Supreme Court of India
Fertilizer Corporation Kamgar ... vs Union Of India And Others on 13 November, 1980
Equivalent citations: 1981 AIR 344, 1981 SCR (2) 52
Author: Y Chandrachud
Bench: Chandrachud, Y.V. ((Cj), Bhagwati, P.N., Krishnaiyer, V.R., Fazalali, Syed Murtaza, Koshal, A.D.

PETITIONER:
FERTILIZER CORPORATION KAMGAR UNION (REGD.), SINDRI ANDOTHER

Vs.

RESPONDENT:
UNION OF INDIA AND OTHERS

DATE OF JUDGMENT13/11/1980

BENCH:
CHANDRACHUD, Y.V. ((CJ)
BENCH:
CHANDRACHUD, Y.V. ((CJ)
BHAGWATI, P.N.
KRISHNAIYER, V.R.
FAZALALI, SYED MURTAZA
KOSHAL, A.D.

CITATION:
1981 AIR 344 1981 SCR (2) 52
1981 SCC (1) 568
CITATOR INFO :

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| RF | 1981 SC1722 | (3) |
| R | 1982 SC 149 | (22,25,608,966) |
| F | 1982 SC1107 | (17,19) |
| MV | 1983 SC 75 | (46) |
| RF | 1985 SC1147 | (15) |
| R | 1986 SC 157 | (8,11) |
| | 1986 SC 847 | (40) |
| R | 1989 SC1988 | (18) |
| RF | 1991 SC1902 | (36) |

ACT:
Constitution of India-Article 19(1)(g)-Sale of redundant/retired plants & equipment-Occupation of an industrial worker-Whether affected by such sale-Article 14-Whether violated-Article 43A-Wrongs committed by management in public sector whether can be remedied-Article 32-Access to Justice-Public Property dissipated by sale-When and by whom can the sale be set aside.

HEADNOTE:

The petitioners (workers) challenged the legality of the sale of certain plants and equipment of the Sindri Fertilizer Factory, whereby the highest tender submitted by respondent No. 4 was accepted by the Tender Committee and approved by the Board of Directors. The petitioners, amongst others, contended that (i) that the decision to sell the plants and equipment of the Factory was taken without calling for any report;(ii) the original tender of Rs. 7.6 crores was unaccountably reduced to Rs. 4.25 crores; (iii) the price of the plants and equipment, which was ultimately realised in the sale was manipulated with ulterior purposes; (iv) the decision to restrict fresh offers, in respect of the reduced equipment, to the tenderers who had submitted tenders for more than Rs. 4 crores was unfair and arbitrary; (v) the said decision resulted in a huge loss to the public exchequer and (vi) the sale had jeopardised the employment of 11000 odd workers who faced retrenchment as a result of the sale.

On behalf of petitioners 3 and 4 it was further contended that the sale will deprive them of their fundamental right under Article 19(1) (g) to carry on their occupation as industrial workers and that the sale is in violation of the provisions of Article 14of the Constitution being arbitrary and unfair. The respondents raised a preliminary objection to the maintainability of the writ petition on the ground that the petitioners have no locus standi and that the impugned sale did not violate any of the fundamental rights of the petitioners.

Dismissing the petition:

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HELD (By the Court)

The petitioners' right under Art. 19(1)(g) to carry on their occupation as industrial workers was not affected by the sale, nor was their fundamental right, if any, under Article 14 of the Constitution violated. [60 A]

(Per Chandrachud, C.J., Fazal Ali & Koshal, JJ.)

1. The violation of a fundamental right is the sine qua non of the exercise of the right conferred by Article 32.
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The jurisdiction conferred on the Supreme Court by Article 32 is an important and integral part of the basic structure of the Constitution because it is meaningless to confer fundamental rights without providing an effective remedy for their enforcement, if and when they are violated. A right without a remedy is a legal conundrum of a most grotesque kind. [59 E-F]

2. Whereas the right guaranteed by Article 32 can be exercised for the enforcement of fundamental rights only, the right conferred by Article 226 can be exercised not only for the enforcement of fundamental rights but for any other purpose. [59 E]

3(i). There is no substance in the grievance that the petitioners' right under Article 19(1)(g) is violated or is

in the imminent danger of being violated by the impugned sale, since not only did the sale not affect the employment of the workers employed in the Factory, but those of them who were rendered surplus from time to time on account of the closure of the plants were absorbed in alternate employment in the same complex. [60 C, F-G]

(ii) The right of petitioners 3 and 4 and of the other workers is not, in any manner, affected by the impugned sale. The right to pursue a calling or to carry on an occupation is not the same thing as the right to work in a particular post under a contract of employment. If the workers are retrenched consequent upon and on account of the sale, it will be open to them to pursue their rights and remedies under the Industrial Laws. The closure of an establishment in which a workman is for the time being employed does not by itself infringe his fundamental right to carry on an occupation which is guaranteed by Article 19(1)(g) of the Constitution. [60 G-H, 61 A]

4. Article 19(1)(g) confers a broad and general right which is available to all persons to do work of any particular kind and of their choice. It does not confer the right to hold a particular job or to occupy a particular post of one's choice. Even under Article 311 of the Constitution, the right to continue in service falls with the abolition of the post in which the person is working. The workers in the instant case can no more complain of the infringement of their fundamental right under Article 19(1)(g) than can a Government servant complain of the termination of his employment on the abolition of his post. The choice and freedom of the workers to work as industrial workers is not affected by the sale. The sale may at the highest affect their locum, but it does not affect their locus, to work as industrial workers. [61 B-D]

5. In the instant case, it is quite difficult to hold that the decision to sell the plants and equipment of the Factory was arbitrary, unreasonable or mala fide. The real drive of the petition is against the decision of the Board to sell the plants and equipment. It is that decision which is stated to furnish the cause to complain of the violation of the right conferred by Article 14, fairness, justness and reasonableness being its implicit assumptions. [64 D-F]

6. As far as possible, sales of public property, when the intention is to get the best price, ought to take place publicly. The vendors are not necessarily bound to accept the highest or any other offer, but the public at least gets the satisfaction that the Government has put all its cards on the table. One cannot exclude the possibility here that a better price might have been realised in a fresh public auction but such possibilities cannot vitiate the sale or justify the allegation of mala fides. [64 G-H, 65 A-B]
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7. It cannot be held that the petitioners' rights, if any, under Article 14 are violated, in view of the fact that

neither the decision to sell nor the sale proceedings were unreasonable, unjust or unfair. But if and when a sale of public property is found to be vitiated by arbitrariness of mala fides, it would be necessary to consider the larger question as to who has the right to complain of it. [65C, D-E]

8.(i) The maintainability of a writ petition which is correlated to the existence and violation of a fundamental right is not always to be confused with the locus to bring a proceeding under Article 32. These two matters often mingle and coalesce with the result that it becomes difficult to consider them in water-tight compartments. The question whether a person has the locus to file a proceedings depends mostly and often on whether he possesses a legal right and that right is violated. But, in an appropriate case, it may become necessary in the changing awareness of legal rights and social obligations to take a broader view of the question of locus to initiate a proceeding, be it under Article 226 or under Article 32 of the Constitution. [65 E-G]

(ii) The Court might not have refused relief to the workers if it had found that the sale was unjust, unfair or mala fide. If a public property is dissipated, it would require a strong argument to convince the Court that representative segments of the public or at least a section of the public which is directly interested and affected would have no right to complain of the infraction of public duties and obligations. Public enterprises are owned by the people and those who run them are accountable to the people. The accountability of the public sector to the Parliament is ineffective because the parliamentary control of public enterprises is "diffuse and haphazard". [65 G-H, 66 A]

(Per Bhagwati and Krishna Iyer, JJ. concurring)

1. Public law, as part of the panorama of the developmental process, must possess the specific techniques of public sector control within well-defined parameters which will anathematise administration by court writ and interdict public officials handling public resources in disregard of normatice essentials and constitutional fundamentals. In a society in which the State had thrust upon it the imperative of effectuating massive transformation of economy and social structure the demands upon the legal order to inhibit administrative evils and engineer developmental progress are enormous, though novel. [68 E & 69 A-B]

2. It is important to underscore the vital departure from the pattern of judicial review in the Anglo-American legal environment because the demands of development obligated by Part IV compel creative extensions to control jurisprudence in many fields, including business administrative law, contract law, penal law, fiscal law and the like. [69 C-D]

3. Judicial interference with the Administration cannot

be meticulous. The court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded. If the Directorate of a Government company has acted fairly, even if it has faltered in its wisdom, the court cannot, as a super-auditor, take the Board of Directors to task. This function is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by rules of public administration. [71 A-C]
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4. Locus Standi must be liberalized to meet the challenges of the time. Ubi jus ibi remedium must be enlarged to embrace all interests of public-minded citizens or organisations with serious concern for conservation of public resources and the direction and correction of public power so as to promote justice in its triune facets. [71 D-E]

5. An officious busybody picking up a stray dispute or idle peddlar of blackmail-litigation through abuse of the process of the court cannot be permitted to pollute the court instrumentality, for private objectives. Public justice is always and only at the service of public good, never the servant or janitor of private interest or personal motive. [72 B-C]

6. Public interest litigation is part of the process to participate justice and 'standing' in civil litigation of that pattern must have liberal reception at the judicial door-steps. [74 E-F]

7. Certainly, it is not part of the judicial process to examine entrepreneurial activities to ferret out flaws. The court is least equipped for such oversights, Nor, indeed, is it a function of the judges under the constitutional scheme. The internal management, business activity or institutional operation of public bodies cannot be subjected to inspection by the Court. To do so, is incompetent and improper and, therefore, out of bounds. Nevertheless, the broad parameters of fairness in administration, bona fides in action, and the fundamental rules of reasonable management of public business, if breached will become justiciable. [77 A-C]

8. Article 43A of the Constitution confers, in principle, partnership status to workers in industry and therefore technical considerations of corporate personality cannot keep out those who seek to remedy wrongs committed in the management of the public sector. [76 G]

Municipal Council, Ratlam v. Shri Vardhichand and Ors. [1981] 1 S.C.R. 97 Wisconsin Law Review, Vol. 1966: 999 at P. 1064 and M. Cappelletti, Rabels Z (1976) 669 at 672 referred to.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 3804 of 1980. (Under Article 32 of the Constitution).

R. K. Garg, Sunil K. Jain, D. K. Garg, Sukumar Sahu and V. J. Francis for the Petitioners.

L. N. Sinha, Att. General of India, M. M. Abdul Khader, T.V.S. Narasimhachari and M. N. Shroff for Respondent No. 1.

M. K. Banerjee, Addl. Sol. Genl., J. B. Dadachanji, C. M. Oberoi and K. J. John for Respondent No. 2.

A. K. Sen, S. S. Ray, R. S. Narula, Anindya Mitra, Parijat Sinha N. P. Agarwala, C. K. Jain, Bardar Ahmad, Mrs. R. Dhariwal and M. C. Dhingra for Respondent No. 4.

The Judgment of Y. V. Chandrachud, C.J., S. Murtaza Fazal Ali and A. D. Koshal, JJ. was delivered by, Chandrachud. C.J. V. R. Krishna Iyer J. gave a concurring Opinion of his own and on behalf of P.N. Bhagwati, J.

CHANDRACHUD, C.J. By this petition under Article 32 of the Constitution, the petitioners challenge the legality of the sale of certain plants and equipment of the Sindri Fertilizer Factory, whereby the highest tender submitted by Respondent 4 in the sum of Rs. 4.25 crores was accepted on May 30, 1980. The relief sought by the petitioners is that the respondents should be directed not to sell away the plant and equipment, that they should be asked to withdraw their decision to sell the same and that the said decision should be quashed as being illegal and unconstitutional.

Petitioner 1 is a Union of the Workers of the Factory, Petitioner 2, Shri A. K. Roy, a Member of Parliament from Dhanbad, is the President of that Union, while Petitioners 3 and 4 are workers employed in the Factory. Respondent 1 to the Writ Petition is the Union of India, Respondent 2 is the Fertilizer Corporation of India, ('FCI'), Respondent 3 is the Sindri Fertilizer Factory, while the added Respondent 4, Ganpatrai Agarwal, is the highest tenderer. Respondent 2, a Government of India Undertaking, is a Company incorporated under the Companies Act 1956 and is a 'Government Company' within the meaning of Section 617 of that Act. It established the Respondent 3 Factory, which was commissioned in 1951. By article 66(1) of the Articles of Association of respondent 2, its directors are appointed by the President of India.

On January 4, 1980 the Board of Directors of respondent 2, (FCI), decided that tenders should be invited for the sale of 'Redundant/retired plants and equipment of respondent 3. In pursuance of that decision, an advertisement was inserted in the newspapers on February 25, 1980 inviting tenders for the sale of nine units of the "closed down chemical plants" of the Factory on "as is where is" basis. The advertisement gave to the intending purchasers the option to quote for four alternatives, one of which was the quotation for individual equipment such as pumping sets and compressors. Each tenderer was required to submit three separate envelopes: Envelope No. 1 relating to the payment of earnest money; envelope No. 2 relating to the terms and conditions of the sale; and envelope No. 3 relating to the amount of bid offered by the tenderer. The offers were to be valid until June 19, 1980.

On March 20, 1980 when the envelopes bearing No. 1 were opened, it was found that two tenderers had not complied with the term as to the payment of the earnest money. As a result, the number of valid tenders was reduced to nine. Discussions took place thereafter between the tenderers and the authorities, as a result of which an agreed formula was evolved regarding the exclusion of the weights of foundation and the exclusion of sales-tax from the bids offered. A few items were also excluded from the list of articles advertised for sale. In the light of these modifications, the tenderers were asked to submit fresh quotations in a separate envelope marked 'No. 4'.

On March 21, 1980 envelopes bearing No. 3 which contained the original offers and those bearing No. 4 which contained the modified offers, were opened in the presence of the tenderers. The highest original offer was that of respondent 4 in the sum of Rs. 7.6 crores. The highest modified offer of Rs. 6.2 crores was also made by respondent

4. The sale was thereafter adjourned.

On March 31, 1980 a letter was received by Respondent 2 that a part of the plants and equipment which were advertised for sale were needed by the Fertilizer (Planning and Development) India Ltd. for the purposes of experiment and research. On April 10, 1980 a similar request was received from the Ramagundam Division of Respondent 2. On May 14, 1980 the Board of Directors decided that only those items should be offered for sale which remained after meeting the requirements of the Fertilizer (Planning and Development) and the Ramagundam Division and that fresh offers should be invited for the reduced stock, restricted to the tenderers who had submitted modified tenders in sums exceeding Rs. 4 crores. There were six such tenders amongst the nine valid tenders. A week later, the six tenderers who had submitted those tenders were called to Sindri and a fresh list of reduced items was furnished to them. They submitted their revised tenders in sealed covers on May 23, 1980. On May 24, the Tender Committee considered the offer made by Respondent 4 in the sum of Rs. 4.25 crores as the best, that being the highest amongst the fresh reduced offers. The Tender Committee referred the matter to the Board on the same date and on May 29, the Board gave its approval to the acceptance of respondent 4's offer. On May 30, a letter of Intent was issued by Respondent 2 in the name of Respondent 4 who paid the security deposit of Rs. 50 lakhs on June 13, 1980. An order of sale in favour of Respondent 4 was issued by Respondent 2 on July 7, 1980 whereupon Respondent 4 started dismantling the machinery and equipment which he had purchased. This Writ Petition was filed on August 14, 1980. On August 25, the Court issued a show cause notice on the writ petition and stayed the sale.

The petitioners challenge the sale, inter alia, on the following grounds:

> (1) that the decision to sell the plants and equipment of the Factory was taken without calling for any report, expert or otherwise; (2) that the original tender of Rs. 7.6 crores was unaccountably reduced to Rs. 4.25 crores; (3) that the price of the plants and equipment, which was ultimately realised in the sale was manipulated with ulterior purposes; (4) that the decision to restrict the fresh offers, in respect of the reduced equipment, to the tenderers who had submitted tenders for more than Rs. 4 crores was unfair and arbitrary;

> (5) that the said decision resulted in a huge loss to the public exchequer since, if the sale was readvertised, an appreciably higher price would have been realised; and (6) the sale has jeopardised the employment of 11000 odd workers who face retrenchment as a result of the sale.

Petitioners 3 and 4 support this petition under Article 32 of the Constitution by contending that the sale will deprive them of their fundamental right under Article 19(1)(g) to carry on their occupation as industrial workers. They contend further that the sale is in violation of the provisions of Article 14, since it is arbitrary and unfair.

The learned Attorney General, who appears on behalf of the Union of India, has raised a preliminary objection to the maintainability of the writ Petition on the ground that in the first place, the petitioners have no locus standi to file the petition and secondly, that the impugned sale does not violate any of the fundamental rights of the petitioners. We must decide this objection before considering the contentions raised by Shri R. K. Garg on behalf of the petitioners.

Article 32 of the Constitution which guarantees by clause (1) the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part III, provides by clause (2) that:

> "The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part".

It is manifest that the jurisdiction conferred on this Court by Article 32 can be exercised for the enforcement of the rights conferred by Part III and for no other purpose. Clause (1) as well as clause (2) of Article 32 bring out this point in sharp focus. As contrasted with Article 32, Article 226 (1) of the Constitution provides that:

> "Notwithstanding anything in article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose". (emphasis supplied).

The difference in the phraseology of the two Articles brings out the marked difference in the nature and purpose of the right conferred by these Articles. Whereas the right guaranteed by Article 32 can be exercised for the enforcement of fundamental rights only, the right conferred by Article 226 can be exercised not only for the enforcement of fundamental rights but for any other purpose.

The jurisdiction conferred on the Supreme Court by Article 32 is an important and integral part of the basic structure of the Constitution because it is meaningless to confer fundamental rights without providing an effective remedy for their enforcement, if and when they are violated. A right without a remedy is a legal conundrum of a most grotesque kind. While the draft Article 25, which corresponds to Article 32, was being discussed in the Constituent Assembly, Dr. Ambedkar made a meaningful observation by saying:

> "If I was asked to name any particular article in this Constitution as the most important-an article without which this Constitution would be a nullity-I could not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it and I am glad that the House has realised its importance". (Constituent Assembly Debates, December 9, 1948, Vol. VII, p. 953).

But though the right guaranteed by Article 32 is one of the highly cherished rights conferred by the Constitution, the purpose for which that right can be enforced is stated in the very article which confers that right. The violation of a fundamental right is the sine qua non of the exercise of the right conferred by Article 32.

That makes it necessary to consider whether any of the fundamental rights of the petitioners is violated or is in the imminent danger of being violated by the sale of the plants and equipment of the Factory. The grievance of the petitioners is that two of their fundamental rights are violated by the sale, one under Article 19(1) (g) and the other under Article 14 of the Constitution.

We find no substance in the grievance that the petitioners' right under Article 19(1)(g) is violated or is in the imminent danger of being violated by the sale. That Article confers on all citizens the right to practise any profession or to carry on any occupation trade or business. The right of the petitioners to carry on an occupation is not infringed by the sale mediately or immediately, actually or potentially, for two reasons. In the first place, Shri R. C. Malhotra, who is the Chief Engineer of the Sindri Unit, says in paragraph 5 of the counter-affidavit filed by him on behalf of the FCI, that although the old plants and equipment had to be shut down from 1976 to 1979 because they had become redundant, unsafe or unworkable, no employee was deprived of his employment on that account. Shri Malhotra says further in the same paragraph and in paragraph 6 of the counter-affidavit, that the management of the FCI had decided to deploy the workmen working in the plants that had to be shut down in various other plants set up under the scheme of modernisation and rationalisation and in the various facilities that had been renovated in the Sindri complex itself. Thus, not only did the sale not affect the employment of the workers employed in the Factory, but those of them who were rendered surplus from time to time on account of the closure of the plants were absorbed in alternate employment in the same complex.

Secondly, the right of Petitioners 3 and 4 and of the other workers to carry on the occupation of industrial workers is not, in any manner affected by the impugned sale. The right to pursue a calling or to carry on an occupation is not the same thing as the right to work in a particular post under a contract of employment. If the workers are retrenched consequent upon and on account of the sale, it will be open to them to pursue their rights and remedies under the Industrial Laws. But the point

to be noted is that the closure of an establishment in which a workman is for the time being employed does not by itself infringe his fundamental right to carry on an occupation which is guaranteed by Article 19(1)(g) of the Constitution. Supposing a law were passed preventing a certain category of workers from accepting employment in a fertiliser factory, it would be possible to contend then that the workers have been deprived of their right to carry on an occupation. Even assuming that some of the workers may eventually have to be retrenched in the instant case, it will not be possible to say that their right to carry on an occupation has been violated. It would be open to them, though undoubtedly it will not be easy, to find out other avenues of employment as industrial workers. Article 19(1)

(g) confers a broad and general right which is available to all persons to do work of any particular kind and of their choice. It does not confer the right to hold a particular job or to occupy a particular post one's choice. Even under Article 311 of the Constitution, the right to continue in service falls with the abolition of the post in which the person is working. The workers in the instant case can no more complain of the infringement of their fundamental right under Article 19(1)(g) than can a Government servant complain of the termination of his employment on the abolition of his post. The choice and freedom of the workers to work as industrial workers is not affected by the sale. The sale may at the highest affect their locum, but it does not affect their locus, to work as industrial workers. This is enough unto the day on Art. 19(1)(g).

In regard to the infringement of the right under Article 14, the contention of the petitioners is that the plants and equipment of the factory were sold without the benefit of any expert report, that the decision to effect the sale was taken arbitrarily, that it was actuated by an ulterior motive, and that the sale is vitiated by the violation of the principles of natural justice since the ultimate bid was restricted to a select group of persons. The petitioners contend that the arbitrariness and unfairness of the sale is reflected in the circumstance that the original bid of Rs. 7.6 crores came down to Rs. 4.25 crores. If the sale was readvertised after there was a material variation in its terms, the plants and equipment, according to the petitioners, would have fetched a much higher price.

A clear and satisfactory answer to this contention is provided by the learned Additional Solicitor General, who appears on behalf of Respondent 2, FCI. He has pointed out to us numerous circumstances from which it would appear that the grievance of the petitioners that the sale was unfair and arbitrary is not justified.

The affidavits filed on behalf of the respondents, particularly those of Shri R. C. Malhotra, Chief Engineer of the Sindri Unit and of Shri K. V. Krishna Ayyar, Under Secretary in the Department of Chemicals and Fertilisers, Government of India, show that the Sindri Plant, which was commissioned in 1951 and was expanded in 1959 and 1969 by providing certain extra facilities, had outlived its use. Various schemes were considered from time to time for improving the economics of the Sindri Unit in order to ensure continued employment to the workers. The first of such schemes was the Sindri Rationalisation Scheme, which was approved by the Government in 1967. This scheme was completed in October 1979 at a cost of Rs. 60.77 crores While the Rationalisation Scheme was under implementation, it transpired that the Ammonia manufacturing facilities based on coke were fast deteriorating and unless the equipment was renovated substantially or was

replaced with modern equipment, it was impossible to expect stability in the production of Nitrogenous fertilisers from the plant. Different alternatives were before the Government in this behalf, and, finally, the Sindri Modernisation Scheme was approved by it in November 1973. This Scheme envisaged the shutting down of the old Ammonia plant based on coke and the setting up of a modern Ammonia plant producing 900 tonnes a day of Ammonia with low sulphur heavy stock as food-stock. This scheme was completed in October 1979 at a cost of Rs. 183.19 crores. Thus, the long term plan of the Government was to retain the Ammonium Sulphate plant after renovating it and to shut down the old coke-based Ammonia plant. The plant operations with the old plant showed considerable deterioration in 1975-76. A team of engineers of the Sindri Unit as well as of the Planning and Development Division of the Fertiliser Corporation, in association with the engineers of the Central Mechanical Engineering Research Institute, Durgapur, undertook Survey, examination and inspection of the plants with a view to determining their status and condition. A committee of Directors was also appointed for the same purpose. One of the main criteria which the Directors kept before themselves in view of the reported unsafe working condition of the plant was the safety of the personnel and the workmen. The matter was thereafter kept under constant review and parts of the plant were retired or closed down from time to time as and when their operation became unsafe and uneconomical. The running of the old plant had indeed become so uneconomical that as against the cost of production of Rs. 787.23 per ton of Ammonia in 1971-72, the cost of production in 1978-79 was approximately Rs. 6296/- per ton. An additional circumstance which compelled the closure of a part of the plant is the fact that the raw material required for the old plant comprised special high quality coal which is in short supply.

On the question of arbitrariness of the sale, the following facts and circumstances are particularly relevant:

> (1) The decision of the Board of Directors in respect of the sale relates only to the redundant or retired plants and equipment; (2) The Board is authorised by article 68(20) of the Articles of Association of the Corporation to sell even the whole of the undertaking with the prior approval of the President of India. Such approval was taken before the sale was finalised in favour of Respondent 4;
>
> (3) The decision of the Board was restricted to a small part of the assets of the Sindri Factory. The balance sheet for 1954-55 of the erstwhile Sindri Fertiliser & Chemicals Ltd. shows that the assets of the said Factory were of the value of Rs. 22,82,99,086/- as on April 1, 1954, out of which plants, equipment, machinery, etc. were of the value of Rs. 14,68,59,502/-. The original cost of the plants and equipment, which have now been sold, was about Rs. 10 crores, of which the written-down value as on March 31, 1980 was about Rs. 50 lakhs. The present outlay on the Sindri Unit is in the region of Rs. 220 crores;
>
> (4) The decision to sell the redundant or retired plants became necessary for the reason that they had out lived their life, having run for a period ranging from 18 to 28 years. It had also become unsafe, hazardous and uneconomic to run such plants and equipment; and (5) Although the old plants had to be shut down on account of the

sale, no employee at all was retrenched or is likely to be retrenched on account of the sale.

The answer which the Minister for Petroleum and Chemicals gave on the floor of the House to the question put by respondent 2 is, if we may say so, strictly 'parliamentary'. The question was whether there was any report justifying the sale. The answer was 'NO' because there were reports which preceded the sale and which advised the sale. But they did not 'justify' the sale, which is an ex post facto matter. In fact many a report had suggested the disbanding of worn out, uneconomical and hazardous plants of Fertilizer undertakings like:

1. Report of the Fertilizer Mission to India of the International Bank for the Reconstruction and Development published July, 1969.

2. Techno economic study of Alternative schemes for Sindri Modernisation Project prepared by Planning and Development Division of Fertilizer Corporation of India and published May 1971.

3. Techno economic Feasibility Report of Sindri Modernisation Project published by Planning and Development Division 1973 of Fertilizer Corporation of India.

4. Appraisal of Sindri Fertilizer Project India-

Report of the International Bank for Reconstruction & Development, International Development Association, published November, 1974.

5. Report on Works Transformation and Environmental Study by M/s UNICO

International Corporation of Japan, published July 1975.

In view of these facts and circumstances, it is quite difficult to hold that the decision to sell the plants and equipment of the Factory was arbitrary, unreasonable or mala fide. It has to be emphasized that the real drive of the petition is against the decision of the Board to sell the plants and equipment. It is that decision which is stated to furnish the cause to complain of the violation of the right conferred by article 14, fairness, justness and reasonableness being its implicit assumptions.

There is only one other aspect of the matter and that we are unable to view with any great equanimity. It is clear from the proceedings that the plants which were initially advertised for sale went through variation on two occasions. The first variation which was made on March 20, 1980 may not be regarded as substantial. But after the sale was adjourned to March 31, 1980, the requests received by the FCI from the other public sector undertakings stating, that they were in need of a part of the equipment which was advertised for sale, led to a substantial reduction in the goods advertised for sale. The authorities then sent for the nine tenderers and negotiated with them across the table. We want to make it clear that we do not doubt the bonafides of the authorities, but as far

as possible, sales of public property, when the intention is to get the best price, ought to take place publicly. The vendors are not necessarily bound to accept the highest or any other offer, but the public at least gets the satisfaction that the Government has put all its cards on the table. In the instant case, the officers who were concerned with the sale have inevitably, though unjustifiably, attracted the criticism that during the course of negotiations the original bid was reduced without a justifying cause. We had willy-nilly to spend quite some valuable time in satisfying ourselves that the reduction in the price was a necessary and fair consequence of the reduction in the quantity of the goods later offered for sale on March 31, 1980. One cannot exclude the possibility that a better price might have been realised in a fresh public auction but such possibilities cannot vitiate the sale or justify the allegation of mala fides.

In view of the fact that neither the decision to sell nor the sale proceedings were unreasonable, unjust or unfair, it cannot be held that the petitioner's rights, if any, under Article 14 are violated. The learned Attorney General contended that arbitrariness would be actionable under Article 32, only if it causes injury to the fundamental rights of the petitioner, and that the petitioners in the instant case have no fundamental right in the exercise of which they can challenge the sale. We consider it unnecessary to examine this contention because the sale is not vitiated by any unfairness or arbitrariness. If and when a sale of public property is found to be vitiated by arbitrariness or mala fides, it would be necessary to consider the larger question as to who has the right to complain of it.

That disposes of the question as regards the maintainability of the writ petition. But, we feel concerned to point out that the maintainability of a writ petition which is correlated to the existence and violation of a fundamental right is not always to be confused with the locus to bring a proceeding under Article 32. These two matters often mingle and coalesce with the result that it becomes difficult to consider them in water-tight compartments. The question whether a person has the locus to file a proceeding depends mostly and often on whether he possesses a legal right and that right is violated. But, in an appropriate case, it may become necessary in the changing awareness of legal rights and social obligations to take a broader view of the question of locus to initiate a proceeding be it under Article 226 or under Article 32 of the Constitution. If public property is dissipated, it would require a strong argument to convince the Court that representative segments of the public or at least a section of the public which is directly interested and affected would have no right to complain of the infraction of public duties and obligations. Public enterprises are owned by the people and those who run them are accountable to the people. The accountability of the public sector to the Parliament is ineffective because the parliamentary control of public enterprises is "diffuse and haphazard". We are not too sure if we would have refused relief to the workers if we had found that the sale was unjust, unfair or mala fide.

Several decisions were cited before us by the learned Attorney General, the learned Additional Solicitor General, Shri A. K. Sen and Shri R. K. Garg on the question of the maintainability of the writ petition. We consider it unnecessary to discuss them in view of the fact that we have come to the conclusion that the petitioner's fundamental right under Article 19 (1) (g) to carry on the occupation of an industrial worker is not affected by the sale, and similarly, that his fundamental right, if any, under Article 14 of the Constitution has not been violated.

The question as regards 'access to justice'. particularly under Article 226 of the Constitution, has been dealt with by Brother Krishna Iyer, at some length, for which reason I do not consider it necessary to dwell upon that topic.

In the result, we dismiss the petition and discharge the rule. There will be no order as to costs.

KRISHNA IYER, J. This Writ Petition which, in the forensic unfolding through oral submissions, has exceeded our expectations, bristles with profound issues of deep import one of which is the citizen's legal standing vis a vis illegal handling of public resources a jurisprudential area of critical importance but of precedential barrenness and, therefore, all the more demanding in the developmental setting and social justice imperatives of Law India. The learned Chief Justice has considered with care some of the profound questions covered in the course of the arguments and it may be supererogation to tread the same territory. The general factual presentation and legal conclusions of the learned Chief Justice have our concurrence. Equally, the approach to Arts. 14 and 32, with its fascinating expansionism, is of strategic significance, viewed in the perspective of Third World jurisprudence. Maybe, that while we broadly agree, our emphasis may differ, our shades of meaning may vary and, in some places, even our processes of reasoning may lead us to other destinations. Even so, a general consensus suffices and we desist from dealing with all the points discussed by our learned brothers. Nevertheless, some problems of seminal significance affecting the adjectival law are of such compelling futuristic impact that we shall examine them alone in our separate opinion.

The facts have been stated, the arguments have been indicated and that helps us to plunge straight into the points we propose to consider. Briefly, a Government company has gone through the long exercise of selling and allegedly obsolescent steel plant for junk price, after receiving tenders, holding discussions, making modifications and ultimately settling the sale in favour of Ganpatrai Aggarwal of Calcutta. In this process, two decisions were taken; the first was a policy decision to sell a substantial plant, part of which could have been salvaged, as if the entire material were scrap; the second question which the company decided was to call for tenders but to settle the sale, not exactly as originally intended, but with many changes, negotiations and alterations, so much so, while the maximum offer in the first round was for over Rs. 7 crores the actual offer which was accepted was for Rs. 4 crores and odd, the difference being explained by the respondents on the score that many items included in the original proposal to sell had since been withdrawn.

When a plant is shut down, as in this case, it has been, for reasons the merits of which we do not propose to scrutinise, the workers employed in it are ordinarily thrown out of employment. Assuming some patch-work arrangement to give lingering employment for some time more were offered as a measure of alleviation, that certainly is not equal to the steady and assured service in a public sector undertaking which is a Government company owned entirely by the President of India. Their economic fortunes and employment status are affected by the amputation of a limb of the company. These workers have invoked the jurisdiction of this Court under Art. 32 of the Constitution and sought to demolish through the writ of this Court, both the decision to sell the plant on the score of obsolescence and the dubious manner of sale which, in their submission, has resulted in colossal loss to the public exchequer and, vicariously, to the citizenry of the country,

including, a fortiori, the workers in the enterprise. Two questions incidentally arise: Have the workers locus standi under Art. 32, which is a special jurisdiction confined to enforcement of fundamental rights ? What, if any, are the fundamental rights of workmen affected by the employer's sale of machinery whose mediate impact may be conversion of permanent employment into precarious service and eventual exit ? Lastly, but most importantly, where does the citizen stand, in the context of the democracy of judicial remedies, absent an ombudsman? In the face of (rare, yet real) misuse of administrative power to play ducks and drakes with the public exchequer, especially where developmental expansion necessarily involves astronomical expenditure and concomitant corruption, do public bodies enjoy immunity from challenge save through the post mortem of parliamentary organs. What is the role of the judicial process, read in the light of the dynamics of legal control and corporate autonomy ? This juristic field is virgin but is also heuristic challenge, so that law must meet life in this critical yet sensitive issue. The active co-existence of public sector autonomy, so vital to effective business management, and judicial control of public power tending to berserk, is one of the creative claims upon functional jurisprudence.

The Court cannot wait and, despite allergy to minimal decisional law-making in vacant spaces, the rule of law in this virgin area cannot leave the fertile field fallow.

Judicial, though interstitial, law-making is needed in this field. "Many of the judges of England have said that they do not make law. They only interpret it. This is an illusion they have fostered. But it is notion which is now being discarded everywhere. Every new decision- on every new situation-is a development of the law. Law does not stand still. It moves continually." We have no doubt that public law, as part of the panorama of the developmental process, must possess the specific techniques of public sector control within well defined parameters which will anathematise administration by court writ and interdict public officials handling public resources in disregard of normative essentials and constitutional fundamentals.

The functional future of the rule of law in our country depends on the fulfillment of the words of Chief Justice Earl Warren: Our Judges are not monks or scientists, but participants in the living stream of national life . Our system faces no theoretical dilemma, but a single continuous problem; how to apply to ever-changing conditions the never- changing principles of freedom". The Indian citizen does expect some cybernetic system or ombudsman Mechanism whereby power geared to public good does not betray the goals of social engineering. The jural postulates which are an imperative of our Independence and planned development assume this command function of the law It is good that we state the inter-action between planning and law in the words of Prof. Berman:

> "Plan is that aspect of the social process which is concerned with the maximum utilization of institutions and resources from the point of view of economic development; law is that aspect of the social process which is concerned with the structuring and enforcing of social policy (plan) in terms of the rights and duties therefrom".

Our national reconstruction involves an enormous increase in public sector operations in fulfillment of the paramount directives of Part IV of the Constitution. In a society in which the State had thrust

upon it the imperative of effectuating massive transformation of economy and social structure the demands upon the legal order to inhibit administrative evils and engineer developmental progress are enormous, though novel. The present case, whatever the merits and the ultimate conclusion, does raise the deeper issue of the dynamics of social justice vis-a-vis the role of the Rule of Law where the public sector occupies the commanding heights of the national economy and yet asserts a right to be free from judicial review. That cannot be. While it is unnecessary for us to spell out in greater detail the emergence of a new branch of administrative law in relation to the national plan and the public sector of the economy. It is important to underscore the vital departure from the pattern of judicial review in the Anglo American legal environment because the demands of development obligated by Part IV compel creative extensions to control jurisprudence in many fields, including business administrative law, contract law, penal law, fiscal law and the like.

Robert Siedmann, dealing with the law of economic development in Sub-Saharan Africa has dealt with the maintenance of legality in a developmental setting with focus on stability and change and the evolution of new norms of constitutional and administrative law. He rightly stresses what applies to India as well:

> "If there are to be some reasonable norms for administrative behaviour in Africa, the formulation of codes of administrative law is desirable. But such codes are not self-enforcing; without institutional devices to support them, they become meaningless."

He continues to make certain observations on the enforcement on the regime of legality and their importance for the Indian scene:

> "If the tone of public life is sufficiently honest and fair-minded, formal norms are relatively unneeded. That is not the position in Africa; on the contrary, there is a notable lack of restraints upon the exercise of state power. This betrays itself most blatantly in the widespread corruption that seems to exist, especially in West Africa. When corruption permeates the entire fabric of government, legality is the first sufferer, for state power is exercised on grounds unrelated to its nominal purposes. In English-speaking Africa, the devices for the enforcement of the few standards of administrative probity that exist are in the common-law tradition. In some cases there are internal administrative appeals. Resort to the courts for relief is theoretically available if an ascertainable norm has been violated. Relief can be sought in a civil action brought by the extreme cases, in a criminal action brought by the director of public prosecutions.
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> The civil remedies for administrative wrongdoing thus depend upon the action of individual citizens. In such an action, the individual is pitted against the State-always an unequal contest. The individual does not have even the few procedural devices that the common law imports into criminal actions to try to redress the balance. At his own expense, he must challenge the vast panoply of State power with all its resources in personnel, money, and legal talent, by a civil action for a declaratory

> judgment or for an extraordinary remedy-injunction, writ of mandamus, or writ of prohibition. Aside from the manifold technical insufficiencies of these forms of action, the financial impediments to such an action are staggering. As a result of these impediments, in the United States, where almost the sole institutional protection against administrative error or arbitrariness is such an action, usually only great corporations or individuals who are supported by large voluntary associations have been able to carry through litigation. To rely upon such individual actions as the primary means of policing administrative action in Africa is to rely upon what is nonexistent."

A pragmatic approach to social justice compels us to interpret constitutional provisions, including those like Arts. 32 and 226, with a view to see that effective policing of the corridors of power is carried out by the court until other ombudsman arrangements a problem with which Parliament has been wrestling for too long-emerges. I have dwelt at a little length on this policy aspect and the court process because the learned Attorney General challenged the petitioners locus standi either qua worker or qua citizen to question in court the wrong doings of the public sector although he maintained that what had been done by the Corporation was both bona fide and correct.

We certainly agree that judicial interference with the Administration cannot be meticulous in our Montesquien system of separation of powers. The court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded. If the Directorate of a Government company has acted fairly, even if it has faltered in its wisdom, the court cannot, as a super-auditor, take the Board of Directors to task. This function is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by rules, of public administration.

Assuming that the Government-company has acted mala fide, or has dissipated public funds, can a common man call into question in a court the validity of the action by invocation of Arts. 32 or 226 of the Constitution.? Here, we come up on the crucial issue of access to justice and the special limitations of Art. 32 which is the passport to this Court.

We have no doubt that in a competition between courts and streets as dispenser of justice, the rule of law must win the aggrieved person for the law court and wean him from the lawless street. In simple terms, locus standi must be liberalised to meet the challenges of the times. Ubi just ibi remedium must be enlarged to embrace all interests of public-minded citizens or organisations with serious concern for conservation of public resources and the direction and correction of public power so as to promote justice in its triune facets. Lord Scarman's warning in his Hamlyn Lectures lend strength to our view :

> "I shall endeavour to show that there are in the contemporary world challenges, social, political and economic, which, if the system cannot meet them, will destroy it. These challenges are not created by lawyers; they certainly cannot be suppressed by lawyers: they have to be met either by discarding or by adjusting the legal system. Which is to be ?"

Lest there should be misapprehension, we wish to keep the distinction clear between the fundamental right to enforce fundamental rights and the interest sufficient to claim relief under Art. 226 and even under other jurisdictions. The learned Attorney General almost agreed, under pressure of compelling trends in the contemporary law of procedure, that Art. 226 may probably enable the petitioner to seek relief if the facts suggested by the court hypothetically existed. Shri A. K. Sen also took up a similar position. I will put aside Art. 32 for a moment and scan the right under Art. 226. There is nothing in the provision (unlike under Art. 32) to define 'person aggrieved', 'standing' or 'interest' that gives access to the court to seek redress.

The argument is, who are you to ask about the wrong committed or illegal act of the Corporation if you have suffered no personal injury to property, body, mind or reputation ? An officious busybody picking up a stray dispute or idle peddlar of blackmail-litigation through abuse of the process of the court cannot be permitted to pollute the court instrumentality, for private objectives. Public justice is always and only at the service of public good, never the servant or janitor of private interest or personal motive.

Law as I conceive it, is a social auditor and this audit function can be put into action only when some one with real public interest ignites the jurisdiction. We cannot be scared by the fear that all and sundary will be litigation-happy and waste their time and money and the time of the court through false and frivolous cases. In a society where freedoms suffer from atrophy and activism is essential for participative public justice, some risks have to be taken and more opportunities opened for the public-minded citizen to rely on the legal process and not be repelled from it by narrow pedantry now surrounding locus standi.

Schwartz and H.W.R. Wade wrote in Legal Control of Government:

> "Restrictive rules about standing are in general inimical to a healthy system of a administrative law. If a plaintiff with a good case is turned away, merely because he is not sufficiently affected personally, that means that some government agency is left free to violate the law, and that is contrary to the public interest. Litigants are unlikely to expend their time and money unless they have some real interest at stake. In the rare cases where they wish to sue merely out of public spirit, why should they be discouraged?" They further observed:
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> "The problem of standing, or locus standi is inherent in all legal systems..... But in the United States, perhaps because of the constitutional basis which the subject has acquired in federal law it can be discussed as a single topic. In Britain it is a thing of shreds and patches, made up of various differing rules which apply to various different remedies and procedures. It is a typical product of the untidy system of remedies, each with its own technicalities, which all British administrative lawyers would like to see reformed."

We have no doubt that having regard to the conditions in Third World countries, Cappelletti is right in his stress on the importance of access:

> "The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured by a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement-the most basic 'human right'-of a system which purports to guarantee legal rights."

The need for a radical approach has been underscored in New Zealand by Black:

> ".....today it is unreal to suggest that a person looks to the law solely to protect his interests in a narrow sense. It is necessary to do no more than read the newspapers to see the breadth of the interests that today's citizen expects the law to protect-and he expects the court where necessary to provide that protection. He is interested in results, not procedural niceties."

India is an a fortiori case, especially as it suffers from the pathology of mid Victorian concepts about cause of action. The Australian Law Reform Commission in its discussion paper No. 4 has considered the pros and cons and strongly supported the wider basis for access to justice. Class-actions will activise the legal process where individuals cannot approach the court for many reasons. I quote from the Discussion Paper No. 4 :

> "Widened standing rules may assist consumers in attaining relevant injunctive or declaratory relief but they do not assist in recovering losses inflicted by illegal trading practices, nor do they threaten the illegal trader where he is mot hurt, his pocketbook. The most potent legal instrument in that regard so far devised is the modern class action, to some an 'engine of destruction', to others a mighty force for good. Consider the New York Commissioner of Consumer Affairs giving evidence before a United States Senate Committee in 1970.
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> 'A federal class action law will have more impact on the market places of the nation than all the myriads of laws and ordinances against fraud and deception which are hidden away, in the statute books of the 50 States and their various sub-divisions, put together. All these laws make fraud illegal. But they have not made fraud unprofitable. Many of these laws can only be invoked by administrative agencies, which long ago lost their concern for the consumer and their appetite for action.
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> A Federal class action law..... will put the power to seek justice in court where it belongs-beyond the reach of campaign contributors, industry lobbyists, or Washington lawyers-and it will put power in the hands of the consumers themselves and in the hands of their own lawyers, retained by them to represent their interests alone.' "

Public interest litigation is part of the process of participate justice and 'standing' in Civil litigation of that pattern must have liberal reception at the judicial doorsteps. The flood-gates argument has been nailed by the Australian Law Reforms Commission :

> "The idle and whimsical plaintiff, a dilettante who litigates for a lark, is a specter which haunts the legal literature, not the courtroom. A major expressed reason for limiting standing rights is fear of a spate of actions brought by busybodies which will unduly extend the resources of the courts. No argument is easier put, none more difficult to rebut. Even if the fear be justified it does not follow that present restrictions should remain. If proper claims exist it may be necessary to provide resources for their determination. However, the issue must be considered.
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> . . . . Over recent years successive decisions of the United States Supreme Court have liberalised standing so as to afford a hearing to any person with a real interest in the relevant controversy. Surveying the result in 1973 Professor Scott commented : 'When the floodgates of litigation are opened to some new class of controversy by a decision it is notable how rarely one can discern the flood that the dissentors feared.
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> Professor Scott went on to point out that the liberalised standing rules had caused no significant increase in the number of actions brought, arguing that parties will not litigate at considerable personal cost unless they have a real interest in a matter." We agree with the conclusion of the Commission: "The moral, perhaps, applies; if the courts cannot, or will not, give relief to people who are in fact concerned about a matter then they will resort to self-held, with grave results for other persons and the rule of law. Some may reply that if there is no evidence of a great increase in numbers there is no evidence of need for enlarged standing rights. The reply would overlook two considerations. One case may have a dramatic effect on behaviour in hundreds of others; this is the whole notion of the legal 'test case'. Secondly, the mere exposure to possible action is likely to affect the behaviour of persons who presently feel themselves immune from legal control".

In the Municipal Council, Ratlam, a bench of this Court observed:

> " 'It is procedural rules' as this appeal proves, 'which infuse life into substantive rights, which activate them to make them effective' .... The truth is that a few profound issues of processual jurisprudence of great strategic significance to our legal system face us and we must zero-in on them as they involve problems of access to justice for the people beyond the blinkered rules of 'standing' of British Indian vintage. If the centre of gravity of justice is to shift, as the Preamble to the Constitution mandates, from the tradi-
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> tional individualism of locus standi to the community orientation of public interest litigation, these issues must be considered. In that sense, the case before us between the Ratlam Municipality and the citizens of a ward, is a pathfinder in the field of

> people's involvement in the justicing process, sans which as Prof. Sikes points the system may 'crumble under the burden of its own insensitibity'..... Our judicial system has been aptly described as follows:
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> Admirable though it may be, (it) is at once slow and costly. It is a finished product of great beauty, but entails an immense sacrifice of time, money and talent.
>
> This 'beautiful' system is frequently a luxury; it tends to give a high quality of justice only when, for one reason or another, parties can surmount the substantial barriers which it erects to most people and to many types of claims.
>
> Why drive common people to public interest action ? Where Directive Principles have found statutory expression in Do's and Dont's the court will not sit idly by.....

After all (Australian, 16 November, 1977) was right. We quote as a concluding thought of benign import for us:-

> "Under a banner 'Easier Access to Courts of Law' the Australian, 16 November 1977 declared: 'Perhaps-and it is only a perhaps-there was once some justification for restricting access to the courts to prevent their being bogged down in a morass of ineffectuality. But today's better informed, better educated, more literate and more politically aware citizens should certainly not be barred from the courts by tradition. The law can no longer be a closed shop."

In the present case a worker, who, clearly, has an interest in the industry, brings this action regarding an alleged wrong-doing by the Board of Management. Article 43A of the Constitution confers, in principle, partnership status to workers in industry and we cannot, therefore, be deterred by technical considerations of corporate personality to keep out those who seek to remedy wrongs committed in the management of public sector. Locus standi and justiciability are different issues, as I have earlier pointed out. This takes us to the question of justiciability of questions like sale of public property by public bodies. Certainly, it is not part of the judicial process to examine entrepreneurial activities to ferret out flaws. The court is least equipped for such oversights. Nor, indeed, is it a function of the judges in our constitutional scheme. We do not think that the internal management, business activity or institutional operation of public bodies can be subjected to inspection by the Court. To do so, is incompetent and improper and, therefore, out of bounds. Nevertheless, the broad parameters of fairness in administration, bona fides in action, and the fundamental rules of reasonable management of public business, if breached, will become justiciable.

If a citizen is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the court will not be ajar for him. But he belongs to an organisation which has special interest in the subject matter, if he has some concern deeper than that of a busybody, he cannot be told off at the gates, although whether the issue raised by him is justiciable may still remain to be considered. I, therefore, take the

view that the present petition would clearly have been permissible under Article 226.

The learned Attorney General drew our attention to Art. 32 and cited decisions to support his contention that only the petitioner's fundamental rights could be agitated under that Article. As the rulings now stand, he is right, although the question still survives as to whether a worker's fundamental right under Art. 14 is not affected when arbitrary action of the enterprise in which he is employed ha an impact on his well-being.

The democratisation of judicial remedies which is the thrust of our separate opinion, induces us to conclude with a quote :

> It was the boast of Augustus that he found Rome of brick and left it of marble. But how much nobler will be the sovereigns boast when he shall have it to say that he found law dear and left it cheap; found it a sealed book and left it a living letter; found it the patrimony of the rich and left it the inheritance of the poor; found it the two-edged sword of craft and oppression and left it the staff of honesty and the shield of innocence.

Having sought to illumine the half-lit zone of access jurisprudence, we wish to make it clear that we are not dealing with the likely application Art. 19(1) (f) or of Art. 14 which have been raised in the present case because the learned Chief Justice has held that on the merits the action of the Corporation is above board. The question which we reserve may well be considered when an appropriate occasion arises.

N. K. A. Petition dismissed.