

The Dominion of  
India  
v.  
Firm Amin  
Chand-Bhola  
Nath  
Bishan Narain, J.

consignment also limitation under Article 31 starts on the expiry of reasonable time when the goods ought to have been delivered and I say so with due respect to the Judges who have come to different conclusions in this matter.

For these reasons I would answer the question referred to this Bench thus:—

“The limitation in such cases starts on the expiry of the time fixed between the parties and in the absence of any such agreement the limitation starts on the expiry of reasonable time which is to be decided according to the circumstances of each case.”

Bhandari, C. J. BHANDARI, C.J.—I agree.

Falshaw, J. FALSHAW, J.—I agree.

B. R. T.

CIVIL MISCELLANEOUS.

Before Bishan Narain, J.

M/s. MUKANDLAL-MADANLAL,—Petitioners.

versus

THE DIRECTOR OF INDUSTRIES, PEPSU GOVERNMENT,  
PATIALA AND OTHERS,—Respondents.

Civil Miscellaneous No. 159/P of 1955.

1957  
March, 26th

Constitution of India (1950)—Article 226—Order cancelling licence—When can be interfered with—Article 19(1)(g)—Reasonableness of restrictions—How to be determined—Control orders—Whether must lay down tests for cancelling licences—Authority cancelling the licence—Whether acts judicially and is under obligation to hear the licensee whose licence is cancelled—Opportunity to be heard—Scope of.

Held, that ordinarily the High Court will not interfere with an order cancelling the licence but when it becomes clear that the order has been made by the authority

concerned under a misapprehension of the licensee's conduct, the High Court has ample power to interfere with it under Article 226 of the Constitution.

*Held*, that Article 19(1)(g) of the Constitution guarantees to all the citizens the right to practise any profession or to carry on any occupation, trade or business, but this right is subject to reasonable restrictions imposed in the interests of the general public. The reasonableness of these restrictions is to be determined with reference to the nature of trade or conditions prevailing in that trade, e.g., the State has always the power even to prohibit noxious trades like trade in liquor. The cement being in short supply in this country, it is in the interests of the public that its distribution and price should be controlled. One of the essential elements of such a control is that the selected distributors should be amenable to the instructions issued from time to time by the authorities and the only way to control the distributors effectively is that licences should be issued which are liable to be cancelled if the distributors do not carry out the instructions given from time to time. The conditions in a particular trade are liable to quick changes and the causes of changed conditions may be so varied that it is not possible to lay down any satisfactory test for cancelling a licence once granted.

*Held*, that in a case in which a citizen of this country is deprived of his fundamental right, the authority is under an obligation to give an opportunity to that person to explain his conduct. The authority cancelling the licence has a duty to proceed judicially not under the particular statute which conferred the power upon him but under the Constitution which guarantees to Indian Citizens the right to carry on any trade or profession subject only to reasonable restrictions.

*Held*, that the scope of the opportunity to be heard to be afforded to the affected party depends on the nature of the order that is to be passed in a given case. In some cases a detailed inquiry may be necessary and in others a mere right of representation may be sufficient. The procedure for choosing a few or one distributor out of many for granting a licence will obviously not be suitable for natural justice is not interested in the form of opportunity revocation of a licence already granted. The doctrine of

but looks to the substance of the matter and that is whether the person concerned has had an opportunity to explain his conduct to the authority concerned. The procedure to be adopted by the authority depends on the nature of the proposed order, on its ordinary course of practice and on the constitution of the authority concerned

*Petition under Article 226 of the Constitution of the Constitution of India, praying that an appropriate writ or direction be issued quashing the order, dated 3rd October, 1955, passed by respondent No. 1 and further praying that the petitioner be allowed to carry on their business.*

D. S. NEHRA, for Petitioners.

LACHHMAN DASS, Deputy Advocate--General, for Respondents.

#### ORDER.

BISHAN NARAIN, J.—This petition under Article 226 of the Constitution has been filed by Madan Lal, proprietor of the firm Mukandlal-Madanlal of Sangrur, against the order of Director of Industries, PEPSU Government, Patiala, dated 3rd October, 1955, whereby the licence of the petitioners for sale of cement was cancelled.

The facts which have led to this cancellation are these. The petitioner firm carries on the business of selling cement in Sangrur after getting the supplies from Cement Marketing Company of India. Before 1947, trade in this area and in this commodity was not controlled. There was, however, a Patiala State Essential Supplies (Temporary Powers) Ordinance, 2003 (Bikrami), which came into force on 27th September, 1946. In this Ordinance there was a list of essential commodities, but this list did not include cement. This Ordinance was amended on 27th February, 1949, and cement was included as one of the essential commodities in the Ordinance. After the integration of various States into the State of PEPSU the Patiala Ordinance was made applicable to the

entire State of PEPSU. By notification No. 193, dated 4th July, 1950, the Government under the Ordinance made the Patiala and East Punjab States Union Cement Control Order, 1949, Under clause 3 of this Order no person could sell or offer to sell any cement unless authorized in writing by the Government or by its delegate. This authorization or licence was, it is common ground, granted to the petitioning firm. Clause 9 of this Control Order lays down that to achieve effective control on the distribution of cement the Director, Civil Supplies, may issue any instructions to any person who would be bound to carry them out. On 19th January, 1955, the Director of Industries issued instructions authorizing the cement stockists to sell without permits 50 per cent of the stock. For the month of July, 1955, the firm's quota was 1,840 bags. The firm sold 650 bags out of this quota to different customers and realized moneys in advance. It may be stated here that under the instructions of 19th January, 1955, the firm could so sell up to 920 bags. It appears that on 25th July, 1955, the instructions of January, 1955, were withdrawn with the consequence that sales without permit could be made only after two months of the receipt of cement if not sold against permits. This withdrawal was brought to the notice of Madan Lal's son on 30th July, 1955. On getting this information the petitioner refunded the advance amounts to the respective customers from whom he had realized these amounts by sale of 640 bags. The Director of Industries, PEPSU, wrote a letter to the firm calling upon it to explain why the firm had received advance money for sale of 640 bags and in reply the firm justified its action on the ground that it was in accordance with the January, 1955, instructions. In this letter it was also stated that since the withdrawal of January, 1955 instructions the advances realized by the firm had been refunded. The Director of Industries,

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M/s. Mukandlal- however, sent the following letter to the firm on 3rd  
 Madanlal  
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“\* \* \* \* \*  
 It has been proved to the satisfaction of this office that you have acquired an evil reputation for taking advances at higher rates from such persons who require cement and also supply cement to such parties who do not actually need it. As such the ‘Sale Authority’ of Cement issued in your favour under the Cement Control Order, 1949, in force in the State is hereby cancelled as recommended by the Deputy Commissioner, Sangrur, with immediate effect. However, you are authorized to dispose of the stocks of cement, if any, available with you at present.”

It is against this order that the present petition is directed and the grounds taken *inter alia* are that the Control Order contravenes Article 19(1)(g) of the Constitution as it gives unregulated power to the Government to permit or refuse a licence to carry on trade and secondly that the exercise of this power in the present case is arbitrary and against rules of natural justice.

It is true that our Constitution in Article 19(1)(g) guarantees to all the citizens the right to practice any profession or to carry on any occupation, trade or business, but this right is subject to reasonable restrictions imposed in the interests of the general public. The reasonableness of these restrictions is to be determined with reference to the nature of trade or conditions prevailing in that trade, e.g., the State has always the power even to prohibit noxious trades like trade in liquor *Cooverjee B. Bharucha v. Excise Commissioner and the Chief Commissioner, Ajmer and*

others (1), In the present case we are concerned with the trade in cement. It is well-known, that there is acute shortage of this commodity in this country and this commodity is required for development purposes like construction of claims and construction of public and private buildings. It is not disputed that it is in the interests of the public that its distribution and price should be controlled. One of the essential elements of such a control is that the selected distributors should be amenable to the instructions issued from time to time by the authorities and the only way to control the distributors effectively is that licences should be issued which are liable to be cancelled if the distributors do not carry out the instructions given from time to time. In the PEPSU Control Order it is laid down that no person shall distribute cement without a written authority from the Government. It, however, does not contain any specific provision of rescinding the licence once granted, but this power is implicit in clause 3 which empowers the Government to grant a licence (*vide* PEPSU General Clauses Act, section 22). In the present case we are concerned with cancellation of a licence only. The contention raised before me is that this provision in the Control Order is *ultra vires* as it is unregulated power. It appears to me, however, that conditions in a particular trade are liable to quick changes and the causes of changed conditions may be so varied that it is not possible to lay down any satisfactory test for cancelling a licence once granted. The object and purpose of the control is given in the Control Order and the power of granting or cancelling a licence is given to further and achieve this purpose of the Control Order. I, however, do not propose to decide this contention of the learned counsel finally as I am of the opinion that the petition succeeds on another ground.

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(1) A.I.R. 1954 S.C. 220.

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As I have already said, in the present case we are concerned with cancellation of a licence to distribute cement which had been previously granted to the petitioner. Correspondence between the Director of Industries and the licence-holder shows that the latter was called upon to explain why he had received the advance money from the public for 640 bags. There are other grounds mentioned in this letter, but it is clear from the written statement filed in the present case (para 13 of the written statement) that the Director cancelled the licence because the petitioner had entered into advance transactions for the sale of cement and had realized certain amounts in advance. This kind of transaction was, however, permissible under the January, 1955, order. The petitioner entered into these transactions when that order was in force. On the rescission of this order on 25th July, 1955, and on the petitioner coming to know of this decision he returned the advance moneys. In these circumstances, it was frankly conceded on behalf of the State, and in my opinion rightly, that the petitioner was not guilty of contravening any order of the Director of Civil Supplies in this matter and that cancellation could not be supported on this ground. It is true that ordinarily this Court would not interfere with an order of this nature, but when it becomes clear as in the present case, that the order has been made by the authority concerned under a misapprehension of the licensee's conduct then in my opinion this Court has ample power to interfere with it under Article 226 of the Constitution.

The learned counsel appearing for the State, however, raised another contention in support of the impugned order. He alleged that from the file in his possession it is clear that there were various complaints against the petitioner to the effect that he was indulging in black marketing and requested me to give

him an opportunity to allege and prove this allegation. I did not permit him to raise this new point on two grounds. This plea is inconsistent with para 13 of the written statement filed in the case. The present petition was filed on 27th October, 1955, and the reply was filed in January, 1956. The present allegation has been made only now in March, 1957. Moreover, it appears to me improper and undesirable that the State should take up a legalistic way in this matter and should try to change its case with a view to defeat the petition. It appears to me that in writ cases it is the duty of the State to put the correct position before this Court and then support the order that is challenged by the writ petition. The reasons that led the authority concerned to cancel the licence were well known to it when the order was made and there is no scope for changing or shifting these grounds later on.

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The more cogent reason for my refusal to allow this new allegation of black marketing to come on record was that this allegation was admittedly never put to the petitioner before the licence was cancelled. It is, however, urged that the authority concerned was under no compulsion to call upon the petitioner to explain the allegation of black marketing made against him. In my opinion this stand of the State is not sound in law. Revocation of the licence deprives the petitioner of the right to carry on this trade which has been guaranteed to him as a fundamental right by our Constitution. This cancellation abrogates a legal right to which the petitioner is entitled. By the exercise of this power under the Control Order the petitioner's business in cement has been stopped and to a great extent, if not completely, it has deprived him of his means of livelihood. Can an authority condemn a citizen to this extent without giving him some opportunity to refute the allegations made against him and to explain his conduct? I think not.



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It is true that the Control Order does not lay down the reasons for which the licence is to be cancelled nor does it lay down that an opportunity must be given to the licence-holder to explain the allegations made against him before the licence is cancelled. This absolute discretion, however, is to be exercised within the scope of the statutory provision and to further the achievement of its purpose. This power is also to be exercised in accordance with the fundamental doctrine of natural justice. This doctrine is applicable in all cases in which a citizen of India has to suffer pecuniary loss in consequence of that order. It is true that this principle may not be applicable if its application is excluded by specific words in a statute or by clear and necessary implication. It is also true that this Doctrine may be held to be inapplicable if the subject-matter of the statute and its scope so require. Its exclusion, however, should not be readily inferred and in my opinion there is no such exclusion implicit in the scope of the Act or of the Control Order. The legal position was stated in *Wood v. Wood* (9 Ex. 190) in these words:—

“But they (the committee of the Goole Marine Insurance Society) are bound in the exercise of their functions by the rule expressed in the maxim *audi alteram partem*, that no man shall be condemned to consequences resulting from alleged misconduct unheard and without having the opportunity of making his defence. This rule is not confined to the conduct of strictly legal tribunals, but is applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals.”

Again in *Spackman v. Plumstead District Board of Works* (1), Lord Selborne at page 240 laid down the legal position in these words:—

“No doubt, in the absence of special provisions as to how the person who is to decide is to proceed, the law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view.”

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A similar view was taken in *Election Importing Company Proprietary Limited v. Courtice* (2). In *Rameshwar Parshad v. District Magistrate* (3), a Division Bench of the Allahabad High Court held that the District Magistrate had a duty to proceed judicially not under the particular statute which conferred the power upon him but under the Constitution which guaranteed to Indian Citizens the right to carry on any trade or profession subject only to reasonable restrictions. I am in respectful agreement with this statement of the law and I am of the opinion that in a case in which a citizen of this country is deprived of this fundamental right the authority is under an obligation to give an opportunity to that person to explain his conduct.

As regards the scope of this opportunity I am of the opinion that it depends on the nature of the order that is to be passed in a given case. In some cases a detailed inquiry may be necessary and in others a mere right of representation may be sufficient. The procedure for choosing a few or one distributor out of many for granting a licence will obviously \*not be suitable for revocation of a licence already granted. The doctrine of natural justice is not interested in the

(1) 10 A.C. 229

(2) (1949) 80 C.L.R. 657.

(3) A.I.R. 1954 All. 144.

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In these circumstances I hold that the petitioner's licence was revoked under a misapprehension of the true situation by the Director and indeed this was conceded before me on behalf of the State. Accordingly, I set aside the order of the Director, dated 3rd October, 1955. The result is that the petitioner is entitled to carry on his cement business according to the permission that had been previously granted to him. In the circumstances of the case I make no order as to costs.

B. R. T.

**SUPREME COURT**

*Before N. H. Bhagwati, Syed Jafer Imam, Sudhanshu Kumar Das, J. L. Kapur and A. K. Sarkar, JJ.*

**PURANLAL LAKHANPAL,—Appellant**

*versus*

**UNION OF INDIA,—Respondent**

**Criminal Appeal No. 96 of 1957**

*Preventive Detention Act (IV of 1950)—Section 11(1)—*

*Whether valid—Constitution of India (1950)—Article 22—*

1957

May, 26th