Liberty Oil Mills & Others vs Union Of India & Others on 1 May, 1984

Equivalent citations: 1984 AIR 1271, 1984 SCR (3) 676, AIR 1984 SUPREME COURT 1271, (1984) 2 COMLJ 124 1984 (3) SCC 465, 1984 (3) SCC 465

Author: O. Chinnappa Reddy

Bench: O. Chinnappa Reddy, A.P. Sen, E.S. Venkataramiah

PETITIONER:
LIBERTY OIL MILLS & OTHERS

Vs.

RESPONDENT:
UNION OF INDIA & OTHERS

DATE OF JUDGMENT01/05/1984

BENCH:
REDDY, O. CHINNAPPA (J)
BENCH:
REDDY, O. CHINNAPPA (J)
SEN, A.P. (J)
VENKATARAMIAH, E.S. (J)

CITATION:
1984 AIR 1271 1984 SCR (3) 676
1984 SCC (3) 465 1984 SCALE (1)750
CITATOR INFO :
R 1985 SC1416 (102)
RF 1986 SC 555 (6)
D 1987 SC1802 (28,30)
RF 1991 SC 363 (11)
RF 1991 SC 537 (13)

ACT:
Imports (Control) order, 1955- Promulgated under ss. 3 and 4A of the Imports and Exports (Control) Act, 1947 - Clause 8B-Added later by way of amendment-Interpretation of-Contemplates action of interim nature-Order action must satisfy rules of natural justice-Authorities not bound to give pre-decisional hearing-Authorities must give post-decisional hearing-Decision must be communicated to person affected-order need not give reasons but must be indicate satisfaction forming basis for action and concise statement of allegations-Action under Clause 8B of drastic nature-Must

be animated by sense of urgency-Sense of urgency infused by several factors-Public sentiment is one such factor-Public interest to be paramount consideration-It is for authorities to consider public interest-Courts not to concern themselves with sufficiency of ground-Courts to consider question of mala fide or patent lack of jurisdiction.

Import (Control) order, 1955-Clause 8B read with Clause 11(4)- Interpretation of-Clause 8B applies equally to goods covered by open General Licence.

Interpretation of statutes-Rules of-Courts not permitted to interpret statutory instruments so as to exclude natural justice unless language of instrument leaves no option to Court.

Natural justice-Rules of-Extent of natural justice-Must vary from case to case-Interim orders imply natural justice-Seeking comments of person before investigation against him not necessary-Decision affecting a person must be communicated to the affected person-Affected person must be given post-decisional opportunity not possible.

Words and phrases-Investigation-When commences.

HEADNOTE:

On being discovered that beef tallow imported from abroad was either being sold as vanaspati or used in its manufacture by certain unscrupulous persons, general public feeling was roused and there was public agitation and demands were made that severe action be taken against those responsible. As a result of the discoveries the Central Government thought that drastic action was called for. So, a notification was issued under s. 3(3)of the Imports and Exports (Control) Act, 1947 totally banning the import of beef, buffalo and pig tallow into India w.e.f. August 24, 1983. And, on different dates in November

677

and December 1983, five circulars, styled 'abeyance' circulars and marked 'secret' were issued by the Deputy Chief Controller of Imports and Exports, in respect of as many as 192 concerns directing licensing authorities to keep in abeyance for a period of six months from the respective dates of the circulars, any application received from any of them for the grant of import licence or customs clearance permits and allotment of imported goods through agencies like the States Trading Corporation of India Limited or any other similar agency. Though the circulars did not themselves cite any statutory authority, they were, as claimed and as agreed to by the parties, presumed to be statutory orders made in exercise of the power conferred by cl. 8B of the Import (Control) Order, 1955. Several persons against whom 'abeyance' orders had been made filed writ petitions in different High Courts challenging those orders. Liberty oil Mills was one of those who filed such a writ

petition in the Bombay High Court. The case was withdrawn to the Supreme Court under Art. 139A of the Constitution.

Liberty oil Mills contended: (1) that the requisite satisfaction of the appropriate authority which was necessary for issuing an order under cl. 8B was not only not recorded in the circular but there was no material whatsoever upon which such satisfaction could have been arrived at; (2) that the circular was not confined to the banned item of animal tallow or to items which could be said to have some connection with the banned item, but extended to all item for which applications for the grant of licences or for allotment had been made by Liberty oil Mills; (3) that general nature of the order disclosed a total non application of the mind; (4) that several firms were clubbed together and dealt with by a single circular and there was no indication whatsoever that the facts relating to each of the firms had been considered separately; (5) that the 'abeyance circulars' far from advancing the public interest would, on the other hand, prejudicially affect the public interest by bringing to a halt several industries and throwing hosts of workers out of employment; (6) that there was no substance in the allegation that Liberty oil Mills were not actual users' of beef tallow but they had misused the import licences of other licensees by obtaining letters of authorisation for import of beef tallow as if they were actual users; and (7) that the circumstance that there was public agitation about the import of beef tallow was a total irrelevant circumstance for making an order under cl. 8B. The interveners contended: (1) that cl. 8B should be construed as providing for an opportunity to be heard and since the abeyance orders made no provision for hearing, they should be struck down as opposed to the principles of natural justice, and therefore arbitrary and violative of Article 14 and 19(1)(g) of the Constitution; (2) that secret orders affecting rights of parties could not lawfully be made since secrecy would militrate against natural justice and against the right of appeal provided by s. 4M of the Imports and Exports (Control) Act, and (3) that an order under cl. 8B could only be made after the investigation under cl 8 had commenced, that is after a show cause notice had been issued under cl.8, Dismissing the writ petitions.
^

HELD: It is not permissible to interpret any statutory instrument so as to exclude natural justice, unless the language of the instrument leaves no option to the Court. Procedural fairness embodying natural justice is to be implied when ever action is taken affecting the rights of parties. It may be that the opportunity to be heard may not be pre-decisional; it may necessarily have to be post-
678
decisional where the danger to be averted or the act to be prevented is imminent or where the action to be taken can brook ne delay. It may not oven be necessary in some

situations to give pre-decisional opportunity of making a representation but it would be sufficient but obligatory to consider any representation that may be made by the aggrieved person and that would satisfy the requirements of procedural fairness and natural justice. There can be no tape-measure of the extent of natural justice. It may and indeed it must vary from statute to statute, situation to situation and case to case. Pre-decisional natural justice is not usually contemplated when the decisions taken are of an interim nature pending investigation or enquiry. Ad-interim orders may always be made ex-parte and such orders may themselves provide for an opportunity to the aggrieved party to be heard at a later stage. Even if the interim orders do not make provision for such an opportunity, an aggrieved party has, nevertheless, always the right to make an appropriate representation seeking a review of the order and asking the authority to rescind or modify the order. The principles of natural justice would be satisfied if the aggrieved party is given an opportunity at his request. There is no violation of a principle of natural justice if an ex-parte ad-interim order is made unless of course, the statute itself provides for a hearing before the order is made. Natural justice will be violated if the authority refuses to consider the request of the aggrieved party for an opportunity to make his representation against the ex-parte ad-interim orders. (700H ; 701A-F)

There is no rule of justice of fair play which requires the authority to seek the comments of the person concerned before embarking upon an investigation. Investigation commences as soon as the authority concerned to take the first step whether by way of seeking evidence or by way of seeking an explanation from the person concerned. (699F)

In some cases, ex-parte interim orders may be made pending a final adjudication. But that does not mean that natural justice is not attracted when orders of suspension or like orders of an interim nature are made. Some orders of that nature, intended to prevent further mischief of one kind. may themselves be productive of greater mischief of another kind. An interim order of stay or suspension which has the effect of preventing a person, however, temporarily, say, from pursuing his profession or line of business, may have substantial, serious and even disastrous consequences to him and may expose him to grave risk and hazard. Therefore, there must be observed some modicum of residual, core natural justice, sufficient to enable the affected person to make an adequate representation. These considerations may not, however, apply to cases of liquor licensing which involve the grant of a privilege and are not a matter of right. That may be and in some cases it can only be after an initial ex-parte interim order is made. (705B-D)

Queen v. Randolph et al. 56 D.L R. (2d) 283, Commissioner of Police v, Tanos, 98, C.L.R. 383, Levis v. Heffer, [1978] 3 All ER 354 and Furnell v. Whangarei High

Schools Ed, 1973 Appeal Cases 660 and Chingleput Bottlers v. Majestic Bottling Company, Supreme Court's Civil Appeal Nos. 1970-71 of 1973, referred to.

Clause 8 of the imports (Control) order, 1955 empowers the Central

679

Government or the Chief Controller of Imports and Exports to debar person from importing goods or from receiving licences or allotment of imported goods for a specified period if such person if guilty of any of the acts or commission or omission enumerated in the Clause. Clause 8A empowers the Central Government or the Chief Controller of Imports and Exports to suspend the importation of goods by any person or grant of licences or allotment of imported goods pending investigation into one or more of the allegations mentioned in cl. 8 without prejudice to any other action that may be taken against him in that behalf. Clause 8B empowers the Central Government or the Chief Controller of Imports and Exports to keep in abeyance applications for licences or allotment of imported goods where any investigation is pending into any of the allegations mentioned in cl.8 against a licences importer or any other person subject to fulfilment of the requirement of the satisfaction of the appropriate authority regarding the public interest. Both clauses 8A and 8B, which were inserted in the Import (Control) order, 1955 later by way of amendment, contemplate action of an interim nature pending investigation into allegations under cl. 8. Ordinarily in the absence of anything more, it would not be necessary to give an opportunity to the person concerned before proceeding to take action under cl. 8A or cl. 8B. But while cl. 8B deals with the right to obtain licences and the rights to obtain allotments, cl. 8A deals with rights which have flowered into licences and allotments A person to whom licences have been granted or allotments made may have arranged his affairs on that basis and entered into transactions with others, and, to him the consequences of action under cl. 8A may be truly disastrous whereas the consequences of action under cl. 8B may not be so imminently harmful. It is presumably because of this lively difference between cl. 8A and 8B that cl.10 provides for a pre-decisional opportunity in the case of action under cl. 8A and does not so provide in the case of action under cl. 8B. Again, it is presumably because, of this difference that cl. 10 while providing for an appeal against a decision under cl. 8A does not provide for an appeal against a decision under cl. 8B. But that does not mean that the requirements of natural justice are not to be meant at all in the case of action under cl. 8B. The requirements of natural justice will be met in the case of action under cl. 8B by considering, bona fide, any representation that may be made in that behalf by the person aggrieved. Clause 8B itself gives an indication that such a post-decisional opportunity on the request of the person

concerned is contemplated. The action under cl. 8B is to be taken if the authority is satisfied in the public interest that such action may be taken without ascertaining further details in regard to the allegations. It clearly. implies that when further facts are ascertained by the authority or brought to the notice of the authority, such action may be reviewed. Therefore, in the case of action under cl. 8B it is not necessary to give a pre-decisional opportunity but a post-decisional opportunity must be given if so requested by the persons affected. [698G; 696D-E; G; 705F-H; 706A-E]

The decision to keep in `abeyance' should be communicated to the person concerned otherwise the rules of natural justice will not be satisfied. It would be most arbitrary and quit clearly violative of Articles 14 and 19 (i) (g) of the Constitution if cl. 8B is to be interpreted as excluding

680

communication of the decision taken. There is nothing in cl. 8B to suggest that the decision is not to be communicated. On the other hand, the expression "without assigning any reason" implies that the decision has to be communicated, but reasons for the decision have not to be stated. Reasons of course, must exist for the decision since the decision may only be taken if the authority is satisfied that the grant of licence or allotment of imported goods will not be in the public interest. The expression without assigning reasons' only means that there is no obligation to formulate reasons and nothing more. Formal reasons may lead to complications when the matter is still under investigation. So the authority may not give formal reasons, but the skeletal allegations must be mentioned in order to provide an opportunity to the person affected to make his representation. [706H; 707A-C]

On what should the satisfaction be based ? The action under cl. 8B is really in aid of the ultimate order under cl. 8. Therefore, in order to invite the satisfaction contemplated by cl. 8B there must be present some strong suspicion of one or other or more of the grounds mentioned in cl. 8. Since the action which is of a drastic nature is to be taken ex-parte, it must necessarily be animated by a sence of urgency. The sense of urgency may be infused by a host of circumstances such as the trafficking and unscrupulous peddling in licences, large scale misuse of imported goods, attempts to monopolise or corner the market, wholesale prevalence of improper practices among classes of importers, public sentiment etc. etc. It is true that public administration is not to be run on public sentiment and statutory action may only be taken on grounds permitted by the statute. Public sentiment is not in some cases the ground for the action but it is what clothes the ground with that sense of urgency which makes it imperative that swift action be taken. [707D-H]

Public interest must nolens volens be the paramount

consideration. If the threatened public mischief is such as to outweigh the likely injury to the party, the authority may take action under cl. 8B. If the threatened public injury is very slight compared to the harm which may be done to the party, the authority may not take action under cl. 8B. Which element of the public interest should be given greater weight and which grounds should weigh at all are matters for the authority taking action under cl. 8B. Courts do not concern themselves with the sufficiency of the grounds on which action is taken or with the balancing of competing considerations, in favour of and against the action. [708A-D].

An `abeyance' order under cl. 8B is directed not against any particular type of goods but against an importer, licensee or other person against whom an investigation into allegations under cl. 8 is pending. Therefore the question is whether it is not in the public interest that a particular person should be prevented from obtaining import licences or imported goods any description pending investigation into the allegations under cl. 8B. That would depend on the nature of the allegations, the extent of involvement of the person concerned and, most important, the element of the public interest which are for the consideration of the authority. making the order under cl. 8B and not for the Court. [708E-G]

681

Action under cl. 8B is of an interim nature and it may be ex-parte, in which case the. affected party may make a suitable representation bringing out all the outweighing circumstances in his favour. That is the real remedy of the party. Courts do not enter the picture at that stage unless the action is mala fide or patently without jurisdiction. The action will be patently without jurisdiction if it is not based on any relevant material whatsoever. If the authority declines to consider the representation, or if the authority after consideration or from oblique motive, or the decision is such as no reasonable man properly directed on the law would arrive at on the material facts, it will be open to the party to seek the intervention of the court at that stage. [709E-G]

Barium Chemicals v. Company Law Board [1966] Supp. SCR 311 Rohtas Industries v. S. D. Agarwal, [1959] 3 S.C.R. 108, M. A. Rasheed v. State of Kerala, [1975] 2 S.C.R. 93, Shalini Soni v. Union of India, [1981] 1 SCR 952 and Commissioner of Income Tax v. Mahindra and Mahindra, [1983] 4 S.C.C. 392, referred to.

The Court cannot consider the question whether there is sufficient relevant material in support of the allegations made against the petitioners. The Court may properly consider the question of mala fide or patent lack of jurisdiction. Therefore in the instant case the Court cannot consider the question whether the material available justifies a prima facie conclusion that the petitioners have

made illegal imports of beef tallow. [711A-B]

The submission that since the abeyance order was never formally communicated to the petitioners, it must be treated as non est has no substance. The abeyance order was undoubtedly communicated to the concerned authorities, Despite the attempt at secrecy made by the concerned authority and the failure to formally communicate the decision to the party, the abeyance circular was very soon public knowledge and the petitioners did come to know of the orders. [710B; E-F]

The argument that cl.11 (4) excludes the application of cl. 8B to goods covered by Open General Licence has no substance. Clause 8B expressly provides that action under the Clause may be taken "not withes standing anything contained in this order". In view of this non-obstante clause there is no doubt that cl. 8B applies. equally to goods covered by open General Licence. [698B-C]

The argument that the order as embodied in the abeyance circular did not fulfil the conditions precedent prescribed by the statute has. some substance. The Circular did not contain a recital of the allegations constituting the basis of the satisfaction contemplated by cl. 8B for action under that provision, and without a recital of the allegations it was impossible to say that the action was not based on irrelevant material. It did not even recite that which was the foundation of any action under cl. 8B, namely, the satisfaction of the authority that the action was in the public interest. Again a large number of concerns were lumped together and purported to

682

be dealt with by a single abeyance circular. There was ex-facie nothing in the circular which could point to the authority having applied its mind and considered the case of his concerned separately. It is true that the abeyance circular suffers from everyone of these informities. But the Court's attention was invited to the statements made in the counter-affidavit by the Deputy Chief Controller of Imports and Export the author of the abeyance circular and the relevant files placed before the Court for perusal which shows that the principal allegations against the petitioners were that they had prima facie indulged in illegal importation of beef tallow and had also misutilised the beef tallow. Why the authority took this prima facie view has been explained in the counter-affidavit. From a perusal of the files it is found that the cases of Liberty Oil Mills as well as other concerns were separately and individually considered. Thus it does not make any difference on the peculiar facts of this case that a single circular was issued covering a large number of concerns.[712A-B; D.G]

It is impressed upon the authorities that those entrusted by statute with the task of taking prejudicial action on the basis of their subjective satisfaction should,

first bestow careful attention to the allegations forming the basis of the proposed action and the probable consequence which may ensue such action and, next, take the trouble of reciting in the order issued by them the satisfaction forming the basis of the action and a concise Statement of the allegations forming the basis of the satisfaction. If the necessary recitals are not found, there may be serious sequels. [713B-D]

In the instant case, the real remedy of the party to make a representation to the concerned authority which is directed to consider such representation if made. [713F]

JUDGMENT:

ORIGINAL JURISDICTION : Transferred Case No. 22 of 1984.

Arising out of Civil Appeal No. 274 of 1984 from Special Leave Petition No. 17128 of 1983 from the Judgment and order dated 13th & 23rd December, 1983 of the Bombay High Court in Writ Petition No. 2855 of 1983.

Ashok H. Desai, S.S. Ray, A.N. Banatwala, G.E. Vehanvati, B R. Agarwala, P.G. Gokhale, M.M. Jayakar, V.K. Chittre, R.H. Rancholi, M. Jayakar & A. Subba Rao for the Petitioner in WP & for Respondent in C.A. No. 274/84.

K Parasaran, Attorney General. M.K. Banerjee, Addl. Sol., General, A.K. Ganguli, G. Subramaniam and R.N. Poodar, for the Respondent in T.C. & for the Appellants in CA. No. 274 of 1984.

S.S. Ray, Ashok H. Desai, Summeet Kachawaha, Rani Karanjawala, Ms. M. Karanjawala, Kuldeep Pablay, A.N. Banathwala, G.E. Vahanvati, Ms.Bina Gupta, Rainu Walia, T.M. Ansari and D.N. Misra for the Interveners.

The Judgment of the Court was delivered by CHINNAPPA REDDY, J. A few months ago, orthodox Hindu sentiment was outraged and general public feeling was roused by the discovery that beef tallow. imported from abroad was either being sold as vanaspati or used in its manufacture by certain unscrupulous persons. There was a furore in the country. There was public agitation. Questions were asked in Parliament. Outside the House, Press and Politician made capital of it. There were demands that severe action be taken against those responsible. Assurances were given in Parliament. Bureaucracy went into action. It was discovered that though the import of beef tallow, like other animal tallow, had been canalised through the State Trading Corporation with effect from June 5, 1981, there had been considerable import of beef tallow outside the channel of the State Trading Corporation even subsequent to June 5, 1981, on the ostensible pretext that licences had been issued and firm contracts had already been entered into before that date. It was also discovered that beef tallow had been allowed to be imported even by `non-actual users' under letters of authority given by licensees who had obtained import licences against the entitlement based on the value of their exports. As a result of these discoveries it was thought that drastic action was called

for. So, a notification was issued under S. 3(3) of the Imports and Exports Control Act totally banning the import of beef, buffalo and pig tallow into India with effect from August 24, 1983. And, on 7th, 9th and 10th November and 17th and 21st December, five circulars, styled abeyance circulars' and marked `secret' were issued by the Deputy Chief Controller of Imports and Exports, in respect of as many as 192 concerns (business houses), directing licensing authorities to keep in `abeyance' for a period of six months from the respective dates of the circulars any application received from any of them for the grant of import licence or Customs clearance Permits and allotment of imported. goods through agencies like the State Trading Corporation of India Limited, the Minerals and Metals Trading Corporation of India Ltd or any other similar agency. It may be useful to extract one of these. `abeyance' circulars, all of which are in substantially similar terms. The abeyance circular dated November 9, 1983 which `lists' we will not use the word `black-lists'- as many as 61 concerns including Liberty Oil Mills (P) Ltd. is as follows:.

SECRET GOVERNMENT OF INDIA MINISTRY OF COMMERCE OFFICE OF THE CHIEF CONTROLLER OF IMPORTS & EXPORTS UDYOG BHAVAN, NEW DELHI-11 dated, the 9th Nov. 1983 ABEYANCE CIRCULAR No. 28/83-84/HQ.

Whereas investigation into certain allegation mentioned under Cl. 8 of the Imports (Control) order, 1955 are pending against the under mentioned concerns, all the licensing authorities are hereby requested to keep in abeyance for six months from the date of issue of this circular any application received from them for the grant of import licence of Customs Clearance Permit and allotment of imported goods through agencies like the State Trading Corpn. Of India Ltd./Minerals and Metals Trading Corpn. of India Ltd. or any other similar agency:

SI. Name & address Name & address of Name of the Prop./ No. of the concern. the branches as partner/Director etc. available. as available.

---

1 2 3 4

---

* * * * 14 M/s. Liberty oil Mills (P) Ltd., 16 Lal Bahadur Shastri Marg, Kurla, Bombay-400070 * * * *

---

2. These instructions may be kept secret and if any of the above mentioned firms make any enquiry about the position of their application (s), they may simply be informed the matter is under consideration.

3. This does not, however, preclude the licensing authorities from rejecting their applications if they are otherwise inadmissible or suffer from discrepancies in terms of the licensing instructions. Only these applications may be kept in abeyance where the party is entitled to licences or Customs Clearance Permits etc. except for the

allegations against them.

4. Full details of all applications kept in abeyance as a result of the above instructions may be reported to the Headquarters.

5. The receipt of this circular may please be acknowledge in the standard proforma.

sd/-

(J.P. SHARMA) DY. CHIEF-CONTROLLER OF IMPORTS & EXPORTS (Issued from file no. 3/42/HQ/83/ECA-I)"

To say the least and to put it mildly, it is a very odd circular, emanating as it does from a high dignitary of the Government of India. Why the secrecy and why the instruction to mislead, as it were ? Are statutory orders to be made and given effect in this furtive manner, almost as if the authorities that be are afraid of wounding the susceptibilities of the persons in respect of whom the orders are made ! We presume they are statutory orders made in exercise of the powers conferred by clause 8 B of the Import Control Order, though they do not themselves cite any statutory authority. The actual direction, the use of the word `abeyance' and the prescription of the six-month period are indicative that clause 8 B is the source of power. In the counter affidavits filed on behalf of the Government of India and the Chief and Deputy Chief Controller of Imports and Exports it is claimed that the power exercised was that conferred by clause 8B. It was so asserted by the Addl. Solicitor General. The learned counsel who appeared for the parties proceeded on that basis. So, we may also proceed on that basis. Incorporating, as they did, directions under clause 8B, vitally affecting the business of the concerns concerned, one would expect the circulars to be communicated to the affected parties, even if they were to be kept secret from other prying eyes. That was not done for reasons which no one has been able to explain to us. Curiously, enough, despite the circular, supplies of imported goods appear to have been continued to be made for about a month to some parties. But soon the circulars ceased to be secret. Everyone came-to know of them. True but unauthorised versions were even published in commercial newspapers. The circulars also came to be acted upon. Licenses were not granted. Customs Clearance Permits were not issued. Allotments were not made. Several persons against whom `abeyance' orders had been made filed Writ Petitions in different High Courts challenging those orders. Liberty Oil Mills (P) Ltd. was one of those who filed such a Writ Petition in the Bombay High Court. The case has been withdrawn to this Court under Art 139A of the Constitution and it is this case that has been heard by us. We heard Shri Ashok Desai for the Liberty Oil Mills (P) Ltd. and Shri Soli Sorabji, Shri V.P. Raman and Shri Ram Jethmalani for the interveners. We heard Shri Milon Banerjea, Addl. Solicitor Generalably assisted by Sri Gopala Subrahmanyam for the Union of India and the Chief Controller and Deputy Chief Controller of Imports and Exports and Shri M.C. Bhandare and Shri A. Subba Rao for the State Trading Corporation.

Liberty Oil Mills (P) Ltd. is a `Trading House' recognised as such in terms of the expression as defined in the `Import Policies' for several years. Their exports for the period 1982-83 are stated to have exceeded Rs. 19 crores. They claim to deal in Vegetable Oils, export of Frozen Marine Products, Frozen foods, Textiles, Chemicals, Agricultural Products and imports of diverse commodities such as oil and oil seeds, Chemicals, Drugs, etc. They claim to have a factory refining Vegetable oil at Kurla and a factory for manufacturing vanaspati at Shahpur. They have plants for processing frozen food at Madras, Tuticorin, Calcutta and Vishakhapatnam; they also have solvent extraction and: Industrial Oil plants. They claim that they require a continuous and steady flow of various imported goods for their several Industrial activities. They allege that if import licences for which they have applied are not granted to them and if the imported goods for which they have applied are not allotted to them, their factories and their plants will have to be closed down, their business will be seriously affected and many of their employees will be thrown out of employment. They state that they have never adulterated the vanaspati manufactured in their factory at Shahpur and that the samples taken from their factory on as many as thirty six occasions had never been found to contain any type of animal tallow. They further state that they had not imported any tallow after July, 1982. Such tallow as was imported by them before July, 1982 was sold to them by other licencees to them as actual users. The tallow so purchased was air-treated by them in their premises at Kurla and sold by them to soap manufacturers and other fatty acid plants. The import of tallow was on the strength of letters of authority issued by licences in respect of additional licences and, replenishment licences and, replenishment licences held by them. All. the additional licences had been issued prior to June 5, 1981 and import of OGL items was permitted against the said licences. Beef tallow become canalised from June 5, 1981 but the canalisation was not retrospective and could not affect the licences previously issued. All the contracts for the import of beef tallow had been entered into before June 5, 1981 and in respect of seven of the contracts letters of credit had also been opened before that date. The beef tallow imported upto July, 1982 was duly cleared by Custom authorities without any dispute or question. Thereafter the tallow as subjected to air-treatment and sold to soap manufacturers and fatty acid plants. There was never any allegation against the petitioners that any portion of the tallow imported by them had ever been diverted for the adulteration of vanaspati. Liberty Oil Mills therefore, claim that there was no justification what for making an order under clause 8B against them. They accordingly seek the issue of Writ to quash the circular.

Shri Ashok Desai for Liberty oil Mills (P) Ltd. contended that an order under clause 8B of the Import Control order could. Only be made if the Central Government or the Chief Controller of Imports and Exports was satisfied that the grant of licences and allotment of imported goods would not be in the public interest. In the present case, not only was the requisite satisfaction of the appropriate authority not recorded in the circular said to have been issued under Clause 8B but there was no material whatsoever upon which such satisfaction could have been arrived it. Before June 5,

1981, beef tallow was not canalised and could therefore, be freely imported as an OGL item. It was on June 5, 1981 that the import of beef tallow came to be canalised but such canalisation could not affect licences which had already been granted. Beef tallow could be imported under the preexisting licences as an OGL item even after June 5, and upto the date on which the import of beef tallow was totally banned. Our attention was repeatedly invited to the two cases of Arvind Exports (P) Ltd. and., Jayant oil Mills (P) Ltd where dealing with appeals and decisions under Section 128 and 131 of the Customs Act, the Central Board of Excise and Customs and the Government of the India took the view "The licence issued during a Policy period is governed by that policy as amended upto the date of issue of the licence and amendments made after the date of issue do not have any application to the licencees." and "A licence is governed by the Policy which is made applicable to it. Restrictions placed on the import of goods in the policy for the subsequent years have to be ignored, unless of course, any such restriction has been specifically made applicable to licences issued earlier either generally or in the particular cases. In this case the licences were issued during the policy for the period AH-81 and were governed by this policy only particularly para 174(v) thereof. These licences were valid for the goods in question as only Mutton Tallow was in the list of canalised items. In terms of para 222(3) of the policy for the period AM-82 these licences continued to be valid for beef tallow as this item continued in the list of OGL items even after the coming into force of the policy for the period AM-82 When vide Public Notice No.29/81 dated June 5, 1981 beef tallow was put in the canalised items it is from this date only that it became canalised. In the public notice there is no specific provision invalidating licences previously issued as far as beef tallow is concerned, in case such licences were valid earlier to import this item. In the absence of any specific provision the licences produced by the importer in this case had to be accepted for the clearance of beef tallow."

It was further contended that the circular order under Clause 8B as actually issued was not confined to the banned item of animal tallow or to items which could be said to have some connection with the banned item but extended to all items for which applications for the grant of licences or for allotment had been made by Liberty oil Mills (P) Ltd., whether or not such items had the remotest connection with animal tallow Shri Ashok Desai connected that the very general nature of the order disclosed a total non- application of the mind since there was no nexus between the alleged misuse of licence for importing beef tallow or the misuse of the imported beef tallow and the abeyance of applications for grant of import licences and for allotment of other items. It was also argued that as many as 61 firms were clubbed together and dealt with by single circular and there was no indication whatsoever that the facts relating to each of the firms had been considered separately. The circular was an omnibus one and revealed a total non-application of the mind. It was suggested that the abeyance orders far from advancing the public interest, would, on the other hand, prejudicially affect the public interest by bringing to a halt several industries and throwing hosts of workers out of employment. It would also affect exports from India and reduce foreign exchange earnings. It was submitted that there was no substance in they allegation that Liberty oil Mills Pvt. Ltd. were not `actual users' of beef tallow but they had none the less obtained letters of authorisation for import of

beef tallow as if they were actual users and they had thus misused the import licences of other licencees. It was pointed out that the beef tallow imported by the under letters of authority had either been sold by them to actual users on the high seas or had been actually used by them to produce marketable beef tallow for use by soap manufacturers and fatty acid plants, by subjecting the imported beef tallow to `air-treatment'. It was also argued by Shri Ashok Desai that the circumstances that there was public agitation about the import of beef tallow was a totally irrelevant circumstances for making an order under clause 8B. Shri V.P. Raman, learned counsel for one of the interveners suggested that clause 8B did not apply to goods covered by open General Licence in view of clause 11 (4) of the Import Control Order which provided, "Nothing in this order, except paragraph 3-1 of sub-clause 3 of Clause 5, Clause 8, Clause 8A, Clause 8-C and Clause 10-C shall apply to the import of any goods covered by open General Licence or Special General Licence issued by the Central Government." Shri Soli Sorabjee, who appeared for another intervener, submitted that clause 8-B should be construed as providing for an opportunity to be heard and since the abeyance orders made no provision for hearing, they should be struck down, as opposed to the principles of natural justice, and therefore arbitrary and violative of Art. 14 and 19(i) (g) of the Constitution. It was also urged by the learned counsel that the satisfaction contemplated by clause 8B was not an omnibus satisfaction but a satisfaction which must disclose an application of the mind to the facts of each individual case and each individual application for licence or allotment. Shri Ram Jethmalani, who appeared for another intervener urged that secret orders affecting rights of parties could not lawfully be made since secrecy would militate against natural justice and against the right of appeal provided by sec. 4-M of the Imports and Exports (Control) Act. He also submitted that in the absence of an express recital of satisfaction which was the foundation for the exercise of the jurisdiction under clause 8B, the order must be held not to conform to clause 8B and therefore, vitiated. He also contrasted clause 8A and clause 8B and argued that the public interest contemplated by clause 8B should be such as to exclude a pre-decisional hearing. There was no such public interest involved in the case. There was not even a recital to that effect. For that reason also the order was vitiated. He further submitted that an order clause 8B could only be made after the investigation under clause 8 had commenced, that is after a show cause notice had been issued under clause 8.

Shri Millon Bannerjee, learned Additional Solicitor General urged that the only question for the consideration of the court was whether there was any relevant material before the authority competent to take action under clause 8B to reach the satisfaction contemplated by that clause. Since the satisfaction contemplated by clause 8B was the subjective satisfaction of the authority concerned, the court was not to concern itself with the sufficiency of the material in arriving at the requisite satisfaction. He however, invited our attention to various facts and circumstances which, according to him, wholly justified the action taken against Liberty oil Mills (P) Ltd. Though Liberty oil Mills itself held several licences, it nevertheless indulged in the collection of a large number of licences of other imported beef tallow as their authorised agents, sold part of the beef tallow to alleged actual users on high seas or purchased the beef tallow after importation, subjected it to the so-called air-treatment a treatment which could by no means be called a manufacturing process and which left the character of beef tallow unaltered-and sold it to innumerable parties stated to be soap manufacturers and fatty acid plants. The claim of Liberty oil Mills (P) Limited that Liberty oil Mills was an `actual users', who had purchased beef tallow for subjecting it to air treatment was no more

than a pretence. It was stated that full particulars of the parties to whom the beef tallow was claimed to have been sold were not made available despite requests for the same. There was great public concern about the manner in which beef tallow had been imported and used by some importers and the authorities very naturally felt that it was their duty in the public interest to investigate into malpractices connected with the import of beef tallow and the misuse of beef tallow after import. The learned Additional Solicitor General placed. before us the relevant files which according to him indicated that the case of Liberty oil Mills (P) Limited as well as the cases of each of the other firms who were included in the abeyance circular had been separately considered and satisfaction duly and properly arrived at by the appropriate authority on relevant material. The learned Additional Solicitor General very fairly did not urge that the decision to keep in `abeyance' need not be communicated or that the principles of natural justice were not required to be observed. But he argued that a pre-decisional hearing was not contemplated. He submitted that rule 8B did not rule out a post-decisional hearing and stated that the appropriate authorities were ready even now to consider faithfully any representation made by the parties affected. With reference to the views expressed by the Central Board to Excise and Customs and the Government of India, in the cases of Arvind Exports and Jayant oil Mills, Shri Bannerjee submitted that those cases did not represent the correct position in law. Those decisions were rendered in proceedings under the Customs Act and did not preclude appropriate action under the Import and Export Control Act and the Import Control Rules. Shri Bannerjee also invited out attention to several provisions of the Import Control order.

Before considering the questions at issue, it will be useful to refer to our Import Policy and to take a cursory look at the various statutory and non-statutory instruments embodying the policy. The import policy of any country, particularly a developing country, has necessarily to be tuned to its general economic policy founded upon its constitutional goals, the requirements of its internal. and international trade, its agricultural and industrial development plans, its monetary and financial strategies and last but not the least the international political and diplomatic overtones depending on `friendship, neutrality or hostility with other countries' (Glass Chotans Importers and Users' Association v. Union of India. There must also be a considerable number of other factors which go into the making of an import policy. Expertise in public and political, national and international economy is necessary before one may engage in the making or in the criticism of an import policy. Obviously courts do not possess the expertise and are consequently incompetent to pass judgment on the appropriateness or the adequacy of a particular import policy. But we may venture to assert with some degree of accuracy that our present import policy is export oriented. Incentives by way of import licences are given to promote exports. Paragraph 173 of Chapter 18 of the `Import Policy' for April 1981 to March 1982 published by the Government of India, Ministry of Commerce-in the first week of April every year, an annual `Import and Export Policy' to be in force during the financial year is published-expressly states "the objective of the scheme of registration of Export Houses and the grant of special facilities to them is to strengthen their negotiating capacity in foreign trade and to build up a more enduring relationship between them and their supporting manufacturers" Paragraphs 183 and 184 enumerate the various import facilities available to Export Houses. Paragraph 185(1) allows Export Houses to import OGL (Open General Licence) items against REP (Replenishment) Licences issued in their own names or transferred to them by others. The facility is stated to be available to them for import of (a) capital goods listed in Appendix II and placed on

Open General Licence for Actual Users and (b) Raw Materials, components, consumables and spares (excluding items covered by Appendix V) which have been placed on Open General Licence for Actual Users. Paragraph 185 (1) further stipulates that Capital Goods so imported shall be transferred by them only to such Actual Users as are authorised to purchase them by the concerned Licensing Authority and that raw materials, components and consumables so imported may be transferred by them to eligible Actual Users. Imported spares may be sold to any person. Paragraph 185 (2) provides that import replenishment licences issued in their own names or transferred to them by others, against which Export Houses wish to take advantage of the facility provided in Paragraph 185, shall be non-transferable. Therefore, the Export Houses wishing to take advantage of the facility are required to get the licences concerned endorsed by the licensing authority as under:-

> "The licence will also be valid for import of OGL items under paragraph 185 of import policy, 1981-82, subject to the conditions laid down and shall be non- transferable."

Paragraph 185 (3) further stipulates that import of OGL items under these provisions shall be subject to the condition that the shipment of goods shall takes place within the validity of the OGL, that is, March 31, 1982 or within the validity period of the import licence itself, whichever date is earlier. Paragraph 186 (1) broadly entitles Export Houses to Additional Licences upto the value of 15% of the f.o.b. value of select products made in 1981- 82 and manufactured by small scale and cottage industries, plus 7-1/2% of the f.o.b. value of other exports of select products made in the same year. All such Additional Licences shall be non-transferable. Paragraph 186(7) provides that the Additional Licences will also be valid for import of Raw Materials, Components, Consumables and Spares (including items covered by Appendix V) which have been placed on Open General Licence for Actual Users (Industrial). While Spares so imported may be sold to any person, Raw Materials, Components and Consumables may only be sold to eligible Actual Users. Paragraph 192 requires every Export Houses to maintain proper accounts of all its exports, imports and disposed of imported items and are further required to furnish detailed information in the prescribed forms.

Some Export Houses are recognised as 'Trading Houses 'depending on their performance. Trading Houses are entitled to all the facilities available to Export Houses, but their entitlement to additional licences against exports of products manufactured in the small scale and cottage sectors is to be 20 per cent and not 15 per cent.

Paragraph 222(1) prescribes that additional licences issued to Export Houses in 1980-81 shall cease to be valid for items which do not appear in Appendices 5 and 7 of Import Policy, 1981-82. But it is said that restriction will not apply to the extent that the licence holders have made firm commitments by opening irrevocable letters of credit through authorised dealers of foreign exchange before April 1, 1981. Paragraph 222(3) provides that REP licences and additional licences held by Export Houses shall cease to be valid for import of any item which could be imported under Open General Licences during 1980-81, but it is no longer so in the Import Policy 1981-82 except for such commitments as have been made by opening irrevocable letters of credit through authorised dealers in foreign exchange before April, 1981. We may notice here that Appendices 1, 3, 4 and 6 contain lists of banned items. Appendix 5 and Appendix 7 contain a list of restricted items. Appendix 8 contains a list of items import of which is canalised through public sector agencies,

Appendix 2 contains a list of Capital Goods allowed under Open General Licences and Appendix 10 contains a list of Items allowed to be imported under Open General Licences, subject to the condi-

tions set out therein. It appears that prior to 1978, OGL was confined to certain restricted items only. But in April, 1978, the Government of India issued Import Trade Control Order No. 9 of 1978: the OGL No. 3 of 1978 granting general permission to import into India from any country of the world, Raw Materials and Components by Actual Users (industrial) if the items to be imported were not covered by any of the lists of banned, restricted and canalised items and did not figure in Appendix IX of the Import Policy for 1978-79. One of the results was that animal tallow which could not be imported as an OGL item prior to April 1978, could be so imported after 1978 as it was not one of the banned, restricted or canalised items. In the Import Policy for April 1980 to March 1981, mutton tallow was included in the list of canalised items. Therefore, while mutton tallow could be imported thereafter through the agency of the State Trading Corporation only, beef tallow could still be imported as an OGL item. The position was the same in the Import Policy issued for the period April 1981-March 1982. However, on June 5, 1981 by a Public Notice for the word 'mutton tallow' in the list of canalised items, the expression "tallow of any animal organ including mutton tallow" was substituted. Therefore with effect from June 5, 1981 beef tallow also became a canalised item. One of the questions posed is regarding the effect of the public notice dated June 5, 1981 by which the expression 'tallow of animal origin or including mutton tallow' was substituted for the word 'mutton tallow'. The question posed is whether the ban of import except through the State Trading Corporation was applicable to beef tallow imported into India after June 5, 1981 but against licences issued earlier and in respect of which contacts had already been into. We have already mentioned that on August 24, 1983, the Government of India made an order under Section 3 of the Exports and Imports (Control) Act totally banning the import into India of beef, buffalo and pig tallow.

We may mention here that the Import Policy for earlier as well as later years, contain more or less similar provisions as those in the Import Policy for April 1981- March 1982.

The statutory regulation of imports is contained in the Imports and Exports (Control) Act, 1947 and the Imports Control Order 1955. Section 2 of the Imports and Exports (Control) Act defines various expressions. 'Letter of authority' is defined a letter meaning as authorising the licensee to permit another person, named in the said letter, to import goods against the licence granted to the licensee. Licence is defined to mean a licence granted and including a customs clearance permit issued, under any control order. Section 3 of the Act is the pivotal section. Section 3(3) empowers the Central Government, notwithstanding anything contained in the Customs Act, by order published in the official Gazette, to prohibit, restrict or impose conditions on the clearance whether for human consumption or for shipment abroad, of any goods or class of goods imported into India. Section 4A empowers the Central Government to levy fee in respect of licences granted or renewed under any order made or deemed to be made under the Act. Sections 4 B, 4 C, 4 D, 4 E and 4 F are provisions relating to the power to enter and inspect the power to search, the power to seize imported goods or material, the power to stop and seize conveyances. Sections 4 G and 4 H, provide for confiscation and Section 4 I for the levy of penalty. Section 4 J preserves the power to inflict any other punishment under the provisions of the Act or under any other law despite the confiscation or penalty imposed under the Act. Section 4 K provides for adjudications and Section 4 L entitles the

owner of the goods, materials, conveyance or animals or other persons concerned to be given a reasonable opportunity of making a representation before any order of adjudication of confiscation or imposition of a penalty is made. Section 4 M provides for an appeal against any decision or order made under the Act and Section 4 N empowers the Chief Controller to exercise power of revision in cases where no appeal has been preferred. Section 5 makes contraventions of any order made or deemed to be made under the Act or any condition of a licence granted under such order punishable with imprisonment and fine as mentioned in that provision. Section 8 empowers the Central Government to make rules for carrying out the provisions of the Act.

The Imports (Control) Order, 1955 is an order made by the Central Government in exercise of the powers conferred by Section 3 and 4-A of the Imports and Exports (Control) Act. Clause 3 of the Imports (Control) Order prescribes that no person shall import any goods of the description specified in Schedule-I except under and in accordance with the licence or a customs clearance permit granted by the Central Government or by a specified officer. Clause 5 provides for the imposition of conditions subject to which licences may be issued. Clause 6 prescribes the situations when the Central Government or the Chief Controller of Imports and Exports may refuse to grant a licence or direct any other licensing authority not to grant a licence. One of the situations is 'if the applicant is for the time being subject to any action under clause 8, 8A or 8B'.

Clause 8(1) empowers the Central Government or the Chief Controller of Imports and Exports to debar a licencee or importer or any other person from importing any goods or receiving licences or allotment of the imported goods through the State Trading Corporation of India, the Minerals and Metals Trading Corporation of India, or any other similar agencies and direct, without prejudice to any other action that may be taken against him in this behalf and that no licence or allotment of imported goods shall be granted to him and he shall not be permitted to import any goods for a specified period for any of the reasons specified in the clause. Two of the reasons mentioned in the clause are: "If he fails to comply with or contravenes or attempts to contravene or abets the contravention of any conditions embodied in or accompanying, a licence or an application for a licence" and "If he commits a breach of any law (including any rule, order or regulation) relating to custom or the import or export of goods or foreign exchange". Clause 8A empowers the Central Government or the Chief Controller of Imports to suspend the importation of goods by any person or grant of licences or allotment of imported goods through the State Trading Corporation of India, the Minerals and Metals Trading Corporation of India, or any other similar agency, to a licensee or importer or any other person pending investigation into one or more of the allegations mentioned in Clause 8 without prejudice to any other notice that may be taken against him in that behalf. The first proviso to Clause 8A prescribes that the grant of a licence or allotment of imported goods shall not ordinarily be suspended under this clause for a period exceeding 15 months. The second proviso stipulates that on the withdrawal of such suspension a licence or allotment of imported goods may be granted to him for a period of suspension, subject to such conditions, restrictions or limitations as may be decided by the authorities aforesaid keeping in view of the foreign exchange position, indigenous production and other relevant factors. Clause 8B empowers the Central Government or the Chief Controller of Imports and Exports to keep in abeyance applications for licences or allotment of imported goods where any investigation is pending into any of the allegations mentioned in Clause 8 against a lincensee, importer or any other person subject to the fulfilment of

the requirement of the satisfaction of the appropriate authority regarding the public interest. Since we are primarily concerned in this case with the vires, the width and the interpretation of Clause 8B, the whole of it may be usefully extracted:-

> "8B: Power to keep in abeyance applications for licences or allotments of imported goods-Where any investigation into any of the allegations mentioned in clause 8 is pending against a licensee or importer or any other person, and the Central Government or the Chief Controller of Imports and Exports in satisfied that without ascertaining further details in regard to such allegation, the grant of licence or allotment of imported goods will not be in the public interest, then notwithstanding anything contained in this Order, the Central Government or the Chief Controller of Imports and Exports may keep in abeyance any application for grant of licence from such person, or direct the State Trading Corporation of India, the Minerals and Metals Trading Corporation of India, or any other similar agency to keep in abeyance allotments of imported goods to such person, without assigning any reason and without prejudice to any other action that may be taken in this behalf:
>
> Provided that the period for which the grant of such licence or allotment is kept in abeyance under this clause shall not ordinarily exceeds six months."

Clause 8C authorises the Central Government to publish or cause to be published the name of such persons or class of persons against whom action under clause 8 or 8A is taken. Clause 9 empowers the Central Government or the Chief Controller of Imports and Exports or any other officer authorised in that behalf to cancel any licence granted under the order or otherwise to render it ineffective for any of the reasons mentioned in the clause. One of the reasons is 'If the licensee has committed a breach of any of the conditions of a licence". Another reason is "If the Central Government is or such officer is satisfied that the licence will not serve the purpose for which it has been granted." Yet another reason in "If the licensee has committed a breach of any law relating to customs or the rules or regulations relating to Imports and Exports of goods or any other law relating to foreign exchange." Clause 10(i) provides that no action shall be taken, inter alia, under Clause 8(1) or Clause 8A or Clause 9(1) against a licensee or importer or any other person unless he has been given a reasonable opportunity of being heard. Clause 10(2) enables any person aggrieved by any action taken under Clause 8(1) or 8(3) or 8(A) or 9(1) to prefer an appeal to the authority constituted by the Central Government for that purpose. Clause 11(4) prescribes, "Nothing in this order, except paragraph (iii) of sub- clause(3) of Clause 5, Clause 8, Clause 8A, Clause 8C and Clause 10C, shall apply to the import of any goods covered by Open General Licence or Special General Licence issued by the Central Government."

We may notice here the argument of Shri V.P. Raman that Clause 11 (4) excludes the application of Clause 8B to goods covered by Open General Licence. We find no substance in this submission. Clause 8B expressly provides that action under the clause may be taken "notwithstanding anything contained in this order". In view of this non-obstante clause, we have no doubt that Clause 8B applies equally to goods covered by Open General Licence.

We may mention at this juncture that Clauses 8A and 8B were not to be found in the Imports (Control) Order 1955 originally but were introduced into it later by way of amendment, to make provision for the making of interim orders pending investigation into allegation under Clause 8. The amendment was af consequence of the lacuna being pointed out by the Bombay High Court in some cases which came before it.

To be fair to the learned counsel for the petitioner and the other learned counsel for the interveners, all of them were unanimous about the necessity for a provision like Clause 8B, and none of them argued that Clause 8B would be ultra vires if the principles of natural justice could be read into it. The learned Additional Solicitor General, as mentioned by us earlier, agreed that natural justice should be read into Clause 8B so as to provide for a post- decisional hearing at the request of the affected party. Let us examine Clause 8B in the scheme and setting of the Imports (Control) Order and consider whether natural justice is excluded and, if not, when and what opportunity may be provided to the affected party.

Clause 8, we have seen, empowers the Central Government or the Chief Controller of Imports and Exports to debar a person from importing goods or from receiving licences or allotment of imported goods for a specified period if such person is guilty of any of the acts of commission or omission enumerated in the Clause. An order of this immensity cannot obviously be made without due investigation and without giving a reasonable opportunity to the affected party. Clause 8A and 8B refer to orders which may be made pending investigation into the allegations under Clause 8 and by necessary implication expose the investigative content of Clause 8. Clause 10 expressly stipulates that action under Clause 8 may not be taken unless a reasonable opportunity is given to the party concerned. Neither Clauses 8 nor Clause 10 prescribes the procedure to be followed before a final order under Clause 8 is made. Has a show-cause notice to be issued first, then followed by an investigation and finally concluded by yet another show cause notice ? Or is it enough if a show-cause notice is issued after the investigation is concluded and the person concerned is asked to explain the evidence gathered against him ? When may investigation be said to have commenced ? Should investigation be necessarily preceded by a show-cause notice ? We do not think that the Central Government or the Chief Controller is bound to follow any rigid, hide-bound, pre-determined procedure. The procedure may be different in each case and may be determined by the facts circumstances and exigencies of each case. The authority may design its own procedure to suit the requirements of an individual case. The procedure must be fair and not so designed as to defeat well known principles of justice and thus deny justice. That is all. If the procedure is fair it matters not whether the investigation is preceded, interjected or succeeded by a show-cause notice. The word 'Investigation' is not defined but in the content it means no more than the process of collection of evidence or the gathering of material. It is not necessary that it should commence with the communication of an accusation to the person whose affairs are to be investigated. That may follow later. When facts come to the notice of the Government or the Chief Controller of Imports which prima facie disclose an act or omission of the nature mentioned in Clause 8, the authority may straight away communicate the allegations to the person concerned, seek his answer and proceed to further investigate or the authority may consider it more prudent to further satisfy itself by seeking other evidence or material before communicating the allegations to the person concerned. There is no rule of justice or fair play which requires the authority to seek the comments

of the person concerned before embarking upon an investigation. Investigation commences as soon as the authority decides to take the first step whether by way of seeking evidence or by way of seeking an explanation from the person concerned. On the initiation of a proceeding under Clause 8 by the commencement of investigation, the authority has to address itself to the Question whether any action of an interim nature to prevent further harm or mischief is warranted pending investigation. Licences may have already been issued and allotment of imported goods may have already been made. The authority may consider it desirable to prevent the person from imported goods pursuant to the licences or to prevent him from obtaining the imported goods allotted to him through the specified agencies. If so, the authority may make an order under Clause 8A suspending the importation of goods, the grant of licences or the allotment of imported goods. But Clause 10 provides that no action under Clause 8A may be taken without giving a reasonable opportunity to the person concerned. It is obviously thought that the right such as it may be, to obtain a licence or allotment of goods having become crystalised into a licence or an allotment, an order under Clause 8A may have immediate and grave prejudicial repercussions on the person concerned making it desirable that he should be heard before an order of suspension is made. So it is that Clause 8A contemplates a pre-decisional hearing. On the other hand, licences may not yet have been issued and allotments may yet have to be made. The appropriate authority may be satisfied that it would not be in the public interest to issues licences or make allotments to the person concerned, without ascertaining further details with regard to the allegations against him. In such cases, the authority may make an order of 'abeyance' under Clause 8B. Though the language of Clause 8B is capable of being read as if it applies to both allotments already made and allotments yet to be made, a reference to the marginal head, in the background of what has been provided for in Clause 8A, makes it clear that Clause 8B applies only to allotments yet to be made and licences yet to be issued. That clearly is the contextual construction of Clause 8B. Read in any other manner, there will be a totally unnecessary over-lapping of and a needless conflict between Clauses 8A and 8B, with freedom to the authority to pursue action either under Clause 8A or Clause 8B each providing a different procedure of its own. We do not think that it is permissible for us to read clauses 8A and 8B in a manner as to create needless conflict and confusion when the two classes are capable of existing separately, without encroaching upon each other. Contextual construction demands such a construction and we have no hesitation in adopting it. Clause 10 which provides for a reasonable opportunity before action is taken under clause 8A, does not make similar provision in the case of action under clause 8A as well as action under clause 8B are both in the nature of interim orders of temporary duration aimed at preventing further harm and mischief pending investigation into the allegations under clause 8. Does it mean that the principle of natural justice of procedural fairness is to be altogether excluded when action is taken under clause 8B ? We do not think that it is permissible to interpret any statutory instruments so as to exclude natural justice, unless the language of the instrument leaves no option to the court. Procedural fairness embodying natural justice is to be implied whenever action is taken effecting the rights of parties. It may be that the opportunity to be heard may not be pre-decisional; it may necessarily have to be pre- decisional where the danger to be averted or the act to be prevented is imminent or where the action to be taken can brook no delay. If an area is devastated by flood, one cannot wait to issue show-cause notices for requisitioning vehicles to evacuate population. If there is an out-break of an epidemic, we presume one does not have to issue show- cause notices to requisition beds in hospitals, public or private. In such situations, it may be enough to issue post- decisional notices providing for an

opportunity. It may not even be necessary in some situations to issue such notices but it would be sufficient but obligatory to consider any representation that may be made by the aggrieved person and that would satisfy the requirements of procedural fairness and natural justice. There can be no tape-measure of the extent of natural justice. It may and indeed it must vary from statute to statute, situation to situation and case to case. Again, it is necessary to say that pre-decisional natural justice is not usually contemplated when the decisions taken are of an interim nature pending investigation or enquiry. Ad-interim orders may always be made ex-parte and such orders may themselves provide for an opportunity to the aggrieved party to be heard at a later stage. Even if the interim orders do not make provision for such an opportunity, an aggrieved party has, nevertheless, always the right to make appropriate representation seeking a review of the order and asking the authority to rescind or modify the order. The principles of natural justice would be satisfied if the aggrieved party is given an opportunity at the request. There is no violation of a principle of natural justice if an ex-parte ad-interim order is made unless of course, the statute itself provides for a hearing before the order is made as in clause 8A. Natural justice will be violated if the authority refuses to consider the request of the aggrieved party for an opportunity to make his representation against the ex-parte ad-interim orders.

In the Qeen v. Randolph et al., the Supreme Court of Canada had to consider the question whether an interim order under s. 7 of the Post Office Act prohibiting the delivery of mail directed to or deposited by a person in a Post Office may be made without prior notice to the person affected, pending the final determination which could only be made after hearing the party affected. The Supreme Court said, "In s. 7 it has not abrogated it (i.e. the application of the maxim audi alteram paterm) Rather it has provided that before any final prohibitory order is made, the party affected shall have notice and a right to an expeditions hearing and has defined the procedure to be followed. It would, in my opinion, be inconsistent with the scheme of the section to hold that before making an interim order the Post-master-General must hold a hearing. If such a duty existed it would be a duty to notify the party affected of what was alleged against him and to give him a reasonable opportunity to answer. If this were done the hearing prescribed sub-s. (2) would be an unnecessary repetition. Generally speaking the maxim audi alteram partem has reference to the making of decisions affecting the rights of parties which are final in their nature, and this is true also of s. 2 (e) of the Canadian Bill of Rights, 1960 (Can), c. 44 upon which the respondents relied."

> "The following passage in Broom's Legal Maxims 10th ed., p. 68 is in point:
>
> Although cases may be found in the books of decisions under particular statues which at first might seem to conflict with the maxim, it will be found on consideration that they are not inconsistent with it, for the rule, which is one of elementary justice, only requires that a man shall not be subject to final judgment or to punishment without an opportunity of being heard."
>
> "The main object of s. 7 is to enable the Post-master- General to take prompt action to prevent the use of the mails for the purpose of defrauding the public or other criminal activity. That purpose might well be defeated if he could take action only after notice and a hearing. Sub- section (1) enables him to act swiftly in performing

> the duty of protecting the public while sub-s. (2) gives protection to the person affected by conferring the right to a hearing before any order made against him becomes final.
>
> "In my opinion, the two interim prohibitory orders in question were validly made."

In the Commissioner of Police v. Tanos, the High Court of Australia (Dixon C. J and Webb J.) was considering the question whether an ex-parte order of closure of a Disorderly House may be made. It was observed.

> ".....it is in a broad sense a procedural matter and while the general principle must prevail it is apparent that exceptional cases may be imagined in which because of some special hazard or cause of urgency an immediate declaration is demanded. A power to regulate procedure might be treated as authorising regulations allowing an ex-parte order in such cases. Under the power conferred by section 15 upon the Governor-in-Council to make regulations this very course seems to have been adopted. Regulation I provides that if the judge is of the opinion that reasonable grounds have been shown (i) he may make the declaration immediately and ex-parte if this seems to him necessary or desirable, or (ii) if he thinks that an opportunity should be given to the owner or occupier or both to oppose the making of the declaration he may direct them to be served with a copy of the affidavit and to be notified of the day on which the matter will be dealt with, such service and notification to be effected in such manner as may seem to him sufficient: when the matter comes on, the Superintendent or Inspector of Police or counsel or solicitor on his behalf and the owner and occupier or counsel or solicitor on their behalf may attend and be heard, and the matter shall be disposed of in public chambers. This regulation may perhaps he read as leaving the choice of course at large to the judge. But it ought not so to be interpreted. It should be understood as meaning that prima facie the course provided for in para (iii) should be followed and only in exceptional or special cases should an immediate declaration be made. The analogy is that of an interim injunction, but the caution should be greater because the declaration, unless it is framed as provisional or conditional, concludes the right subject to rescission. "It may be added that probably a declaration improperly made ex-parte may be rescinded or set aside on an application made independently of s. 4(1)."

In Lewis v. Heffer, Lord Denning MR distinguished the observations of Megarry J. in John v. Rees and observed, "Those words apply, no doubt, to suspensions which are inflicted by way of punishment, as for instance when a member of the Bar is suspended from practice for six months, or when solicitor is suspended from practice. But they do not apply to suspensions which are made, as a holding operation, pending enquiries. Very often irregularities are disclosed in a government department or in a business house; and a man may be suspended on full pay pending enquiries. Suspicion may rest on him; and so he is suspended until he is cleared of it. No one so far as I know, has ever questioned such a suspension on the ground that it could not be done unless he is given notice of the charge and an opportunity of defending himself, and so forth. The suspension in such a

case is merely done by way of good administration. A situation has arisen in which something must be done at once. The work of the department or the office is being affected by rumours and suspicions. The others will not trust the man. In order to get back to proper work, the man is suspended. At that stage, the rules of natural justice do not apply;: see Furnell v. Whangarei High Schools Board." In Furnell v. Whangarei High School Bd. the Privy Council upheld the order of suspension of a teacher pending determination of charges against him. It was observed, "Neither in the regulations nor in the Act is suspension classified as a penalty. Section 157 (3) shows that it is not. It must however be recognised that suspension may involve hardship. During suspension salary is not paid and apart from this something of a temporary slur may be involved if a teacher is suspended. But the regulations (by regulation 5) clearly contemplate or lay it down that the written statement of a teacher (under regulation 5(2)) and the oral personal statement (under regulation 5(3)) will be made after suspension if any has taken place. Suspension is discretionary. Decisions as to whether to suspend will often be difficult. Members of a board who are appointed or elected to act as the governing body of a school must in the exercise of their responsibilities have regard not only to the interests of teachers but to the interests of pupils and of parents and of the public. There may be occasions when having regard to the nature of a charge it will be wise, in the interests of all concerned, that pending decision whether the charge is substantiated a teacher should be suspended from duty. In many cases it can be assumed that charges would be denied and that only after a full hearing could the true position be ascertained. It is not to be assumed that a board, constituted as it is, will wantonly exercise its discretion."

We have referred to these four cases only to illustrate how ex-parte interim orders may be made pending a final adjudication. We however, take care to say that we do not mean to suggest that Natural Justice is not attracted when orders of suspension or like orders of an interim nature are made. Some orders of that nature, intended to prevent further mischief of one kind, may themselves be productive of greater mischief of another kind. An interim order of stay or suspension which has the effect of preventing a person, however, temporarily, say, from pursuing his profession or line of business, may have substantial, serious and even disastrous consequences to him and may expose him to grave risk and hazard. Therefore, we say that there must be observed some modicum of residual, core natural justice, sufficient to enable the effected person to make an adequate representation. (These considerations may not, however, apply to cases of liquor licensing which involve the grant of a privilege and are not a matter of right : See Chinglepur Bottlers v. Majestic Bottling Company, Civil Appeal Nos. 11970-71 of 1983). That may be and in some cases, it can only be after an initial ex-parte interim order is made.

As we have seen, both clauses 8A and 8B contemplate action of an interim nature pending investigation into allegations under clause 8. Ordinarily, in the absence of anything more, it would not be necessary to give an opportunity to the person concerned before proceeding to take action under clause 8A or clause 8B. But while clause 8B deals with the right to obtain licences and the right to obtain allotments, clause 8A deals with rights which have flowered into licences and allotments. A person to whom licences have been granted or allotments made may have arranged his affairs on that basis and entered into transactions with others, and, to him the consequences of action under clause 8A may be truly disastrous whereas the consequences of action under clause 8B may not be so imminently harmful. It is presumably because of this lively difference between clauses

8A and 8B that clause 10 provides for a pre-decisional opportunity in the case of action under clause 8A and does not so provide in the case of action under clause 8B Again, it is presumably because of this difference that clause 10 while providing for an appeal against a decision under clause 8A does not provide for an appeal against a decision under clause 8B. Not that it makes any difference because S. 4M and 4N of the Imports and Exports (Control) Act provide for an appeal and a revision against any decision or order made under the Act, which naturally include any decision or made under any subordinate legislation made under the Act, and this right of appeal and revision cannot be whittled down by the subordinate legislation. As we mentioned earlier, it does not mean that the requirements of natural justice are not to be met at all in the case of action under clause 8B. The requirements of natural justice will be met in the case of action under clause 8B by considering, bona fide, any representation that may be made in that behalf by the person aggrieved. Clause 8B itself gives an indication that such a post-decisional opportunity on the request of the person concerned is contemplated. We have seen that action under clause 8B is to be taken if the authority is satisfied in the public interest that such action may be taken without ascertaining further details in regard to the allegations. It clearly implies that when further facts are ascertained by the authority or brought to the notice of the authority, such action may be reviewed. As we have earlier pointed out while ex-parte interim orders may always be made without a pre-decisional opportunity or without the order itself providing for a post-decisional opportunity, the principles of natural justice which are never excluded will be satisfied if a post-decisional opportunity is given if demanded. So we hold that in the case of action under clause 8B it is not necessary to give a pre-decisional opportunity but a post decisional opportunity must be given if so requested by the person affected.

The next question for consideration is whether the decision to keep in 'abeyance' should be communicated to the person concerned. There can be no two opinions on this. Ours is a Constitutional Government, an open democracy founded upon the rule of law and not a cloak and dagger regimen. It is inconceivable that under our constitutional scheme a decision of the kind contemplated by clause 8B which may have the effect of bringing to a stand still the entire business activity of the person affected and which may even spell ruin to him, should be made and implemented without being communicated to that person. Intertwined is the question of observance of natural justice and how can natural justice be satisfied if the decision is not even communicated ? It would be most arbitrary and quite clearly violative of Articles 14 and 19(i)(g) of the Constitution if clause 8B is to be interpreted as excluding communication of the decision taken. There is nothing in clause 8B to suggest that the decision is not to be communicated. On the other hand, the expression "without assigning any reason" implies that the decision has to be communicated, but reasons for the decision have not to be stated. Reasons of course, must exist for the decision since the decision may only be taken if the authority is satisfied that the grant of licence or allotment of imported goods will not be in the public interest. We must make it clear that 'without assigning reasons' only means that there is no obligation to formulate reasons and nothing more. Formal reasons may lead to complications when the matter is still under investigation. So the authority may not give formal reasons, but the skeletal allegations must be mentioned in order to provide an opportunity to the person affected to make his representation, Chapter and verse need not be quoted. Details may not be mentioned and an outline of the allegations should be sufficient.

The further question is on what should the satisfaction be based ? Since action under clause 8B is to be taken pending investigation into allegations under clause 8, we must take it that the action under clause 8B is really in aid of the ultimate order under clause 8. It must follow that in order to invite the satisfaction contemplated by clause 8B there must be present some strong suspicion of one or other or more of the grounds mentioned in clause 8. Since the action which is of a drastic nature is to be taken ex-parte, it must necessarily be animated by a sense of urgency. The sense of urgency may be infused by a host of circumstances such as the trafficking and unscrupulous peddling in licences, large scale misuse of imported goods, attempts to monopolise or corner the market, wholesale prevalence of improper practices among classes of importers, public sentiment etc. etc. One of the submissions very strenuously pressed before us was that public sentiment was wholly irrelevant in arriving at the satisfaction contemplated by Clause 8B. We are unable to agree. It is true that public administration is not to be run on public sentiment and statutory action may only be taken on grounds permitted by the statute. But strong public sentiment may impart a sense of urgency to a situation such as to compel the authorities to proceed to take action under a statute provided of course grounds for taking action under the statute. Public sentiment is not, in such cases, the ground for the action but it is what clothes the ground with that sense of urgency which makes it imperative that swift action be taken. That is how we understand the reference to public sentiment in the counter affidavit filed on behalf of the Union of India and the Chief Controller of Imports and Exports.

Public interest must nolens volence be the paramount consideration. If the threatened public mischief is such as to outweigh the likely injury to the party, the authority may take action under Clause 8B. If the threatened public injury is very slight compared to the harm which may be done to the party, the authority may not take action under Clause 8B. There may be cases where the 'abeyance' orders may themselves be productive of serious public injury as where a substantial amount of foreign exchange may be lost or a large number of workers are likely to be thrown out of employment etc. In such situations the authorities may pause and have second thoughts, consider the inevitable consequences and be guided by that element of the public interest which outweighs all others. Which element of the public interest should be given greater weight and which grounds should weigh at all are matters for the authority taking action under Rule 8B. Courts do not concern themselves with the sufficiency of the grounds on which action is taken or with the balancing of competing considerations, in favour of and against the action.

One of the submissions very strenuously urged before us was that a large number of the applications. for import licencees and allotments of imported goods which have been kept in 'abeyance' relate to goods which are totally unrelated to beef tallow or any other animal tallow and there was no justification whatever for keeping them in 'abeyance'. But an 'abeyance' order under clause 8B is directed not against any particular type of goods but against an importer, licensee or other person against whom an investigation into allegations under clause 8 is pending. The question is not whether any particular type of goods should be allowed to be imported or allotted to any person that is a question of policy-, but whether it is not in the public interest that a particular person should be prevented from obtaining import licences or imported goods of any description pending investigation into the allegations under clause 8B. That would depend on the nature of the allegations, the extent of involvement of the person concerned and, most important, the element of

the public interest. If the allegations against a person involve him deeply in trafficking or racketeering in import licences and imported goods, the authority may consider it inexpedient in the public interest to keep in abeyance any application of his for the grant of a licence or allotment of goods. On the other hand even if the allegations are grave, if the effect of an order under clause 8B is likely to result in loses of considerable foreign exchange or to shut down an industry throwing large number of workers out of employment, the authority should restrain itself in larger public interest, from making an order under clause 8B or may make an order confining the abeyance order to applications and goods of certain description only instead to making a, general order which extends to all applications for import licences and allotment of imported goods. Again, the allegations may reveal that the involvement of the person in illegal activity is so remore or minimal that it would be entirely inexpedient to make an order clause 8B. A person who legitimately purchases imported goods or imports goods under a licence lawfully acquire by him and who has used the goods in the manufacture of a different kind of goods in which industry the person is engaged may not be visited with an order under clause 8B merely because the original licensee's actions may be suspicious. Again where a person's bonafides are not suspect at all but he may be technically at fault or he may have acted on a bonafide interpretation of the rules and regulations, it may not be a case for making an order under clause 8B. But these are all matters for the consideration of the authority making the order under clause 8B and not for the Court.

We have held that action under Clause 8B is of an interim nature and it may be ex-parte, in which case the affected party may make a suitable representation bringing out all the outweighing circumstances in his favour. That is the real remedy of the party. Courts do not enter the picture at that stage unless the action is mala fide or patently without jurisdiction. The action will be patently without jurisdiction if it is not based on any relevant material whatsoever. If the authority declines to consider the representation, or if the authority after consideration of the representation eschews relevant considerations and prefers to act on irrelevant considerations or from oblique motive, or the decision is such as no reasonable man properly directed on the law would arrive at on the material facts, it will be open to the party to seek the intervention of the court at that stage. Our attention was drawn to the well known cases of Barium Chemicals v Company Law Board, Rohtas Industries v. S.D. Agarwal, M.A. Rashecd v. State of Kerala, and the recent cases of Shalini Soni v. Union of India, and Commissioner of Income Tax v. Mahindra and Mahindra and we have considered all of them in arriving at our conclusion.

In the present case, the party instead of representing his case to the appropriate authority chose the path of litigation obviously deterred by the clumsy attempt at secrecy made by the concerned authority and the failure to communicate the decision to the party. One of the submissions made to us was that the abeyance order was never formally communicated to the petitioners and it was, therefore, to be treated as non est. Reliance was placed on the decisions of Bachhittar Singh v. State of Punjab and State of Punjab v. Balbir Singh. We do not think that these decisions are of any facility to us on the facts of the present case. In Bachittar Singh's case, what was decided was that a decision taken in the privacy of a Minister's Chamber, which was not communicative to the party and which was reversed without ever being communicated was of no effect at all. In Balbir Singh case, it was held that once an order was sent out, and went out beyond the control of the authority, the order must be said to have been issued no matter when the party affected actually received it.

Communication, according to learned Judges, was the process of setting in motion the despatch of the order. It was held in that case that forwarding of copies to the Accountant General and to the Chief Engineer was sufficient communication. In the present case, the 'abeyance' order was undoubtedly communicated to the licensing authorities, the State Trading Corporation, the Minerals and Metals Trading Corporation and other similar agencies. Despite the attempt at secrecy made by the concerned authority and the failure to formally 'communicate the decision to the party, the abeyance circular was very soon public knowledge. The affected party also learnt about it but probably deterred by the attempt at secrecy, chose the path of litigation, instead of representing his case to the appropriate authority. We might have considered the question of what relief the petitioners were entitled to had the secrecy been maintained and knowledge of the order continued to be held back from the party. But the person affected did come to know of the order-he filed a copy of the circular along with the writ petition-, and in the final analysis, the object of communication is only to impart knowledge. Since then, a volume of water has flown under the bridge and we must proceed on the basis that the affected party is aware of the decision and so, what next ? We can not, of course, proceed to consider the question whether there is sufficient relevant material in support of the allegations made against petitioners. In fact we can-not enter upon the merits of the controversy at all. We cannot, for example, consider the question whether the material available justifies a prima facie conclusion that the petitioners have made illegal imports of beef tallow. According to the contention of the petitioners, they were entitled to import beef tallow even after June 5, 1981 if they had valid licences and if they had entered into firm contracts and opened letters of credit before June 5,1981 According to the authorities to is was not permissible; the affect of paragraph 222(3) of the Import Policy was that the amendment which was made on June 5, 1981 took effect from April 1, 1981 and permitted import of beef tallow under OGL only where firm contracts had been entered into and letters of credit had been opened before April 1,1981 but if the contracts had not been entered into and letters of credit had not been opened before April 1, 1981, the imports had to be through the channel of the State Trading Corporation only. Though in the cases of Arvind Exports and Jayant Mills is an appeal and review arising under the provisions of the Customs Act, the question was decided in favour of the parties, the present stand of the Government is that those decisions are not binding on the authorities functioning under the Imports (Control) Order and that those decisions had been rendered without reference to paragraph 222(3) as well paragraph 24 of Appendix 10 of the Import Policy of 1980-81 which expressly states:

> "Nothing in the Open General Licence shall affect the application to any goods, of any other prohibition or regulation affecting the import thereof, in force, at the time where they are actually imported."

We consider that this is not a matter for the court to decide at this stage in a petition under Article 226 of the Constitution or under Article 32 of the Constitution questioning an ad-interim order under Clause 8B. Again we cannot enter into the controversy whether there has been mis utilisation of the imported goods by the petitioners and whether the petitioners can be termed as 'actual users' within the meaning of that expression in the Import Control Order by the mere fact that they subject the beef tallow to 'air-treatment'. All these questions pertain to the merits of the controversy and it is not for us to embark into a discussion into these matters.

But we may properly consider, even at this stage, the question of mala fides or patent lack of jurisdiction. There is no suggestion that the action was mala fides. It was, however, argued that the order as embodied in the abeyance circular did not fulfil the conditions-precedent prescribed by the statute It did not contain a recital of the allegations constituting the basis of the satisfaction contemplated by clause 8B for action under that provision, and without a recital of the allegation it was impossible to say that the action was not based on irrelevant material. It did not even recite that which was the foundation of any action under clause 8B, namely, the satisfaction of the authority that the action was in the public interest. On the other hand, it issued a directive to the licensing authorities to keep in abeyance for a period of six months any application received from the concerns specified for the grant of import licence or customs clearance permit and allotment of imported goods through agencies like the State Trading Corporation of India, Minerals and Metals Trading Corporation of India and similar agencies, making a bare recital that investigations into certain allegations under clause 8 were pending against the concerns. Again a large number of concerns were lumped together and purported to be dealt with by a single abeyance circular. There was ex-facie nothing in the circular which could point to the authority having applied its mind and considered the case of each concern separately. It is true that the abeyance circular suffers from every one of these infirmities and if there was nothing more, the parties would be well entitled to ask us to quash the circular. But the learned Addl, Solicitor General invited our attention to the statements made by Shri J.P. Sharma, Deputy Chief Controller of Imports and Exports and the author of the abeyance circulars in the counter affidavit filed by him. The learned Additional Solicitor General has also placed before us for our perusal the relevant files of the authority. The counter-affidavit of Shri J.P. Sharma shows that the principal allegations against the petitioners were that they had prima facie indulged in illegal importation of beef tallow and had also misutilised the beef tallow. Why the authority took the prima facie view that the petitioners had illegally imported beef tallow and had mis-utilised the imported beef tallow has been explained by him in the counter-affidavit. Illegal importation of beef tallow and mis-utilisation of the imported beef tallow are certainly relevant grounds on which action may be taken under clause 8B. We are of course, not concerned with the question of the sufficiency of material before the authority in arriving at its conclusion. A perusal of the files shows that in respect of nine of the firms covered by the abeyance circular dated November 7, the decision to keep their applications and allotments in abeyance was taken at the highest level, that is, at the level of the Minister for Commerce, Government of India. Thereafter the Deputy Chief Controller of Imports and Exports, the files show, considered the cases of 61 concerns including that of Liberty Oil Mills Limited and issued the abeyance circular dated November 9, 1983. We find that the cases of Liberty Oil Mills Limited as well as other concerns were separately and individually considered. Their cases having been considered by the authority separately and individually before the circular was issued, we do not think that it makes any difference on the peculiar facts of this case that a single circular was issued, covering a large number of concerns. However, we wish to impress upon the authorities that those entrusted by statute with the task of taking prejudicial action on the basis of their subjective satisfaction should, first, bestow careful attention to the allegations forming the basis of the proposed action and the probable consequences which may ensue such action and, next, take the trouble of reciting in the order issued by them the satisfaction forming the basis of the action and a concise statement of the allegations forming the basis of the satisfaction. If the necessary recitals are not found, there may be serious sequels. In cases involving civil liberties, the orders will necessarily have to be quashed. In other

cases also, it is possible to envisage similar results depending on the rights involved, the object of the statute and other facts and circumstances. As it is the circulars in question are hopelessly drafted adding to the confusion created by the sadly drafted clause 8B. In the facts and circumstances of this, case, the real remedy of the party, as we conceive it, is to make a representation to the concerned authority setting out his version of the facts and the law and the prejudice to himself and the public interest as a consequence of the action under clause 8B. We would have first directed the authority to communicate, within a specified time, to the party the allegations forming the basis of the action. But we do not consider it necessary to do so as the party is now fully apprised of the allegations against him. In the circumstances, we think that it would be proper if we direct the authority concerned to consider any representation that may hereafter be made by the party within 10 days from the date of its receipt. Subject to this directions, the writ petition is dismissed but without any order as to costs.

Civil Appeal No. 274 arises out of an interlocutory order made by the Bombay High Court before the writ petition was transferred to this court. In view of our final decision disposing of the main writ petition, it is unnecessary to pass any orders in this civil appeal, which is disposed of accordingly.

H.S.K. Petitions dismissed.