HIGH COURT OF GUJARAT *(D.B.)*

PROF MANUBHAI D SHAH
V/S
LIFE INSURANCE CORPORATION OF INDIA

Date of Decision: 17 June 1980

Citation: 1980 LawSuit(Guj) 108

Hon'ble Judges: S H Sheth, S L Talati

Eq. Citations: 1981 AIR(Guj) 15, 1981 GLR 206

Case Type: Special Civil Application

Case No: 2711 of 1979

Subject: Constitution

Head Note:

Constitution of India - Art 12, 14, 19(1)(a), 226, preamble, Part-III - non publication of petitioner's article Yogakshema' by corporation - assailed as discriminatory and violative of fundamental rights to freedom of speech and expression under Art 19(1)(a) and right to equality under Art 14 - on the other hand claim of corporation that it is a "State" within meaning of Art 12 of Constitution and as a result, maintainability of said petition is under dispute - basic and cardinal principle of interpretation of a democratic Constitution that it is interpreted to foster, develop and enrich democratic institutions - articles of petitioner have an equal and an honourable place in our social order - therefore, given all other things equal, his article must be treated equally and alike - again, given all other things equal, they belong to same class and not to different classes , and therefore, both are entitled to equal treatment - denial to publish petitioner's studied Article is violative of Art 19(1)(a), as appreciation and criticism are

quintessence of a free society - action of corporation is violative of fundamental rights guaranteed to petitioner both under Art 19(1)(a) and Art 14 - it is prima duty of judiciary to be and to remain impregnable, and hence corporation directed to publish article of petitioner in immediate next issue - petition allowed.

Acts Referred:
Constitution Of India Art 226, Art 19(1)(a)

Final Decision: Petition allowed

Advocates: V B Patel, Vijay V Patel,K S Nanavati

Reference Cases:
Cases Cited in (+): **2**
Cases Referred in (+): **14**

Judgement Text:-

S H Sheth, J

[1] The petitioner is the Executive Trustee of Consumer Education and Research Centre (hereinafter referred to as the 'CENTRE' for the sake or brevity) at Ahmedabad. He has filed this petition as a citizen of India and also in his capacity as the Executive Trustee. The Centre published a study entitled "A fraud on policy-holders". It is not disputed that it was a scientific research made into the working of the Life Insurance Corporation (hereinafter referred to as the "Corporation" for the sake of brevity). This study tried to protray and establish the discriminatory practices which the Corporation is alleged to have adopted and which adversely affect a large number of policy-holders, their investment policies, their expense ralio, availability of term insurance and other cognate matters. Mr. N, C. Krishnan who is a Director of the Corporation wrote a reply to it. His reply was published in THE HINDU on 6th November 1978. In that reply, he tried to challenge the conclusions recorded in by the study prepared by the Centre.

[2] The Corporation officially publishes a monthly magazine which is called "YOGAKSHEMA". The reply from Mr. Krishnan which was published by The Hindu was republished by the Corporation in "Yogakshema". On a scientific and studied basis, the petitioner rejoined Mr. Krishnan and replied to his reply. Since Yogakshema had

published Mr. Krishnan's reply, the petitioner requested the Publicity Manager of the Corporation to publish his reply in Yogakshema. By his letter dated 23rd January 1979, the Publicity Manager refused to comply with the request made by the peti tioner. Therefore, on 14th February 1979, the petitioner met the Chairman of the Corporation and submitted to him a written representation reque sting him to publish in Yogakshema his reply to Mr. Krishnan's reply. By his letter dated 8th March 1979, the Chairman of the Corporation refused to comply with the request made by the petitioner. The Chairman, while refusing to comply with the petitioner's request, stated that it was a matter of discretion for the Corporation to publish or not to publish the petitioner's reply.

[3] It is that refusal which has led to the institution of this petition.

[4] Before we record the contentions raised on behalf of the petitioner by Mr. Patel, we would like to note the nature of the periodical public-7 ation of the Corporation-Yogakshema. Indisputably Yogakshema invites articles from the members of the public and permits republication else where of what is published in it. It is available to any one on payment of subscription. Its publication is financed by the Corporation out of the public funds which it handles. There is no dispute or doubt about these facts.

[5] Mr. Patel who appears on behalf of the petitioner has raised before us the following three contention :

(1) Inasmuch as the Corporation which is a State has refused to publish the petitioner's reply to Mr. Krishnan's reply to the Study published by the Centre, the petitioner's fundamental right under Art. 19(1)(a) of the Constitution to freedom of speech and expre ssion has been violated - particularly when the Corporation has published Mr. Krishnan's reply in Yogakshema.

(2) The petitioner's right to equality under Art. 14 has been violated by that action of the Corporation.

(3) The Corporation has exercised its discretion arbitrarily.

[6] The Corporation in its affidavit-in-rep!y has tried to meet the petitioner's claim on three grounds, Firstly, it claims editorial privilege. Secondly, it claims absolute discretion

to publish or not to publish an article. Thirdly, Yogakshema is a house magazine and, therefore, not so much open to the members of the public as other periodicals are

[7] It is well-settled that the Corporation is a "State" within ihe meaning of Art. 12 of the Constitution. In Sukhdev Singh and Others v. bhagatram Sardarsingh Raghuvanshi and Another, (1975) I S.C C. 421, the Supreme Court has held that the Corporation is a State within the meaning of Art. 12 of the Constitution. Therefore, the maintainability of this petition against the Corporation for the purpose of enforcing fundamental rights of the petitioner, if he has any, is not in dispute before us. The claim made by the Corporation to the editorial privilege to publish or not to publish an article and the claim to absolute discretion to do so or not to do so which it has made cannot prevail over the fundamental rights guaranteed by the Constitution if the petitioner has any in the instant case. Therefore, if the petitioner's fundamental rights have been violated, editorial privilege and absolute discretion must yield place to them and be non-existent. If no fundamental rights of the petitioner have been violated, editorial privilege and absolute discretion must prevail and the petition must be dismissed It cannot be gainsaid that the fundamental rights guaranteed by the Constitution are transcendental in character and over-reach all other things except those which have been protected against them by the Constitution. Therefore, the material question which we are required to decide in this petition is whether any fundamental right of the petitioner has been violated. If the question is answered in the affirmative, the petitioner must get the relief. If it is answered in the negative, he must lose. The contention that 'Yogakshema' is a house magazine and not a mass media is also untenable against the petitioner's claim to the enforcement of his fundamental rights. We are however not in a position to uphold the contention raised on behalf of the Corpor ation that Yogakshema is a house magazine which is necessarily circulated only amongst the officers, employees and agents of the Corporation and is not a mass media. There are two reasons which lead us to this concl usion. Firstly, it is available to any one on payment of subscription. Secondly, it invites articles for publication therein from the members of the public. It is, therefore, wrong to say that it is a house magazine. Merely because it is interested in a particular subject-matter and happens to find its circulation amongst officers, employees and agents of the Corporasion, it does not attain the character of a house magazine. How ever, assuming that the contention raised by the Corporation that it is a house magazine is correct, it does not strengthen the case of the Cor poration. Under the pretext and guise of publishing a house magazine, the Corporation cannot violate the fundamental rights of the petitioner if he has any. House magazines cannot claim any privilege against the fundamental rights of a citizen. Therefore, the only question which we must answer is

whether any fundamental rights of the petitioner have been violated by the aforesaid action of the Corporation.

[8] The petitioner claims infringement of two fundamental rights guaranteed to him by the Constitution under Art. 19 (1) (a) and Art. 14. In order to effectively examine the claim made by the petitioners, it is necessary to examine the amplitude of these rights. Art. 19 (1) (a) guarantees the following fundamental right : "All citizens shall have the right to freedom of speech and expression." Let us now examine the case-law on the subject.

[9] Tbe first decision is in Express Newspaper (Private) Ltd, and Another v. The Union of India and Others, AIR 1958 S.C. 578. It was a case in which vires of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 45 of 1955, were challenged. The constitutional challenge was based on the ground that impugned provisions of that Act violated the petitioners' fundamental rights guaranteed under Art. 19 (1) (a), Art. 19 (1) fg), Art. 14 and Art. 32. The decision of the Wage Board was also challenged, inter alia, on the ground that it violated the petitioners' fundamental right guaranteed under Art. 19 (i) (a) and Art. 14. It is in that context that the Supreme Court examined the amp litude of the fundamental right guaranteed under Art. 19 (1) (a). In that behalf, the Supreme Court has made the following material observations : Art. 19 (1) (a) guarantees to all citizens the right to freedom of speech and expression. It has got to be read along with Art. 19 (2) which lays down certain constitutionally permissible limitations on the exercise of that right. Art. 19 (2) empowers the State to impose reasonable restrictions on the exercise of the fundamental right guaranteed under Art. 19 (1) (a) in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to conte mpt of Court, defamation or incitement to an offence. If any limitation on the exercise of the fundamental right under Art. 19 (I) (a) does not fall within the four corners of Art. 19(2), it cannot be upheld. Freedom of speech and expression includes within its scope the freedom of the press. To be free is to have the use of one's powers of action (i) with out restraint or control from outside and (ii) with whatever means or equipment the action requires. Referring to the earlier decision in Romesh Thapper v. State of Madras, A.I.R. 1950 S.C. 124, it has been observed that freedom of speech and expression includes the freedom of propagation of ideas and that that freedom is ensured by the freedom of circulation. Liberty of circulation is an essential to that freedom as the liberty of publication. Since in the opinion of the Supreme Court, the fundamental right to the freedom of speech and expression guaranteed under Art. 19(1) (a) of our Constitution

was based on certain provisions of the First Amendment to the Constitution of United States of America, reference was made to decisions of the Supreme Court of United States of America in order to appreciate the true nature, scope and extent of this right. After having referred to about half a dozen decisions of the American Supreme Court, oar Supreme Court has laid down that in the United States of America :

(a) the freedom of speech comprehends the freedom of press and the freedom of speech and press are fundamental personal rights of the citizens;

(b) the freedom of the press rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of thepublic;

(c) such freedom is the foundation of the free Government of a freepeople;

(d) the purpose of such a guarantee is to prevent public authoritiesfrom assuming the guardianship of the public mind; and

(e) freedom of press involves freedom of employment or non-employment of the necessary means of exercising this right or in other words, freedom from restriction in respect of employment in the editorial force. (Paragraph 142 of the report)

Since that is the concept of the freedom of speech and expression which obtains in the United States of America, no measure can be enacted which would have the effect of imposing a pre-censorship curtailing the circulation or restricting the choice of employment or unemployment in the editorial force. Such a measure would certainly tend to infringe the freedom of speech and expression and would therefore be liable to be struck down as unconstitutional. With reference to this decision, it is necessary to note that, in a democracy which ensures a free society, widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.

[10] Mr. Patel has invited our attention to the decision of the Supreme Court in Sakal Papers (P) Ltd. and Another v. Union of India, AIR 1962 S.C. 305. In that case, the constitutional validity of the Newspaper (Price and Page) Act, 1956, and Daily Newspaper (Price and page) Order, 1960, was challenged on the ground that they violated the provisions of Art. 19(1) (a) of the Constitution. Interpreting Art, 19(1) (a) in that context, the Supreme Court has observed as follows :

> ".....the Constitution must be interpreted in a broad way and not in a narrow and pedantic sense. Certain rights have been enshrined in our Constitution as fundamental and, therefore, while considering the nature and content of those rights the Court must not be too astute to interpret the language of the Constitution in so literal a sense as to whittle them down. On the other hand the Court must interpret the Constitution in a manner which would enable the citizen to enjoy the rights guaranteed by it in the fullest measure subject, of course, to permissible rest- rictions. Bearing this principle in mind it would be clear that the right to freedom of speech and expression carries with it the right to publish and circulate one's , ideas, opinions and views with complete freedom and by resorting to any available means of publication, subject again to such restrictions as could be legitimately imposed under CI. (2) of Art. 19."

Referring to its earlier decision in Ramesh Thappar's case (supra), the Supreme Court has observed that the freedom of speech and expression includes freedom of propagation of ideas and that this freedom is ensured by the freedom of circulation. Freedom of speech and expression are the foundation of all democratic organisations and are essential for the proper functioning of the processes of democracy. Therefore, very narrow and stringent limits have been set to permissible legislative abridgment of the right of freedom of speech and expression. The right to freedom of speech and expression is an individual right guaranteed to every citizen by Art. 19(1)(a) of the Constitution. It is not open to the State to curtail or abridge the freedom for promoting the general welfare of a section or a group of people unless its actions could be justified under a law competent under CI. (2) of Art. 19. It may be within the power of the State to place, in the interest of the general public, restrictions upon the right of a citizen to carry on business but it is not open to the State to achieve this object by directly and

immediately curtailing any other freedom of that citizen guaranteed by the Constitution and which is not susceptible of abridgment on the fame grounds as are set out in CI. (6) of Art. 19. Therefore, right to freedom of speech cannot be taken away with the object of placing restrictions on the business activities of a citizen. Freedom of speech can be restricted only in the interest of the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence. It cannot, like the freedom to carry on business, be curtailed in the interest of the general public. A citizen is entitled to enjoy each and every one of the freedoms together and CI. (1) does not prefer one freedom to another. Therefore, the State cannot make a law which directly restricts one freedom even for securing the better enjoyment of another freedom.

[11] In Bennett Coleman and Co. Ltd. and Others v. Union of India and Others, A.I.R. 1973 S.C. 106, the validity of Newsprint Policy of 1972-73 was challenged on the ground that it was violative of fundamental rights guaranteed under Arts. 19(1)(a) and 14. It is in that context that the Supreme Court examined the amplitude of the fundamental right guaranteed under Art. 19(1)(a). The Supreme Court has made the following observations in that behalf:

"Freedom of speech could not be restricled for the purpose of regulating the commercial aspects of activities of the newspapers." (Paragraph 33 of the report)

The freedom to public commercial advertisement is not a part of freedom of speech. The freedom of the press can be enriched by removing the restrictions on page limit and allowing them to have new editions of newspapers. Freedom lies both in circulation and in content.

[12] Mr. Patel has invited our attention to illuminating observations made in the dissenting judgment in this case : paragraphs 120 to 125, 133 to 135 and 139 and 140. It is risky and imprudent for the High Court to rely upon the observations made in a dissenting or a minority judg ment. We, therefore, respectfully refrain from making any reference to them lest we should be unmittingly influenced by them.

[13] The next decision to which Mr. Patel has invited our attention is in Smt. Maneka Gandhi v. Union of India and another, AIR 1978 S.C. 597. The question of personal liberty under Art. 21 arose in that case, Referring to clause (1) of Art. 19 (paragraph 77 of the 'report')', thss h what the Supreme Court has observed :

> "It is possible that a right does not find express mention in any clause of Art. HM1) and yet it may be covered by some clause of that Article." Freedom of press is one such right. It is the most cherished and valued freedom in a democracy. The Supreme Court has further observed as follows :
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> ".....democracy cannot survive without a free press. Democracy is based essentially on free debate and open discussion, for that is the only corrective of govern mental action in a democratic set-up. If democracy means government of the people, by the people it is obvious that every citizen must be entitled to participate in the democratic process and in ordtr to enable him to intelligently exercise his right of making a choice, free and general discussion of pub.ie mattters is absolutely essential. Manifestly, free debate and open discussion, in the most comprehensive sense, is not possible unless there is a free arid independent press Indeed the true measure of the health and vigour of a democracy is always to be found in its press. Look at its newspapers - do they reflect diversity of opinions and views, do they contain expression of dissent and criticism agair.st governmental policies and actions, or do they obsequiously sing the praises of the government or lionize or deify the ruler ? The newspapers are an index of the true character of the Government whether it is democratic or authoritarian. It was Mr. Justice Potter Stewart who said : "With out an informed and free press, there cannot be an enlightened people". Thus freedom of the press constitutes one of the pillars of democracy and indeed lies at the foundation of democratic organiation"
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> Reference with approval has been made in this decision to the earlier decisions of the Supreme Court in Express Newspapers' case (supra), Sakal Papers' case (supra) and Bennett Cokrnan & Co.'s case (supra). Freedom of circulation is necessarily involved in freedom of speech and expression and is a part of it. It, therefore, enjoys the protection of Art. 19(1 (a). "If a right is not specifically named in Art. 19{i), it may stil! be a fundamental right

covered by some clause of that Article if it is an integral part of a named fundamental right or partakes of the same basic nature and character as that fundamental right. Every activity which facilitates the exercise of a named fundamental right is not necessarily comprehended in that fundamental right nor can it be regarded as such merely because it may not be possible otherwise to effectively exercise - that fundamental right. What is necessary to be seen is, and that is the test which must be applied, whether the right claimed by the petitioner is an integral part of a named right or partakes of the same basic nature and character as the named fundamental right so that the exercise of such right is in reality and in substance nothing but an instance of the exercise of the named fundamental right." This is what Supreme Court has inter alia observed in Maneka Gandhi's case (supra).

[14] Mr. Patel has then invited our attention to the decision of the Supreme Court in Ramana Dayaram Shetty v. The International Airport Authority of India and others, AIR 1979 S.C. 1628. It was a case of a contract entered into with the International Airport Authority. Referring to the nature of the Governmental activities and manifold increase therein, it has been observed by the Supreme Court :

"The Government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licences only in favour of thpse having grey hair or belonging to a particular political party or professing a particular religious faith. The Government is still the Government when it acts in the matter of granting largess and it cannot act arbitrarily. It does not stand in the same position as a private individual."

The Supreme Court has approved the observations made by the Full Bench of Kerala High Court in V. Punnan Tfnmasv. State of Kerala, AIR 1969 Kerala 81, that "the Government is not and should not be as free as an individual in selecting the recipients for its largess. Whatever its activity, the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal". The Government "is still a Government when it enters into contract or when it is administering largess and it cannot, without adequate reason, exclude any person from dealing with it or take away largess

arbitrarily". When the Government is trading with the public, "the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions". There should be fairness and equality in the activities of the Government. The Government "cannot act arbitrarily at its sweetwill" and cannot deal with a person in any manner it pleases. Its action must be in conformity with the standard or norm which is not arbitrary, irrational or irrelevant. "The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts, quotas, licences etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

[15] Mr. Patel has next invited our attention to two decisions of the American Supreme Court. The first decision is in Estelle T. Griswold v. State of Connecticut, 14 Lawyers' Edition 2d 510. It has been observed in that decision.

"The right of freedom of speech and press includes not only the right to utter or to print, but also the right to distribute, the right to receive, the right to read, and freedom of inquiry, freedom of thought, and freedom to teach - indeed the freedom of the entire university community."

"The right of association, like the right of belief, is more than the right to attend a meeting and includes the right to express one's attitudes or philosophies by membership in a group or by affiliation with it or by other lawful means; association in that context is a form of expression of opinion, and while it is not expressly included in the First Amendment, its existence is necessary in making the express guaranties fully meaningful."

[16] The last decision to which Mr. Patel has invited our attention is in Time v. James J. Hill, 17 Lawyer's Edition 2d 456. This is what the American Supreme Court has observed on the freedom of speech.

"The guaranties of free speech and press are not the preserve of political expression orcomment upon public affairs, but extend to the vast range of published matter which exposes persons to public view, both private citizens and public officials."

"Freedom of discussion must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period."

"No suggestion can be found in the Federal Constitution that the freedom guaranteed for speech and press bears an inverse ratio to the timeliness and importance of the ideas seeking expression."

"The subject of the magazine article, the opening of a new play linked to an actual incident, is a matter of public interest protected by the constituiional guaranties of free speech and press."

[17] Mr- Patel has then invited our attention to sec. 6(1) of the Life Insurance Corporation Act, 1956 which provides as follows:

"Subject to the rules, if any, made by the Central Government in this behalf, it shall be the general duty of the Corporation to carry on life insurance business, whether in or outside India, and the Corporation shall so exercise its powers under this Act as to secure that life insurance business is developed to the best advantage of the community." He has laid special emphasis on the expression 'the life insurance business is developed to the best advantage of the community" and argued that the best advantage cannot be secured to the community at large only by appreciation and admiration of the business activities of the Corporation, According to him, "the best advantage of the community" can be secured by placing before the community both the appreciative and critical aspects of the business carried on by the Corporation. It cannot be gainsaid that the Corporation exists principally for the benefit of the community and not merely for the benefit of those who run it. The community is, therefore, entitled to know what drawbacks, short-comings and infirmities the business activities of the

Corporation disclose. Mr. Patel has. therefore, argued that for the Corporation to fight shy of publishing the studied criticism of its business activities in its own journal "YOGA-KSHEMA" is to violate the provisions of sub-sec. (1) of sec. 6.

[18] These decisions to which we have made reference clearly show and establish that a democratic polity which India is presupposes a free debate and open discussion of all the activities of its public institutions and it is this free debate and open discussion which act as correctives against the lapses of such institutions. It also presupposes that what a democratic or a public institution does in a democratic poliiy must always suffer the exposure to public view. Thirdly, whoever deals with the members of the public and public funds is under an inherent obligation to inform the people of its activities, their appreciation and criticism. The expression of diverse and antagonistic views and the dissemination of diverse and antagonistic expressions in regard to the activities of a public institution in a democratic polity constitute the life and soul of democracy. In our opinion, it is wrong to say that such a public institution can spend public funds on lionsing itself and singing its own songs. That is not the only purpose to which public funds can be subjected in a democracy. Those who contribute by their mite to the development of a public institution have a right to know how that institution functions, what is does, where it errs and what steps it takes to correct its errors. If the members of the democratic polity, which India is, have a right to know ajl such things, as we believe they have, then it is the prime duty of the Corporation to publish the studied criticisms of its own activities and every citizen has a right to express through the medium of such Corporation his studied criticism of its activities. That is what, in our opinion, is the essence of freedom of speech and expression in so far as facts of this case are concerned. By spending public funds on publishing only what is appreciative of its activities and by refusing to publish a critical study of its activities, the Corporation will only assume the guardianship of public mind. It cannot be allowed to do so as long as at least Art. 19 (1)(a) is on the statute book.

[19] Mr. K. S. Nanavaty who appears on behalf of the Corporation has in reply argued by posing the question in a different manner. The question which he has posed is as follows : Can the petitioner, a citizen of India, force the Corporation to extend to him an opportunity to express his views through their medium ? The question which he has posed for our consideration raises a very important aspect relating to the extent of public participation in governmental working or public administration. Our answer to the

question which Mr. Nanavaty has posed for our consideration is in favour of the petitioner because in a democratic polity though people may not directly participate in governmental working or public administration, they have a right to demand of those who are in charge of their destiny for the time being how they deal with the problems which they are facing. A Corporation which carries on the business of life insurance in the shape of a statutory monopoly is answerable to the people of India with whose funds it deals and to whose welfare it claims to cater.

[20] The next question which Mr. Nanavaty has raised for our considera tion is whether Art. 19(1)(a) confers upon the petitioner any enforceable right or obligation to extend such aid and assistance as he demands by a positive act on the part of the Corporation. Our answer to the question is in the affirmative for the following reasons. Firstly, the Corporation is a creature of the public will. Secondly, it lives on public funds. Thirdly, "YOGAKSHEMA" owned and controlled by the Corporation is financed wholly out of public funds. Whoever deals with public funds under the mandate of the Parliament cannot siphon them only to his admiration and appreciation. The use of public funds must pass through a double-barrel siphon, one of which may voice the appreciation and admiration and the other shall voice its criticism. In this context, it has been further argued by Mr. Nanavaty that the reply which the petitioner wrote was published in "THE HINDU" daily and that the refusal to republish it does not directly and substantially violate the petitioner's fundamental right under Art. 19(1)(a). In the context in which this question has arisen before us, we have got to express our view on how public funds can be spent by a public body. Can they be spent only for blowing the pipe of its admiration and can they be withheld for the purpose of bugling its studied criticism ? It has also been argued by Mr, Nanavaty that sub-sec. (1) of sec. 6 of the Life Insurance Corporation Act, 1956, confers no statutory right upon the members of the public or a policy-holder to use the monthly journal of the Corporation. Assuming that it is so, Art. 19(1)(a) places the Corporation as against the students of its activities under an obligation to publish both the studied criticism of its public activities and their appreciation.

[21] It has next been argued by Mr. Nanavaty that Art, 19(I)(a) may hit a positive invasion. However, no resort can be had to it for supplying a negative omission. The distinction which Mr. Nanavaty has tried to make is indeed a very fine distinction In our opinion, Art. 19 (1) (a) embraces within its sweep both acts of omission and ccmmission which curtail or abridge the freedom of speech and expression, indeed subject to the rea sonable restrictions contemplated by Clause (2) of Art. 19, and any such act can be

challenged in a Court of law as violative of Art. 19(1)(a).

[22] Mr. INanavaty has invited our attention to four decisions to which we are now referring.

[23] The first decision is in Hamdard Dawakhcma and Another v. The Union of India and Others, A.I.R. 1960 S.C, 554. It was a case under Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954. Its consti tutionality was challenged on the ground that it violated the fundamental rights guaiantced by Art. 19 (1) (a) and Art. 19 (1)(g). The right to freedom of speech and expression, in regard to objectionable advertisements which publish, inter alia, magic remedies, was claimed under Art. 19(1) (a). The Supreme Court held that the advertisements which were affected by the said Act did not fall within the words "freedom of speech" and that, therefore, there was no direct abridgement of the right of freedom of speech and a mere incidental interference with such right would not alter the character of the law. The Supreme Court has further observed that the form or incidental infringement does not de'ermine the constitutiona lity of a statute in reference to the rights guaranteed under Art. 19(1), but it is the reality and substance which determine its constitutionality. Sec. 3 of the Act with which the Supreme Court was concerned in the Hamdard Dawakhana case (supra) inter alia prohibited the publication of all adver tisements lefeiring to certain drugs specified in that section. This decision has no application to the facts of the instant case, firstly, because the constitutionally of no enactment has been challenged in the instant case and secondly because the studied criticism of the activities of a public body cannot by any stretch of imagination be equated with objeclional advertisements which are likely to mislead the people to purchase spuri ous medicines for self-medication.

[24] The next dec'sion to which he has invited our attention is in All India Bank Employees'' Association v. The National JndustrialTribunal (Bank Disputes),Bovdbiy, and others, A.I.R. 1962 S.C. 171. It was a case in which the constitutionality of sec. 34-A of the Banking Companies Act, 1949, was challenged. Art. 19 (1) (c) was inter alia, brought into the picture, The principles laid down by the Supreme Court in that decision, in the context of the facts of that case, are too general to be applied to the facts of the instant case.

[25] The next decision to which Mr. Nanavaty has invited our attention is in Railway Board, New Delhi and Another v. Niranjan Singh, A.I.R. 1969 S. C. 966. It was a case of a departmental enquiry and the application of Art. 311 of the Constitution to it. Art. 19 (1) was brought into play and it was contended that it guaranteed a fundamental right for

any one to hold meetings in governmental premises. The Supreme Court in that context has observed that the fact that those who work in a public office can go there does not confer on them the right of holding a meeting at that office even if it be the most convenient place to do so. The fact that the citizens of the country have freedom of speech, freedom to assemble peaceably and freedom to form associations or unions does not mean that they can exercise those freedoms in whatever place they please. The exercise of these freedoms will come to an end as soon as the right of someone else to hold his property intervenes. Such a limitation is inherent in the exercise of those rights. The validity of such a limitation is not to be judged by the tests prescribed by clauses (2) and (3) of Art. 19. In other words, according to the Supreme Court, the contents of the freedoms guaranteed under clauses (a), (b) and (c) do not include the right to exercise them in the properties belonging to others. What was contended in that case was the right of the employees to hold meetings in the premises belonging to the railway administration. Right to hold a meeting where all kinds of speeches may be made which may contain an element of excitement cannot be equated with the studied criticism of the activities of a public body. Secondly, Art. 19 (1) (a) in that case was placed by the Supreme Court in juxtaposition with Art. (19) (f) under which the Railway Board had a right to hold its property. We do not have now Art. 19 (I) (f) on the statute Book, The principles laid down in that decision, therefore, have no application to the facts of the instant case.

[26] The last decision to which Mr. Nanavaty has invited our attention is in Jack H. Bread v. City of Alexandria, 95 Lawyers' Edition 1233. Jn that case a municipal ordinance was published prohibiting canvassers and peddlers from calling upon the occupants of private residences without having been requested or invited to do so. The constitutionality of that ordinance was challenged on the ground that it violated the due process clause. The American Supreme Court held that such a municipal ordinance did not violate the due process clause of the Fourteenth Amendment because it did not impose an unreasonable restraint on the right to engage in a legitimate occupation. In that context, it has been observed by the American Supreme Court that freedom of speech or press does not mean that one can talk or distribute where, when and how one chooses; but the right to do so must be adjusted to the rights of others. In the instant case, no rights belonging to other citizens come into picture at all. If the rights of any one come into play, they are the rights of the Corporation. We have already observed that the Corporation is a creature of the public will and lives on public funds. It is difficult to imagine for us, therefore, (hat a right of such a corporation would be antagonistic to the rights of the citizens or their welfare. Secondly, the studied criticism

of the activities of the corporation cannot be equated with talking and distributing anything where, when and how one chooses. The principle laid down the aforesaid decision, therefore, has no application to the facts of the instant case.

[27] It has also been argued by Mr. Nanavaty that "YOGAKSHEMA" is the property of the Corporation and that the right cannot be defeated by the petitioner. Firstly, the fundamental right to property does not now exist on the statute book. Secondly, publication of the studied criticism of the activities of the Corporation always caters not only to the welfare of the members of the public but also to the welfare of the Corporation. The petitioner's fundamental right under Art. 19 (1) (a) cannot be defeated by the Corporation's nebulous claim to hold its property. It may also be noted that a statutory Corporation unlike the citizens does not have any fundamental right.

[28] It is necessary to note in this context that we are not deciding in this case whether a citizen has a fundamental right to have his study of a branch of a governmental or public administration published in a govermental or other official journal. We are also not deciding whether a studied reply to something published elsewhere should be published in an official journal if it pertains to public administration or a branch the reof We are only deciding whether an official journal which has published something and which is ciitical of someone else's study should be directed to publish a studied reply to such publication in pursuance of the funda mental right of freedom of speech and expression guaranteed to every citizen under Art. 19 (1) (a). In other words, does a citizen have a right to give a studied reply thiough the same journal to what has been pub lished in it? It may also be Loted tLat what we are deciding is confined only to the field of public administration and to the journals which are published with the aid of public funds and public moneys. Thirdly, our decision is confined only to a study and not something which is scurrilous, vituperative, simply maligning, propagandist or otherwise commonplace.

[29] Let us take in this context an extreme illustration. Assuming that the official Gazette publihes a studied criticisim of someone's study with out publishing the original article or study, is it under an obligation to publish a studied reply to that study? We are aware of the fact that we do tot have the aid or assistance of a reported case on this aspect. But, we are clear in cur minds that the Official Gazette is under an obligation to publish a studied reply to such a criticism which is the study of a problem. Assuming that All India Radio or Doordarshan publishes some thing which is a reply to someone's study or is a criticism of someone's studied article by naming that person, is it under an obligation to publish a studied reply to it? The reasons which have weighed with us in this judgment

leave us no alternative but to answer the question in the affirmative.

[30] It is necessary in this context to examine the functions of fundame ntal rights guaranteed under the Constitution to all citizens of India. In our opinion, the vital function which a fundamental right conferred upon the citizens fulfils is to ensure or to afford to every citizen maximum opportunity to develop his personality fully so as to enable him to make his best contribution to the development of social gocd. Secondly, they perform the function of drawing a line of demarcation between social good and individual good and to clearly delineate an area showing where, in the name of social good, a citizen shall not be pounced upon. Thirdly, their function is to maintain healthy and sound democracy and to ensure the even development of a free society. Freedom and democracy in a democratic polity thrive on them. In order that the fundamental rights perform such vital functions in a democratic polity, diverse and antagonistic criticism is the essence of healthy democracy because it keeps public administration alert and always on its tows in order to enable it to shrug off lethary, inaction, complacency, inefficiency, waste and corruption. A studied criticism of an antagonistic character is, in our opinion, an artery of democracy. There is no doubt about the proposition that public funds must be spent for social good and public welfare. Social good and public welfare cannot be brought about merely by publishing one's eulogy and appreciation. Their seeds lie as much in the criticism-nay more in it-than in euiogy and appreciation. Both appreciation and criticism are the sustaining pillars of democracy and both are necessary ingredients of social good and public welfare in a democratic polity. Democracy is not an institution of flattery or psychophancy and freedom is not its removable gift to the people revocable at the sweetwill and pleasure-by those who for the time being are placed in charge of the destinies of people. Therefore, a public organ in the interests of democracy and in the interests of healthy and free society must be available to both to an admirer and to a critic. To lean on one side more than on the other is likely to produce a lop-sided and misleading picture of an otherwise free society. Interests of the members of the public demand both criticism and appreciation. Therefore, the author of every studied criticism has a right to have it published in the concerned official organ. The Corporation is a public body and belongs to no individual. Therefore, the considerations which govern the case of an individual do not apply to a statutory public body. Every citizen has a right to demand of the State to make available to him a particular channel or channels for publishing his studied criticism of the concerned branch of public administration.To make such an opportunity available to an admirer and to deny it to a critic is to deny to him his freedom of speech and expression and to throttle democracy.

[31] It is the basic and cardinal principle of the interpretation of a democratic Constitution that it is interpreted to foster, develop and enrich democratic institutions. Irrespective of whether it is inscribed in any book on jurisprudence, it is inherently implicit in democratic Constitution itself. It runs through every constitutional artery. It is its life and soul. To interpret a democratic Constitution so as to squeeze the democratic institutions of their life-giving essence is to deny to the people or a section thereof the full benefit of the institutions which they have established for their benefit and to cease to be faithful and loyal to the Constitution to uphold and protect which a Judge takes his oaih before entering upon his office. Salt loses its flavour when a Judge ceases to be a Judge and mechanically approves all executive actions challeiged before him. A democratic Constitution cannot be interpreted in a narrow and pedantic (in the sence of strictly literal) manner. It lays down basic norms of community life which must find, on judicial interpretation, their true reflection in every aspect of human life-individual and collective. It is the prime duty of judiciary-the last bastion in the edifice of democracy - to be and to remain impregnable, to inject life and soul into its institutions and to transplant a heart in it which always throbs and pulsates and which never fails to function. Therefore, any constitutional interpretation which subverts the free social order is, in our opinion, anti-constitutional. Since appreciation and criticism (both studied) are the quintessence of a free society, both must thrive under freedom of speech and expression. In our opinion, therefore, denial to publish the petitioner's studied reply to Mr. Krishnan's reply has violated the petitioner's fundamental right under Art. 19(1) (a) of the Constitution.

[32] The next contention which has been raised by Mr. Patel flows from Art. 14. There is no doubt about the fact that in the matter of disbursement of public funds the Corporation has preferred its admirer to its critic. Mr. Patel has invited our attention to two decisions of the Supreme Court in this behalf.

[33] The first decision is in Railway Board v. Mis. Observer Publications (P) Ltd. A.I.R. 1972 S.C. 1792. In that case, the question which arose was whether the Railway Administration should provide equal opportunity to all the popular newspapers for sale in their stalls on the same terms. Sub-clause (viii) of Clause 742 of the Railway Code provided that obscene books, pictures and publications shall not be sold in Railway premises. In that behalf, the Supreme Court observed that if the Government has not made any order prohibiting the sale of any newspaper on the ground that it is obscene, the Railway Board cannot impose ban on sale of that newspaper under Clause 742(v). fn the context of Art. 14 the Supreme Court has held that if other publications containing

similar matters are not prohibited from sale by the Board, its order is liable to be quashed as violative of Art. 14. In other words, in the matter of dissemination of information and sale of publications, all must be treated alike unless the Government has banned the sale of a particular publication.

[34] The next decision to which our attention has been invited by Mr. Patel is in Ramana Dayaram Shetty v. The International Airport Authority of India and Others, A.I.R. 1979 S.C. 1628. The principle which has been laid down in that decision by the Supreme Court is that, in matters of executive discretion, all must be treated alike or equal treatment should be meted out to all. He has invited our attention to Art. 14 of the Constitu tion which specifies a directive principle of State policy. It provides as under:

> "The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."

> This Article does not have any application to the instant case. To make available public funds to an admirer and not to a sober critic, in our opinion, violates the guarantee of equality enshrined in Art. 14. Both, in our opinion, have an equal and an honourable place in our social order. Therefore, given all other things equal, both must be treated equally and alike. Again, given all other things equal, they belong to the same class and not to different classes. Therefore, both are entitled to equal treatment.

[35] In that view of the matter, refusal to make available to the petitioner "YOGAKSHEMA" for voicing his studied criticism has, incur opinion, violated the petitioner's fundamental right under Art. 14. The action of the Corporation is, therefore, violative of the fundamental rights guaranteed to the petitioner both under Art. 19(1)(a) and Art. 14.

[36] In view of the findings which we have recorded, we allow the petition and issue a writ of mandamus directing the respondents to publish in the immediate next issue of "YOGAKSHEMA" the petitioner's reply to Mr. Krishnan's reply which was published in "YOGAKSHEMA" earlier. Rule is made absolute with costs.

[37] Mr. K. S. Nanavaty who appears on behalf of the respondents makes an oral

application for staying the implementation of the writ issued by us. This is not a fit case for staying the implementation of the writ. The oral application made by Mr. K. S. Nanavaty is, therefore, rejected.

Petition allowed : Leave to appeal refused.