fide for the benefit of the company as a whole".

252. The learned author discussing the law on the point concludes (p. 629) :

"Where the effect of resolution is to deprive the company of its property or to enable the shares of a minority to be expropriated or to releases the director from their duties of good faith, the resolution will be ineffective, inlaid it is shown positively that the purpose was proper. In other cases the resolution will be upheld inlaid it is shown that the purpose of those voting for it was improper or that reasonable man could not have regarded it as calculated to fulfill a proper purpose."

253. In *E.D. Sassoon and Co. Ltd. Vs. K.A. Patch*, , Justice Pratt sitting singly held :

"The right to vote may be so controlled by the purchaser as to ask the vendor to vote for alterations in articulated of association of the company with a view to procure transfer of the shares in this name. Such a purchase is entitled to a restrictive as well as mandatory injunction, i.e., to restrain him from attending meetings of the company and to enjoin him to sign a proxy with regard to the shares to the purchaser."

254. That a person registered as a shareholder is entitled to vote does not mean that he an vote in such a manner as to result in oppression of the other. The limit of such right is recognised by nullifying any act which result in oppression.

255. In *North-West Transportation Co. Ltd. and James Hughes Beatty v. Henry Beatty* [1887] 12 AC 589 where a voidable contract was entered into by a shareholder who had a majority of votes, exercised his voting power as a shareholder in general meeting to ratify such contract, the court held the he was acting oppressively towards the minority.

256. In *Ngruli Ltd. v. McCann* 90 CLR 425, it was held that the action of the majority could be in breach of the fiduciary duty to consider the interest of that company as a whole and the minority shareholders were held entitled to sue in their own names to remedy the breach of trust.

257. In *Clemens v. Clemens Bros. Ltd.* [1976] 2 All ER 268, the defendant who was holding 55% of the share capital of a family company was the aunt of the plaintiff, who held 45% of the share capital. The aunt was a director of the company, while the plaintiff was not. The director proposed to increase the company's share capital from 2,000 to 3,650 by the creation of a further 1,650 ordinary shares all of which were to carry voting rights. There was a difference of opinion on this proposal and notice of extraordinary general meeting to approve the proposal was sent. The plaintiff brought an action against the company and the aunt seeking a declaration that the resolution were oppressive of the plaintiff and an order setting them aside. The defendant contended that, if two shareholder, both honestly held differing opinion, the view of the majority should

prevail, and that shareholder in general meeting were entitled to consider their own interests and to vote in any way they honestly believed proper in the interests of the company. The court held (headnote) :

"The aunt was not entitled as of right to exercise her majority votes as an ordinary shareholder in any way she pleased; here right was subject to suitable consideration which might make it unjust to exercise it in a particular way."

258. On the facts of that case, the court found (headnote) :

"... the inference was irresistible that the resolutions had been framed in order to put complete control of the company into the hand of the aunt and her fellow directors, to deprive the plaintiff of her existing rights as a shareholder with more than 25 per cent. Of the votes and to ensure that she would never get control of the company. Those considerations were sufficient in quite to prevent the aunt using her votes as she had, and the resolutions would accordingly be set aside."

259. In *Hind Overseas Private Limited Vs. Raghunath Prasad Jhunjhunwalla and Another*, the Supreme Court, after discussing the several English cases, observed (headnote of AIR) :

"Although the Indian Companies act modeled on the English Companies Act, the Indian law is developing on its own lines. Court will have to adjust and adapt, limit or extend, the principles derived from English decisions, entitled as they are to great respect, suiting to the conditions of India society and the country in general, always, however, with one primary consideration in view that the general interests of the shareholder may not be readily sacrificed at the alter of squabbles of directors of powerful groups for power to manage the company."

260. That was a matter arising under s. 433(f) of the Act where winding up was sought on just and equitable grounds and the court cautioned that merely because the shareholdering is between two family groups, it could not be said that the company thereby takes the image of partnership, and held that the principles of dissolution of partnership could not be applied.

262. In *In re Holders Investment Trust Ltd.* [1971] 1 WLR 583, the question posed was whether the majority preference shareholders has acted in the interest of the class as a whole in voting for the reduction of capital so that an effectual sanction had been given to the modification of the class rights, and whether in any event, the company's terms for the reduction were fair, the court held that (at p. 584) : "the majority preference shareholders has considered what was best in their own interests based on their large quite shareholding as class; accordingly, there has been no effectual sanction for the modification of class rights". The court observed that it had to determine whether the supporting trustees voted for the reduction in the bona fide belief that they were acting in the interest of the general body of members of that class. The court thus recognised the limitation on the exercise of the right of the majority vote.

263. *Clemens v. Clemens Bros. Ltd.* [1976] 2 All ER 268, the court clearly held

that if the majority seeks to injure the minority and does not keep the interest of the company in view, it may not approve its action. That was the case where the majority honestly believed that it was in the interest of the company to act in a particular manner and certified the resolutions. The court held that a director, who held a fiduciary position, must not only act within his powers but must also exercise them bona fide in what he pleads to be the interests of the company and then proceed to consider. Is there any similar restraint on shareholder exercising their power as members at general meeting? Reviewing the case-law on the subject the court held (at p. 282) :

"I do not doubt that Miss Clemens (the aunt who had majority shareholding) is in favour of the resolutions and knows and understands their purpose and effect; nor do I doubt that she genuinely would like to see the other directors have share in the company and to see a trust set up for long services employees. But I cannot escape the conclusion that the resolution have been framed so as to put into the hands of Miss Clemens and her fellow directors complete control of the company and to deprive the plaintiff of her existing rights as a shareholder with more than 25 per cent. of the votes and greatly reduce her rights under articles 6. They are specifically and carefully designed to ensure not only that the plaintiff can never get control of the company but to deprive her of what has been called her negative control."

264. The resolutions were nullified. The principle so laid down constitutes a landmark in the field of company law.

265. In *Ebrahimi v. Westbourne Galleries Ltd.* [1973] AC 360 the right to remove a director vested under the articles of a company was held to be subject to equitable considerations. At para 380 of the report, the court regarded the case of expulsion of a director to stand on a different footing from a case of retirement of a director and election of a director to fill in such vacancy. The court stated that in such cases the just and equitable clause would apply and the question would be, whether it is equitable to allow one for two to make use of his legal right to the prejudice of his associates and held (at p. 380) :

"The law of companies recognised the right, in many ways, to remove a director from the board And quite apart from removal power, there are normally provisions for retirement of directors by rotation so that their re-election can be opposed and defeated by a majority, or even by a casting vote. In all these ways, a particular director-member may find himself no longer a director, through removal or non-re-election; this situation he must normally accept, unless he undertakes the burden of proving fraud or mala fides. The just and equitable provision nevertheless comes to his assistance if he can point to, and prove, some special underlying obligation business continues he shall be entitled to management participation, an obligation so basic that, if broken, the conclusion must be that the association must be dissolved."

266. In *Estmanco (Kilner House) Ltd. v. Greater London Council* [1982] 1 All ER

437: [1982] 1 WLR 2, the Vacation Court held :

"Thus, although a majority shareholder, unlike a director, owed no fiduciary duty to the company and was entitled to vote in this own interest, that did not give him an unrestricted right to pass a resolution depriving a minority shareholder of his right or property merely because the majority shareholder reasonably believed that his actions were in the best interests of the company."

267. The court held (p. 11 of 1 WLR) :

"Plainly there must be some limit to the power of majority to pass resolutions which they believe to be in the best interests of the company and yet remain immune from interference by the courts. It may be in the best interests of the company to deprive the majority of some of their rights or some of their property, yet I do not think that this gives the majority an unrestricted right to do this, however unjust it may be, and however much it may harm shareholder whose rights as class differ from those of the majority. If a case falls within one of the exceptions from *Foss v. Harbottle* [1843] 2 Har 461. I cannot see why the right of the majority to sue under that exception should be taken away from them merely because the majority of the company reasonably believe it to be in the best interests of the company that this should be done. This particularly so if the exception from the rule falls under the rubric of "fund on a minority"."

268. The court went on to hold fraud on minority must include where it results in breach of contract. The court observed (p. 15 of 1 WLR) :

"As matters appears to me now, it seems clear enough that the council has throughout been actuated by its desire to put into effect its new housing policy, even though that plainly and admittedly involves the council in a breach of contracts, in depriving the purchasers of flats of their rights as shareholder, and in destroying the scheme under which they were induced to buy their flats. The new housing policy may well be an entirely right and proper policy for the council to adopt for any block of flats where that can be done without committing flagrant breaches of contract; but it is that a different matter where, as for this block, the policy cannot be carried out without committing such breaches."

269. Thus, it is now well recognised even under the Companies Act that the majority cannot act in whatever manner it chooses; the rights of the minority shareholders are also recognised. That the majority cannot oppress the minority shareholders and the minority shareholder have a right to move the court for taking the extreme step of winding up of the company is statutorily recognised. As discussed above, the shareholder even if they are in a majority, cannot act in their individual interest or group interest; even if the group happens to be holding majority they are bound to act in the interest of the company as a whole. Were the writ court find that the majority, is acting against the interest of the company, which is a public authority it is not powerless to intervene. If the court find that the act of the majority is not in the interest of the company as a whole, it can certainly restrain the majority from acting so.

270. From the cases referred to and relied upon by the learned counsel, it would appear that though the right of an individual shareholder is a right which he may exercise in this discretion, that right is subject to certain limitations and cannot be exercised arbitrarily or unreasonably, on such limitation being that it should be exercised in the interest of the company as a whole, and the other that it should not be exercised so as to constitute an oppression of the majority shareholder. This is given statutory recognition under the Companies Act and applied as a cardinal principle in matters of winding-up. In Clemen's case [1976] 2 All ER 268 (Ch.D.), it was enforced by way of a suit under the English law. If that be the position with respect to exercise of voting rights of an individual shareholder, the action of the LIC which is a "State" within the meaning of art. 12 and which must conform to art. 14, exercising its right to requisition an extraordinary general meeting to remove the directors must be much more so amenable to the writ jurisdiction of this court.

271. We cannot, therefore, recognise that any unrestricted power is vested in the LIC even as a shareholder to issue the requisition notice. It can only act to fulfill the object of enactment and discharge the functions within the statutory limits prescribed by the LIC Act. One of the functions which the LIC is empowered to perform is to invest its amount and take all steps to recover the same, and if necessary, for that purpose take over the management of the property given by way of security. That power is to be exercised only to safeguard its investment and recover its amount and not for any other purpose. If it is for any other purpose, it would amount to acting contrary not only to the object and intent of the enactment but also to the express provisions of the Act which circumscribes its authority. The LIC cannot claim to have any private right of its own and act in its arbitrary discretion. In discharge of its function, the LIC must function in accordance with the LIC Act and in conformity with art. 14 of the Constitution. A shareholder, be he a private individual or a public sector company or a statutory body like the LIC would still have to act in the interest of the company as a whole which he is a member and not in its own individual interest.

272. We are unable to comprehend how the interest of the LIC or that of the other financial institution are adversely affected by the nine directors whom they now seek to remove continuing on the board of Directors. These directors have been on the board for the last more than a decade, some of them ever since the inception of the company. These very directors have been elected and re-elected for successive terms unanimously supported even by these financial institutions. The company itself has been showing a consistently good record of growth and progress. It has been declaring 20% dividend for the last three years. The assets of the company have grown and the financial institutions themselves have obtained right shares amounting to nearly ten times their original investment within a short period of 24 years. What prompted these financial institutions to seek replacement of these nine directors is not spelled out in any of the affidavits. The assertion of the petitioner is that there can be no other reason than that these nine directors did not fall in line with the wishes of the financial institutions.

to register the transfer of shares in favour of the respondent-companies. We are unable to imagine how the interest of these financial institution or of the petitioner-company are advance by registering these shares or are thwarted by refusing to register the transfer of these shares in the name of the respondent-companies. The profit earned by the petitioner-company or by these financial institution are in no way affected by such refusal. In fact, it is not the case of the LIC or of respondents Nos. 1 and 2 that their own interest is in any way affected by the refusal of the petitioner-company to register the transfer. If that be so, what urgency or even the necessity of requisitioning or extraordinary general meeting on fails to comprehend. The petitioner alleges that the removal of the nine directors is sought for the sole purpose of securing a review of the decisions of the board directors and constitute a majority of nine out of fifteen. As discussed above, the circumstances unmistakably point out only to this and only this conclusion and none else. If this is not the reason, then the respondents must disclose what other reason had promoted this requisition. Their only answer is that they are not bound to disclose their reason; they claim that they have a right to remove any director only because they do not wish these directors to continue and choose such persons as directors as they like. But as discussed above, it must be held that no such absolute under a state even where the right sought to be exercised as a member of a corporate body. The rule that corporate membership rights are subject to the supremacy of the majority has since been greatly modified. To that rule, which is often referred to as the rule in *Foss Harbottle* [1843] 461 several exceptions have now been admitted. If the act is ultra vires the company or village or if the act constituted a fraud on the minority and the wrongdoers themselves are in control of the company, this rule would not apply. (vide *Palmer's Company Law*, 23rd edition, page 747, para. 58.11). When no such right is recognised even in a private shareholder, much less can such arbitrary right be recognised to vest in a statutory body like the LIC, which is a "State" within the meaning of art. 12 of the Constitution. If an individual shareholder must act in the interest of the company as a whole, public financial institution which are concerned with the protection of their investments must, as shareholders, be required to exercise that right for that purpose and for no other collateral purpose. They cannot seek to exercise their right arbitrarily. In the circumstance of the case, we are unable to hold that in requisitioning the EGM for removing the nine directors, the LTC has kept in view the interest of the petitioner-company as whole of which it is a shareholder. The requisition notice deserves to be quashed on this ground as well.

273. The petitioners also allege that the action of the LIC in requisitioning the EGM to remove the nine directors and to bring in its own whole-time employees as part-time directors of the petitioner-company was a mala fide action. That, according to them, is the culmination of a course of undue pressure put upon the petitioner-company to register the transfer of shares in favour of respondents Nos. 4 to 16. Finding that the petitioners were not yielding to the pressure, the LIC sought to punish the petitioner-company and its management by initiation

steps to remove nine out of fifteen directors who had opposed registration or transfer. According to the petitioner, even respondents Nos. 1 and 2, the Union of India and the RBI, were behind these steps. By way of amendment of the original writ petition, the petitioner pleaded that the Union of India, through the Ministry of finance, Department of Economic Affairs, Addressed a letter dated July 28, 1983, to all the stock exchange in the country informing them that "it had noticed that the board of Directors of some companies have been rejecting transfer of shares lodged with them particularly, if the transfer is a non-resident Indian." It was pointed out that "any impediment on such free negotiability and transferability of shares would shake the confidence of investors in the very functioning of the stock exchange and negative the object of the Government to encourage non-resident Indian investors to invest in Indian companies." The petitioner say that this obviously had reference only to the DCM Ltd. and the petitioner-company, for, at the relevant time, these were of share in favour of respondents Nos. 4 to 16, the NRI investors. After that letter was issued, the representatives of the financial institutions, including the LIC, IDBI, IFCI, GIC and UTI, who have a decisive majority shareholding in the petitioner-company, pressed upon the petitioner to register the transfer of shares in the names of respondents Nos. 4 to 16. Notwithstanding the legal advice to the contrary, the financial institutions continued to press upon the petitioner to register the transfer of shares. It is alleged that the requisition notice was issued at the instance of respondent No. 1 to achieve this object. It is argued that in deciding on the allegation of mala fides, all the facts and circumstances and the setting in which each of these facts manifested themselves must be taken note of. A single fact viewed in isolation may not lead to the conclusion that the person responsible was actuated by mala fides. It is the cumulative effect of the several events in the circumstances in which they occurred and the subsequent act of the LIC requisitioning the meeting would establish the mala fides of the respondents.

274. The allegations relating to pressure fall under four head :

- (1) Initial refusal dilatory method adopted by the financial institutions in accepting prepayment of loans proposed by the petitioner-company.
- (2) Non-acceptance of the proposal of the petitioner for the merger of Goetze-Escorts companies.
- (3) Deliberate delay in considering the petitioner-company's proposal to issue debenture-cum-equity shares of Rs. 35 crores.
- (4) Note submitted by D. N. Davar at the meeting of the petitioner-company held on January 6, 1984, to withdraw the present Writ Petition No. 3063 of 1983.

275. The case of the petitioner with reference to each of these facts gathered from the affidavits in supports of the writ petition requires to be noticed is some details, for the learned Attorney-General rightly contends that where the allegations of mala fides are made, all the material particular must be stated and

established. Unless all the material particular are averred, the respondents cannot be called upon to answer them. At the stage itself, we may deal with an objection in the natural of a preliminary objection taken by the learned Attorney-General that the allegation of mala fides are not properly verified by disclosing the source of information and the documents on which they are based and hence the pleading in this behalf should be struck off and should not be investigated further.

276. The learned Attorney-General referred us to the decisions of the Supreme Court is Sukhwinder Pal Bipan Kumar and Others Vs. State of Punjab and Others, in which the petitioner had verified the affidavit stating "that the allegation in para 9 and 12 are correct to the best of my knowledge". The court observed (p. 70) :

"... this is no affidavit at all. Under order XIX, rule 3 of the Code of Civil Procedure, 1908, it was incumbent upon the deponent to disclose the nature and source of this knowledge with sufficient particularity. The allegation in the petition are, therefore, not supported by an affidavit as require by law. That being so, the Sate Government was fully justified in stating in answer "Denied"."

277. The case of Virendra Kumar Saklecha Vs. Jagjiwan and Others, on which also reliance was placed, arose out of an election potion filed under the Representation of the People Act, 1951, making allegation of corrupt practice and the verification of that petition was attacked as not being in accordance with law. The Supreme Court held (headnote) :

"... the affidavit in support of the election petition is to be modeled on the provisions contained in Order 19 of the Code of Civil Procedure."

278. It was so held because s. 83 of the Representation of the People Act, 1951, requires an election petition to be verified in the manner laid down in the CPC. The verification has to be of information received. The "sources or grounds of information or belief" are to be set out in the affidavit. The Supreme Court further held (headnote) :

"Proviso to section 83(1) requires an affidavit in the prescribed form in support of allegation of corrupt practice. According to rule 94A of the Conduct of Election Rules, the affidavit should be in Form 25 which requires the deponent to set out which statement are true to the knowledge of the deponent and which statement are true to his information. The source of information is required to be given under the provisions in accordance with rule 7 of the M.P. High Court Rules which is not inconsistent with the Act and Form 25 of the Conduct of Election Rules. According to rule 7, every affidavit should clearly express how much is a Statement and declaration from Knowledge and how much is a statement made on information or belief must also state the source or ground of information or belief with sufficient particularity. The High Court Rules give effect to provisions of Order 19, Civil PC.

The importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations. The non-disclosure of grounds or sources of information in an election petition which is to be filed within 45 days from the date of election of the returned candidate, will have to be scrutinised from two points of view.. If there is any embellishment of the case, it will be discovered."

279. This rule is specially applicable to election petition because of r. 94A. Their Lordship were construing the M.P. High Court Rules which required the particular from of verification and the importance thereof in the context of the period of limitation within which an election petition may be filed.

280. In *Barium Chemicals Ltd. v. Company law Board* [1966] 36 Comp Cas 639, the Supreme Court, while recognising that it would be difficult for a petitioner to have person knowledge in regard to an averments of mala fides held (p. 678) :

"... where such knowledge is wanting he has to close his souse of information so that the other said gets a fair chance to verify it and make an effective answer."

281. In this context, the Supreme Court referred to its observations in *The State of Bombay Vs. Purushottam Jog Naik*,

".. as slipshod verifications of affidavits might lead to their rejection, they should be modeled on the lines of O.XIX, r. 3 of the CPC and that where an averments is not based on personal knowledge, the source of information should be clearly disclosed in the absence of tangible material, the only answer which the respondents could array against the allegation as to mala fides could be one general denial."

282. At the outset, it must be noticed that all the affidavits filed by the petitioner in this case conform to the rules governing writ petition filed on the Original side of this High Court. When O.XIX of the CPC does not in teams apply to the affidavits filed in writ proceeding and the affidavits filed in this court conform to the rules farmed by this court, they cannot be summarily excluded from consideration. The averments verified in accordance with the rules specifically framed to govern writ petition cannot be ignored merely because the verification does not conform to O.XIX, r. 4 of the CPC. An analysis of the affidavits and the verification would show that the averments with respect to each of the alleged acts of pressure disclose the source of knowledge in paragraph 14 are stated to be based on press statements and are attributed to the Union Finance Minister. The averments in paragraphs 62 to 74 relate to Caparo ground holding and are based on record which are within the knowledge of the RBI the PNB and to her respondents. The averments in paragraphs 76 to 92 as also averments in paras. 116 to 143 deal with letter addressed to several of the respondents and that is a matter of record. The allegation made in paras. 141(ia) to 131(v) quo the LIC are support by particular of sauces of information and mostly they are matter of record and inferences drawn therefrom. In view of the above, we are unable to hold that there is no proper verification of the affidavits.

283. Mr. Nariman next urged that a general denial of the allegations of undue pressure was not enough. On the other hand, Mr. Parasaran, learned Attorney-General, urged that the petitioner's averments are devoid of all material particular and, therefore, a general denial was all that was required. Even otherwise, the allegations of pressure made by the petitioner do not fall within the legal concept of undue influence, fraud, coercion, intimidation, duress or misrepresentation which alone render an act void or voidable. Mr. Parasaran prefaced his arguments in regard to the pressure alleged to have been exerted on the petitioner-company and petitioner No. 2, managing director, by stating that unless the pressure amounted to duress, coercion or intimidation or undue influence, it can have no bearing on the issues involved in this case. Pressure as such is not a legal or juristic concept. The pressure exercised must be such as to amount to undue influence or coercion. Even if it were to constitute undue influence or coercion, it would be a factor relevant to the general law and not the administrative law. In the field of administrative law, unless the right of a party was affected and some injury or prejudice is caused to that party by a statutory authority in discharge of a duty, it cannot be questioned by way of writ. He urged that if in discharge of that duty, the administrative authority exercised undue influence or coercion, that act does not become void; it is only voidable. However, if the administrative authority in discharge of its duty, act mala fide, legal or factual, the act would be void. It could be quashed. Exercising pressure does not amount to acting mala fide. It was said that what all was alleged in this carefully drafted writ petition was that in view of the mounting pressures on the board of directors of the petitioner-company to revoke their decision not to register the transfer of share and in order not to cause embarrassment to public financial institution which have also invested large sums by way of loan to the petitioner-company, the managing director of the petitioner-company in October, 1983, not only offered to prepay the entire outstanding loan of about Rs. 2 crores to public financial institution but also sent a cheque for Rs. 61,51,000 to the lead financial institution, IDBI, towards total repayment of its outstanding teams loan. The particularly of the so called pressure were not stated. When and by whom and on whom this pressure was mounted is not averred. What embarrassment the petitioners wanted to save the public financial institutions from is not spelled out. In para. 126 of the petition what all is averred is :

"We are addressing this letter to you as we have been informally informed that pressure will be brought upon this company, either directly or through financial institutions, to register the shares in favour of the 13 companies of the Caparo ground notwithstanding any valuation of the law committed in the purchased of the said shares."

284. This letter is the one addressed to the Finance Minister on September 17, 1963, by petitioner No. 2 on behalf of the petitioner-company and it is silent on these particulars.

285. Here again, it is pointed out, who informed the petitioner-company so and

when it was so informed are not stated. What sort of a pressure was threatened; was it sought to be put on petition No. 2 or on all the director, particulars, are not pleaded. Even the affidavit does not give these particulars. Though it is stated in the minutes of the petitioner-company dated June 8, 1983, that attempts to intimidate and occurrence were made, no particulars are disclosed. Once again in para. 144 of the petition this aspect is dealt with but what all is stated :

"Agencies and statutory bodies under the control and supervisions of respondent No. 1 have from time to time adopted position exerting unwanted pressure on the petitioner-company with a view to coerce the board of directors of the petitioner-company to reverse their decisions refusing registration of shares in the names of respondent Nos. 4 to 16."

286. This averment too, it is urged, is devoid of all particulars. The letter addressed by the Government of India to the stock exchange also is stated to be instance of bringing pressure in the legal sense of the term. The learned Attorney-General contends that that letter only clarified the legal position in general in the interests of the economy of the nation and did not amount to a direction to any company; much less can it be termed as pressure exerted by the Government of India on the petitioner-company to register the transfer of shares.

287. In para. 149A(8) of the petition, it is pleaded that the financial institution contained to press upon the petitioners to register the transfer of shares, notwithstanding the legal advice. It was pointed out that even petitioner No. 2 accepted in his affidavit filed in June, 1984, at page 1545 of the compilation, that the financial institution did not exert any pressure for the registration of transfer of shares until September 17, 1983. That statement is contrary to what was stated in para. 149A (9) of the petition. We, however, find that what all is stated in that paragraph is that after October, 1983, pressures were exerted.

288. We may first refer to the contention of the learned Attorney-General that the pleading with regard to pressure, undue influence and coercion leading to mala fides is vague; it should have been precise. As laid down by O. VI, r. 4. CPC, it should have been supported with full material particulars. The averments, such as they are, lack material particulars and even if taken to be true do not amount to a plea of coercion. He contend that in any event the material particular not having been pleaded it does not amount to a pleading at all which the respondents could be called upon to controvert. Reliance is placed upon the judgment of the Supreme Court in *Varanasiya Sanskrit Vishwavidyalaya and Another Vs. Dr. Rajkishore Tripathi and Another*, in which it was held that its not enough to state in general terms that there was collusion without more particulars. In *Bishundeo Narain and Another Vs. Seogeni Rai and Jagernath*, , the court held that general allegation are insufficient even to amount to an averment of fraud of which any court ought to take notice, however strong the language in which they couched may be. The same principle applied to undue influence and coercion. It is contention of the learned Attorney-General that the

same principle applied to an allegation of mala fide. When such is the pleading, no amount of evidence could be considered. Evidence unrelated to pleading can be of no avail. That evidence cannot be relied upon for proving a different kind of pressure that could possibly be pleaded and proved.

289. In *The Union of India (UOI) Vs. Pandurang Kashinath More*, , the court held that the particulars of any allegation of conspiracy must be given. The learned Attorney-General points out that although O. VI, r. 4. of the CPC does not in terms apply to an allegation of conspiracy, the principle underlying it was applied by the Supreme Court to a pleading of conspiracy. The same principle should be extended to an allegation of mala fide also. Where the pleading suffers from lack of material particulars and is based on vague and general allegation, as held in *The Union of India (UOI) Vs. Pandurang Kashinath More*, , a general denial would be sufficient.

290. This requires us to refer to the allegations of mala fides themselves in detail.

291. In para. 11 of the petition, it is averred that :

"In view of the mounting pressures on the board of directors of the petitioner-company to revoke their decision to reject the transfer of shares and in order not to cause embarrassment to the public financial institutions which have also invested large sums by way of loans in the petitioner-company, the managing director of the petitioner-company in October, 1983, not only offered to repay the entire outstanding loans of Rs. 2 crores of public financial institutions, but as a matter of fact sent cheque for Rs. 61,51,000 to the lead financial institution, IDBI, towards total prepayment of outstanding principal loan as per their letter dated December 17, 1983."

292. Although the IDBI made a public statement that it was short of funds and appealed to the borrowers to repay the loans, the manager of the IDBI, in his letter dated December 24, 1983, refused to accept prepayment of the loan amount and treated a sum of Rs. 52,44,000 as "excess amount received from the company." The petitioners allege that this was done in spite of petitioner No. 2's letter "to the chairman of the IDBI protest in against the linking up of prepayment of loans and the controversy regarding non-registration of transfer of shares of respondent No. 17's companies". A copy of the letter was filed. It is averred that at the insistence of Punjab to reconsider the decision reducing to register the transfer of shares in the name of the Caparo group of companies, a meeting of the lawyers of the petitioner-company with the legal advisers of financial institutions was fixed on November 1, 1983, at the office of the IFCI, New Delhi. That meeting was held at 11-30 a.m. in the office of IFCI, New Delhi, and was attended by Hariharan, Executive Director, LIC, who is also the nominee on the board of the petitioner-company. At a luncheon meeting on November 9, 1983, at New Delhi, petitioner No. 2 met Punja and requested Punja to expeditiously clear proposals of the petitioner-company at the inter-institutional meeting scheduled to be held later that afternoon. Subsequently, petitioner No. 2

was informed the formal clearance would have to await as Punja desired to have a discussion with petitioner No. 2. On November 10, 1983, petitioner No. 2 was requested to attend a meeting with Punja at the IDBI office at New Delhi. At this meeting, Punja insisted that the petitioner-company must register at least "some shares" of the Caparo group of companies. Petitioner No. 2 informed Punja that he had learnt about some investigation having been undertaken by the PNB into the purchases of shares by the Caparo group of companies and requested Punja to at least await the outcome of the said investigation. On November 12, 1983, at another meeting between Punja and petitioner No. 2 at New Delhi, Punja once again insisted that the shares of the Caparo group of companies should be immediately registered. When he was told that it was not possible, Punja said that at least some shares must be immediately registered and that petitioner must give an assurance to that effect. On November 14, 1983, petitioner No. 2 received a telephone call from Bombay from S. S. Nadkarni, Chairman, ICICI, to meet him at New Delhi on November 16, 1983. Petitioner No. 2 met Nadkarni on November 16, 1983, in the office of ICICI, New Delhi, at 3-00 p.m. Nadkarni informed petitioner No. 2 that Punja was upset that petitioner No. 2 had not agreed to register immediately at least some shares in the name of Caparo group of companies. Nadkarni also requested that at least some shares be registered immediately. Petitioner No. 2 apprised him of the illegalities in the purchase of shares and also gave copies of letters addressed by the company to the RBI detailing all the illegalities which forced them not to register the shares. On December 13, 1983, a meeting between petitioner No. 2 and representatives of the financial institutions including the LIC was held at the office of Punja. At this meeting, petitioner No. 2 was called upon to explain why the shares were not being registered and he was also informed that all issues relating to prepayment, Goetze-Escorts merger, etc., were inter linked with the question of non-registration of shares. At this meeting, Petitioner No. 2 told them that in view of illegalities in the (purchase of) shares "he would not succumb to the unethical pressures being exerted upon him to register the shares in the names of Caparo group of companies". Once again on December 20, 1983, when petitioner No. 2 had a telephonic conversation with Punja in New Delhi to enquire about the clearance of the company's proposals for prepayment of loans, the Goetze-Escorts merge and the debenture issue, Punja answered by a counter-question as to whether the board of directors of the petitioner-company had agreed to reconsider registration of transfer of shares and whether petitioner No. 2 would agree to register "at least some shares". He also retreated that the company's proposals and registration of shares are interlinked and, therefore, some shares at least be registered. On the same day, petitioner No. 2 addressed a letter to Punja recording the above conversation. With reference to that letter, petitioner No. 2 received a telegram from Punja in Bombay on December 28, 1983, requesting him to be present for a meeting in Bombay on December 29, 1983. When petitioner No. 2 requested to fix the meeting at a subsequent date, he was informed that he must be present on December 29, 1983, at 4 p.m. as another date and time would not be convenient. Petitioner No. 2, therefore, attended the

meeting whereat the representatives of all financial institutions including the LIC were present. At that meeting, the proposal to get the nominee of the UTI elected on board of the company was made and when it was suggested by the second petitioner that it could be done at the next annual general meeting, he was told that it was totally unacceptable to the institutions and that petitioner No. 2 should take steps to get him nominated on the board immediately. When petitioner No. 2 stated that there was no reason for this hurry, he was bluntly told that the financial institutions owned majority shares and the petitioners must follow their instructions. At that meeting, he was also told that the financial institutions would not agree to favourably consider the Goetze-Escorts merger proposal as the shareholding of the institutions in the petitioner-company would, as a consequence, be reduced from 52% to about 49% and that they would not agree to the shareholding being reduced below 50%. Petitioner No. 2 informed them that this was contrary to their earlier communication that the institutions had agreed to the merger proposal in principle. It is against this background that at the meeting of the board of directors held on January 6, 1984, D. N. Davar, Executive Director of IFCI, stating that he was representing all the financial institutions holding 52% shares in the petitioner-company, tendered four typed and signed referred to above in detail. His suggestions were not adopted by the board. Petitioner No. 2 addressed a letter dated January 9, 1984, to Punja appealing him to restore good faith and goodwill between the petitioner-company and the financial institutions.

293. The averments detailed above, in our opinion, give sufficient particulars to enable the respondents to meet the case of the petitioners. The allegations are with reference to specific dates and event. They also refer to the correspondence relevant in this behalf. It cannot be said that the averments in the petitioners' affidavit are devoid of material particulars so as to absolve the respondents from the obligation to rebut them.

294. Respondents Nos. 1 to 3 in their affidavits-in-reply did not state anything in regard to these allegations obviously because it was a matter which did not concern them and related to the facts within the knowledge of the financial institutions.

295. The LIC filed affidavits-in-reply at the admission stage as well as on February 22, 1984, and February 28, 1984. After it was admitted, another affidavit-in-reply was filed on May 17, 1984. The LIC denied that in issuing the said requisition it had acted at the behest of the Central Govt. or because petitioner No. 2 did not succumb to the pressure allegedly exerted by it and other financial institutions to register the transfer of shares in favour of respondents Nos. 4 to 17. It also denied that prepayment was refused for ulterior motive of compelling the petitioners to register the transfer of shares. It was pleaded that the security of the several financial institutions, namely, IDBI, IFCI, UTI, GIC, LIC and ICICI and International Financial Corporation, Washington (IFC/W), to whom the assets of the petitioner-company were mortgaged, was to be

shared *pari passu* and unless all the joint mortgagees consented, prepayment of loans could neither be made nor accepted. The agreements also provided for ninety days" prior notice to all concerned and for obtaining the consent of the joint mortgagees. The financial institutions has also the right to appoint their nominees on the board of directors of the petitioner-company. Therefore, when a telex message was sent by petitioner No. 2 on October 24, 1983, to IFC/W requesting permission for prepayment, the petitioner had to consider all these aspects of the matter. It was not clear whether prepayment was offered to IFC/W. It was admits that the petitioner wrote a letter to the lead institution, IFCI, to clear prepayment of the outstanding loans of Rs. 2 crores. But that letter did not make any reference to the telex sent to the IFC/W. The only reason given for prepayment was "improved financial position" of the petitioner-company. This prepayment was suddenly contemplated in October, 1983. It was admitted that by a letter dated November 7, 1983, addressed by petitioner No. 2, Davar, Executive Director of IFCI, was request to expedite the necessary permission for prepayment of loans do to the other financial institutions. To that was enclosed the telex received by the petitioner-company from IFC/W granting permission for prepayment. Petitioner No. 2 retreated his request at a meeting with the chairman of IDBI on November 9, 1983, and again throughout a letter on November 29, 1983, for expeditious clearance of prepayment of loans. On December 6, 1983, another telex message was addressed by petitioner No. 2 to IDBI to accept prepayment. Petitioner No. 2, without awaiting expiry of ninety days, sent along with his letter dated December 17, 1983, a cheque for Rs. 61.50 lakhs by way of prepayment to IDBI's loan with interest. On receipt of that cheque, as the question was not finally decided, IDBI retained only the amount due by that date and returned the balance.

296. In paragraph 5(a)(x) of its affidavit-in-reply, the LIC alleged that for the first time, petitioner No. 2, in his letter dated December 20, 1983, addressed to IDBI, stated that "acceptance of prepayment was imperative and prepayment was being offered because of the urgency of debenture issue of Rs. 35 crores" and so that "all the present and future security package and assets of the company can be offered as securities against the proposed secured debenture issue". The petitioners alleged that at a meeting held on December 29, 1983, petitioner No. 2 got the impression that prepayment of the borrowings of the financial institutions would be approved expeditiously and he, therefore, sent a cheque on December 31, 1983, once again towards prepayment of the loans. It is averred that the financial institutions with a view to take a decision in this matter addressed a letter to the petitioner-company calling for certain information which was forwarded on January 4, 1984. It is stated that "it is in this situation that Davar, the then Executive Director of the IFCI, who was also on the board of the petitioner-company as a nominee of the IFCI, stating that he was acting on behalf of the financial institutions, requested that as the matter of prepayment was under consideration the petitioner-company must recall cheque given towards prepayment." By a letter dated January 13, 1984, Punja, the

chairman of the IDBI, informed the petitioner-company that the financial institutions were accepting prepayment. It was pleaded that the above facts showed that there was no delay on the part of the public financial institutions in accepting prepayment. According to respondent No. 18, petitioner No. 2 was anxious to get rid of the financial institution "in order to avoid approaching the financial institutions for clearance of various schemes of the second petitioner, which, would have the effect of reducing the shareholding of some of the financial institutions in the petitioner-company from the position of majority to that of a minority, and also to avoid the continuance or appointment of nominee director of the financial institutions". It was averred that the reason given for effecting prepayment, viz, improve financial position of the company, was also not correct and the subsequent events would show that the company had to borrow huge amounts at higher rates of interest. Respondent No. 18 thus denied that the offer of pressures petitioner No. 2 to register the transfer of shares in favour of respondents Nos. 4 to 17.

297. We have been taken though the several affidavits of the petitioners and the affidavits-in-reply filed by all the parties. We find that in the initial affidavit filed by respondent No. 18 at the admission stage, the LIC contended itself by merely stating that those allegations relate to "the realm of internal management of the petitioner-company and cannot be brought before this court." It took other legal pleas with regard to the maintainability of the writ petition against the LIC and with regard to the jurisdiction of the court to grant any relief restraining the company from holding its meeting. It did not state why the prepayment was not accepted as soon as it was offered.

298. The facts relating to prepayment of loans by the petitioner-company are based on documentary evidence which is not dispute. Only certain allegations made and inference sought to be drawn on the strength of these documents have to be considered.

299. The offer of prepayment made for the first time on October 25, 1983, was accepted finally by the financial institutions on January 13, 1984. It is true that under the loan agreements, the financial institutions have been given the power to insist upon ninety days" notice of intended prepayment. They have also been given the power to refuse prepayment. Any prepayment must be in full to all the financial institutions or proportionate to all the financial institutions. Unless all financial institutions accept, the petitioner-company could not insist upon acceptance of prepayment. However, when any debtor-company proposes to make prepayment, that offer must be accepted or rejected on its own merits. It cannot be linked up with any other extraneous issue. It is the allegation of the petitioners that although the financial institutions had no ground to refuse prepayment especially after IFC/W had agreed to accept prepayment and the petitioner-company had agreed to pay the entire loan advanced to it by all the financial institutions, the financial institutions could not refuse acceptance. By letter dated November 7, 1983, addressed to Davar, Executive Director of IFCI, it

was made clear that prepayment of loans due to all the financial institutions was being offered and that IFC/W had also agreed to accept prepayment. The telex message received from IFC/W was attached to that letter. This is admitted in the affidavit of Ganesan Chidamber filed on behalf of respondent No. 18. It is asserted by the petitioners that in spite of this, the financial institutions, including the LIC, did not accept the prepayment and used it as a lever to pressurise the petitioner. Petitioner No. 2 was told by Punja that in principle, all the financial institutions had agreed to accept prepayment, but before it was accepted, the petitioner-company should agree to register the transfer of at least some shares. Petitioner No. 2 expressed his inability. This allegation made by petitioners with particular reference to Punja when he contacted petitioner No. 2 to meet him at Bombay, was defined in general terms in the affidavit of Ganesan Chidamber filed on behalf of the LIC. Ganesan Chidamber was admittedly not present at any of the meetings. The denial by such a person could not be of any value and was rightly commented upon severally by the petitioners' counsel. To fill up this lacuna, the affidavit of Punja, the managing director of IDBI, was filed in this court during the course of hearing on June 22, 1984. Although IDBI is not a party, Punja states in his affidavit that it is being filed on legal advice. That affidavit was filed especially to rebut allegations made in the affidavit of petitioner No. 2 dated June 9, 1984, and in the context of the affidavit of Chidamber filed on May 17, 1984, being criticised as insufficient and cannot be acted upon. Punja in his affidavit merely stated that he was denying each and every statement. He denied "that he had brought pressure on the petitioners, that he had linked the proposal of Goetze-Escorts merger and the debenture-cum-equity issue and prepayment of loans by the petitioner-company or any of them to the transfer of shares in favour of respondents Nos. 4 to 17 or any of them." As regards the telephonic conversations and interviews, he admitted having communicated to petitioner No. 2 as follows :

"that in the light of submissions and clarifications issued by the Reserve Bank of India by its circular dated September 17 and 19, 1983, the board of directors of the first petitioners might reconsider the matter and consider registering the transfer of at least those shares which were legally acquired and properly lodged. I deny that at such meeting or conversations I told petitioner No. 2 that "I appeal to you to register the shares" that is to say, all the shares as now suggested by petitioner No. 2. All requests by me were only appeals "to transfer some shares " as were legally acquired and properly lodged and that I had not at any stage insisted or put any pressures on petitioner No. 2 that unless the share so some of them were transferred to respondents Nos. 4 to 17, the financial institutions would not consider or approve of the three proposals of the petitioners, individually or collectively, namely, (i) proposal for prepayment of loans,

(ii) proposal for Goetze-Escorts merger,

(iii) proposal for debenture-cum-equity issue."

He also denied that he had either in the interviews, correspondence or telephonic conversations informed petitioner No. 2 that the above three proposal would be considered by him only if the share lodged by respondents Nos. 4 to 17 were transferred by the petitioners. This affidavit of Punja establishes one fact, viz., that he, as the chairman and the managing director of the IDBI, requested petitioner No. 2 register transfer of at least some shares, if not all the shares as alleged by the petitioners. No reason for showing this interest in the transfer of shares purchased by respondents Nos. 4 to 16 is stated. He himself does not suggest in his affidavit the reason why he shows such showed such interest. So far as these public financial institutions were concerned, it was immaterial whether those shares were held by an India or a non-resident India or respondents Nos. 4 to 16. It did not affect the investments of any of these public financial institutions. By the transfer or non-transfer of the shares, the IDBI or any other financial institution was not to be involved in any legal proceedings.

300. The letter dated December 20, 1983, addressed by the second petitioner to Punja records the above facts. That is a contemporaneous record. If what was stated therein were not true, Punja would I have immediately protested and denied that he had ever made a request for registering transfer of at least some shares or stated that the consideration of the proposals made by the petitioner-company and registration of shares was interlinked. Neither he nor any of the financial institutions wrote any reply denying this statement. There is no reason to disbelieve the petitioners' averments in this regard.

301. That the averments of the petitioners is true is further confirmed by the note late submitted by Davar at the meeting of the board of directors held on January 6, 1984, to withdraw the writ petition. It would be remembered that the issues involved in the writ petition at that stage were limited to the validity of the circular issued by respondent No. 2 and the right of respondents Nos. 4 to 16 to obtain registration of transfer of shares in their favour. These issues did not concern the public financial institutions as such. They would not increase or decrease their share in the dividend declared by the petitioner-company. If at all anybody was interested in contesting the matter, it was respondents Nos. 4 to 17. Respondents Nos. 1 to 3, who were interested in indicating their policy were already contesting the writ petition. Respondents Nos. 4 to 17, who were interested in obtaining the transfer, did not choose to enter their appearance or oppose the grant of relief.

302. According to the petitioners, in this situation, without contesting the issues before the court Swraj Paul, respondent No. 17, who controls the respondent-companies issued statement that it was now up to the financial institutions and other respondents to see that the shares purchased by NRI are registered and if the directors still do not agree to register, suitable steps may be taken by the financial institutions. The LIC, which held 30% of the shares and along with the support of the other shares and along with the support of the other financial institutions, cumulatively holding 52% issued the requisition notice to replace the

nine directors who had opposed the registration of shares so that it could be accomplished thereafter to benefit the responded-companies. The only reason given by the LIC in the resolution, as already discussed above, could not be the true reason and in any case, was untenable. The LIC has not suggested any other reason in its affidavit-in-reply. During the course of the arguments, it was suggested that prepayment was insisted by petitioner No. 2 in view of the proposal for issue of debenture-cum-equity share. Clearance of the debenture-cum-equity issue as proposed by the petitioners would have resulted in the reduction of equity holding of the financial institutions and acceptance of prepayment would have reduced their claim to the debenture-cum-equity share proposed to be issued by the petitioners. That averment only means that acceptance of prepayment was being postponed to see that the shareholding of the financial institutions was not reduced and for considerations other than those envisaged by the contract itself. The suggestion made by Punja, chairman and the managing director of the lead financial institution, which, in the circumstances almost amounts to a directors, followed by the suggestion of Davar, speaking for all the financial institutions, to withdraw the writ petition, in our view, discloses the purpose behind this move to requisition the meeting and remove the directors. Respondent No. 17 stated that it was now for the financial institutions to see that the transfers of shares are registered. That furnishes the reason for the LIC to requisition an EGM of the petitioner-company. That cannot be a valid reason. In view of the above discussion, the allegation of the petitioners that the refusal to accept prepayment and requisition of the EGM by the LIC is thus established. The requisition of the EGM by the LIC is thus not bona fide. It amounts to an arbitrary and mala fide exercise of power for a collateral purpose.

303. It was also alleged that the LIC requisitioned the meeting at the instance of respondents Nos. 1 and 2 and that the speech of the Union Finance Minister and the speeches of Swraj Paul as reported in the press support this conclusion.

304. In para. 13 of petitioner No. 2's affidavit, it is averred that "addressing the platinum jubilee of the stock exchange, the finance Minister, as reported in the press, administered a threat in the following terms :

"I have a very effective instrument under my command to end the uncertainty,"

a statement which was widely reported in the press. Some other press report said :

"The Union Finance Minister, Pranab Mukherjee today issued a clear warning to these companies which are withholding registration of share certificates in the name of non-resident Indians. He, however, did this without mentioning the companies and the non-resident Indians but restricted his reference to "investors". But the import of his warning was clear enough and his audience at the Calcutta Stock Exchange this morning received the warning with a thunderous applause. Addressing the platinum jubilee of the stock exchange, Mr.

Mukherjee "told" those who were creating uncertainty in the minds of "investors" that "please do not disturb the system, do not allow uncertainty to creep in, do not create a situation when doubts creep into the minds of investors". Referring to the dominant positions held by the financial institutions in the equity shares of large private companies, he said "I have a very effective instrument under my command to end the uncertainty".

The Union Finance Minister's warning this morning came in the wake of the blistering attack by Mr. Swraj Paul, the U.K. based industrialist whose large purchases of shares of companies started the controversy over non-resident Indian's investment in the Indian corporate sector on the Reserve Bank Governor and the Deputy Governor for the latest controversy on investment in the shares of Reliance Textiles. Mr. Paul accused Dr. Manmohan Singh and Mr. Amitava Ghosh of following standard in the matter of non-resident Indians' investment.

Mr. Paul alleged in Calcutta yesterday that the RBI had been asking him all kind of questions about his investment in Delhi Cloth Mills and Escorts Ltd. while it had apparently cleared the investment by 11 companies in Reliance Textiles without asking a single question. Even after it had cleared his investment, the RBI had imposed many conditions".

305. The petitioners' allegation that the Finance Minister administered the threat is solely based on a press statement.

306. In *Samant N. Balkrishna and Another Vs. V. George Fernandez and Others*, , the Supreme Court ruled that "a new item without further proof of what had actually happened through witnesses is of no value. It is at best a second hand secondary evidence". The press reports, therefore, by themselves do not constitute evidence and without any further proof cannot be acted upon in a court of law. The Finance Minister is not impleaded as a party to the petition. The Union of India and the RBI which have been impleaded have specifically denied the allegation that any such threat was held out either by the Finance Minister or by them or on their behalf. The petitioners' allegation is supported only by petitioner No. 2's solitary affidavit. It is not the case of petitioner No. 2 that he had met and heard the Finance Minister holding out the threat. Though the report purports to publish the actual words used by the Finance Minister, no one has vouch safe for the correctness of that statement. That statement cannot, therefore, be deemed sufficient to hold that the Finance Minister or that respondents Nos. 1 and 2 had held out such a threat.

307. The same, of course, does not hold good in regard to the press reports of what Swraj Paul himself is alleged to have said and what the LIC itself has done. On the basis of the press reports, the petitioners asserted on oath that Swraj Paul has from time to time certain statements. In paragraph 13(a) of his affidavit, petitioner No. 2 avers that in the Telegraph dated December 21, 1983, a news item was published which reads as follows :

"On the other hand, Mr. Swraj Paul, currently in the Capital, flatly denied having heard anything about such ordinance. He, however, did say that such a directive was overdue as "after September 17, when the eligibility of the Caparo group was cleared, the management of the two firms were fighting against the Government and not Swraj Paul". He also added provocatively "as things stand, the Government stands defeated". As to his own intentions, he said he had no plans to appeal to the Company Law Board or the Government. He insisted that the fight was now between the Government and the two managements, reducing him to the states of an observer."

308. Again in the issue of Telegraph dated December 22, 1983, it is reported that Swraj Paul had made certain statements, which read as follows :

"Mr. Swraj Paul, the controversial non-resident India investor, today made it clear that he would consider himself defeated if the Government cleared the recently proposed Rs. 35 crore shares and debentures issue by Escorts, without settling matter of the transfer of shares.

"The Government must take a decision on the matter soon" Mr. Paul declared stressing that it was now a fight between the Government of India and the managements of Escorts and DCM. Asked what he meant by "soon", he said the government stand should be clear before the current proposal for equity was decided upon."

309. In the Financial Express of December 25, 1983, another statement attributed to Swraj Paul is an under :

"Mr. Swraj Paul, the U.K. based India industrialist, has accused "high-ups" in the Reserve Bank of India of approving investments by no-resident India in Reliance Textiles without standard investigations. In a statement issued here, Mr. Paul said the RBI had adopted "double standards" - one towards the Reliance and the other towards his Caparo group of companies. He said he supported the Union Finance Minister, Mr. Pranab Mukherjee, in the current controversy over non-resident Indian investments in Reliance. Mr. Paul alleged that, while the RBI had asked him and Caparo "all sorts of questions" before clearing his investments in Delhi cloth Mills and Escorts, it okayed the massive investments by 11 companies in the Bombay-based Reliance Textiles "without shooting a single query". He also alleged that the RBI Governor and the Deputy Governor must have fed "wrong information" to Mr. Pranab Mukherjee. There was no way RBI could have gone about such simple facts like the names of the companies or the companies or the place of their incorporation. He also alleged that there was "clique of bureaucrats operating to discredit and defame the Finance Minister and the Government at the behest of some industrialists of the country".

310. Mr. Swraj Paul has been impleaded as a party-respondent. Neither he nor any of the respondents have chosen to file any affidavit-in-reply disputing this statement. Swraj Paul and the group of companies in which he holds controlling interest, directly or indirectly, are primarily concerned with the validity of the

purchase and the registration of the transfer of shares in the name of respondent-companies. None of them have chosen to question the decision of the board of directors of the petitioner-company not to register the transfer of shares. The allegation of the petitioners that respondents Nos. 1 and 2 had issued the impugned press release, circular and the letter purporting to grant the permission with retrospective effect with a view to benefit Swraj Paul and his companies, has not been controverted by respondents Nos. 4 to 17. It was further alleged that Swraj Paul had left it to respondents Nos. 1 and 2 to fight out his cases and that it was between the Government, the financial institutions and the company to thrash out the issue and that the requisition notice was issued by the LIC for a collateral purpose already referred to above. Even then, respondent No. 17 or any of his companies did not choose to enter appearance or deny any of these allegations. The statements attributed to him, though appearing in press and have been vouchsafed on oath by petitioner No. 2 and reiterated in a number of affidavits, thus remain uncontroverted. Heaving regard to all the circumstances of the case, we do not see any reason why we should not accept that Swraj Paul had made the statements attributed to him and that he left it to the financial institutions to take up his cause and fight out the case to safeguard his interest both in the company and in the court. It may be significant to note that in his statement he had specifically held out that it is for the financial institutions to see that the registration of the transfer of shares is effected and the financial institutions very soon after his statements, proceeded to requisition the EGM which, according to the petitioners, is primarily to secure registration of transfer of shares after their own nominees are inducted so as to constitute a majority in the board of directors. The circumstance lead to the irresistible conclusion that requisition of EGM was for achieving the above object.

311. It was argued that RBI also acted in concert with the LIC in requisitioning an EGM and that is evidenced by the letter addressed by the RBI to the several banks with which the shares of the petitioner-company were pledged against advances. It is true the LIC, after requisitioning the EGM, had addressed a letter to the RBI to instruct all banks to support the resolution moved by it. The RBI addressed letters to the Grindlays Bank Ltd., the PNB and other banks with reference to the D.O. letter No. LD. No. 580/84 dated May 23, 1984, addressed by the chairman, IDBI, requesting the banks to exercise voting rights in respect of the shares of Escorts Ltd., held by the respective banks along with the LIC and other public financial institutions at the EGM and the annual general meeting to be held on 9th and 30th June, 1984, respectively. But, as pleaded by the RBI, this letter was addressed in accordance with and in discharge of its statutory obligations imposed upon it under direction issued under s. 35A of the Banking Regulation Act, 1949. Under these directions, every bank which grants or renews an advance limit over Rs. 50,000 against the security is required to stipulate as one of the conditions of such grant or reveal that the said shares shall be transferred to its name, that it shall have exclusive voting rights in respect thereof which it may exercise in any manner whatever. It is also required to get

the said shares transferred to its name expeditiously. Any grant or renewal of advance thereafter was to be made only against the security of shares and that too after the approval of the RBI. If the company were not agreeable to the imposition of such a condition, the loans were required to be recalled forthwith or on the expiry of the term, as the case may be. Another important obligation imposed upon these banks under these directions was as follows :

"no banking company shall exercise voting right in respect of shares held by it as a pledge except with the prior approval of the Reserve Bank."

312. The above directives were published and instructions accordingly were issued to all commercial banks under DBOD No. Ins. 1473/C.450-70 dated December 14, 1970, to conform to the same. Any directions issued by the RBI in pursuance of the said directives amount to discharging a statutory duty imposed upon it and does not amount to bringing any undue pressure on the banks with which the shares of the petitioner-company are pledged as contended by the petitioner. The letter addressed by the RBI after the EGM was convened to support the LIC resolution is, in our opinion, only intended to see that all financial institutions adopt a uniform stand in such matters. It cannot necessarily raise any inference of mala fides. In any event, that by itself is not sufficient to hold that respondents Nos. 1 and 2 acted in league with respondent No. 18 to issue the requisition notice and move the resolution to remove the nine directors. Even the petitioner does not allege that the RBI brought pressure on the LIC to issue the requisition notice or did any other act thereafter which amounted to bringing pressure on the petitioner-company. Of course, in so far as the LIC and IDBI having requested the RBI to call upon all those banks to support the resolution moved under the impugned requisition notice exhibits the anxiety of the financial institutions to get the resolution passed at any cost. As discussed above, it clearly exhibits that all financial institutions were acting in concert with that LIC and their whole object was to secure the removal of the nine directors of the petitioner-company by exercise of their majority vote. The RBI itself in issuing the statutory instructions, however, cannot be said to have acted mala fide or for any collateral purpose.

313. The petitioner-company moved for merger of Goetze India Ltd. with Escorts Ltd. some time in January, 1983. Goetze India Ltd, was a company promoted by petitioner No. 2. Under that proposal, assets, liabilities and the undertaking of Goetze India Ltd. were sought to be transferred under a scheme of merger with Escorts Ltd. In exchange for such transfer, the shareholders of Goetze India Ltd. were to be allotted certain shares of Escorts Ltd. That scheme was to be in accordance with s. 391 to 394 of the Companies Act. The petitioners were pressing for clearance of this proposal. The IFCI, which was the lead financial institution for Goetze India Ltd., accepted in principle this scheme of merger even on January 29, 1983. It is the allegation of the petitioners that although the merger scheme was accepted in principle as early as in January, 1983, and some particulars were called for to finalise it, only because the question of registration

of the transfer of shares in favour of the respondents Nos. 4 to 16 had cropped up in the meanwhile, respondent No. 18 and other financial institutions, without whose support the merger could not be effected, sought to use their position as a level for pressing the petitioner to register those shares. It is further alleged that at the meeting of the petitioner No. 2 with the representatives of the financial institutions, when the proposal for merger of Goetze-Escorts was to come up, petitioner No. 2 was asked to register at least some shares.

314. The respondents plead that the allegations in this behalf are not very specific and all the relevant particulars are not stated. The respondent point out that although this proposal was made in January, 1983, neither Goetze India Ltd. nor Escorts Ltd., appeared to be serious about it. For over nine months, the particulars required of them were not furnished. The mergers of the companies was dependent upon the consent of all the shareholders, creditors - secured and unsecured - and the financial institutions of both the companies and subject to the ultimate permission of the Controller of Capital Issues and the central Government. It is also pointed out that accepting this proposal would have resulted in the reduction of percentage of the shareholding of the financial institutions from 52% to about 49% and simultaneously increase the holding of the petitioner No. 2's group, i.e., the promoters' group from 16% to 19%. The share exchange ratio was proposed for the first time by Escorts Ltd., on October 21, 1983, from which it was clear that the financial institutions' percentages of shareholding in the petitioner-company would certainly be reduced from that of a majority shareholders of 52% to a minority shareholder of 49%. That was an important aspect to be considered by the financial institutions before accepting the merger proposal. While the petitioners themselves took nine months to furnish the particulars necessary for examining this proposal, within four day of submitting the share exchange ratio, they began pressing the financial institutions to accept the merger proposal and addressed a letter on October 25, 1983, and continued to pressurise them through November and December, 1983, simultaneously, with the request to accept the prepayment. After the prepayment was accepted on January 13, 1984, the petitioner No. 2 proposed to drop the merger proposal as prior approval of the lending institutions was no longer necessary. In the agenda circulated for the meeting of the board of directors on May 8, 1984, it was stated that the merger proposal was to be dropped. At the meeting itself, instead of dropping the proposal, the directors resolved to defer this issue. In views of these facts, it is urged that the petitioners themselves were not serious about pushing through this merger proposal. They were only anxious to reduce the majority shareholding of the financial institutions to a minority.

315. In our view, if it is not true that the proposal for merger was sought to be linked up by respondent No. 18 and other financial institutions with the question of registration of transfer of shares, no question of mala fides would arise. But, as discussed above, as the decision on the long pending issued of merger was sought to be linked up with the issue of registration of transfer of shares, it

would take a different colour and it would amount to exercising the power vested in the financial institutions or a collateral purpose arbitrarily. The fact remains that this issue of merger of Goetze India Ltd. with Escorts Ltd., though accepted in principle by the financial institutions, was kept pending till long after the writ petition was filed. In any event, after the share exchange ratio was indicated, there was sufficient time for the financial institutions to make up their mind. But that could not have been linked up with the issued of registration of transfer of shares with which the financial institutions were not directly concerned and which issued had no bearing on the question of merger.

316. The other proposal made by the petitioner-company was of debenture-cum-equity shares issue of Rs. 35,00,00,000 (Rs. 35 crores.). The proposal was to issue combined linked up debenture-cum-equity shares. The proposal envisaged issue of Rs. 17.50 lakhs secured debentures of Rs. 100 each for cash at par, aggregating to Rs. 17,50,00,000. Simultaneously Rs. 87.50 lakhs equity shares of Rs. 10 each for cash at premium of Rs. 10 per share, aggregating to Rs. 17,50,00,000 were also to be issued. These were to be not on a right basis of as contemplated by s. 81 of the Companies Act, read with the articles of association of the petitioner-company, but on a differential preferential basis which according to respondent No. 18 was resulting in the shareholding of the financial institutions being reduced from 52% to 31% in the petitioner-company. The other shareholders, i.e., the promoters, directors, their friends and relatives, business associates and employee of Escorts Ltd., constituting all petitioner No. 2's group controlled by petitioner No. 2, were to be allotted 16% of the debentures/shares but without any maximum ceiling. Farmers, customers and dealers and ancillary suppliers were to be issued another 20%. In this context, it was also urged for the petitioner s that while the debenture-cum-equity share issue proposal was acceded to in the case of J. K. Synthetics, Kesoram Industries, Reliance Textiles, Gwalior Rayon, by the financial institutions, the proposal put fourth by the petitioner-company was not acceded to. According to the respondents, this proposal made by the petition in the petitioner would have resulted in petitioner No. 2's group securing 35% shares in the petitioner-company, thereby transforming them along with petitioner Nos. 2 into majority shareholders. This would also have resulted in direct financial loss to the financial institutions to the tune of Rs. 20 lakhs.

317. The case of respondent No. 18 is that whereas in the debenture issue proposed by the other companies named by the petitioners, the financial institutions did not own more than 25% shares and any slight reduction in the shareholding would not have had any real effect at all in the case of the petitioner-company, it would have reduced its shareholding from 52.90% to below 30%. Further, while the other companies offered convertible debentures either on right basis or through prospects, the petitioner-company proposed by only a portion 20% of the debenture-cum-equity share issue to be of converted into debenture issue at a later date. That justified the clearance of those proposals. Respondent No. 18 suggests that if Escorts Ltd. had also issued

similar debentures, it would have received good response and that it was not at all necessary for the company to raise 50% capital by borrowing. The respondents allege that the principal purpose of this issue was to disturb the minority. It was pointed out that even this proposal was not made by the petitioners in accordance with the guidelines indicated by the Controller of Capital Issues. It was put for the with some variation at the 39 annual general meeting : but after later petitioner No. 2 made a statement that the board of directors had decided to withdraw the proposal and it was also, in fact, withdrawn. All the above facts show that the petitioners were not serious about the debenture issue.

318. We find that there is no specific averments on the part of the petitioners in any of the several affidavits filed on their behalf that the debenture issue was linked up with the question of registration of shares. Only at the hearing of the writ petition, it was urged that this matter was kept pending for some time by the financial institutions. In our view, merely because this proposal of the lending institutions for some time, any inference of undue pressure being exerted by them upon the borrowing company cannot be drawn. We are, therefore, not impressed that the debenture issue is a factor relevant in deciding whether the LIC acted mala fide in requisition in the meeting.

319. The other two issues - the prepayment of loan and the merger of Goetze-Escorts - were, however, linked up by the financial institutions with the question of registration of shares. That, in our opinion, constitutes undue pressure on the petitioner-company. That would amount to using their dominant position vis-a-vis the petitioner-company for collateral purpose. In these circumstances, the inescapable conclusion is that the financial institutions sought to punish the petitioner-company and the nine directors who had opposed the registration of transfer of shares, which was, admittedly, mooted in respect of at least some shares by Punja of the IDBI, the lead financial institution, to secure controlling power in the board of directors and to revoke the decision not to register the transfer of shares in favour of respondents Nos. 4 to 16.

320. In the result, we hold that the statement attributed is to the Finance Minister and the allegations of mala fides made against respondents Nos. 1 and 2 are not proved. The requisition notice issued by respondent No. 18 and the resolutions moved by it are therefore not liable to be struck down on the ground of mala fides of respondents Nos. 1 and 2. It is, however, proved to be a mala fide and arbitrary act of respondent No. 18. That action of the LIC, cannot be a ground attribute any mala fides to respondents Nos. 1 and 2.

321. The financial institutions have grown in number and in strength. Some of these are constituted by an Act of Parliament and their power and functions are defined by the statute. Some others are constituted by a Government notification under an Act of Parliament or the State Legislature. Some others just constituted by the Government without reference to any particular enactment. Funds flow to these institutions from the Government. They also acquire large funds from the

public in general through the activities permitted by or under the statute or the notifications governing the constitution of these institutions. They are mainly intended to attract and conserve funds for the purpose of investment and for advancing loans required for accelerated growth of the trade, commerce and industry and for all round development of the country. Institutional finance is a recognised method of fostering industrial growth in all development countries. The Government cannot exercise control over such institutions with a view to secure to the industry the necessary funds and to save it from the clutches of unscrupulous money-lenders. Strict discipline on the financial institutions is sought to be enforced by prescribing the condition and the limits subject to which such institution may advance loans and make investments and the investment and the steps they may take to ensure the safety of their investment. The ambit of their power and authority is defined by the enactment, notification or the Government order, as the case may be, under which these institutions are constituted. The LIC acts as one such financial institution. Section 6(2)(b) of the LIC Act empowers it to take such steps, including taking over management of the property given as security for its investment for the sole purpose of realising its investment. Although the power of taking over the management is vested in the LIC under s. 6(2)(b), as can be gathered from the Union Finance Minister's reply in the Lok Sabha and discussed above, even where the financing institution has come more than 50% shares in any company, it is not the policy of the Government that such institution should take over the management of the debtor company. This is the declared policy of Government and limited purpose of for which the management could be taken over by the LIC. In approaching these institutions for financial facilities and accommodation, the borrowing companies have a right to proceed on the basis that the institutions would adhere to the law governing their activities and the policy enunciated by the Government itself. If the policy were otherwise, perhaps, they would not have approached these institutions for such financial assistance at all. The course of conduct of the financial institutions over these years also had lent assurance to the companies that the financing institutions would never use their shareholding to take over the management of such companies. If the financial institutions are permitted to take over the management for no reason at all or for no better reason than the that they hold majority shares in a company as was contended and they are not bound to disclose the reasons every when it is questioned as mala fide, it would be no better than a private creditor or any other shareholder. That would be permitting financial institutions with their monolithic structure and vast public funds and majority shares acquired by them by virtue of their statutory position to carry on defined activities, to use their dominant position to act arbitrarily either to cripple the management and entrepreneurs of one company or confer favour on another company at their sweet will and pleasure. That could never have been the intention of the LIC Act. Corporate bodies such as the petitioner company, their board of directors and their shareholders are entitled to see that this vast controlling power of the public financial institutions which are a "State" within the meaning of art 12, is not used as commercial duress to make a

borrowing company to their line and register the transfer of shares purchased in contravention of law, like the FERA. The LIC and the public financial institutions, though acting as shareholders, are still duty bound to act within the four corners of the law under which they are constituted. The LIC Act permits the power to take over to be exercised only for the purpose of protecting its investment and to advance the interest of the company as a whole in which it holds shares. It is the duty of the managing directors and the board of directors of the petitioner-company to contravene any law and also to oppose all steps taken towards that end and frustrate it. The company and its shareholders have a right to request the court to restrain the other shareholders, such as the LIC, which is governed by the statute, from using its majority shareholding from committing an illegality and from removing the directors only because they have not acted to the liking of the LIC or in the matter of registration of transfer of shares.

322. It is not in public interest to concede to public financial institutions, such as the LIC, having vast financial resources at their command and required to invest in accordance with the statutes and law governing them, unguarded and unbridled power to exercise their controlling voting rights as they "wished". If these institutions are acting contrary to law or arbitrarily, they must be restrained.

323. The learned Attorney-General argued that even on the date when the writ petition was filed, the petitioner herein had no cause of action to file this writ petition and that in any case there is no longer any live issue to be adjudicated by the court. The argument of the learned Attorney-General runs thus : Petitioner No. 1 is the company and petitioner No. 2 is a shareholder and managing director of the petitioner-company. The company acts as through its board of directors. The act of the board of directors constitutes a corporate act. The petitioner-company had rejected the request for registration of the transfer of shares. There was nothing further to be done either by the managing director or by the board of directors or by company in this regard. If any one was aggrieved by the refusal to register the shares, it was the respondent-companies which had purchased the shares and they had any cause of action in this behalf and not the petitioners. So far as the petitioners were concerned, it was a closed chapter. The learned Attorney-General points out that any question as to whether under s. 29 of the FERA prior permission is required and whether refusal to register the shares in the name of the transferee by December 29, 1983, had become wholly academic. It was no longer necessary to pronounce upon the validity of circular No. 18 dated September 19, 1983 (Exh."B"), and the letter even of the RBI dated September 19, 1983 (Exh. "C"), addressed to the PNB. As regards the prospective operation of the impugned circular and letter, even the petitioners take no objection and as regards the purchases already completed, no further action is expected of the petitioners. Hence, this court should refuse to exercise its discretionary jurisdiction and leave the matter to be agitated by the parties in appropriate forums for such reliefs as they are entitled to.

324. In the rejoinder affidavit by filed by petitioner No. 2, it was specifically pleaded that the petitioners do not want adjudication on the other grounds of refusal of registration of shares, and, as such, failure to obtain prior permission under s. 29 of the FERA remained the sole ground for rejection. The respondents urge that since the other grounds of refusal to register the shares are not now pressed and are not require to be adjudicated in this writ petition, the court should refuse to go into this question. That would amount to piecemeal adjudication on the validity of the purchase and refusal to register, which is not permissible even in the case of a suit, which principle, according to the learned Attorney-General, also applies to writ petitions mutates merchandise.

325. Whether there is a live issue for adjudication and whether the petitioners have locus standi cannot be viewed in isolation or in the abstract, divorced from the facts and circumstances of the case.

326. In our view, in rising this condition, certain relevant facts are being overlooked. The Union of India, the RBI and the PNB and the other respondents dispute the correctness of the decision taken by the petitioners not to register the transfer of shares purchased by respondents Nos. 4 to 17. Respondent No. 19 has preferred an appeal under s. 111 of the Companies Act before the Company Law Board and the same is still pending. Respondents Nos. 20 and 21, the stock-brokers, continue to insist upon reconsideration of the decision taken by the board of directors in regard to registration of the shares. D. N. Davar, on behalf of the financial institutions, has put in a written note on January 6, 1984, signed by him demanding the board of directors to consider its decision. Further, the petitioner-company has to pay dividend on these shares. The dividend on these shares amounting to Rs. 7,50,000 per annum is obviously payable in to those in whose names the shares stand registered in the books of the company. If the dividend not paid within the stipulate time, the petitioner-company and its directors would be exposed to penalties under the Companies Act. The question of payment of dividend would recur year after year. In fact, when the question of payment of interim dividend arose, while the respondent-companies claim to be entitled to the payment of the dividend because they have purchased the a shares, the petitioners object to payment because the registration of transfer of shares purchased object without prior permission could not be a effected and the dividend cannot be a paid to persons whose shares ar not registered. When the petitioner No. 2 addressed a letter dated December 2, 1983, to D. N. Davar, Executing Director, IFCI, inviting his comments on the decision to withhold the interim dividend with respect to shares purchased by the respondent-companies, he replied through his letter dated December 17, 1983, inter alia, as follows :

"Since the payment of dividend in question, as referred to in your letter under reply, pertains to interim dividend as resolved by the board of directors on July 29, 1983, there does not appear to be a legal bar in withholding the same according to the second opinion. However, in view of the conflicting legal opinions on the issue, we are referring the matter to the Ministry of Law, Department of

Company Affairs, for their clarification. On hearing from them, we shall revert to you on the subject."

327. Thus, the matter was under reference to the Government of India and the question whether registration of transfer of shares should be affected or not and who would be entitled to receive dividend on these shares was a live issue even on 17, 1983, and was not decided even by the time the writ petition was filed. None of the respondents has been take back the shares lodges with the petitioner-company of transfer. Upon the a sale of the shares and lodging of applications for their transfer with the petitioner-company, it had to the a decision. The company has rejected the request for registration on grounds which, according to the well considered opinion of their legal advisers, are valid and justified. The RBI as well as the other respondents and their legal advisers seem to hold a different view. Of courses, as discussed above, that legal opinion had not been placed before the court; nor is the court entitled to a require them to disclose it. It must be recorded that the petitioners" learned counsel, Mr. Nariman, fairly conceded that it was an error on the part of the petitioners to have referred in the petitioner No. 2's affidavit to the legal advice tendered to the respondents and requested that it may be treated as withdrawn. It was not pressed at the hearing of the writ petition. Be that a it may, the fact remain that the respondents held a different view on this legal issue and have pressed the same before this court. The question when the prior permission is necessary or not is thus not concluded by the rejection of transfer of the shares purchased by respondents Nos. 4 to 16. It would arise from time to time as and when such purchases ar made in future. The petitioner-company itself would have to consider the same whenever such shares are presented for registration. Even the solicitors of respondents No. 18 in their letter dated February 27, 1984, addressed to the petitioners" solicitors stated :

"..... the controversy reading transfer of shares has been raging throughout the length and breadth of the country and various forums including the shareholders" associations, chambers of commerce and other public bodies have been making observations and suggestions on such issues"

328. They also specifically said in that letter that they would refer to that letter at the hearing of the writ petition. This legal issue would arise for decision whenever the action of the petitioners not to register the shares a is questioned by any of the transferors of transfers of the shares. If the respondents could still insist upon the registration of the shares and claim that permission granted to the respondent-companies by the respondent No. 2 subsequent to the purchase of shares is valid, which claim is strongly supported by the stand taken by respondents Nos. 1 and 2, the petitioners are certainly entitled to seek a declaration in this behalf. Whether such a declaratory relief in this behalf could be granted or not will be considered in due course, but certainly it cannot be said that the petitioners have no cause of action for seeking a declaration. Notwithstanding the decision taken by the board of directors, the company

continues to be under pressure to transfer the shares. If the stand taken by the petitioner is incorrect, then they would be bound under the statute as well as under the directions of the RBI, to register the transfer of shares in the books of the company even now. While forwarding a copy of the letter dated September 27, 1983, addressed by the PNB to respondent No. 4 company, Haresh Bhasin (respondent No. 20) by his letter dated October 8, 1983, addressed to the petitioner-company, and sent by Registered by Post A.D., had requested that the decision of the board of directors dated August 29, 1983, refusing to register the shares be reviewed. In reply, the petitioner company conveyed through its letter dated October 13, 1983, that notwithstanding the impugned Circular and the letter of the RBI, the refusal to register continued to hold good for various other reasons. In that letter, the petitioner-company also disputed the claim that the 13 non-respondent companies had purchased the shares prior to May 2, 1983. The petitioner-company thus maintained that the permission granted subsequently is not valid and that the refusal to register the shares for other reasons still holds good. Of course, at the hearing of the writ petition, having regard to there decision of the Supreme Court in *Bajaj Auto Ltd. v. N. K. Firodia* [1971] 41 Com Cas 1, the learned counsel Mr. Nariman conceded that the other grounds for not registering the shares were not being pressed in support of the refusal of registration. It was, therefore, argued for the respondents that this letter would indicate that even the petitioners at that stage accepted that the permission granted under Exh."B "and Exh."C" validated the purchased and no longer stood in the way of registration of the shares. We are unable to agree with this contention; firstly, because if under s. 29 prior permission was required for a valid purchase, any such statement made in the letter on behalf of the petitioner-company cannot validate such transfer so as to entitle the purchaser to claim registration of shares. Any registration of transfer by the petitioner-company would still be in contravention of s. 19 read with s. 29 of the FERA; secondly, the letter cannot be interpreted to mean that the stand taken by the company and its board of directors unanimously that the purchase is invalid for not obtaining prior permission was given up. Further, even if Exh."B" and Exh."C" are construed as a grant of permission, it would amount to granting permission subsequent to the purchase. When the letter of the petitioner-company expressly states that "Notwithstanding grant of permission by the RBI as referred by you", it could only mean the grant of permission subsequent to the purchase, would not hold good and that they were not prepared to transfer the shares on the basis of that permission. The facts that they actually proceeded to challenge the very permission granted by way of writ petition fully establishes that the company repudiated its liability to transfer the shares on the strength of the impugned circular and letter. While so, it is the case of the petitioners that D. N. Davar, one of the directors, armed with the authority to speak for all the financial institutions including the LIC, continued to insist that the writ petition be withdrawn. Apart from the other pressures exerted on the petitioner-company and its managing director, already discussed above, at the meeting of the board of directors of the petitioner-company held on January 6, 1984, D. N. Davar

tabled four pages of signed note, inter alia, insisting upon the board of directors to recall the cheque lodged with the institutions towards prepayment of loan and to withdraw the writ petition filed in the court and not to take note of the correspondence exchanged between the financial institutions and the management. The board of directors, however, did not concur with his proposal; on the contrary, it ratified the filing of the writ petition. Apart from petitioner No. 2, each of the other nine directors filed an affidavit in this supporting the filing of the writ petition. It is also the allegation of the petitioners that the financial institutions, finding that notwithstanding the unanimous request made on their behalf by D. N. Davar, at the meeting of the board of directors, the company and its managing director were refusing to withdraw the writ petition and effect the transfer of shares, requisitioned an EGM of the petitioner-company, so that they may secure a controlling majority in the board of directors. The petitioners allege that this action of the LIC (respondent No. 18) which by itself holds 30% of the shares and along with the other financial institutions, collectively represented by Davar, holds 52% shares, is mala fide and is calculated to secure the registration of the shares which were purchased in contravention of the FERA. In the circumstances referred to above, it cannot be said that the company and its managing director had no cause of action to file this writ petition or that there was no longer any live issue to be adjudicated.

328. The learned Attorney-General next contended that even under the wider horizons of locus standi enunciated in the Judges' case, S.P. Gupta Vs. President of India and Others, the petitioners have no locus standi to file this writ petition. It is his contention that no vested rights of the petitioner-company or of the managing director is in any way affected and unless such a right is shown to have been infringed, they would have no locus standi. The principles of locus standi enunciated in the Judges' case, in our view, do not limit the right to move the court under art. 226 only to a person whose right it infringed. It is much wider than that. The right of the advocates to question the transfer of judges was recognised on the ground that the transfer of judges affected judicial independence and administration of justice as a whole. Although no question of the right of the advocates as such was involved, in the transfer of a judge, the Supreme Court held that the lawyers have locus standi on the ground that "they have a vital interest in the independence of the judiciary and if any unconstitutional or illegal action is taken by the state or any public authority which has the effect of impairing the independence of the judiciary, they would certainly be interested in challenging the constitutionality or legality of such action. The profession of lawyers is an essential and integral part of the judicial system and lawyers may figuratively be described as priests in the temple of justice They are really and truly officers of the court in which they daily sit and practice. They have, therefore, a special interest in preserving the integrity and independence of the judicial system and if the integrity or independence of judiciary is threatened by any act of the State or any public authority, they would naturally be concerned about it, because they are equal partners with the Judges

in the administration of justice." Pausing here, if we consider the position of the petitioners herein in relation to the controversy in question, it must be held that while it is the bounden duty of the RBI, a statutory body to conform to the provisions of the FERA in granting permission, it is the statutory obligation of the petitioner-company to conform to s. 19 read with s. 29 in the matter of registration of transfer of shares. It is the managing director and the board of directors that are specially enjoined to conform to these requirements. The duty of respondent No. 2 is all the more. The financial institutions which are public authorities and the LIC, which is statutory body, are obliged even as shareholders, to see that no shares are purchased in contravention of the FERA. The observance of the provisions of the FERA is as much the responsibility of these a statutory bodies and public authorities as that of the petitioners. When such provisions are contravened by any of the respondents and the petitioners are advised under the impugned letter by a statutory authority such as the RBI that the respondent-companies are entitled to hold the shares already purchased by them, they have clearly locus standi, as enunciated by the Supreme Court in the Judges' transfer case, to file this writ petition. In the Judges case, the court observed that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duties and observance of such constitutional or legal position. Applying this dicta, it must be held that the RBI is enjoined to see that the provisions of the FERA are strictly complied with, and the LIC and other financial institutions do not use their decisive majority shareholding in the company to condone the contravention of the provisions of law in the purchase of shares and compel the registration of transfer of shares by exercise of their of their majority vote. The petitioner-company and its directors and even the shareholders have sufficient interest to see that these bodies conform to law in the discharge of the public duties. Even earlier the Supreme Court in Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, even while observing that or order to have the locus standi to involve the criterion jurisdiction under art. 226 the petitioner should be an "aggrieved person" elucidated (headnote) :

"The expression "aggrieved person" denotes an elastic, and, to an extent. An elusive concept. Its scope and meaning depends on divers, variable factors such as the content and intent o the statue of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner"s interest, and the nature and extent of the prejudice or injury suffered by him."

329. This case deals with the overruling of an objection raised by a rival in business to the grant of a "no objection certificate" to a cinema theatre. The Supreme Court held that he had no legal right under the statutory provisions or under the general law which can be said to have been subjected to or threatened with injury as a result of grant of "no objection certificate" to the rival trader. Even in this case, the Supreme Court, while holding that the petitioner therein

had no locus standi, observed that the question of locus standi depends upon the facts of each a case. One of the tests for determining whether a petitioner could be deemed to be "a person aggrieved" was to see if the petitioner "has suffered a legal wrong or injury, in the sense, that hi interest recognises by law, has been prejudicially and directly affected by the act or omission of the authority, complained of. Is he a person against whom a decision has been pronounced which has wrongfully deprived him of something Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public ?" It would be seen that while along the RBI took the stand that for purchase of shares under the portfolio investment scheme, prior permission was necessary, which is the stand taken by the petitioners, it proceeded to issue Exhs. "B" and "C". Based on that the respondents Nos. 4 to 18 are insisting upon registration of shares which according to the petitioners, they ar not entitled to. The conflict of opinion on the question whether permission envisaged by s. 29 is only prior permission or whether such permission could be granted even subsequent to the purchase is a matter of acute legal controversy. Legal opinion on this issue obtained by the petitioners is clearly in their favour. A contrary opinion, which is said to have weight with respondent No. 2 and the other respondent financial institution has been disclosed to the court. Of course, neither the petitioners not the court is entitled to know what legal advice the respondents have received. But presumably they have acted on the opinion of high legal authority. If armed with that opinion, the financial institutions insist the petitioner-company should register the shares, it cannot be said that the petitioner-company and its managing director have not locus standi to vindicate their stand by moving this court. We have, therefore, no hesitation in holding that the petitioners have locus standi to file this writ petition. There could be no better forum than the High Court to agitate this vexed question of law. In our view, the issue is very much alive and the High Court is the proper forum before which it could be agitated.

330. It was said that the High Court in exercise of its discretionary jurisdiction ought not to grant a declaratory relief such as the one prayed for by the petitioners in this writ petition especially when no consequential relief is claimed.

331. We may briefly refer to the decision strongly relied upon the by learned Attorney-General to contend that a merely declaratory relief cannot be granted. In General Manager, Eastern Rly and Another Vs. Kshirode Chandra Khasmobis, it was ruled that art. 226 should not be used for getting a mere declaratory order. That was suit by an employee, whose services were terminated, for a mere declaration that the order of termination was invalid and was invalid and was intended to lay the foundation for a separate suit for recovery of arrears of salary. As a preliminary step to filing a suit for recovery of arrears of salary, he sought an adjudication on the validity of the termination order. It is in such a suit that the court held that a were declaratory relief should not be granted. It was termed as "an abuse of the writ jurisdiction for a collateral purpose to be utilised as a foundation for subsequent claims in future legal proceedings".

332. *Maxwell v. Department of Trade and Industry* [1974] ALL ER 122: [1974] 2 WLR 338 was a case in which a declaration was sought in respect of report made by inspectors appointed under the Companies Act, 1948 (English), by the department of trade and industry to investigate and report on the affairs of the company. The plaintiff, who sought a declaration, was a chairman and chief executives of a public company. There was no charge or accusation against him. The inspectors had been engaged only in investigating how good the company's relations with certain other companies were. It would be notice that in that case in observing" whilst I would not restrict in any way the court's jurisdiction to grant a declaration, the case must be very rare which it would be right to make such a bare declaration in the air" Lord Denning in fact recognised that declaratory relief per could be granted and Lord Justice or positively held (at p. 348) :

"I accept that this court would have jurisdiction to grant relief by way of a bare declaration, but agree with Lord Denning M.R. that the circumstances which would justify the grant of such relief in the context of an investigation under s. 165 would have to be of a very exceptional kind."

333. Lord Justice Lawton opined that declaratory relief should be refused in that case only because he was of the view that "report in this case itself neither produced, nor could it directly produce, any legal consequences ". Evidently, if there was a threat of any legal consequence, Lord Justice Lawton to appears to be of the view the declaratory relief should not be refused.

334. In *Throne Rural District Council v. Bunting* [1972] ALL 439: [1972] 2 WLR 517, the court found that what the plaintiff council the in was seeking may "not in any real sense of the word" relief", that is, something which will relieve the council from any real liability or disadvantage or difficulty which affects the council. In my judgment, the council's In my judgment, the council's complaint is too indirect and insubstantial to justify proceedings for a declaration relating to the in which they have no proprietary interest. I also bear in mind that the making declaration is a discretionary remedy; there may be other cases where on other facts there is a more substantial reason for a local authority to claim a declaration in respect of land in their area not owned by the authority [1972] 2 WLR" That decision turns on the facts of that case; but even there the principle was recognised that a court may grant a declaratory relief even in respect of a land over which the plaintiff did not claim any proprietary interest.

335. That a mere declaratory relief should not be granted in is thus not an invariable rule. It depends upon the facts and circumstances of each case. Section 34 of the Specific Relief Act, 1963, which corresponds to s. 42 of the India Specific Relief Act, 1877, itself recognises that declaratory reliefs that could be prayed for and granted by a court could be of a varied nature. Every possible declaration that could be prayed for is not governed by that section. The Specific Relief Act, which makes provision in s. 34 for granting declaratory relief, prohibits the grant of declaratory relief simpliciter only where the party is in a position to

sue for the consequence relief, but omits to do so. But where declaratory relief itself would serve the purpose and no consequential relief could be prayed for in the circumstances of particular case, the Specific Relief Act does not preclude the court granting such declaratory relief. As laid down by the Supreme Court in *Veruareddi Ramaraghava Reddy and Others Vs. Konduru Seshu Reddy and Others*, , s. 34 of the Specific Relief Act is not exhaustive. There could also be circumstances where the declaratory relief itself constitutes substantive relief. The Privy Council relied in *Fischer v. Secretary of State for India in Council* [1899] 26 IA 160 that in such an event, declaratory relief could be granted. In that case, the plaintiff had merely prayed that the order complained of may be declared ultra vires and illegal and of no binding effect on the plaintiff. The order complained of was that of the Government setting aside the order of the Collector. The Collector had, with the subsequent sanction of the Board of revenue, ordered, on notice to the proprietor and lessees of a zamindari, that separate registration and sub-assessment of the appellant's village situate therein be made under Regulation XXV of 1802, section 8, Act I of 1876. The plaintiff asked for no further specific relief. Their Lordships summarised the contention that a mere declaratory relief should not be granted thus :

"It is said the plaintiff sins against the Specific Relief Act which forbids the court to entertain a suit for a declaratory which may be followed by consequential relief, unless that relief be asked for specifically - and so it was held by the High Court."

336. Their Lordships of the Privy Council, however, examined the facts of the case and pronounced :

"It is an substance a suit to have the true construction of a statute declared, and to have an act done in contravention of the statute rightly understood pronounced void and of no effect. That is not the sort of declaratory decree which the framers of the Act had in their mind. But even assuming that the Specific Relief Act applies to such a suit as this, what is the result ? What further relief can be required ? If the so called cancellation is pronounced void, the order of the Government falls to the ground, and the decision of the Collector stands good and operative as from the date on which it was made But then, it was asked, what would happen if the collector ignored the order of the court ? What remedy would the appellant have if he had omitted to ask for specific relief against the collector ? It is highly improbable that any officer of the Government would set the court at defiance. It is impossible to suppose that the Government would countenance such conduct as that. But the remedy in such a case, if it did occur, would be simple enough. Every order such as that which the appellant asks for carries with it liberty to apply. On a proper notice being given it would be found that the arm of the court would be long enough to reach the offender, whatever his position might be."

337. If that was the position recognised as early as in 1898 by the Privy Council in a regular suit, it would be too late in the day to contend that in exercise of the extraordinary jurisdiction under art. 226, this court cannot grant declaratory

relief and any such declaratory relief granted by it would be dead letter. Such a stand does not behave a statute and especially when the contravention complained of by the petitioners is rendered penal.

338. The primary relief in this writ petition prayed for ostensibly is of a declaratory nature. But in reality it pronounces upon the validity of the action taken by the petitioners on July 9, 1983, and August 29, 1983, refusing registration of transfer of shares and results in restraining the respondents from insisting upon a review of the decision already taken and further restraining them from seeking implementation of the impugned Circular (Ex."B") and the letter (Ex."C"). The decision of the board of directors and the stand taken by the management of the relief prayed for. The petitioners now exposed to the coercive measure under the FERA and the Companies Act would be fully protected if the declaratory relief prayed for by them is granted. That would automatically result in restraining the respondents from compelling the petitioner-company to act to the contrary and a writ of mandamus would follow. It is, in fact, incorrect to contend that no relief consequential to a declaration that Exs."B" and "C" are invalid in law, is prayed for in this writ petition. That would of course follow as a necessary consequence or corollary to granting the declaration specifically prayed for. So is the position with regard to the declaration prayed for with respect to the requisition notice issued by the LIC. If it is held that the requisition made by the LIC is invalid in law, as has been held by us, the threat of removal of the nine directors who have supported refusal of registration of transfer of shares would abate. David Foulkes on Administrative Law, 5th Edition, at page 320, has this to say :

".... although the person seeking a declaration need have no cause of action, he must be claiming relief. So that if what he is seeking will not relieve him from any real liability, disadvantage or difficulty, a declaration will not be granted."

339. It was also recognised that a declaration may be refused as of no practical use, even though the question is not academic. In the circumstances, we can hardly say the same about the declaratory relief sought by the petitioner. The apprehension of the petitioner is not imaginary. If the declaration is not sought, it will materialise into removal of the directors and, in all probability, registering the transfer of shares.

340. Another aspect stressed by the learned Attorney-General is that when none of the transferors or transferees of the shares has requested for registration of the shares before this court, there is, therefore, no occasion for this court to grant any declaration as prayed for. It is true that none of the transferors or transferees of the shares has questioned the decision of the board of directors of the petitioner-company. But as already discussed above, the matter does not stand concluded; it is still a live issue. Unless decided by the High Court, the board of directors would be called upon to implement the impugned Circular (Ex."B") and letter (Ex."C") by the other transferors or transferees of shares. It is, therefore, necessary to deal with and decide the question raised in this writ petition.

Further, this contention is raised on the basis that a mere declaratory relief cannot be granted. But, as discussed above, in certain circumstances, the declaratory relief itself may constitute substantive relief and having regard to the declaration granted, the respondents may be also restrained from taking any action contrary to the said declaration. Such declaratory relief is not in a position or is not required to seek any further consequential relief. We are, therefore, clearly of the view that the declaratory reliefs prayed for in this writ petition could be granted and in the circumstance of the case must be awarded.

341. It is said that in view of the tendency of the appeal filed by respondent No. 19 before the Company Law Board, this court should not exercise its jurisdiction under art. 226. But it is plain that constituted as it is, the Company Law Board before which the appeal filed by respondents No. 19 is pending, could not deal with and dispose of servile issues raised by the petitioner in this writ petition. Respondents Nos. 1,2,3, and 18 could not be made parties to any proceeding before the Company Law Board. In particular, it would not pronounce upon the allegation of mala fides against any of the respondents. It could only decide whether the decision of the petitioner-company not to register the transfer of shares is in accordance with the FERA, the company law and memorandum and articles of association governing the management of the petitioner-company. It is significant decision that the only one several transferors has been to question the decisions of the board of directors. It is different to perceive how the transferor is aggrieved by the refusal to register the transfer of shares; if at all, it is the purchase of the shares who claim to be entitled to be registered as the shareholder that would have preferred an appeal. They have not chosen to prefer any appeal. Curiously enough, they have not even chosen to appear before this court and dispute the correctness of that decision. The pendency of such an appeal, in our view, would not be a bar to the filing of this writ petition. That would only be one of the factors to be considered by the court in exercising its extraordinary jurisdiction and the judicial discretion vested in it.

342. It was also urged that by virtue of s. 637 read with the notification of the Central Government No GSR 443 (E) dated October 18, 1972, the power to hear an appeal against the order refusing registration of shares is delegated by the Government to the Board and the rules framed in this behalf render the decision of the Board final and, hence, no declaratory relief as prayed for should be granted. No doubt the company Law Board in hearing the appeal under s. 111 acts as a quasi-judicial body; its decision is not subject to the administrative control of the Central Government. But, none the less, the Board cannot pronounce upon the invalidity of the permission granted by the RBI; it must proceed on the assumption that it is valid. It was not vested with the jurisdiction to decide upon the validity of any permission granted under the FERA or question any act of the RBI as such. It can only consider the validity of the action taken by the company vis-a-vis the claim of the purchasers of the shares, as regards, the registration of transfer of such shares in the books of the company. Assuming that the Company Law Board has jurisdiction to decide this

issue, still it is not as if the jurisdiction of the High court is barred or that by itself is a sufficient ground for refusing the declaratory relief. The Board of Company Law Administration, the constitution of which is envisaged by Part I-A of the Companies Act, 1956, is to function subject to the directions of the Government under s. 10E of the Act. It is constituted by the Central Government under notification and is to exercise and discharge such powers and functions as are conferred on the Central Government by or under the Companies Act or under any other law as may be delegated to it by the Central Government. The Board, thus, acts as a delegate of the Central Government. It comprises of such members not exceeding nine, as the Central Government deems fit to appoint, of whom one shall be the chairman. Sub-section (6) of s. 10E lays down that in exercise of its powers and discharge of its functions, the company Law Board shall be subject to the control of the Central Government. The RBI itself is enjoined to carry out the directions subject to the control and general superintendence of the Central Government under s. 7 of the Act. In relation to the administration of the FERA also, the Central Government is empowered under s. 75 to issue to the RBI such general and special directions as it deems fit and the RBI is enjoined to discharge functions in accordance with the Act and in compliance with such directions. When the Central Government has taken a particular view on the question of prior permission s. 29 of the FERA and the eligibility of the respondent-companies to purchase the shares, and the RBI has issued the impugned Circular (Exh."B") and purported to grant permission under the impugned letter (Exh."C"), the Company Law Board, which is authorised to adjudicate upon the validity of the transfer and rejection of the registration raised by respondent No. 20, could not be expected to take a different view. It was, however, sought to be argued that the control of the Central Government envisaged by the aforesaid provisions is only administrative; it does not extend to any quasi-judicial matters required to be adjudicated upon by it. Even conceding this position in the light of the decision of the Supreme Court in *Orient Paper Mills Ltd. Vs. Union of India (UOI)*, ; *B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others*, it would not be proper for the High Court to decline to exercise its jurisdiction and deny the relief to the petitioner even after finding that the stand taken by the Central Government and the RBI and the other financial institution as regards the validity of the purchases of shares without prior permission of the RBI and the liability of the petitioner-company to register the shares is not correct in law. The fact that some of the issues raised in this writ petition would also be decided by the Company Law Board is not a valid and sufficient circumstance to refuse relief to the petitioners.

343. The Punjab National Bank was impleaded as respondent No. 3 herein. Mr. Mahendra Shah, learned counsel appearing for the PNB, contended that as no relief is claimed against the PNB, the petitioner ought not to have impleaded it as a party to this writ petition. Though the petitioners have not claimed any relief against respondent No. 3-bank, the fact remains that respondents Nos. 4 to 16 have designated the PNB as their bank for the purchase of shares under the

portfolio investment scheme. All the relevant particulars regarding the opening of the NRI (External) Account, receipt of foreign remittances and debit of the NRI (External) Account on the advice of respondent No. 17 and as to whether any permission for the purchase of shares was applied for and obtained by the respondent-companies, and if so when, are all matters within the special knowledge of the PNB, the designated bank. In facts, certain obligations are imposed on the designated banks under the FERA and the portfolio investment scheme framed thereunder. The PNB is as much obliged to comply with the provisions of the FERA and the scheme as the non-resident investors themselves. Having regard to the questions raised in this writ petition, the court was required to consider whether the designated bank has acted in accordance with the provisions of the FERA. In the absence of respondent No. 3, the court would have been greatly handicapped in this regard. Far from making a grievance of it, the PNB, which is a nationalised bank, should have welcomed the opportunity of meeting the allegations made against it in the petition. Any aspersion made against the PNB by the petitioner and adverse observation, if any, made by the court in deciding issues raised before it could have been legitimately complained of by the PNB. In our view, impleading of the PNB was most appropriate and it has indeed facilitated the court in ascertaining very many facts and in setting out the issues involved in the case in the proper perspective.

344. Mr. Shah, the learned counsel appearing for the bank, fairly placed all the facts in possession of the bank which have a bearing on the issues involved in this case. We are, however, not impressed by the contention raised by the PNB that since rule nisi is not issued in regard to the prayer classes (d), the court was wholly debarred from going into the question whether the respondents have complied with the provisions of the Act in purchasing the shares and applying for permission. For granting or refusing relief to the petitioners, the principal question whether prior permission of the Reserve Bank was necessary or not for the valid purchase of the shares by the respondent-companies, had to be gone into. In this context, the role of the PNB has necessarily to be considered. It was obligatory on the NIR investor purchasing shares to obtain prior permission of the RBI and it was the duty of the designated bank, in this case, the PNB, to see that such permission was obtained before foreign remittance of investor was released from the NRI (External) Account. The stand taken by the PNB in this behalf is the same as the one taken by the learned Attorney-General on behalf of respondents Nos. 1 and 2, namely, that such permission could be obtained even after the purchase of the shares. That contention, after elaborate consideration has been already rejected.

345. It was further urged By Mr. Shah, the learned counsel for the PNB, that the Company Law Board was competent to decide all the questions relating to the validity of purchases or refusal to transfer the shares. As against this decisions, an appeal lies to the Supreme Court and, therefore, this court should not entertain the writ petition. This contention has already been answered above. However, we do not see how the PNB is interested in raising this objection and

pursuing this matter. The obligation of the bank ended with producing the record and stating its case which is in no way different from that of respondents Nos. 1 and 2. The facts disclosed from the documents placed by the PNB and the other correspondence have been noticed at length while dealing with the question of arbitrariness and mala fides alleged against respondents Nos. 1 and 2 in issuing the impugned circular and letter and in issuing notice of requisition. In view of the above, we are clearly of the view that the PNB was at least a proper party if not necessary party to this writ petition.

346. The learned Attorney-General pointed out that the writ petition, both as originally framed as well as after its amendment, suffers from multifariousness; it is bad for misjoinder of parties and causes of action. It was urged that respondents Nos. 1 to 2 are interested only in seeing that the validity of the impugned circular and the impugned letter was upheld by the court. Respondents Nos. 1 and 2 were not concerned with the decisions of the petitioner-company to reject the registration of shares purchased by respondents Nos. 4 to 17. Only respondents Nos. 4 to 17 were concerned with it. Respondents Nos. 1 to 2 were also not concerned with question whether the requisition for EGM was validly made by respondent No. 18. Further, the originally framed against respondents Nos. 1 to 17 in this writ petition as regional framed have no direct connection with the relief claimed against respondent No. 18. The relief claimed against respondent No. 18 is not interested in the relief claimed against the other respondents.

347. Whether a plaint or a petition suffers from multifariousness, misjoinder of parties or causes of action must be determined primarily on the averments in the plaint or the petition, as the case may be. In the writ petition as originally framed, the validity of the press note, the circular and the letter (Exs."A", "B" and "C") are questioned and declaration that purses of shares without prior permission under s. 29 of the FERA is invalid is sought. If the press note (Exh."A"), Circular (Exh."B") and letter (Exh."C") are valid as contended by the petitioner and prior permission is not required, then the action of the petitioner-company and the decision of the board of Director refusing to register the shares would obviously be unsustainable and the writ petition would fail. Then no further question would arise. After the rules nisi was issued in the writ petition so framed, respondents No. 18 sent notice requisitioning an EGM of the company to remove nine part-time directors and to elect in their place nine whole-time employees of the financial institutions as directors. It was alleged by the petitioner that this requisitions was mala fide and was calculated review and reverse the easier decisions of the board of directors not to register the transfer of shares in favour of respondents Nos. 4 to 17. The requisition was for an ulterior purpose. The decision to reject registration of the shares which was dependent upon the question whether prior permission was necessary thus got interlinked with the validity of the requisition notice. The point that the requisition notice is issued mala fide is a question of fact and how far that affects the validity of the requisition itself is a matter to be considered for granting or

refusing relief to the petitioner. It cannot be said that the allegations made in the writ petition as originally framed and the relief claimed by way of amendment of the writ petition are so wholly unconnected or extraneous to one another as to prevent the concerned company and its managing director from filing a single writ petition for the several reliefs claimed therein.

348. The exercise of the jurisdiction under article 226 cannot be put into a strait-jacket by any rules of procedure. The provisions of the CPC are not made applicable in their entirety to petition under art. 226 of the Constitution. Where the rule governing writ petition is silent, the court is entitled to devise its own procedure for doing justice between the parties. Order I of the CPC is devised to prevent prejudice being caused to parties due to multifariousness or misjoinder of parties or causes of action. The consequences of multifariousness and misjoinder are expressly provided therein. In the absence of any provision making O. I of the CPC specifically applicable to writ petition the consequences of misjoinder provided under the CPC do not necessarily follow in every writ petition. Even under the provisions of the CPC, in our view, the contention of the respondents cannot be upheld. Order I, r. 1 of the CPC lays down that all such persons may join in one suit as plaintiffs where any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative, if such person brought separate suit, any common question of law or fact would arise. The interest of the petitioner-company which is being managed by duly elected board of directors of which petitioner No. 2 is the managing director, are common. There was no conflict of interests between the company and the managing director. In fact, the filing of the petition for the said relief has been approved by the majority of the directors. Apart from petitioner No. 2, who has subscribed to the writ petition, nine other directors have also filed affidavits before this court supporting the writ petition and the stand taken therein and prayed for the relief set out in the writ petition. If these petitioners could have filed separate petition, they could as well validly join in filing a single writ petition for the reliefs claimed. In fact, if separate proceedings were to be initiated by them, common questions of law and fact would have arisen for consideration necessitating hearing of all those writ petitions together. The company and the managing director joining as petitioner in filing a single writ has avoided such a situation.

349. As regards the persons who may be joined as defendants under O.I. r. 3 of the CPC, it is provided as under :

"All persons may be joined in one suit as defendants where - (a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and

(b) if separate suit were brought against such persons, any common question of law or fact would arise."

350. It is well settled that each of the defendants that are joined in a suit may not be interested in all the relief claimed by the plaintiffs and each of the defendants may be interested in only denying certain facts and raising certain issues. Rules 5 of O. I of the CPC specifically lays down that it shall not be necessary that even defendant be interested as to all the reliefs claimed in any suit against him. But if the issues common to all or some of them are required to be decided in a particular case for the purpose of granting or refusing relief to all or some of the defendants, then all these defendants could be joined in one suit. That is the position undoubtedly in regard to respondents Nos. 1 to 17 herein. If our decision on the allegation of mala fides and arbitrariness made against respondent No. 18 and one the necessity of obtaining prior permission for valid purchase of the shares was necessary and correct, then the impleading of the other respondents in the writ petition was undoubtedly proper. As regard misjoinder of parties, r. 9 of O. I of the CPC lays down that no suit shall be defeated by reason of the misjoinder or non-joinder of parties and the court may in every suit deal with the matter in controversy so far as regards the rights and interest of the parties actually before it.

351. The respondents also contend that there is misjoinder of parties or causes of action in this writ petition. There is no specific provision making O. I or O. II applicable to writ petitions. Even where in filing a suit against several defendants, several causes of action are joined, it is within the power of the court to separate trials; that cannot be made a ground to dismiss the suit. These rules of procedure are not intended to defeat the rights of the parties on any technical ground. They are laid down to avoid embarrassment to the parties and ensure that trial is not delayed. The parties that are really affected by the decision of the petitioner-company not to register the shares, have not chosen to appear in this court in spite of the service of the summons. So far as respondent No. 3 is concerned, no relief is claimed against it. Respondents Nos. 1 and 2 are merely interested in upholding the validity of the circular and the letter addressed by the Reserve Bank and not in questioning the non-registration of the transfer of the shares as such. The question of validity of the LIC's requisition, as already stated above, came to be linked up because of the allegation of mala fides against it by the petitioner and especially the allegation that the EGM is requisitioned to secure a majority in the board of directors for the purpose of reversing the earlier decision of the board of directors refusing registration of transfer of shares. The cause of action for claiming the relief against respondent No. 18 arose after the filing of the writ petition. Filing of a separate writ petition in this regard would have necessitated court to go into some of the questions which were required to be gone into in the writ petition as originally filed. Even if a separate writ petition were to be filed questioning the requisition notice, it would have been more convenient to hear that writ petition along with this writ petition. In fact much of the confusion has been avoided by respondents Nos. 1 and 2 and the LIC (respondent No. 18) being represented by the learned Attorney-General himself. It has facilitated all the parties concerned. In our view,

the petition could not be rejected on any ground of misjoinder of parties causes of action or multifariousness.

352. It is argued on behalf of the respondents that since the learned single judge has refused rule nisi in regard to prayer clause (d), this court is precluded from granting even the other relief prayed for in the writ petition as originally framed. Prayer clause (d) reads as follow :

"(d) for a declaration that the purchases of shares made by or on behalf of respondents Nos. 4 to 17 are illegal violative of the provisions of the FERA, the provisions of the RBI circulars issued from time to time and the provisions of the Securities Contracts (Regulation) Act, 1956, and of the bye-laws of the stock exchange."

353. Though the learned single judge did not direct rule nisi to be issued in regard to clause (d), he did order rule nisi with regard to the relief claimed in purer clauses (a), (b), (c), (e), (f), (g), (h) and (i). For deciding whether the petitioner should be granted the reliefs prayed for in these other clauses, this court would certainly have to consider whether prior permission under s. 29(1) (b) of the FERA must be obtained for valid purchases of shares by the NIR investors and whether the press release of the RBI dated September 17, 1963 (Exh."A"), and the Circular No. 18 of September 19, 1983 (Exh."B"), and the letter dated September 19, 1963 (Exh."C"), addressed by the RBI to the PNB are valid with retrospective effect. In that context and especially in considering whether a writ of mandamus restraining respondent No. 2 from directing the implementation of the letter (Exh. "C") and respondents Nos. 4 to 17 from insisting upon implementation of the said direction should be issued or not, even the question that are relevant for granting relief under prayer clause (d) would have to be necessarily gone into. In our view, when by the same order rule nisi in respect of one relief is refused and for granting or refusing the other reliefs certain issues have to be decided, the reasons that prompted the court to refuse one relief cannot operate as *res judicata* so as to preclude the court from granting the other reliefs. In refusing the relief prayed for in clause (d), the court did not decide any issue on merits at the admission stage. It merely held that that would require going into disputed questions of fact. If, even on the facts pleaded by the respondents, the purchase of shares is found to be illegal and in contravention of s. 29 for the reason that prior permission was not obtained, this court, which has to necessarily dispose of the writ petition on merits, is not prevented by any principle of *res judicata* from so declaring and granting the other reliefs which serve the same purpose. In AIR 1940 222 (Privy Council) on which reliance was placed for contending that refusal to grant rule nisi in respect of prayer clause (d) operates as *res judicata*, the court declined to exercise jurisdiction on a construction of the terms of the award. The court held that it is the decision as to lack of jurisdiction which operates as *res indicator* and not the reason for that decision. It must be noticed that in refusing rule nisi with respect to prayer clause (d), the learned single judge did not give any decision whether

for valid purchase of shares, prior permission under s. 29 of the FERA is necessary or not. Hence, that question is open for consideration in this writ petition. Further, the learned single judge specifically observed :

"What is sought for by prayer (d) must be regarded as ordinarily beyond the function of the writ court. But, this should not be taken to imply that there is no warrant in various complaints made by the Escorts and petitioner No. 2 in connection with this aspect of the matter.

If it were the intention of the learned single judge that no aspect of the matter, which impinges upon the validity of the purchases of shares, including whether prior permission is necessary for valid purchase, should at all be gone into and no declaration in that regard should be granted, there was no occasion for issuing rule nisi in respect of the other reliefs prayed for in the clauses. That the intention of learned single judge was not to refuse such a declaration is further clear from the fact that he directed one of the transferors, Kishore Paral Ghia, who questioned the order of the petitioner-company rejecting the registration of the transfer of shares before the Board of the Company Law Administration, to be added as a party respondent to the writ petition. He also directed two other transferors of shares "as representing themselves and other transferors" who had sold their shares to respondents Nos. 4 to 16 who may be effected by the decision of this court to be impleaded as respondents. They were accordingly impleaded as respondents Nos. 19, 22, and 23. Since the court has expressly directed rule nisi in respect of other prayer clauses, the principle enunciated in *Avtar Singh and Others Vs. Jagjit Singh and Another*, relied upon the learned Attorney-General, in our view, cannot apply.

In *Chockalinga Thevar v. Sankarappa Naikar* AIR 1942 Mad 421, it was held that when an appeal was pending and a final judgment on the same issue is pronounced by another court of competent jurisdiction in the meanwhile and that has become final, that would operate as *res judicata* in appeal. This principle, in our view, cannot apply to case where the writ petition itself is admitted and rule nisi is respect of one prayer at the stage of admission without deciding any issue on merits.

No statutory rule of *res judicata* as such applies to writ petitions. It is only the general principles of *res judicata* that are applicable and not s. 11 of the CPC as such. Both *Devilal Modi, Proprietor, M/s. Daluram Pannalal Modi Vs. Sales Tax Officer, Ratlam and Others*, and *Gulabchand Chhotalal Parikh Vs. State of Bombay (Now Gujarat)*, , were cases in which the writ petition were disposed of on merits and the court held that subsequent petition involving same question and for same reliefs are barred by the principles of *res judicata*. So are the decisions in *Thakore Sobhag Singh Vs. Thakur Jai Singh and Others*, and *Union of India (UOI) Vs. Nanak Singh*, . However, in *Workmen of Cochin Port Trust Vs. Board of Trustees of The Cochin Port Trust and Another*, , the court held that from the order dismissing the SLP in limine, it cannot be inferred that all the matters agitated in a subsequently filed writ petition were either explicit or implicit

decided. The court observed that the technical rule of *res judicata*, although a whole some rule, cannot be stretched too far to bar the trial identical issues in a separate proceeding merely on an uncertain assumption that the issues must have been decided. It is not safe to extend the principle of *res judicata* to such an extent so as to found it on mere guess-work. In *Daryao and Others Vs. The State of U.P. and Others*, , it was observed that the point to be considered would always be : what is the nature of the decision pronounced by a court of competent jurisdiction and what is its effect. The Supreme Court, referring to the above observation, held that the dismissal of a writ petition in limine with a reasoned order may or may not constitute a bar. If the petition is dismissed in limine says Gajendragedkar J. (headnote) :

".... without passing a speaking order, such dismissal cannot be treated as creating a bar of *res judicata*. It is true that, *prima facie*, dismissal in limine even without passing a speaking order in that behalf may strongly suggest that the court took the view that there was no substance in the petition at all, but in the absence of a speaking order, it would not be easy to decide what factors weighed in the mind of the court and that makes it difficult and unsafe to hold that such a summary dismissal on merits and as such constitutes a bar of *res judicata* against a similar petition"

354. This strongly suggests that ever where the entire writ petition is dismissed in limine, the principle of *res judicata* does not necessarily apply. In our view, where no issue as such is divided and while admitting the writ petition, rule nisi is refused to be issued in regard to only one of the reliefs prayed for, no bar of *res judicata* arises in regard to that issue when it is required to be decided for granting the other reliefs in respect of which rule nisi is issued. In exercise of the extraordinary jurisdiction vested in it under art. 226 of the Constitution, when the High Court admits a writ petition and issues rule nisi, it is always open to the court, having regard to the conclusions reached by it, to withhold the relief to suit the circumstances of the case. Refusal of rule nisi by itself, in our view does not operate as *res judicata* for there is no binding decision between the parties at that stage. In our view, all reliefs flowing from the conclusions reached in this case can certainly be granted notwithstanding refusal of rule nisi in regard to prayer clause (d) of the writ petition.

355. It was argued that this writ petition ought not to have been filed on behalf of the company. If petitioner No. 2 was aggrieved, he should have filed a writ petition in his own name as a shareholder, and he should not have filed it as a managing director of the company. It is said that in any case he should not have filed the writ petition in the name of the company and dragged it into the litigation. We are unable to accept this contention.

356. Refusal to register the shares is a decision taken by the board of directors who are authorised under the provisions of the companies Act and by art. 55 of the articles of association to manage all the affairs of the company. That decision constitutes a corporate decision and is a decision of the petitioner-company

itself. Until varied u/s 111 of the Companies Act or by a general meeting of the company under arts. 51 and 55, that decision stands. Now that is made an issue and the contest is between the board of directors who are meaning the affairs of the petitioner-company and who appear to be now representing the minority shareholder and the financial institution who virtually have a decide and controlling majority shareholding in the petitioner-company. The order refusing registration of transfer of share is no doubt appealable before the Company Law Board under s. 111 of the Companies Act, but the Companies Law Board, which is itself a body constituted under the Companies Act, cannot adjudicate upon the validity of the permission granted by another statutory body. In any case, it is the High Court that is the proper forum for adjudication of such disputes so as to be binding on all the statutory bodies constituted by or under any law. In all such cases, even though the decision refusing registration of shares is taken by the board of directors, that being a corporate act, it is the company that is primarily interested in upholding that decision. The corporate body acts through its board of directors. The day-to-day management of the company especially vests in the managing director. Petitioner No. 2, as the managing director of the petitioner-company, has been vested with such power. The articles of the company clothe him with the authority to file suits and other proceedings in the name of the company. The act of the board of directors refusing to register the shares is a corporate act and when that was being questioned, as discussed above, that was a *lice* issue. The LIC had requisitioned a meeting to remove nine directors who were parties to this decision. If the decision of the board of directors, which is a corporate act, is valid, an action could be brought in the name of the corporation to sustain it. In *Bennet Coleman & Co. v. Union of India* [1977] 47 com Cas 92, a Division Bench of the Bombay High Court held that the company could prefer an appeal in the name of the company even where the dispute is internal. It was also laid down that the board of directors is competent to start proceedings in the name of the company. Justice Tulzapurkar, as he then was, speaking for the court referring to Gower's *Principles of Modern Company Law*, 3rd Edition, p. 583; Buckley on the *Companies Acts*, 13th Edition, p. 169; and the decision in *Pender v. Lushington* [1876] 6 Ch 70, observed (p. 107 of 47 Comp Cas) :

"... the normal rule is that in an action arising out of a dispute within the company the appropriate agency to start an action on the company's behalf is the board of directors through as an exceptional measure it has been ruled that if the directors cannot and will not start proceedings in the company's name, the power to do so reverts to the general meeting."

357. Petitioner No. 2 was, therefore, competent to file the writ petition in his own name and also in the name of the company of which he is the managing director and shareholder.

358. In *Estmanco (Kilner House) Ltd. v. Greater London Council* [1982] 1 All ER 437; [1982] 1 WLR 2, the right of the minority to maintain a petition on behalf of the company in cases of fraud on minority was refined. It was held that "the

majority shareholders cannot be allowed to deprive to minority of its rights, if it amounts to fraud upon the minority." The court held (headnote a All ER) :

"The exception to the rule that a member of a company could not maintain an action on behalf of the company for a wrong done to the company which permitted a member to sue where there was fraud on a minority of shareholders extended beyond fraud at common law and include an abuse or misuse of power by the majority, whether acting as directors or shareholder."

359. We have already discussed above and held that there was a live issue in regard to the validity of the purchase of shares by respondents-NRI investors and the refusal to register the shares. On the facts and in the circumstance of the case, it was very necessary in the interest of the company itself to get an authoritative adjudication on this issue by the highest court in the State. The company could, therefore, properly move this court under art. 226 of the Constitution. The board of directors as presently constituted having taken a decision in exercise of its authority, which constitutes a decision of the company itself, is competent to file the writ petition not only on their own behalf but on behalf of the company, especially when question is inextricably interlinked with the question of payment of dividend. If the issues are left to be decided by a mere trial of strength at the EGM, one cannot be sure that what is legally right would necessarily be supported by the majority. With the stand taken earlier by the financial institutions, which hold 52% shares of the company which stand continued to be pressed by the LIC even before this court, the result of the EGM was foregone. The subsequent result of the voting at the EGM amply demonstrates how true the apprehensions of the petitioner were. They fully justify the filing of the writ petition both by the company and by the managing director.

360. The learned Attorney-General, Mr. Parasaran, next drew out attention to the fact the subsequent to the filing of the writ petition, as permitted by the Supreme Court, the requisitioned extraordinary general meeting of the company was held on several days for considering the resolution moved by the LIC. That resolution was ultimately adopted by the majority of the shareholders. In view of this subsequent event, the court should refrain from granting any of the relief prayed for. On the other hand, the learned counsel for the petitioners, Mr. Nariman pleaded that if the court were to uphold the main contention of the petitioners, taking into account these subsequent event, the court, rather than denying relief to the petitioner, should so could the relief as to make its decision effective.

361. This court, while granting rule nisi, has issued an injunction restraining the holding of the extraordinary general meeting. On appeal, their Lordships of the Supreme Court, while permitting the holding of the meeting, ordered that further directions be obtained before announcing the result of the extraordinary general meeting. When the resolution adopted were brought to the notice of the Supreme Court by the LIC for appropriate directions, the Supreme Court was

pleased to issue the following directions :

"So far as directors who have been purported to have been removed at the extraordinary general meeting and also those purported to have been elected in their place at the said meeting, they shall not function as directors of the company until further orders are passed by this court. We are making this direction because the writ petition is pending for judgment before the High Court of Bombay.

So far as the board as newly constituted after the annual general meeting is concerned, all the members would function excluding those who have been purported to be removed by the resolutions of the extraordinary general meeting and those who have been purported to be elected at the said meeting. The newly constituted board will only transact routine business and shall not take any policy decisions including decision concerning the withdrawal of the writ petition or registration of transfers of shares. It will be open to the new board of rectors to apply to this court for further directions as may be necessary.

It would be clear from the above that it was never the intention of the Supreme Court that the resolution of the EGM should prevail and be given effect to irrespective of the finding reached by this court on the several substantial legal issues raised before it. The Supreme Court was obviously of the view that any resolution of the EGM should be subject to the decision of the High Court on these issues. Now that this court has held that the impugned requisition notice was invalid, it must necessarily follow that upon such a requisition, the EGM could not have been held and, consequently, the resolutions adopted at such a meeting ought not to given effect. The subsequent events must stand nullified if the requisition which is the foundation for this meeting itself is declared illegal. We, therefore, declare that the resolutions adopted at the EGM held pursuant to the impugned cannot have any legal effect and in particular cannot have the effect of removing the nine directors sought to be removed by resolutions Nos. 1,3,5,7,9,11,13,15, and 17. Consequently, there was no occasion for electing nine other directors as proposed in resolutions Nos. 2,4,6,8,10,12,14,16, and 18. In the result, the none directors sought to be removed do not vacate the office by virtue of those resolutions; they continue to hold office and the other nine directors purported to have been elected in their stead would not assume office. It is, however, clear that if by virtue of any resolution of the annual general meeting, any of the above nine directors or any other directors has vacated office or any person has been elected to fill in any vacancy, nothing said herein will affect those resolutions or the validity of the action, if any, sought to be taken in pursuance thereof.

Who then should bear the costs of this writ petition. The learned single judge at the stage of admission observed :

"That the questions raised in this petition are of such importance that the matter may be very advantageously heard by a Bench of two judges."

He also observed :

"When one is considering the challenge to a requisition such as Exh."AY" the question is not restricted to one company but goes to the entire corporate sector. In a was the importance of this question becomes glaring when we have the admitted track record of Escorts as also the clear position that the decision to requisition a meeting for replacing these nine directors is not protect or safeguard or to further the investment of the public financial institutions. Indeed with this background, in the my opinion, the High Court possessing writ jurisdiction is obliged to entertain the petition and dispose of important questions with such expedition as possible under the contract in which the court are today functioning."

362. However, as regards costs, some controversy is raised. It is said, the managing director should not have dragged the company into litigation and burdened it with costs. In this petition, important questions of law, vitally affecting the corporate sector and public financial institutions, were raised. In raising such large and important issues to be decided by the High Court in exercise of its writ jurisdiction, it could not be said that the petitioners have acted either rashly or negligently or with any interior motive. It is to vindicate the action taken corporate body that the board of directors, vested with the authority to manage the affairs of the company, filed this writ petition after obtaining independent legal advice. In a matter such as this, irrespective of the result of the writ petition, an individual shareholders or even a managing director cannot be saddled with costs. The action having taken for and on behalf of the corporate body, even if that decision were to be ultimately held to be erroneous, so long as it is not for a collateral and is not taken tightly or negligently and without keeping the interest of the company in view, the managing director be individually made liable to bear the costs. The costs must be born by the corporate body. In *Wallersteiner v. Moir* [1975] 1 QB 373 the Court of Appeal even in the case of minority shareholder declared :

".... it was open to the court in a minority shareholder's action to order that the company indemnify the plaintiff against the costs of the action."

363. In that view, M, the plaintiff therein, was indemnified for the costs incurred by him on behalf of the companies up to and including discovery when he was required to obtain further directions from the court. It is presumably, having regard to this position of law, that the learned single judge, even while directing rule nisi, held that with effect from March 14, 1984, the costs of the petition should be incurred until further orders by petitioner No. 2 only and restrained both the petitioner of an order and injunction of this court from acting in contravention of the aforesaid directions. Until further orders, the court restrained petitioner No. 2 from drawing any amount from the petitioner-company or seeking reimbursement of the costs incurred by him and left his matter to be considered and ordered by this court at the time of final hearing and disposal of the writ petition. In view of the directors, the solicitor of the

petitioners informed the solicitors or respondent No. 18 by their letter dated July 17, 1984, that a sum of Rs. 1,75,000 was deposited by petitioner No. 2 towards the costs and expenses of this petition. In this writ petition, we direct that the costs of this writ petition, do come out of the funds of the petitioner-company irrespective of the ultimate result of this writ petition or any appeal that may be filed against this judgment. Petitioner No. 2 shall be reimbursed to the full extent irrespective of the ultimate result of the proceeding initiated by the petitioner. Now that the petitioner have succeeded the petitioner will be entitled to costs of this writ petition.

364. The hearing of this writ petition lasted for 25 working days and covered about 120 hours. The record is voluminous and the issues raised are substantial and complex. The labour involved in the preparation and presentation of this petition by both the parties was considerable. It was done with utmost care and due diligence. The arguments addressed exhibited great learning, lucidity, legal acumen and advocacy. We are indeed grateful for the assistance rendered by Mr. Parasaran, learned Attorney-General, Mr. Nariman, learned counsel for the petitioner, and Mr. Mahendra Shah, learned standing counsel for the PNB and their able colleagues. In view of the above, under r. 606(9) of the Rules of the High Court of Judicature at Bombay, Original Side, 1980, we fix the costs in this writ petition at Rs. 25,000.

To sum up :

Section 29(1) (b) of the FERA is mandatory. No NRI investor may purchase shares in an Indian company under the portfolio investment scheme envisaged by Circular No. 9 dated April 14, 1982, without obtaining prior permission of the RBI under s. 29(1)(b). Any purchases made without such prior permission would expose him to action under ss. 50 and 57 and prosecution under s. 56. Such purchases would be illegal. Obtaining prior permission is also made mandatory under regulation 24.1 issued by the RBI. The shares in question were all purchased by the respondent-companies prior to September 19, 1989, before any permission was granted. These purchases contravene s. 29 of the FERA and regulation 24.1 issued by the RBI as also the conditions stipulated by Circular No. 9 dated April 14, 1982. The petitioner-company was, therefore, statutorily prohibited from registering the transfer of these shares and it was justified in law in refusing registration of transfer of shares. Neither the Union of India nor the RBI is empowered to order otherwise, either by issuing directions under s. 75 or under s. 73(3) of the FERA. There is no provision under the FERA authorising the RBI to grant permission after the shares are purchased so as to validate such purchases or to permit holding of the shares purchased without obtaining prior permission. Under the portfolio investment scheme, enunciated under Circular No. 9 of April 14, 1982 (Exh."G"), NRI investors were permitted to purchase shares in Indian companies, subject to the limit mentioned therein, only after obtaining prior permission of the RBI under s. 29(1)(b) of the FERA. The NRI investor, if it were to be a company, firm, society or trust and not an individual,

was eligible to make investment under that scheme only if non-residents of Indian nationality/origin held ownership or beneficial interest therein up to 60% or upwards. If such beneficial interest was held indirectly they were not eligible and permission could not be granted under s. 29(1)(b) of the FERA to such NIR companies to purchase shares in Indian companies. Parliament could never have envisaged attracting foreign exchange or permitting investment by the NIR investors in purchasing shares Indian companies without obtaining prior permission of the RBI. The press release dated September 17, 1983 (Exh."A"), the Circular dated September 19, 1983 (Exh."B"), and the letter dated September 19, 1983 (Exh. "C"), are not vitiated by mala fides. The clarifications made under Exhs."A", "B" and "C" that the original intention of the Government of India and that of the RBI was to permit even such entities in which non-residents of Indian nationality/origin hold ownership or beneficial interest up to or above 60% even indirectly, does not have any legal and cannot retrospectively make such entities eligible to invest under the portfolio investment scheme envisaged by the circular (Exh."G"). The clarifications under Exhs."A", "B" and "C" would, however, amount to amending the portfolio investment scheme with full repatriation benefits introduced under Exh."C" prospectively, that is, on and from September 19, 1983, which is the date of its issue and they are valid from that date and validly operate prospectively. They, however, cannot operate retrospectively so as to validate the purchase of shares made by legal entities which were ineligible on the date of purchase or authorise purchase of shares without obtaining prior permission of the RBI under s. 29(1)(b) of the FERA. Under the portfolio investment scheme in force on the date when the shares in question were purchased by the Caparo Group Ltd. in the petitioner-company, the non-resident Indians did not directly hold 60% or more of shares in the NIR company so as to make them eligible for purchasing shares. They were not, therefore, eligible to purchase shares under the said scheme. The subsequent clarification cannot make them eligible retrospectively from the date they purchased the shares. Exhs."A", "B" and "C" do not have the legal effect of validating the purchases of shares in the petitioner-company made respondents Nos. 4 to 16, firstly, because the NIR did not directly hold interest up to or above 60% in these companies and, secondly, because they did not obtain prior permission of the RBI under s. 29(1)(b) of the FERA. The clarification (Exhs."A"), the circular (Exhs."B") and the letter (Exh."C") are, however, valid prospectively and on their strength respondent-company may validly purchase shares under the portfolio investment scheme with full repatriation so long as the NIR of Indian nationality/origin continue to hold at least 60% interest and the permission subsists. In so far as they have the effect of permitting shares purchased without obtaining prior permission of the RBI, they ultra vires of s. 29(1)(b) of the FERA and the powers vested in the Union of India under s. 75 and the RBI under s. 73(3) of the FERA; to that extent they are void and inoperative both prospectively and retrospectively. A writ of mandamus issue restraining respondents Nos. 1 and 2 from issuing any direction to register transfer of shares purchased by the respondent-companies pursuant to the letter

dated September 19, 1983 (Exh."C") and to further forbear from implementing the said circular (Exh."B") and the said letter (Exh."C").

365. The LIC and other financial institution linked up the proposals of the petitioner-company to accept prepayment of loan and to agree to the merger of Gortze-Escorts Ltd. with the issue of registration of transfer of shares in favour of Caparo group of companies. The linking up of these two matters by the LIC and other financial institutions amounts to exercising an illegal and unauthorised pressure on the petitioner-company and its management and constitutes commercial dues and abuse of their dominant position. This illegal was brought to secure the registration of transfer of shares in favour of the respondent-companies. Having failed to achieve this object, the LIC resorted to requisitioning an EGM of the petitioner-company.

366. The LIC is a statutory body and is an "authority" which is deemed to be "a State" within the meaning of art. 12 of the Constitution. Even in issuing a notice requisitioning the EGM of the Escorts Ltd. the LIC acts as a statutory body and must act within the four corners of the LIC Act. It can issue a notice do all other acts as a shareholder only to discharge the functions and duties set down under the LIC Act and only for achieving the object of the LIC and for no other purpose. It cannot act as a private individual shareholder; it cannot a requisition notice for a purpose not envisaged by the LIC Act; the requisition notice cannot be issued arbitrarily and without reason. The impugned requisition notice was issued by the LIC for a collateral purpose and is not a bona fide exercise of the vested in the LIC as a shareholder. It is vitiated by mala fides. The statement attributed to the Union Finance Minister and the allegation of mala fides made against respondents Nos. 1 and 2 are unsubstantiated. The requisition notice issued by respondent No. 18 and the resolutions moved by it are not liable to be struck down on the allegation of mala fides made against respondents Nos. 1 and 2 or the Union Finance Minister. It is, however, proved to be a mala fide and arbitrary act of respondent Nos. 18. That action of the LIC, however, cannot be a ground to attribute any mala fides to respondents Nos. 1 and 2. The Union of India and the RBI, respondents Nos. 1 and 2, are in no way responsible for the action of the LIC in this regard.

367. The impugned requisition notice does not conform to the provisions of s. 284 of the Companies Act, inasmuch as it does not disclose any reasons or grounds for moving a resolution to remove in out of fifteen directors of the petitioner-company. Section 284 of the Companies Act by its necessary intendment requires the requisitionists to state reasons in the notice requisitioning an EGM to consider a resolution to remove the directors. In any event, such an obligation must be enjoined on principles of natural justice. The notice offends the principle of natural justice. If the reason given in the notice on the face of it is either not true or is invalid, it amounts to not giving any reason at all. When such a notice a challenged in court and if even then no plausible reason is suggested, it amounts to arbitrary exercise of the rights by the

shareholder. The LIC in requisitioning the EGM has not given any reason except that it does not "wish" the nine directors who are part-time directors to continue and has moved a resolution to replace them by nine directors who are whole-time employees of public financial institutions and who, consequently, become part-time directors of the petitioner-company. This is a wholly an incorrect and unsustainable reason. When a statutory body acts for no reason or on a stated reason which is found to be wholly untenable, it must be held that it is acting arbitrarily. Any such arbitrary action of a public authority and more so of a statutory authority like the LIC, which is a "State" within the meaning of art. 12 of the Constitution, must be held to be violative of article 14 of the Constitution. This itself is sufficient to quash the impugned requisition notice. Issuing such a notice of requisition amount to an arbitrary exercise of power by the LIC. Even a private individual shareholder is not entitled to use the majority shareholding for any collateral purpose; much less a statutory body like the LIC. The corporate sector, at least public corporations governed by statute and the public sector which acquires certain special powers and exclusive rights under a statute must not be left to act in their arbitrary discretion; reason for their actions must be stated. Requiring reasons to be stated by invoking the principle of natural justice further the object of the legislation and makes it much more effective without affecting the right of anyone. Public policy dictates the invoking of the principles of natural justice to enjoin upon the requisitionists to give reasons. The requisition notice must be struck down for failure to given reasons. That power vested in the shareholder must exercised only for benefit of the company as whole and not as they "wish" disregarding the interest of the company and that of the other shareholders.

368. The resolution moved for removing the nine directors out of a total of fifteen directors of the petitioner-company amounts to taking over the management of the petitioner-company. Neither section 6 nor any other provisions of the LIC Act authorise the taking over of any company or any other property by the LIC except for protecting its investment. The provisions of the LIC Act do not authorise the taking over the other companies only because the LIC by itself or along with other financial institutions, happened to envious considerable sums of money or hold over 50% of the share in the borrowing company; nor does the policy decision of the Union Government authorise them to take over the management or do any act which virtually amounts to taking over the management of another company. That can be done only for the purpose of safeguarding the investment made by it. As the investments of the LIC and other financial institutions are not in jeopardy, it amounts to taking a step not authorised by the LIC Act. The resolution proposed in the requisition notice, with the support of all the financial institutions is certain of being adopted. That would logically result in virtually taking over the management of the petitioner-company. To requisition an EGM calculated to achieve this object is the exercise of power for a collateral purpose and is a mala fide and arbitrary action. It is violative of art. 14 of the Constitution. A statutory corporation such

as the LIC cannot be permitted to take any step for taking over the management of another company like the petitioner-company. If that is the logical consequence, It must necessary be restrained by the issue of a writ.

369. The power exercisable by the LIC is not pure contractual but referable to a statute, which defines the limitations of its authority. The LIC while it may exercise its vote as any other shareholder, it can do so only for the purpose of or in discharge of its function u/s 6 and for the objects of the LIC Act and not for any other purpose. While the right to requisition an EGM vests in the LIC as in any other shareholder, the exercise of this right by the LIC is restricted to the objects and purpose define by the LIC Act and not for any other purpose. The LIC being a statutory body fills the character of an authority against whom writ could be issued. The requisition notice and the resolutions adopted at the EGM covered pursuant to the said requisition cannot be sustained and deserve to be quashed. In requisitioning the EGM for removing the nine directors, the LIC has not kept in view the interest of the petitioner-company as a whole of which it is a shareholder. The requisition notice deserves to be quashed on this ground as well.

370. The pendency of the appeal preferred by respondent No. 19 before the Board of Company Law Administration is not a bar to this court considering the several issues raised in this writ petition and more especially the issue relating to the validity of the purchase of share without obtaining prior permission of the RBI.

371. In exercise of the extraordinary jurisdiction vested in it under art. 226 of the Constitution, when the High Court admits a writ petition and issues rule nisi, it is always open to the court, having regard to the conclusions reached by it, to would the relief to suit circumstances of the case. Refusal of rule nisi by itself does not operate as res judicata for there is no binding decision between the parties at that stage. All reliefs flowing from the conclusions reached in this case can certainly be granted notwithstanding refusal of rule nisi in regard to prayer clause (d) of the writ petition. Refusal of rule nisi in respect of the relief prayed for in clause (d) does not preclude this court from considering all the issues relevant for granting or refusing the reliefs prayed for in the other prayer clause in respect of which rule has been issued.

372. This court, in exercise of its jurisdiction under art. 226 of the Constitution is empowered and justified in granting a declaratory relief simpliciter. In certain circumstances, the declaratory relief itself may constitute substantive relief and having regard to the declaration granted, the respondents may be also restrained from taking any action contrary to the said declaration. Such declaratory relief not be denied where the party applying for that relief is not a position or is not required to seek any further consequential relief. The present case is one such. In any even, the petitioners have sought not merely a declaration but also prayed for consequential relief of writ mandamus to restrain the respondents from giving effect to the impugned press release dated September 19, 1983 (Exh."B"), and the letter dated September 19, 1983 (Exh."C") from giving effect

to the requisition notice and the resolutions, if any, passed in pursuance thereof.

373. The questions raised in the writ petition were live issues and the petitioner had locus standi to file writ petition. Petitioner No. 2, apart from being the managing director of the petitioner-company, is a shareholder and is entitled to file the writ petition questioning Exhs."A", "B" and "C" and the requisition notice and to pray for writ of mandamus and interim relief both on his own behalf and on behalf of the petitioner-company. On the facts and in the circumstance of the case, it was very necessary in the interests of the company itself to get an authoritative adjudication on this issue by the highest court in the State. The company could, therefore, properly move this court under art. 226 of the Constitution. The board of directors as then constituted having taken a decision in exercise of its authority, which constitutes a decision of the company itself, the second petitioner as managing director was competent to file this writ petition not only on his own behalf but on behalf of the company as well. He was entitled to take all legal proceedings to support and sustain the resolution passed by the board of directors for the time being managing the affairs of the company. The subsequent result of the voting at the EGM amply demonstrates how true the apprehensions of the petitioner were. They fully justify the filing of the writ petition both by the company and by the managing director. In view of the finding arrived at by us, the subsequent event cannot stand in the way of this court granting the relief prayed which flow from the said conclusions. Now that this court has held that the impugned requisition notice was invalid, it must necessarily follow that upon such a requisition, the EGM could not have been held and, consequently, the resolutions adopted at such a meeting ought not to be given effect to. The subsequent events must stand nullified if the requisition which is the foundation for this meeting itself is declared illegal. The resolutions adopted at the EGM held pursuant to the impugned requisition cannot have any legal effect and in particular cannot have the effect of removing the nine directors sought to be removed by resolutions Nos. 1,3,5,7,9,11,13,15, and 17. Consequently, there was no occasion for electing nine other directors as proposed in resolutions Nos. 2,4,6,8,10,12,14,16, and 18. In the result, the nine directors sought to be removed do not vacate the office by virtue of those resolutions; they continue to hold office and the other nine directors purported have been elected in their stead would not assume office. However, if by virtue of any resolution of the annual meeting, any of the above nine directors or any other directors has vacated office or any person has been elected to fill in any such vacancy, nothing said herein will affect those resolutions or the validity of the action, if any, sought to be taken in pursuance thereof. There could be no better forum than the High Court to agitate the vexed questions of law raised in this writ petition. The issues raised are very much live and High Court is the proper forum before which they could be agitated.

374. Irrespective of the ultimate result, the costs of such a writ petition which has been filed bona fide and with due care and caution expected of a prudent person, must come out of the funds of the petitioner-company. The shareholders,

the managing director or the board of directors cannot be mulcted with costs of the writ petition or other expenses which were necessarily required to be incurred in this behalf. The writ petition does not suffer from multifariousness or misjoinder of parties or causes of action; the LIC was properly misplaced as a party. The petition could not be rejected on any ground of misjoinder of parties, causes of action or multifariousness.

375. In view of the findings reached by us, the petitioners are entitled to the declaratory relief and also to a writ of mandamus and costs, as herein after detailed.

376. Rule nisi is made absolute as under :

Section 29(1) (b) of the FERA is mandatory. No NRI investor is authorised to purchase shares in an Indian company without prior permission of the RBI under s. 29(1)(b) of the FERA; any purchase of shares without such prior permission is illegal. Neither the Union of India nor the RBI is empowered to order otherwise either by issuing directions under s. 75 or under s. 73(3) of the FERA; nor are they empowered to grant permission after the shares are purchased so as to validate such purchases or to permit holding of the shares purchased without obtaining prior permission. The press release dated September 17, 1983 (Exh."A"), the Circular dated September 19, 1983 (Exh."B"), and the letter dated September 19, 1983 (Exh."C"), cannot operate retrospectively so as to validate the purchase of shares made by the NRI companies which were ineligible on the date of purchase; nor can they authorize purchase of shares without obtaining prior permission of the RBI under s. 29(1)(b) of the FERA. In so far as the impugned press release, circular and the letter permit the respondent-companies to hold the shares purchased without obtaining prior permission of the RBI, they are ultra vires s. 29(1)(b) of the FERA and the powers vested in the Union of India under s. 75 and the RBI under s. 73(3) of the FERA. To that extent, they are void and inoperative both prospectively and retrospectively. The impugned press release and the circular, however, amount to amending the portfolio investment scheme with full repatriation benefits introduced under Circular No. 9 dated April 14, 1982 (Exh."G"), and such amendment operates only prospectively. A writ of mandamus shall issue restraining respondents Nos. 1 and 2 from issuing any directions - (a) to register transfer of shares purchased by the respondents companies (which form the subject-matter of this writ petition) pursuant to the letter dated September 19, 1983 (Exh."C"); and

(b) to further forbear from implementation the said Circular dated September 19, 1983 (Exh."B"), and the said letter dated September 19, 1983 (Exh."C"), with respect to the shares purchased by the respondent companies which form the subject-matter of this writ petition.

377. There shall be a declaration that the action of respondent No. 18 in issuing the impugned requisition notice is contrary to the provisions of s. 284 of the Companies Act and ultra vires the powers vested in the LIC under s. 6 of the LIC

Act and contrary to the intendment of the provisions of the LIC Act. The impugned requisition notice offends the principles of the natural justice. The action of the LIC in issuing the impugned requisition notice is an arbitrate and mala fide action taken for a collateral purpose; it is violation of art. 14 of the Constitution. The Union of the India and the RBI, respondents Nos. 1 and 2, are in no way responsible for the action of the LIC in this regard. The allegation mala fides made against them and the Union Finance Minister are unsubstantiated. The requisition notice and the resolutions passed at the meeting held in pursuance of the said notice are quashed. A writ of mandamus shall issue restraining the respondents from taking any steps or action in pursuance of the impugned requisition notice and/or in pursuance of the resolutions passed at may meeting held pursuant to that notice or any step or action on or under or in furtherance of the impugned requisition notice.

378. In the result, the writ petition is allowed and the rule is made absolute to the extent indicated above. The petitioners shall be entitled to costs, which are fixed at Rs. 25,000 from respondents Nos. 1,2 and 3.

379. In view of the order pronounced by us, the constraint imposed upon the petitioners by the order of the learned single judge dated March 14, and 15, 1984, in regard to the expenses required to be incurred for prosecuting the writ petition and the further proceedings therefrom would no longer operate.

380. The order awarding costs to petitioners in this writ petition shall remain suspended for a periods of eight weeks from today.