

establishing monopoly in the business of printing and publishing text books for school students is wholly without jurisdiction and illegal. His second contention is, that assuming that the State could create a monopoly in its favour in respect of a particular trade or business, that could be done not by any executive act but by means of a proper legislation which should conform to the requirements of Article 19(6) of the Constitution. Lastly, it is argued that it was not open to the Government to deprive the petitioners of their interest in any business or undertaking which amounts to property without authority of law and without payment of compensation as is required under Article 31 of the Constitution.

6. The first point raised by Mr Pathak, in substance, amounts to this, that the Government has no power in law to carry on the business of printing or selling text books for the use of school students in competition with private agencies without the sanction of the legislature. It is not argued that the functions of a modern State like the police States of old are confined to mere collection of taxes or maintenance of laws and protection of the realm from external or internal enemies. A modern State is certainly expected to engage in all activities necessary for the promotion of the social and economic welfare of the community. What Mr Pathak says, however, is, that as our Constitution clearly recognises a division of governmental functions into three categories viz. the legislative, the judicial and the executive, the function of the executive cannot but be to execute the laws passed by the legislature or to supervise the enforcement of the same. The legislature must first enact a measure which the executive can then carry out. The learned counsel has, in support of this contention, placed considerable reliance upon Articles 73 and 162 of our Constitution and also upon certain decided authorities of the Australian High Court to which we shall presently refer.

7. Article 73 of the Constitution relates to the executive powers of the Union, while the corresponding provision in regard to the executive powers of a State is contained in Article 162. The provisions of these articles are analogous to those of Sections 8 and 49(2) respectively of the Government of India Act, 1935 and lay down the rule of distribution of executive powers between the Union and the States, following, the same analogy as is provided in regard to the distribution of legislative powers between them. Article 162, with which we are directly concerned in this case, lays down.....Thus under this article the executive authority of the State is exclusive in respect to matters enumerated in List II of Seventh Schedule. The authority also extends to the Concurrent List except as provided in the Constitution itself or in any law passed by Parliament. Similarly, Article 73 provides that the executive powers of the Union shall extend to matters with respect to which Parliament has power to make laws and to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or any agreement. The proviso engrafted on clause (1) further lays down that although with regard to the matters in the Concurrent List the executive authority shall be ordinarily left to the State it would be open to Parliament to provide that in exceptional cases the executive power of the Union shall extend to these matters also. Neither of these articles contains any definition as to what the executive function is and what activities would legitimately come within its scope. They are concerned primarily with the distribution of the executive power between the Union on the one hand and the States on the other. They do not mean, as Mr Pathak seems to suggest, that it is only when Parliament or the State Legislature has legislated on certain items appertaining to their