

Vaishanava Dass And Ors. vs Faqir Chand And Ors. on 7 April, 1967

Author: Chief Justice

Bench: Chief Justice

ORDER

1. This is an application under Article 226 of the Constitution. Herein the petitioners pray that this Court may be pleased to declare that the order made by the Government on July 29, 1957 under sub-section (4) of Section 89 of the Companies Act, 1956, to be hereinafter referred to as the "Act" is null and void or in the alternative, quash the same for the reasons mentioned in the petition.

2. The petitioners are shareholders of Nav Samaj, Ltd., a company registered under the Indian Companies Act, 1913. (Respondent No.4). Petitioner No.1 holds 400 ordinary shares of the said company. Petitioners 2 to 5 hold five shares each, therein. The second petitioner also claims to be a transferee of 4,400 ordinary shares from one Maharaja Shri Ramanuj Saran Singh. But the said transfer has not yet been recognised by the aforementioned company.

3. The said company was incorporated on or about 5th May, 1947. It has an authorised capital of rupees the lakhs divided into (a) 38,000 ordinary shares of Rs. 25 each and (b) 25,000 deferred shares of Rs. 2 each. Out of the authorised capital, the total subscribed and paid-up capital of the company is made up by the value of (a) 31,527 ordinary shares of Rs.25 each and (b) 25,000 deferred share at Rs. 2 per share. The value of the ordinary shares subscribed is Rs. 7,88,175 and that of the deferred shares is Rs. 50,000. The deferred shares are also called as the founder's shares. All these deferred shares were allotted to only five persons, namely,-

(1) Shri P. Y. Deshpande, (2) Shri A. G. Sheorey, (3) Shri W. G. Sheorey, (4) Mrs. Vimalabai Deshpande, and (5) Dr. M. G. Patwardhan The said deferred shares carried disproportionate voting rights in their favour inasmuch as although the total capital contributed in respect of those shares is only Rs. 50,000, i.e., about 6 per cent of the total paid-up capital shares of the company, the said shares carry 25,000 votes as against 31,527 votes of the ordinary shareholders who have contributed Rs. 7,88,175 towards the paid-up capital of the company.

4. By the deed dated 22nd August, 1947, the said company entered into an agreement of Managing Agency for a period of twenty years with Nav Samaj Pravartan - a partnership firm wherein the aforementioned Shri P. Y Deshpande and Shri W. G. Sheorey were the partners.

5. The Act came into force on 1st April, 1956. Sections 87 to 90 of the Act deal with the voting rights of the shareholders of the companies limited by shares.

6. By an application dated 26th March, 1956, Messrs. Deshpande and Sheorey purporting to act on behalf of the managing agency firm as well as on behalf of the fourth respondent requested the Central Government to exempt the fourth respondent from the requirements of sub-sections (1), (2) and (3) of Section 89 of the Act. The Central Government by its letter dated 30th March, 1957, granted the exemption prayed for "for a period of 3 months with effect from 1st April, 1957". Later, by its letter dated 20th July, 1957, it wrote as follows to the managing agents:- "Whereas the Central Government is of opinion that the exemption prayed for is required in the public interest, now, therefore, in exercise of the powers conferred on it by Sub-section (4) of section 89 of the said Act, the Central Government hereby exempts the Company from the requirements of sub-sections (1), (2) and (3) of the said section in respect of the said shares."

The words 'said shares' refer to the founders' shares.

7. The petitioners' case is that the Managing Agents did not disclose to the shareholders at any time either that they had applied to the Central Government for an exemption under Section 89(4) of the Act or that any exemption under that provision had been obtained; the Central Government granted the exemption asked for by the Managing Agents without giving any opportunity to the shareholders to show cause against the same; the petitioners came to know about the exemption in question in the month of January, 1960; thereafter on 13th February 1960, the fifth petitioner represented to the Central Government the injustice caused to the shareholders by granting the exemption; on the basis of that representation and after hearing the Managing Agents, the Central Government revoked the exemption granted, by its order dated 24th March, 1962.

8. The said revocation order of the Central Government was challenged by the fourth respondent in Special Civil Application No. 244 of 1962 in the High Court of Judicature at Bombay (Nagpur Bench). In that petition the fourth respondent herein prayed for the following two reliefs:-

- (1) that the Court may be pleased to issue a writ of mandamus respondent the respondent therein from giving effect to the order of the Central Government dated 24-3-1962 revoking the order made by it under section 89(4) of the Act on 29-7-1957,
- and (2) it may be pleased to prohibit the respondent from taking any steps compelling the petitioner-company to modify the voting rights of the deferred or founders shares and vested in the trustees.

The court by its judgment dated 27-1-1965 made the following order:- "The result is that we must strike down and we hereby declare the impugned order of revocation of exemption dated March 24, 1962, as invalid and of no effect. There shall be a mandamus against the respondents restraining them from enforcing that order of revocation. The respondents will pay the costs of the petitioner company."

9. At this stage, it is necessary to mention that in about February 1957 a trust known as Nagpur Times Trust (third respondent) was created and the rights of the Managing Agency firm were transferred to the said trust.

10. Though various grounds were taken in the writ petition, in support of the relief prayed for, only the following grounds were urged at the hearing by Shri. A. K. Sen, the learned counsel for the petitioners:-

(1) The impugned order of the Government having been passed behind the back of the ordinary shareholders of the company and without giving any opportunity to them of being heard in the matter, the same is liable to be struck down as in making that order, the Government violated the principles of natural justice:

(2) the Government had no competence to make the said order after the expiry of the statutory period of one year statutory period of one year mentioned in Section 89(1) of the Act;

(3) on a combined reading of Sections 9 and 87, it would be seen that the rights conferred on the ordinary shareholders under the latter section, came to be vested in them on 1-4-1957 and the Government had no competence to make away that right after the said date;

(4) The government's power to grant exemption under Section 89(4) came to an end on its making an order on 30th March, 1957; thereafter it had no competence to make a further order on 29-7-1957;

(5) the impugned order is void inasmuch as it is violative of Article 14 of the Constitution; and (6) there was no basis for the government to conclude that the exemption asked for was necessary in public interest.

(10-A) On behalf of respondents 1 and 2, the first respondent Shri Faqir Chand, Deputy Secretary to the Government of India, Department of Company Law Ministry of Finance, New Delhi, filed a counter-affidavit. Therein he repudiated all the contentions advanced on behalf of the petitioners. Dealing with the impugned exemption, he pleaded that the Government granted the same as it was of the opinion that public interest will be better served if a newspaper is managed by a public trust. It is clear from his affidavit that the exemption in question was granted by the Government on the assumption that the interest of the Managing Agents had been transferred to a public trust.

11. Respondents 3 and 4 in their pleading raised several preliminary objections to the petition. They contended that the controversy between the parties was concluded by the decision of the Bombay High Court in Special Civil Application No 244 of 1962; the respondents therein had approached the Supreme Court for granting special leave to appeal against that judgment (the special leave prayed for had been subsequently granted and the appeal is now pending before the Supreme Court); therefore, this Court should not entertain this petition because if this Court issues any direction contrary to that issued by the Bombay High Court, the Government will not be in position to obey the orders of both the Courts. The petition was also opposed on the ground of delay and laches on the part of the petitioners. It was also urged that the petitioners must be held to be bound by the decision of the Bombay High Court as they had intervened in the petition, referred to earlier.

12. Coming to the other question urged it was pleaded that as the company was consulted before passing the impugned order, all the shareholders must be deemed to have been consulted. Alternatively, it was said that there was no need for the Government to consult the shareholders before making the order in question as the said order was an administrative order. The various legal contentions taken on behalf of the petitioners were controverted. It was also urged that an order under Section 89(4) is an order in rem and that binds all the concerned persons. One other objection taken was that petitioners 2,3,4 and 5 were not even shareholders at the time the impugned order was made and therefore they have no right to challenge the same. So far as petitioner No 1 is concerned, it was said that he had notice of the agenda of the meeting of the company held on 14-3-1957 and therefore he should be deemed to have had notice of the application made by the Managing Agents under Section 89(4).

13. In view of the admitted fact that petitioner No. 1 was the shareholder of Nav Samaj Limited at the time the impugned order was made and that he is challenging the validity of that order, it is not necessary for us to consider whether petitioners 2 to 5 have any right to challenge the same. The contention that the validity of the order in view of the fact of the company held on 14-3-1957 has no merit. The agenda in question did not directly or indirectly refer to the application made under Section 89(4). The mere fact that the shareholders were informed that the interest of the Managing Agents was going to be assigned to a public trust cannot be considered as a notice to them of the application made under section 89(4).

14. We are unable to accept the contention that the decision of the Bombay High Court in special Civil Appln. No. 244 of 1962 , binds the petitioners herein. The petitioners were not parties to that application. Their application to get themselves impleaded in that special civil application was unsuccessful. The court rejected that application though it permitted them to intervene in that case. The fact that case does not make them parties to the application. The Contention that the judgment in that application is a judgment in rem has no basis in law.

15. It is true that if this court issues orders or directions which conflict with the directions issued by the Bombay High Court, then it would lead to anomaly. In that event, the Central Government will not be able to comply with the directions given by the Bombay High Court as well as those given by this High Court. At one stage, we thought that this petition can be kept pending till the appeal pending before the supreme court is decided and the petitioners herein asked to move the Supreme Court to implead them in the appeal. Though Shri A. K. Sen, the learned counsel for the petitioners agreed with that suggestion, Shri Phadke, the learned counsel for respondents 3 and 4, urged that we should dispose of this petition on its own merit without waiting for the decision of the supreme court. On a closer examination of the reliefs prayed for and that granted by the Bombay High Court, we came to the conclusion that the order that we purpose to make in this petition does not conflict with the order of the Bombay High Court and therefore, there is no difficulty in disposing of this application on its own merit. As seen earlier, the petitioners in Special Civil Application No. 244 of 1962, had prayed for two reliefs, Viz.:-

- (1) A mandamus prohibiting the respondents from giving effect to the order of the Central Government dated 24-3-1962; and (2) to prohibit the respondents from

taking any steps compelling the petitioner-company to modify the voting rights of the deferred or founders-shareholders and vested in the trustees.

The High Court merely struck down the order of the Government dated 24-3-1962 and issued a mandamus to the respondents restraining them from enforcing the said order. In other words, the Bombay High Court only considered the validity of the order of the Central Government dated 24-3-1962. Herein, we are called upon to consider the validity of the order of the Central Government dated 29th July, 1957. The Bombay High Court did not go into the validity of that order. Therefore, our striking down that order or declaring it as null and void would not conflict with the decision of the Bombay High Court.

16. We see no substance in the contention that the petition is liable to be dismissed on the ground of laches on the part of the petitioners. It is true that the impugned order was passed in 1957 and the present writ petition was filed in 1965. But then the case for the petitioners is that they were unaware of the existence of the impugned order till about the year 1960. After they came to know about that order, one of the shareholders moved the Central Government to revoke the same, as a result of which the impugned order was revoked by the Central Government by its order dated 24-3-1962. Thereafter the fourth respondent filed Special Civil Appln No. 244 of 1962 which application was disposed of by the High Court on 27-1-1965. Very soon after the disposal of that petition. The petitioners moved this Court under Article 226 challenging the validity of the impugned order. That petition had to be withdrawn. Thereafter the present writ petition was filed. From the material before us, it is not possible to come to the conclusion that the petitioners were aware of the impugned order till about the year 1960. Under these circumstances, it cannot be said that the petitioners had unreasonably delayed in approaching this Court. That apart, it must be remembered that the petitioners are complaining of a continuing wrong. That circumstance has an important bearing in considering the question of delay. Further, delay is not a bar for filing an application under Article 226. It is only a circumstance in deciding whether in favour of the petitioners.

17. Having disposed of the preliminary objections advanced on behalf of the respondents, we may now proceed to consider the contentions advanced on behalf of the petitioners, which we had earlier formulated. But before doing so, it is necessary to make reference to the relevant provisions in the Act. The provisions with which we are primarily concerned in this case are sections 87 to 90 of the Act. Incidentally, we have to consider Section 9 therein.

18. Till the Act came into force, the voting rights of the shareholders of a company limited by shares were regulated by its Articles of Association. But Section 87(1) lays down that subject to the provisions of section 89 and subsection (2) of section 92, (a) every member of a company limited by shares and holding any equity share capital therein shall have a right to vote, in respect of such capital, on every resolution placed before the company; and (b) his voting right on a poll shall be in proportion to his share of the paid-up equity capital of the company. But as the section itself says, the provisions of S. 87(1) are subject to the provisions of section 89. Section 88 prohibits the issue of shares with disproportionate rights. Section 89 prescribes :

"(1) If at the commencement of this Act any shares, by whatever name called, of any existing company limited by shares carry voting rights in excess of the voting rights attaching under sub-section (1) of section 87 to equity shares in respect of which the same amount of capital has been paid up, the company shall, within a period of one year from the commencement of this Act, reduce the voting rights in respect of the shares first mentioned so as to bring them into conformity with the voting rights attached to such equity shares under sub-section (1) of section 87.

(2) Before the voting rights are brought into such conformity, the holders of the shares in question shall not exercise in respect thereof voting rights in excess in respect thereof voting rights in excess of would have been exercisable by them if the capital paid up on their shares had been equity share capital, in respect of the following resolutions placed before the company namely: -

(a) any resolution relating to the appointment or reappointment of a director or of a managing agent or secretaries and treasurers, or to any variation in the terms of an agreement between the company and a managing or whole time director thereof or its managing agent or secretaries and treasurers;

(b) any resolution relating to the appointment of buying or selling agents;

(c) any resolution relating to the grant of a loan or to the giving of a guarantee or any other financial assistance, to any other body corporate having any person as managing agent or secretaries and treasurers who is also either the managing agent or the secretaries and treasurers of the company or an associate of such managing agent or secretaries and treasurers.

(3) If, by reason of the failure of the requisite proportion of any class of members to agree, it is not found possible to comply with the provisions of sub-section (1), the company shall, within one month of the expiry of the period of one year mentioned in that sub-section, apply to the Court for an order specifying the manner in which the provisions of that sub-section shall be complied with; and any order made by the Court in this behalf shall bind the company and all its shareholders.

If default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extent to one thousand rupees.

(4) The Central Government may, in respect of any shares issued by a company before the first day of December, 1949, exempt the company from the requirements of sub-sections (1), (2) and (3), wholly or in part, if in the opinion of the Central Government the exemption is required either in the public interest or in the interests of the company or of any class of shareholders therein or of the creditors or any class of creditors thereof.

Every order of exemption made by the Central Government under this sub-section shall be laid before both Houses of Parliament as soon as may be after it is made". Section 90 says that nothing in sections 85 to 89 shall, (a) in the case of any shares issued before the commencement of the Act, affect any voting right attached to the shares save as otherwise provided in section 89, or any right attached to the shares as to dividend, capital or otherwise; or (b) apply to a private company, unless it is a subsidiary of a public company.

19. From a reading of the above provisions. It is seen that the mandate contained in section 87(1) applies to all companies which may come into existence after the Act came into force, in view of Section 90, the regulation of voting rights provided under Section 87 can take effect, except to the extent provided for in Section 89(2), only after the steps contemplated by Section 89(1) are taken. Hence it is not correct to content that in view of Section 9 of the Act, the voting rights of the shareholders stood regulated in accordance with the provisions contained in Section 87. Section 9 provides:

"Save as otherwise expressly provided in the Act-

(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum of articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and

(b) any provision contained in the memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be."

The said provision is subject to section 90. Hence, we are unable to accept the contention of Shri A.K.Sen, that because of Section 87 the voting rights of shareholders in the company stood automatically modified in the manner contemplated in that provision. The action contemplated by Section 89(1) is a condition precedent for the application of the provisions contained in Section 87(1). Till that action is taken, the existing voting rights are not affected excepting to the extent provided in sub-section (2) of Section 89. But the Central Government has power to exempt a company from the provisions of Section 89(1), (2), and (3). Under the circumstance mentioned in sub-section (3) of Section 89 it is open to the company to move the Court for necessary directions, within one month of the expiry of the period of one year mentioned in Section 89(1) and any order made by the Court in that behalf shall bind the company and all its shareholders. But it must be noted that the company can move the Court under Section 89(3) only if by reason of the failure of the requisite proportion of any class of its members to agree, it was not possible to comply with the provisions of sub-section (1) of Section 89. There is no indication in the provisions to which our attention was invited, as to what should happen if the company itself failed to comply with the requirements of Section 89(1). We have not gone into that question as the same is not necessary for our present purpose. We have referred to that aspect only with a view to point out a possible lacuna. We are unable to agree with the view taken by a learned single Judge of the Gujarat High Court in

Juvan Singhji v. Balbhadra Singhji, , that the net effect of the provisions of Section 87 to 89 is that if there are at the commencement of the Act, any shares of any existing company which carry voting rights in excess of voting rights attaching under Section 87(1) to equity shares in respect of which the same amount of capital has been paid up, the voting rights in respect of those shares stand automatically modified in accordance with the provisions contained in S. 87(1) at the end of the one year mentioned in Section 89(1). Such a conclusion is impermissible in view of Section 90.

20. There was great deal of controversy before us as to whether the Central Government could grant any exemption under Section 89(4) after the period of one year mentioned in section 89(1) elapsed. It was urged on behalf of the petitioners that it had no such power. Accordingly to the petitioners, Section 89(4) merely empowered the Central Government to exempt a company wholly or in part from the requirements of sub-sections (1), (2) and (3) in respect of any shares issued by it, if in its opinion the exemption is required either in public interest or in the interest of the company or any class of shareholders therein or any of the creditors or any class of creditors thereof. It was further urged that if we are to hold that the exemption in question can be granted at any time, then the Government can override the order of the Court made under Section 89(3). That could not have been the intention of the legislature. Therefore, on a harmonious construction of the various provisions in Section 89, we were told that it is reasonable to conclude that the power of the Central Government to grant exemption under Section 89(4) came to an end at the expiry of the period of one year mentioned in Section 89(1).

21. On the other hand, it was contended on behalf of the respondents that the language of Section 89(4) does not lend itself for the construction that the Government's power to grant exemption under that provision came to an end at the expiry of the period of one year mentioned in Section 89(1); that apart, the Government has competence to exempt a company from complying with the requirements of sub-section (3); an application under that sub-section can be made within one month of the expiry of the period of one year mentioned in Section 89(1); therefore, it follows that the exemption to be granted even after the period of one year mentioned in Section 89(1) came to an end. We do not think that for deciding the present case, it is necessary to pronounce on this controversy. There is no doubt that section 89 is not happily worded. As we are of the opinion that the relief prayed for by the petitioners should be granted for the reasons to be mentioned presently, we refrain from pronouncing on the controversy noticed above.

22. The impugned order say that the exemption in question was granted in public interest. In its return the Government has stated that the management of a newspaper by a public trust is in public interest and that it granted the impugned exemption in the belief that the third respondent was a public trust. It is clear from the return made on behalf of the Central Government that the only ground on which it came to the conclusion that it was in public interest to grant the exemption asked for was that the third respondent was a public trust. We have now to see whether the Government was right in its conclusion that the management of the company was in the hands of a public trust on the date it granted the exemption. Clause 21 of the Trust Deed as it stood on the date the impugned exemption was granted provided thus: "The Trustees hereby declare that they hold and shall hold the shares specified in Schedule 'D' hereto and all dividends and interests accrued or to accrue upon the same or any of them upon trust for the beneficiaries, the settlers and the other

three their successors or assigns and agree and undertake to pay to the beneficiaries their successors, or assigns, dividends and interests etc., accrued thereon:."

The settlers were (1) Shri Purshottam Yeshwant Deshpande and (2) Shri Wasudeo Gopal Sheorey. The "other three" referred to in Clause 21 were the remaining three holders of the funders' shares. In view of Clause 21 of the Trust Deed, it is clear that the trust in question could not have been considered as a public trust. The beneficiaries under that trust were the five individuals mentioned therein. It was not a trust in favour of a public, religious or charitable purpose.

Shri Phadke, the learned counsel for Respondents 3 and 4 did not take the stand that the trust in question was a public trust under the Trusts Act. His contention was that as the said trust had been registered under the Madhya Pradesh Public Trusts Act, 1951 its validity cannot be challenged now. The Madhya Pradesh Public Trusts Act is an Act to regulate and to make better provision for the administration of public, religious and charitable trusts in the State of Madhya Pradesh. Section 2(4) of that Act defines 'public trust' thus: 'public trust' means an express or constructive trust for a public, religious or charitable purpose and includes a temple, a math, a mosque, a church, a wakf or any other religious or charitable endowment and a society formed for a religious or charitable purpose".

The scope of that Act came to be considered by the Supreme Court in *Abdul Karim v. Raipur Municipality*, . Therein, it was laid down that the Act is concerned with the registration of public, religious and charitable trusts in the state of Madhya Pradesh, and the enquiry which it contemplates is an enquiry into the question as to whether the trust in question is public or private; the enquiry into questions as to whether the property included in the deed belongs to a private individual and is not the subject matter of any trust at all is not contemplated; the Registrar who is given the powers of a civil court under Section 28 of the act, holds a kind of summary enquiry and clauses (1) to (x) of section 4(3) indicate the points which can fall within his jurisdiction; contested questions of title do not fall within enquiry held under Section 5; the only persons who are required to file their objections in response to a notice issued by the Registrar on receiving an application made under section 4(1), are persons who dispute the existence of the trust or who challenge the allegation that any property belongs to the said trust; no doubt, Section 8(1) permits a person having interest in the public trust or any property found to be trust property to file a suit, but the interest to which this section refers is the interest of a person who claims the right to maintain the trust or any other interest of a similar character and is not the interest which is adverse to the trust set up by a party who does not claim any relation with the trust at all; moreover, the right to file a suit to which Section 8(1) refers is given to persons who are aggrieved by the findings of the Registrar; similarly, the right to prefer an appeal against the Registrar's order prescribed by Section 4(5) necessarily implies that the person must be a party to the proceedings before the Registrar; Section 4(5) also seems to be confined in its operation to persons who are before the Registrar, or who could have appeared before the Registrar under Section 5(2).

Neither the Central Government nor the petitioners were parties to the proceedings before the Registrar. Therefore, the registration of the trust cannot debar either the petitioners or the Central Government from questioning its validity. Hence it is open to them to contend that the trust in

question was not a public trust. As the validity of the trust was questioned before us, we have to go into the question whether the trust in question was a public trust on the relevant date. There can be hardly and doubt that it was not a public trust on that date. Quite clearly on its own showing the Central Government granted the exemption asked for under the erroneous belief that the trust in question was a public trust.

23. It was argued on behalf of the Respondents 3 and 4 that whether the trust in question was a public trust or not, it was in public interest to leave the management of the 4th respondent in the hands of disinterested public men. The fact that the managing agents had transferred their right of managing the company to some responsible persons who are called trustees by them, was itself a goods reason that it was in public interest to grant the exemption prayed for. It is not necessary for us to go into the validity of this contention as the for on the sole basis that the third respondent was a public trust. Therefore whether there were other grounds to grant the exemption prayed for does not arise for consideration. Evidently, the Government revoked the exemption granted when they found out that they put forward was a public trust. From the above discussion, it follows that the exemption in question was granted on the basis of a non-existing circumstance and that fact vitiates the exercise of its power by the Government under Section 89(4) of the Act.

24. On the facts of this case, it is unnecessary for us to decide whether the power conferred on the Government under Section 89(1) is an administrative power or a quasi-judicial power. There is no doubt that Sections 87 and 89(2) conferred on the ordinary shareholders valuable rights. Once the voting rights attached to the founders' shares were reduced, the ordinary shareholders got a greater voice in the affairs of the company. This undoubtedly was a valuable right. Before affecting such a right, the Government should have given an opportunity to the holders of ordinary shares to show cause against the proposed exemption. If only the Government had given an opportunity to the ordinary shareholders to show cause against the exemption asked for, they would have satisfied the Government that the rights of the managing agents had not been transferred to a public trusts. In other words, they would have been able to satisfy the Government that the circumstances put forward by the 3rd and the 4th respondents in support of the exemption asked for did not exist. As observed by the Supreme Court in *Barium Chemicals Ltd. V. Company Law Board*, , the non-application of its mind by the Government to relevant circumstances is a good ground for challenging the validity of an order made by it. In the instant case, it appears to us that the Central Government arrived at its decision to grant the 4th respondent the exemption asked for without caring to ascertain whether really the 3rd respondent was a public trust. It acted with eyes closed. Again, as observed in *Barium Chemicals case*, , though an order passed in exercise of power under a statute cannot be challenged on the ground of propriety or sufficiency, it is liable to be quashed, even if it is passed in good faith and with the best of intention to further purpose of the legislation which confers the power, if the court is satisfied that in passing that order the Government did not apply its mind to the relevant facts. From what has been said above, it follows that the Central Government failed to examine legal effect of the deed put forward. It ignored the law bearing on trusts in holding that the deed placed before it is a trust deed. Therefore, its order liable to be quashed.

25. In view of our above conclusion, it is not necessary to go into the question whether the Government's power to grant an exemption under Section 89(4) had come to an end in view of its order dated 30-3-1957. To a case like the present one, Article 14 of the constitution is in applicable. In the very nature of things, exemptions under Section 89(4) can only be granted to individual companies.

26. For the reasons mentioned above, this petition is allowed and the impugned order, namely, the order of the Central Government dated 29-7-1957 is quashed. The petitioners are entitled to their costs in this petition from Respondent No. 3. Advocate's fee Rs. 500.

27. Petition allowed.