PETITIONER:
RELIANCE PETROCHEMICALS LTD.

Vs.

RESPONDENT:
PROPRIETORS OF INDIAN EXPRESS NEWSPAPERS,BOMBAY PVT. LTD. &

DATE OF JUDGMENT23/09/1988

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
RANGNATHAN, S.

CITATION:
1989 AIR 190 1988 SCR Supl. (3) 212
1988 SCC (4) 592 JT 1988 (3) 749
1988 SCALE (2)748

ACT:
Constitution of India, 1950: Article 19(1)(a)--Public Limited Company--Issue of debentures--Right of newspaper to publish and print article on the debenture issue--Court litigation in regard to debenture issue--Risk caused by publication of article and obligation of Press to keep people informed--Appraisal of by Court before grant/continuance of injunction to publication of article.
%
Contempt of Court Act, 1971: Public Limited Company-Issue of debentures--Litigation in respect of--Press publishing article in respect of debenture issue--Whether prejudging of issue and interference with administration of justice--Whether Court entitled to injunct press from publication of article--Newspapers right of freedom of speech.

HEADNOTE:
The petitioner company had offered for public subscription secured convertible debentures after obtaining the consent of the Controller of Capital Issues. Before the public issue was due to open, certain writ petitions etc. were filed in some High Courts challenging the grant of consent or sanction for the public issue. The petitioner there-upon filed an application under Article 139A of the Constitution seeking transfer of those cases to this Court and prayed inter alia for vacation of any injunction or stay granted by the High Courts. On August 19, 1988 this Court, while issuing notice on the transfer applications, directed that the public issue be proceeded with "without let or hindrance". and vacated all orders of injunction in respect of the said issue .
On August 25, 1988 an article appeared in the Indian Express to the effect that the Controller of Capital Issues had not acted properly and legally in granting the sanction to the issue, and that the issue was not a prudent or a reliable venture. The petitioner moved the Court for initiating contempt proceedings against the respondents for alleged interference with the due administration of justice by publication of an article commenting on a matter which was sub-judice. The petitioner also sought injunction

against the threatened or expected publication of similar
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comments. The Court, while declining to take cognizance of contempt in the absence of the consent of the Attorney General, issued an order of injunction restraining publication of articles, etc. questioning the legality or validity of any of the consents, approvals or permissions for the public issue.

The matter came up before the Court again to consider the question whether there was any necessity for the continuance of the order of injunction. It was contended that pre-stoppage of newspaper article or publication on matters of public importance was uncalled for and contrary to freedom of press enshrined in the Constitution and the laws; that public had a right to know about this issue of debentures which was a matter of public concern, and the newspapers had an obligation to inform; and that there was no jury trial involved here and no likelihood of the trial being prejudiced because trial was by professionally trained Judges. On the other hand, it was contended that there was an inherent jurisdiction to restrain by injunction any publication that interfered with a fair trial of a pending case or with the administration of justice in general, that publication was permissible provided it did not amount to prejudgment or prejudice of a matter in Court; that liberty or freedom of Press must subserve the due administration of justice, and that there was need to continue the injunction because contribution to the debentures could be withdrawn as the final allotment had not yet been made.

While disposing of the application for the continuance of the injunction, it was,

HELD: Per Sabyasachi Mukharji, J.

(1) The Constitution of India is not Absolute with respect to freedom of speech and expression, as enshrined by the First Amendment to the American Constitution. {223F]

(2) A judiciary is not independent unless courts of justice are enabled to administer law by absence of pressure from without, whether exerted through the blandishments of reward or the menace of disfavour. A free Press is vital to a democratic society for its freedom given it power. 1227F]

[3] The law of contempt must be judged in a particular situation. The process of due course of administration of justice must remain. Public interest demands that there should be no interference with judicial process and the
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effect of the judicial decision should not be pre-empted or circumvented by public agitation or publications. At the same time, right to know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age in our land under Article 21 of our Constitution. A balance has to be struck between the requirements of free Press and fair trial. [235B-C; A]

(4) The Court must examine the gravity of the evil. In other words, a balance of convenience in the conventional phrase of Anglo-Saxon Common Law Jurisprudence would, perhaps, be the proper test to follow. [228Bl

(5) The Court must see whether there was a present and imminent danger for the issuance/continuance of injunction. It is difficult to lay down a fixed standard to judge as to how clear, remote or imminent the danger is. [234D]

(6) The orders passed on 19th August, 1988 as reiterated on 25th August, 1988 stated that there must be no legal impediment in the issue of the debentures or in the progress of the debentures, taking into account the overall balance

of convenience and having due regard to the sums of money involved and the progress already made.1234D]

(7) The continuance of this injunction would amount to interference with the freedom of Press in the form of preventive injunction and it must therefore be based on reasonable grounds for the sole purpose of keeping the administration of justice unimpaired. [234El

(8) There must be reasonable ground to believe that the danger apprehended is real and imminent. The subscription to debentures having been oversubscribed, there is no such imminent danger of the subscription being withdrawn before the allotment so as to make the issue vulnerable by any publication of article. [235DI

(9) As the issue is not going to affect the general public or public life, nor any injury is involved, it would be proper and legal, on an appraisal of the balance of convenience between the risk which will be caused by the publication of the article and the damage to the fundamental right of freedom of knowledge of the people concerned and the obligation of Press to keep people informed, that the injunction should net true any further. [235H]

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(10) Publication, if any, however, would be subject to the decision of the Court on the question of the contempt of court, namely, prejudging the issue and thereby interfering with the due administration of justice. [236A]

(11) Preventive remedy in the form of an injunction is no longer necessary. Whether punitive remedy will be available or not, will depend upon the facts and the decision of the matter after ascertaining the consent or refusal of the Attorney-General. [236B]

Per Ranganathan, J.

(1) It would not be correct to say that when the Court passed the order dated l9.9.1988, it had formed any prima facie opinion on the question whether the debenture issue had been validly approved or consented to by the various authorities. What predominantly influenced the Court was that, even assuming, prima facie, as was contended in the writ petitions, that there could be some doubt regarding the validity or otherwise of the consent orders etc., the restraint by any court or tribunal on the issue of debentures at a late stage might prove catastrophic, and cause irreparable loss or damage to the petitioner. The balance of convenience required that there should be no order of any court or tribunal staying the debenture issue.[238-E]

(2) The article published by the respondents, though not violative of the terms of the injunction granted by this Court, could have the effect of circumventing the order of this Court and rendering it ineffective. It had, prima facie, a tendency to affect the efficacy of, and defeat the object with which this Court had passed, the interim order dated 19.8.1988. That is the reason why the second order dated 25.8.1988 was passed. The said order was rightly passed and the contention that no such injunction ought to have been granted at all is not acceptable. [239A-B]

(3) The position has radically changed. The danger apprehended by the petitioner is not so real or substantial as to warrant the continuance of the injunction orders. [239C]

Attorney-General v. British Broadcasting Corporation., [1981] A.C. 303; 354; Harry Bridges v. State of California, 86 L.Ed. 252 at page 260; Express Newspapers (Pvt.] Ltd. & Anr. v. Union of India & Ors., [1959] SCR 12; Ramesh Thapar v. State of Madras, [1950] SCR 594 at 597: Brij Bhushan &

Anr. v. State of Delhi, [1950] SCR 605; State of Travancore-

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Cochin & Ors. v. Bombay Co. Ltd. [1952] SCR 1112; State of Bombay v. R.M.D. Chamatbaugwala, [19S7] SCR 874 at 918; P. C. Sen's case, [1969] 2 SCR 649; C. K. Daphtary & Ors. v. O. P. Gupta, [1971] Suppl SCR 76; Indian Express Newspapers (Bombay) Pvt. Ltd. & Ors. v. Union of India & Ors., [1985] 1 SCC 641; Abrams v. United States, 11963] L.Ed. 1173 at 1180; P.N. Duda v. P. Shiv Shanker & Ors., AIR 1988 SC 1208; John D. Pennekamp v. State of Florida, 11945] 90 L.Ed. 331; Neoraska Press Association v. Hugh Stuart, 49 L.Edn. 683; Attorney General v. British Broadcasting Corpn., [1979] 3 AER 45; Attorney General v. B.B.C., [1981] AC 303; Attorney General v. Times Newspapers Ltd., [1974] AC 273; Ex Parte Bread Manufacturers Ltd., [1937] 37 SR (NSW) 242 and Charlotte Anita Whitney v. People of the State of California, 71 L.Edn. 1095 at 1106.

JUDGMENT:

CIVIL/CRIMINAL ORIGINAL JURISDICTION: C.M.P. Nos. 21903-06 of 1988.

IN

Transfer Petitions Nos. 192 & 193 of 1988.

(Under Article 139(A)(i) of the Constitution of India).

F.S. Nariman, V.C. Kotwal, M.H. Baig, Harish N. Salve, Mrs. P.S. Shroff, S.A. Shroff, A.K. Desai and S.S. Shroff for the Petitioner.

G. Ramaswamy, Additional Solicitor General, Ram Jethmalani, C.V. Subba Rao, Ms. A. Subhashini, Mrs. Sushma Suri, P. Parmeshwaran, Mukul Kohtagi, Ms. Bina Gupta, Ms. Madhu Khatri, Parveen Anand, Anip Sachthey, B.L. Bagaria, P.K. Jain, P.S. Goyal, Arun Jatley, R.F. Nariman, Rajan Karanjawala and Mrs. Manik Karanjawala for the Respondents.

The following Judgments of the Court were delivered:

SABYASACHI MUKHARJI, J. At this stage, we are concerned with the question whether there is need for the continuance of the Order of injunction passed by this Court on 25th August, 1988. In order to appreciate the question it is necessary to state a few facts. A petition was moved before this Court on l9th August, 1988 under the Contempt of Courts Act, 1971 for initiation of contempt proceedings against

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the proprietors of Indian Express Newspapers Bombay Pvt. Ltd., Shri Arun Shourie, Indian Express Newspapers Bombay Pvt. Ltd., Shri Hari Jaisingh, Resident Editor, Indian Express Newspapers Bombay Pvt. Ltd., Shri A.C. Saxena, News Editor, Indian Express Newspaper Pvt. Ltd., Delhi, Shri H.K. Dua, Chief, New Delhi Bureau, Indian Express Newspaper Pvt. Ltd., New Delhi, and Shri V. Ranganathan, Indian Express Bombay Pvt. Ltd. The petition was moved on behalf of Reliance Petrochemicals Ltd. (hereinafter called "Reliance Petrochemicals"). It was stated therein that this Court should take cognisance of the contempt alleged to have been committed by the respondents and it was further prayed that pending the consideration of the question of criminal contempt, this Court should pass an order restraining the Express Group of Newspapers and their related publications from publishing any materials or articles in relation to the subject matter of the proceedings in the Transfer Petitions Nos. 192 and 193 of 1988 which was sub-judice issue in Writ Petition No. 1276 of 1988 in Karnataka High Court, Writ Petition No. 1791 of 1988 in Delhi High Court, Writ Petition No. of 1988 Radhey Shyam Goel v. Union of India, Suit No.

1172 of 1988 K.S. Brahmabhatt v. Reliance Petrochemicals Ltd and MRTP proceedings instituted in J.P. Sharma v. Reliance Petrochemicals Ltd. as the same was alleged to be calculated to affect the Reliance debenture issue which was to open on 22nd August, 1988 till the decision of the transfer petitions pending herein.

The subject-matter of dispute related to the Public Issue by the petitioner company of 12.5% Secured Convertible Debentures of Rs.200 each for cash at par aggregating to Rs.593.40 crores (inclusive of retention of 15% excess subscription of Rs.77.40 crores). It was stated that Reliance Petrochemicals was to set up what was claimed to be the largest petrochemical complex in the private sector for the manufacture of critically scarce raw-material known as Mono Ethylene Glycole (MEG) and plastic raw-materials like High Density Polyethlene (HDPE) and Poly Vinyl Chloride (PVC] which are used for making various articles from films to pipes, auto parts to cable coating, containers to furnishings. It was asserted that the issue was of global and national importance. It was claimed that Reliance's public issue was the largest public issue in India till date and the second largest issue in the world. The public issue was due to open on Monday, the 22nd August, 1988 and was scheduled to be closed on 31st August, 1988.

It was the claim of the petitioner that the debentures were being issued after obtaining the consent of the

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Controller of Capital Issues and on the basis of schedule indicated therein, and after complying with all the requirements of the Companies Act and otherwise. Certain writ petitions and a suit had been filed in some High Courts, namely, Karnataka, Bombay, Rajasthan, Delhi and later on in Allahabad challenging the grant of consent or sanction for the issue of debentures. Such applications in the different High Courts and the Courts were filed at the last moment when enormous amount of money had already been spent, it was claimed. It was stated that enormous monies on publicity had been spent. In some of these proceedings orders of injunction had been obtained. It was contended that issue was prima facie legal and valid and the consent and permission of the necessary authorities specially the Controller of Capital Issues had been obtained properly. In such circumstances an application for transfer of these proceedings under Article 139A of the Constitution of India read with Part IV-A of the Supreme Court Rules 1966 was moved by Reliance Petrochemicals Ltd. against the Union of India, Controller of Capital Issues and the petitioner in the suit in Bangalore and writ petition in Delhi. It was stated that the Certificate of Incorporation was granted to the petitioner on or about 11th January, 1988 and the Certificate of Commencement of Business was granted on 21st January, 1988. On 4th May, 1988 an application was made to the Controller of Capital Issues for raising Equity Share Capital/Cumulative Convertible Preference Shares/Convertible Debentures for financing the proposed projects for manufacture of PVC HDPE and MEG. On 4th July, 1988, as mentioned before, the consent of the Controller of Capital Issues was granted to the petitioner for capital issue of 5,75,00,000 Equity Shares of Rs. 10 cash inclusive of retainable excess subscription of Rs.7.5 crores and for 2,96,70,000 12.5 per Secured Fully Convertible Debentures of Rs.200 each for cash at par to public. It is not necessary for the present purpose to set out the details of the same. It is stated that the consent of the Controller of Capital Issues was given on 4th July, 1988 on certain terms which

are again the relevant to be set out for the present purpose. The consent order of the Controller was modified and further condition of obtaining the Reserve Bank of India's permission for allotment of debentures of Non-Residents as required under FERA 1973 and for allotment of debentures to employees on certain terms was imposed on 19th July, 1988. On 27th July, 1988 a prospectus was filed with the Registrar of Companies, Gujarat, Ahmedabad, for the public issue of 12.5% Secured Fully Convertible Debentures of Rs.200 each for cash at par, as indicated before.

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A petition was filed in the Karnataka High Court on 17th August, 1988 by one Shri Balkrishna Pillai. In the Delhi High Court another writ petition was filed on 18th August, 1988. On 18th August, 1988 a transfer petition was filed in this Court. It was claimed that any injunction order after the satisfaction of the Central Government, through the Controller of Capital Issues would make the public issue stillborn and sums in excess of Rs.4.5 crores had already been incurred for the public issue as pre-Issue expenses and a sum of Rs.20 crores was allocated as Issue Expenses for what was popularly known as 'Mega Issue" as mentioned hereinbefore. It was claimed that grave prejudice would be caused to the petitioner company as well as the public at large who were investing in the issue. if the issue is not allowed to go through. It was claimed that there was no ground for the High Court to grant injunction or stay order in the facts and circumstances of this Issue and this Court should vacate those orders and transfer the applications pending in different Courts to this Court.

On that application being moved on 19th August, 1988, this Court issued notices to all concerned making the same returnable on 9th September, 1988 in terms of prayer (a) and paragraphs 2 and 4 of the affidavit of Mr. Balkrishna Bhandari affirmed on 18th/19th August, 1988. This Court further directed as follows:

"The issue of 2 .96,70,000, 12.5 per secured convertible debentures of Rs.200 each by the petitioner company under the prospectus dated July 27. 1988 filed with the Registrar of Companies Gujarat and with the stock exchanges at Ahmedabad and Bombay to be proceeded with, without let or hindrance, notwithstanding any proceedings instituted or that may be instituted in or before any Court or tribunal or other authority.

Any order direction or injunction of any Court, tribunal or authority in any proceeding already passed or which may be passed will by operation of this order be and remain suspended till further orders of this Court.

In substance the order was that the issue be proceeded with "without let or hindrance". notwithstanding any proceedings instituted or that may be instituted in or before any Court or tribunal or other authority. This Court vacated all orders of injuction in respect of the said issue. It was asserted on behalf of the petitioner that this Court must have been prima facie satisfied that there was no legal infirmity which should stand in the way of the public

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issue of the said debentures going through and further, in any event, must have been satisfied that there should not be any let or hindrance to the said public issue. The petitioner had drawn our attention to an article published on 25th August, 1988, under the heading "Infractions of Law has Unique Features RPL Debentures". It is not necessary for the present purpose to set out the said article. It was claimed in the said article that the Controller of Capital

Issues had not acted properly and legally in granting the sanction to the issue for various reasons stated therein. It was further stated that the issue was not a prudent or a reliable venture. It was contended that by this article the respondents have commented on a matter which is sub-judice and was intended to undermine the effect of the interim order passed by this Court and the ultimate decision of the Court and they threatened to publish such articles unless restrained by this Court. It was contended that trial by newspapers on issues which are sub-judice is one of the grossest modes of interference with the due administration of justice and any threat of that interference should be prevented by both punitive action of contempt and preventive order of injunction of wrong anticipated to be committed by the delinquent. The publication threatened or expected expected to be published would cause very grave interference with the due administration of justice, and should, therefore, be prohibited.

On that application being moved on 25th August, 1988, this Court directed that cognizance of contempt would only be considered after the necessary sanction from the Attorney General is obtained. This Court on the facts of the alleged contempt declined to take cognizance on that application without the views of the Attorney General. This Court, however, issued an order of injunction restraining all the six respondents mentioned therein from publishing any article, comment, report or editorial in any of the issues of the Indian Express of their related publications questioning the legality or validity of any of the consents, approvals or permissions to which the petitioners in the Transfer Petitions Nos. 192-193 of 1988 have made reference in the Prospectus dated 27th July, 1988 for the issue of 12.5% Secured Full Convertible Debentures. Notice of that application was made returnable on 9th September, 1988 and the same was to come up with other related matters. The respondents were further given liberty to move this Court for variation or vacation of the order upon notice to the petitioner. Upon that the six respondents had filed an affidavit in opposition on 26th August, 1988 the very next day asking for variation or vacation of the interim order passed by this Court on 25th August, 1988. Attention of the Court was drawn to an article proposed to be published in

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the Indian Express which was Annexure 'B' to the said affidavit. Submissions were made on the validity or the propriety of the interim order. Upon hearing learned counsel for both the parties, this Court observed that it was sufficient to say that the article proposed to be published and forming part of Annexure 'B' did not violate the order of injunction passed by this Court on 25th August, 1988. In other words, this Court was of the view that the article in question which was intended to be published and shown to this Court on 26th August, 1988 did not question the legality or the validity of the order which was in issue in the proceedings in this Court. In those circumstances no question of variation or vacation of the said interim order arose. The said article proposed at that time has since been published before 31st August, 1988. It was stated in the affidavit as well as in the submissions made from the Bar that the shares have been over-subscribed but the day of allotment, of course, has not yet expired and before the allotment the subscribers, it was submitted, could withdraw their subscriptions. In those circumstances, this Court was invited to consider the question whether there was any necessity for the continuance of the order of injunction

granted by this Court on 25th August, 1988. On behalf of the petitioner it was submitted that the danger still persists and the injunction should continue. On the other hand on behalf of the respondents it was submitted that the injunction should be vacated.

Elaborate arguments were advanced by counsel for both sides. It was contended that there was no contempt of Courts involved herein and furthermore, it was contended that pre-stoppage of newspaper article or publication on matters of public importance was uncalled for and contrary to freedom of Press enshrined in our Constitution and in our laws. The publication was on a public matter so public debate cannot and should not be stopped. On the other hand, it was submitted that due administration of justice must be unimpaired. We have to balance in the words of Lord Scarman in the House of Lords in Attorney-General v. British Broadcasting Corporation, [1981] A.C. 303 at page 354 between the two interests of great public importance, freedom of speech and administration of justice. A balance, in our opinion, has to be struck between the requirements of free Press and fair trail in the words of the Justice Black in Harry Bridges v. State of California, 86 L. Ed. 252 at page 260.

Therefore, in considering the question posed before us whether there should be continuance of the order of injunction we have to bear in mind and apply the basic principles of law to the facts and circumstances of this

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case. The point at issue has been canvassed very ably and vehemently on behalf of the petitioner by Sh. M.H. Baig, assisted as he was by Sh. S.S. Shroff and Smt. P.S. Shroff. They submit that the danger still persists and the publication of any article which would jeopardise the allotment of those debentures, should be prevented. On the other hand, Sh. Ram Jethmalani and Sh. Anil B. Diwan, senior counsel assisted as they were by Sh. R.F. Nariman and Sh. C.R. Karanjawalla, urged before us that the injunction should no longer continue. In view of the delicacy of the problem in the question posed before us, it is well to remember the legal background. We may refer to our constitutional provisions in Article l9(1) & (2) which provides as follows:

19. Protection of certain rights regarding freedom of speech, etc.--(l) All citizens shall have the right

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form association or unions:

[d] to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India;

(f) [Omitted by ibid. Sub-cl. [f] read to acquire, hold and dispose of property; and)

[g] to practise any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (a) of clause (I) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of (the sovereignty and integrity of India,) 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."

The effect of Article 19 on the freedom of Press, was analysed in the decision of this Court in Express Newspapers

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(Pvt) Ltd. & Anr. v. The Union of India & Ors., [1959] SCR 12, where at page 120 onwards of the report Bhagwati J. referring to the decision of this Court in Ramesh Thapar v. The State of Madras, [19501 SCR 594 at 597, referred to the observations of Justice Patanjali Sastri, and further referred to the decision of this Court in Brij Bhushan & Anr. v. 7he State of Delhi, [1950] SCR 605. Referring to these two decisions, Bhagwati J. expressed his view that these were the only two decisions which evolved the interpretation of Article 19(1)(a) of the Constitution and they only laid down that the freedom of speech and expression included freedom of propagation of ideas which freedom was ensured by the freedom of circulation and that the liberty of the press consisted in allowing no previous restraint upon publication. Referring to the fact that there is a considerable body of authority to he found in the decisions of the Supreme Court of America bearing on this concept of the freedom of speech and expression, Justice Bhagwati observed that it was trite knowledge that the fundamental right to the freedom of speech and expression enshrined in our Constitution was based on the provisions in the First Amendment to the Constitution of the U.S.A. and, hence, it would be legitimate and proper to refer to those decisions of the Supreme Court of the U.S.A., in order to appreciate the true nature, scope and extent of this right in spite of the warning administered by this Court against the use of American and other cases, in State of Travancore-CochIn and Ors. v. Bombay Co. Ltd., [1952] SCR 1112 and State of Bombay v. R. M. D. Chamarbaugwala, [1957] SCR 874 at 918.

Our Constitution is not absolute with respect to freedom of speech and expression and enshrined by the first Amendment to the American Constitution. Our attention was drawn to the decision of this Court in Re: P.C. Sen. [1969] 2 SCR 649 where this Court upheld the order of conviction against the Chief Minister of West Bengal for broadcasting a speech justifying an order, the validity of which was challenged in proceedings pending before the Court. The West Bengal Govt. had issued an order under Rule 125 of the Defence of India Rules, placing certain restrictions upon the right of persons carrying on business in milk products. The validity of this order was challenged by a writ petition. After the Rule nisi had been issued on the petition and served on the State Govt. the State Chief Minister broadcast a speech seeking to justify the propriety of the order. The High Court a Rule requiring the Chief Minister to show cause why he should may be committed for contempt of Court. The High Court found him guilty of contempt and fined him. The matter came up before this Court

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and the conviction was upheld. It was held that the speech was ex facie calculated to interfere with the administration of justice. This Court reiterated that in all cases of comment on pending proceedings, the question is not whether the publication did interfere, but whether it tended to interfere, with the due course of justice. The question is not so much of the intention of the contemnor as whether it is calculated to interfere with the administration of justice. But for the instant case this decision cannot be of much assistance. Firstly, the contents of the speech of the Chief Minister were entirely different.

The Chief Minister in his speech had characterised the preparation of any food with milk product as amounting to a crime. There was a tendency in the speech of the Chief

Minister of intimidating the litigants or the potential litigants in respect of the issue pending in the Court.

In the instant case we are, however, not concerned directly with the question of whether the respondents have in fact committed contempt of Court by interfering with the due administration of justice. The question whether comments on an issue, directly or indirectly, in Court amount to pre-judging of an issue and transferring a trial by the Court to the trial by the newspapers, is another matter which will be decided when the contempt application will be taken up. At the moment, we are concerned with the short but difficult question i.e. whether there is need for preventing publication of an article on a matter of public interest but on an issue which is sub judice. In this case, as at this stage we are not dealing with the question of punitive action of committal for contempt of Court for publication pending trial of an issue in Court, the decision of this Court in P.C. Sen's case (supra) in view of the facts involved, is not of much aid to us. The case of gross contempt was discussed by this Court in C.K. Daphtary & Ors. v. O.P. Gupta & Ors., [1971] Suppl SCR 76. However, in view of the facts involved therein, that decision cannot give us much guidance at present.

The law on this aspect has been adverted to in the decision of this Court in Indian Express Newspapers (Bombay) Pvt. Ltd. & Ors. v. Union of India & Ors., [1985] 1 SCC 641, where at page 659 of the report, Justice Venkataramiah referred to the importance of freedom of Press in a democratic society and the role of Courts. Though the Indian Constitution does not use the expression 'freedom of press' in Article 19 but it is included as one of the guarantees in Article 19 [1] [a]. The freedom of Press, as noted by Venkataramiah J., is one of the around which the greatest and the bitterest of constitutional struggles have been

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waged in all countries where liberal constitutions prevail. Article 19 of the Universal Declaration of Human Rights, 1948 declares the freedom of Press and so does Article 19 of the International Covenant on Civil and Political Rights, 1966. Article 10 of the European Convention on Human Rights, provides as follows:

"Article 10-(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprise.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

The First Amendment to the Constitution of the U.S.A provided as follows:

"Amendment--1 Congress shall made nO law respecting an establishment of religion, or prohibiting the tree exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble. and to petition the Government for a redress of grievances."

Keeping the constitutional requirements of the Indian law in the background, it would be appropriate to refer to certain American decisions to which our attention was drawn. We have mentioned the observations of Justice Black in the case of Harry Bridges v. State of California (supra). There, Justice Black observed that free speech and fair trial are the two most cherished values of our civilisation and it would be a trying task, and if we may say so, a difficult one to choose between them. But in case of need a choice has to be made. He that a public utterance or publication is not to be denied the constitutional protection of freedom of

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speech and Press merely because it concerns a judicial proceeding still pending in the Courts, upon the theory that in such a case it must necessarily tend to obstruct the orderly and fair administration of justice. In America, in view of the absolute terms of the First Amendment, unlike the conditional right of freedom of speech under Article 19(1)(a] of our Constitution, it would be worthwhile to bear in mind the "present and imminent danger" theory.

Justice Black quoted from the observations of Justice Holmes in Abrams v. United States, [1963] L. Ed. 1173 at 1180, where the latter had observed that to justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. Justice Black concluded that there must be clear and present danager and that would provide a workable principle in preventing publication consistent with the First Amendment. But in our case Mr. Baig submitted that our article 19(1)(a) as it is termed anything that interferes with the due administration of justice, should be prevented if it is a threat to the due administration of justice. His submission was that the Article published or proposed to be published herein, undermines the effect or pre-empts the effect of the order of injunction which was to help or boost up the chances of the debentures being subscribed.

Mr. Baig drew our attention to page 282 of the said report where Justice Frankfurter had observed that free speech was not so absolute or irrational a conception as to imply paralysis of the means for effective protection of all the freedoms secured by the Bill of Rights. The administration of justice by an impartial judiciary has been basic to the conception of freedom ever since Magna Carta. Justice Frankfurter further reiterated that the dependence of society upon an unswered judiciary is such a common place in the history of freedom that the means by which it is maintained are too frequently taken for granted without heed to the conditions which alone make it possible. (Emphasis supplied). The role of Courts of justice in our society has been the theme of statesmen and historians and constitution makers, and best illustrated in the Massachusetts Declaration of Rights as the right of every citizen to be tried by Judge as free, impartial and independent as the lot of humanity will admit.

Justice Frankfurter dissenting in his Judgment with whom Justice Stone, Justice Roberts and Justice Byrnes agreed, reiterated at page 284 of the report that the Constitution

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is an instrument of Government and is not conceived as a doctrinaire document, nor was the Bill of Rights intended as a collection of popular slogans. It is well to remember that Justice Frankturter recognised that we cannot read into the 14th Amendment the freedom of speech and of the Press

protected by the 1st Amendment and at the same time leave out the age old means employed by States for securing the calm course of justice. He emphasised that the 14th Amendment does not forbid a State to continue the historic process of prohibiting expressions calculated to subvert a specific exercise of judicial power. So to assure the impartial accomplishment of justice is not an abridgement of freedom of speech or Press, as these phases of liberty have heretobefore been conceived even by the stoutest libertarians. Actually, these liberties themselves depend "upon an untrammeled judiciary whose passions are not even unconsciously aroused and whose minds are not distorted by extrajudicial considerations."

The test of imminent and present danger as the basis of Justice Holmes's ideas has been referred to by this Court in P.N. Duda v. P. Shiv Shanker & Ors., AIR 1988 SC 1208.

This question again cropped up in John D Pennekamp v. Slate of Florida, [1945] 90 L.Ed. 331 and Justice Frankfurter reiterated that the 'clear and present danger' conception was never used by Mr. Justice Holmes to express a technical legal doctrine or to convey a formula for adjudicating cases. It was a literary phrase not to be distorted by being taken from its context. He reiterated that the judiciary could not function properly if what the Press does is reasonably calculated to disturb the judicial judgment in its duty and capacity to act solely on the basis of what is before the Court. A judiciary is not independent unless courts of justice are enabled to administer law by absence of pressure from without, whether exerted through the blandishments of reward or the mance of disfavour. A free Press is vital to a democratic society for its freedom gives it power .

In 1976, in Nebraska Press Association v. Hugh Stuart, 49 L.Edn. 683, where the facts of the case were entirely different to the present ones, Chief Justice Burger delivered the opinion of the Court saying that to the extent that the order prohibited the reporting of evidence adduced at the open preliminary hearing in a murder trial was bad. Chief Justice Burger reiterated that a responsible Press has always as the handmaiden of effective judicial administration, the criminal field. The observations of Learned Hand referred to at page 683 indicate "the gravity

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of the evil, discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger", as the test. Hence, we must examine the gravity of the evil. In other words, a balance of convenience in the conventional phrase of Anglo-Saxon Common Law Jurisprudence would, perhaps be the proper test to follow.

In this background it would be appropriate to refer to some of the English decisions to which our attention was drawn. Mr. Jethmalani relied on the observations of Lord Denning in the Court of Appeal in Attorney General v. British Broadcasting Corpn., [1979] 3 AER 45, where the Master of Rolls Lord Denning characterised some of these similar type of injunctions as "gagging injunctions". Mr. Baig, however, protested that in view of the terms in which the injunction was issued in the instant case, the order did not "gag" anything that was legitimate. The House of Lords, however, did not approve the observations of Lord Denning. We may refer to the observations of the House of Lords in Attorney General v. B.B.C., [1981] AC 303, wherein the Attorney General brought proceedings for an injunction to restrain the defendants from broadcasting a programme dealing with matters which related to an appeal pending

before a local valuation court on the ground that the broadcast would be a contempt of court. The Divisional Court of the Queen's Bench Division, on the single issue before it, held that a local valuation court was a court for the purposes of the powers of the High Court relating to contempt. On appeal, the Court of Appeal, by a majority, affirmed that decision. The House of Lords, however, allowed the appeal and held that the jurisdiction of the Divisional Court in relation to contempt did not extend to a local valuation court because it was a court which discharged administrative functions and was not a court of law and the Divisional Court's jurisdiction only extended to courts of law and when it referred to 'Inferior courts' must be taken as inferior courts of law and though the local valuation court has some of the attributes of the long-established 'Inferior Courts' public policy required in the interests of freedom of speech and freedom of the press that the principles relating to contempt of court should not apply to it or to the host of other modern tribunals which might be regarded as 'inferior courts'.

There, however, Lord Scarman emphasised that the due administration of justice should not, at all, be hampered. Lord in the Court of Appeal referred to Borrie & Lowe, The Law of Contempt (1973) and mentioned that professionally trained Judges are not easily influenced by publications.

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'This is a point which was emphasised before us also. Lord Denning referred to the question whether there was contempt of court by the B.B.C. He emphasised whether there was no accused. The House of Lords, however, in appeal held that valuation court is not a court where the concept of contempt of court would apply. But it did make observations that such broadcasting or publication might affect a Judge. Viscount Dilhorne at page 335 of the report observed as follows:

"It is sometimes asserted that no judge will be influenced in his judgment by anything said by the media and consequently that the need to prevent the publication of matter prejudicial to the hearing of a case only exists where the decision rests with laymen. This claim to judicial superiority over human frailty is one that I find some difficulty in accepting. Every holder of a judicial office does his utmost not to let his mind be affected by what he has seen or heard of read outside the court and he will not knowingly let himself be influenced in any way by the media, nor in my view will any layman experienced in the discharge of judicial duties. Nevertheless it should, I think, be recognised that a man may not be able to put that which he has seen, heard or read entirely out of his mind and that he may be subconsciously affected by it. As Lord Denning M.R. said the stream of justice must be kept clean and pure. It is the law, and it remains the law until it is changed by Parliament that the publication of matter likely to prejudice the hearing of a case before a court of law will constitute a contempt of court punishable by fine or imprisonment or both.

In this appeal we do not have to pronounce on whether the proposed broadcast would have prejudicially affected the hearing before the local valuation court. Although it clearly was likely to have aroused hostility to the Exclusive Brethern, it by no means follows that it would have prejudiced their claim to relief from rates. The mere assertion in the course of-the broadcast that they were not entitled to that relief was in my view unlikely to have affected in any way a decision on whether their meeting room was a place of Public religious worship coming within

section 39."

Lord Edmund-Davies at page 354 of the report emphasised that only a very short question arose, namely, whether the local valuation court comes within the jurisdiction of the

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High Court or not. Before that Lord Scarman had occasion to refer to the observations of the European Court of Human Rights which criticised the judgment of the House of Lords in Attorney General v. Times Newspapers Ltd., l 1971l AC 273 and emphasised that neither the Convention nor the European Court's decision, as part of the English law, which related to Article B 10(2) of the Convention for the Protection of Human Rights and Fundamental Freedoms.

In Attorney General v. Times Newspapers Ltd., (supra), between 1959-61 a company made and marketed under licence a drug containing thalidomide about 450 children were born with gross deformities to mothers who had taken that drug during pregnancy. In 1968, 62 actions against the company begun within 3 years of the births of the children were compromised by lump sum payments conditional on the allegations of negligence against the company being withdrawn. Thereafter leave to issue writs out of time was granted ex parle in 261 cases, but apart from a statement of claim in one case and a defence delivered in 1969 no further steps had been taken in those actions. A further 123 claims had been notified in correspondence. In 1971 negotiations began on the company's proposal to set up a 3 1/4 million charitable trust fund for those children outside the 1968 settlement conditional on all the parents accepting the proposal. Five parents refused. An application to replace those parents by the Official? Solicitor as next friend was refused by the Court of Appeal in April 1972. Negotiations for the proposed settlement were resumed. On September 24, 1972, a national Sunday newspaper published the first of a series of articles to draw attention to the plight of the thalidomide children. The company complained to the Attorney General that the article was a contempt of court because litigation against them by the parents of some of the children was still pending. The editor of the newspaper justified the article and at the same time sent to the Attorney General and to the company for comment an article in draft, for which he claimed complete factual accuracy, on the testing, manufacture and marketing of the drug. On the Attorney-General's motion, the Divisional Court of the Queen's Bench Division granted an injunction restraining publication on the ground that it would be a contempt of court. After the grant of the injunction on November 17, 1972, and while the newspaper's appeal was pending, the thalidomide tragedy was on November 29 debated in Parliament and speeches were made and reported which expressed opinions and stated facts similar to those in the banned article. Thereafter, there was a national campaign in the press and among the general public directed to bringing pressure on

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the company to make a better offer for the children and their parents; and the company in fact made a substantially increased offer.

The Court of Appeal having discharged the injunction. the Attorney-General appealed to the House of Lords. It was held that the contempt of court to publish material which prejudged the issue of pending litigation or was likely to cause public prejudgement of that issue, and accordingly the publication of this article, which in effect charged the company with negligence, would constitute a contempt, since negligence was one of the issues in the litigation. The

House of Lords granted injunction prohibiting the Times Newspaper from publishing the proposed publication. Reference was made to Oswald's Contempt of Court, 3rd Edn. (1910), where it was emphasised that the contempt of court involves 3 objects, namely, (i) to enable the parties to come to the courts without interference; (ii) to enable the courts to try cases without interference; and (iii) to ensure that the authority and administration of the law is maintained. There was no room for the balancing suggested by the respondents between the public interest in free discussion of matters of public concern and the public interest that judicial proceedings should not be interfered with . (Emphasised by Mr. Baig).

Lord Reid referred to the observations of the Chief Justice Jordan in Ex Parte Bread Manufacturers Ltd., [1937] 37 SR (NSW) 242 to the following effect:

"It is of extreme public interest that no conduct should he permitted which is likely to prevent a litigant in a court of justice from having his case tried free from all matter of prejudice. But the administration of justice, important though it undoubtedly is, is not the only matter in which the public is vitally interested; and if in the course of the ventilation of a question of public concern matter is published which may prejudice a party in the conduct of a law suit, it does not follow that a contempt has been committed. The case may be one in which as between competing matters of public interest the possibility of prejudice to a litigant may be required to yield to other and superior considerations. The discussion of public affairs and the denunciation of public abuses, actual or supposed, cannot be required to be suspended merely because the discussion or the denunciation may, as an incidental but not intended by-product, cause some likelihood of prejudice

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to a person who happens at the time to be a litigant. It is well settled that a person cannot be prevented by process of contempt from continuing to discuss publicly a matter which may fairly be regarded as one of public interest, by reason merely of the fact that the matter in question has become the subject of litigation, or that a person whose conduct is being publicly criticised has become a party to litigation either as plaintiff or as defendant, and whether in relation to the matter which is under discussion or with respect to some other matter."

Lord Reid made certain observation upon which Mr. Baig relied, i.e. at page 300 which is as follows:

"I think that anything in the nature of prejudgment of particular case or of specific issues in it is objectionable, not only because of its side effects on that particular case but also because of its side effects which may be far reaching. Responsible "mass media" will do their best to be fair, but there will also be ill-informed, slapdash or prejudiced attempts to influence the public. If people are led to think that it is easy to find the truth, disrespect for the processes of the law could follow, and, if mass media are allowed to judge, unpopular people and unpopular causes will fare very badly. Most cases of prejudging of issues fall within the existing authorities on contempt. I do not think that the freedom of the press would suffer; and I think that the law would be clearer and easier to apply in practice if it is made a general rule that it is not permissible to prejudge issues in pending cases." (Emphasis supplied)

Lord Diplock stated at page 309 of the report that the due administration of justice requires first that all

citizens should have unhindered access to the constitutionally established courts of criminal or civil jurisdiction for the determination of disputes as to their legal rights and liabilities; secondly, that they should be able to rely upon obtaining in the courts the arbitrament of a tribunal which is free from bias against any party and whose decision will be based upon those facts only that have been proved in evidence adduced before it in accordance with the procedure adopted in courts of law; and thirdly that, once the dispute has been submitted to a court of, law, they should be able to rely upon their being no usurpation by any other person of the function of that court

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to decide it according to law.

Lord Simon of Glaisdale at page 315 emphasised as follows:

"The first public interest involved is that of freedom of discussion in democratic society. People cannot adequately influence the decisions which affect their lives unless they can be adequately informed on facts and arguments relevant to the decisions. Much of such fact-finding and argumentation necessarily has to be conducted vicariously, the public press being a principal instrument. This is the justification for investigative and campaign journalism. Of course it can be abused--but so may anything of value. The law provides some safeguards against abuse; though important ones (such as professional propriety and responsibility) lie outside the law. " (EmPhasis supplied)

Lord Cross of Chelsea at page 322 of the report observed as follows:

"Contempt of Court" means an interference with the administration of justice and it is unfortunate that the offence should continue to be known by a name which suggests to the modern mind that its essence is a supposed affront to the dignity of the court. Nowadays when sympathy is readily accorded to anyone who defies constituted authority the very name of the offence predisposes many people in favour of the alleged offender. Yet the due administration of justice is something which all citizens, whether on the left or the right or in the center, should be anxious to safeguard. When the alleged contempt consists in giving utterance either publicly or privately to opinions with regard to or connected with legal proceedings, whether civil or criminal, the law of contempt constitutes an interference with freedom of speech, and I agree with my noble and learned friend that we should maintain the rule that any "prejudging" of issues, whether of fact or of law, in pending proceedings--whether civil or criminal--is in principle an interference with the administration of justice although in any particular case the offence may be so trifling that to bring it to the notice of the court would be unjustifiable."

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Mr. Baig emphasised that there is an inherent jurisdiction to restrain by injunction any publication that interferes with a fair trial or a pending case or with the administration of justice in general. He further urged that trial of newspaper in sub judice matter is wrong. Publication is permissible provided it does not amount to prejudgment or prejudice of a matter in Court. Liberty or freedom of Press must subserve the due administration of justice. He submitted that there is need to continue the injunction because contribution to the debentures could be withdrawn as the final allotment has not yet been made.

On the other hand, Mr. Diwan submitted that there is no jury trial involved here and no likelihood of the trial being prejudiced because trial is by professionally trained

Judges. Public have a right to know about this issue of debentures which is a matter of public concern. It affects the public interest, so public have a right to know and the newspapers have an obligation to inform.

We must see whether there is a present and imminent danger for the continuance of the injunction. It is difficult to lay down a fixed standard to judge as to how clear, remote or imminent the danger is. The order passed on l9th August, 1988 as reiterated on 25th August, 1988 stated that there must be no legal impediment in the issue of the debentures or in the progress of the debentures, taking into account the overall balance and convenience and having due regard to the sums Of money involved and the progress already made. It is necessary to reiterate that the continuance of this injunction would amount to interference with the freedom of Press in the form of preventive injunction and it must, therefore, be based on reasonable grounds for the sole purpose of keeping the administration of justice unimpaired. In the words of Mr. Justice Brandeis of the American Supreme Court concurring in Charlotte Anita Whitney . People of the State of California, 71 L. Edn. 109S at 1106, there must be reasonable round to believe that the danger apprehended is real and imminent. This test we accept on the basis of balance of convenience. This Court has not yet found or laid down any formula or test to determine how the balance of convenience in a situation of this type, or how the real and imminent danger should be judged in case of prevention by injunction of Publication of an article in a pending matter. In the context of the facts of this case we must judge whether there is such an imminent danger which calls for continuance of the injunction. Incidentally, it may be mentioned that the so-called informed Press may misrepresent the Court proceedings. We must remember that the people at large have a right to know in order to be able to take part in a participatory development in the

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industrial life and democracy. Right to Know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age in our land under Article 21 of our Constitution. That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take upon the responsibility to inform.

The question of contempt must be judged in a particular situation. The process of due course of administration of justice must remain unimpaired. Public interest demands that there should be no interference with judicial process and the effect of the judicial decision should not be pre-empted or circumvented by public agitation or publications. It has to be remembered that even at turbulent times through which the developing countries are passing, contempt of court means interference with the due administration of justice.

In the peculiar facts of this case now that the subscription to debentures has closed and, indeed, the debentures have been over-subscribed, we are inclined to think that there is no such imminent danger of the subscription being withdrawn before the allotment and as to make the issue vulnerable by any publication of article. On a balance of convenience, we are of the opinion that continuance of injunction is no longer necessary.

In this peculiar situation our task has been difficult and complex. The task of a modern Judge, as has been said, is increasingly becoming complex. Furthermore, the lot of a democratic Judge is heavier and thus nobler. We cannot escape the burden of individual responsibilities in a

particular situation in view of the peculiar facts and circumstances of the case. There is no escape in absolute. Having regard however, to different aspects of law and the ratio of the several decisions, by which though we are not bound, except the decisions of this Court referred to hereinbefore, about which we have mentioned, there is no decision dealing with this particular problem, we are of the opinion that as the Issue is not going to affect the ,general public or public life nor any injury is involved, it would be proper and legal, on an appraisal of the balance of convenience between the risk which will be caused by the publication of the article and the damage to the fundamental right of freedom of knowledge of the people concerned and the obligation of Press to keep people informed, that the injunction should not continue any further.

In the aforesaid view of the matter, we direct that there is no further need for the continuance of the injunction.

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Publications, if any, however, would be subject to the decision of the Court on the question of the contempt of court, namely, prejudging the issue and thereby interfering with the due administration of justice. Preventive remedy in the form of an injunction is no longer necessary. Whether punitive remedy will be available or not. will depend upon tacts and the decision of the matter after ascertaining the consent or refusal of the Attorney-General.

The application for the present purpose is, therefore. disposed of with the direction that the injunction against publication in the order dated 25th August, 1988, need not further continue.

RANGANATHAN, J. I agree. I would, however, like to add a few words, having regard to the range of the arguments addressed before us.

The principal ground urged in support of the prayer for the continuance of the injunction already granted is that it was very restricted in terms and injuncted only the publication of articles, comments and reports on the validity or legality of the various consents, approvals and permissions obtained by Reliance in relation to the debenture issue. This is precisely the subject matter of the writ petitions and suit withdrawn to this Court in the Transfer Petitions. It is urged, strongly relying on the speeches of the various Law Lords in the Thalidomide case Attorney General v. Times Newspapers Limited, 11974] A.C. 273 the observations of this Court in Re: P. C. Sen, [1969] 2 SCR 649 and the provision contained in S. 2(c)(iii) of the Contempt of Courts Act, 1971, that any such publication would tend to interfere with the fair administration of justice and so constitute criminal contempt and would be liable not merely to punitive action after publication but also to stoppage by a preventive order before publication. On the other hand, for the respondents, it is contended that, in the decisions relied upon for the petitioners, the publications alleged to constitute contempt were of such a nature that they were seen to affect the course of actions actually pending in courts, that even otherwise the decision of ; the House of Lords has been widely criticised and should not be followed and that the views expressed by Lord Denning, M.R. in Attorney General v. BBC, [1979 3 AER 45--though reversed by the House of Lords in 1981 A.C. 303--and by the American Courts in Bridges v. State of California, 86 L. Ed. 252 and in John D. Pennekamp v. Stale of Florida, 90 L. Ed. 1295 should be preferred as more appropriate to present day conditions, particularly in the context of the

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freedom of press guaranteed under Act 19(1)(a) of the Constitution of India, and also incorporated in Article 19 of the Universal Declaration of Human Rights, 1948, Art. 10 of the European Convention of Human Rights and Art. 19 of the International Convention on Civil and Political Rights, 1966. I do not think we are called upon to decide this wider question at this stage. As already pointed out, the contempt petition filed by the petitioners in respect of the article published by the respondents on 25.8.88 has not been taken cognisance of by us in the absence of the consent of the Learned Attorney General. At the moment we have to assess whether any article that may be published by the respondents, even assuming that it touches on the issues of validity or legality of the approvals, consents and permissions referred to in our order of 19.8.88, will so clearly and obviously prejudice or tend to prejudice the course of the proceedings, now pending in this Court, that such publication should be injuncted by, what the respondents describe as, a "gagging order". I agree with my learned brother that there is no such imminent danger or apprehension in the circumstances present here, as calls for such an extreme step curtailing the freedom of a newspaper. It is sufficient, I think, to clarify, if at all any such clarification were needed, that should any newspaper publish any such matter, it will be doing so at its own risk and subject to its liability for being proceeded against by the petitioner or others for defamation, contempt of court or otherwise.

A somewhat narrower ground, as I understand it, put forward for the petitioner was that the grant of ex parte injunction by us on 19.8.88 and 25.8.88 was the result of our prima facie conclusion that consents, approvals or permissions from the concerned authorities for the debenture issue had been duly and validly obtained by the petitioner and that any article, liberty for the publication of which is sought for by the vacation of the interim order, would contain views contrary to or inconsistent with the prima facie view of this Court. Persons reading the newspaper might be taken in by and believe in the statements made by the respondents in such articles and, if they start acting upon such beliefs, then the effect of the order of this Court, upholding, prima facie, the validity of the debenture issue on the above aspects would stand undermined. In my view this contention is untenable. I do not think that the contention proceeds on a correct analysis of the ratio of our order dated 25.8.88 or the earlier order dated 19.8.88. It should be remembered that the proceedings, which gave rise to the transfer applications, were writ petitions and a suit filed in various courts challenging inter alia, the validity or regularity Of the debenture issue of the petitioner company. If these matters had been heard by the

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various High Courts or other subordinate courts, there was a possibility that one or more of the courts, satisfied with the prima facie tenability of the contentions of the petitioners therein might issue an order staying the debenture issue pending disposal of the suit or writ petition. In fact, also, it seems that interim orders of this nature had been obtained. The petitioner was apprehensive that, if any such interim order was passed, all the time, labour and money expended in floating the debenture issue might be nullified at the last moment. The petitioner, therefore, moved for the transfer of all the various proceedings to this Court and for an interim order permitting it to issue the debentures as planned without let

or hindrance and without being hampered by any interim stay order from any court. I do not think it would be correct to say that, when we passed the order dated C 19.8.88, we formed any prima facie opinion on the question whether the debenture issue had been validly approved or consented to by the various authorities. Though it is true that there were averments in the transfer petitions stating that all the legal formalities had been properly complied with, what predominantly influenced us to pass the order dated 19.8.88 was that, even assuming, prima facie, as contended in the various writ petitions and suits, that there could be some doubt regarding the validity or otherwise of the consent orders etc., the restraint by any court or tribunal on the issue of debentures at a late stage might prove catastrophic, and cause irreparable loss or damage, to the petitioner. We were also of the opinion that. pending adjudication on the issue of validity raised in the various suits, the balance of convenience required that there should be no order of any court or tribunal staying the debenture issue.

Now, 1 shall turn to the circumstances in which the order dated 25.8.88 were passed. Subscriptions to the debenture issue were open between 22nd August, 88 and 31st August, 88. It was during this interim period that the first article was published by the respondent newspaper attacking the validity of the consent granted by the Controller of Capital Issues to the issue of the debentures. I do not go into the merits of the article. But, when it was pointed out to us that this article had been published at a very crucial time when the subscription to the issue had started flowing in, we saw that it would have the indirect effect of achieving exactly what this Court wanted to prevent by its order dated 19.8.88. Though this Court. in view of the allegations raised in the transfer petitions, referred in its order only to stay orders from courts restraining the progress of the debenture issue, it was the intention of this Court that the debenture issue should go ahead without any obstacles placed in the way of the collection of

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subscriptions therefor on the grounds on which stay orders had been sought to be obtained from courts. The article published by the respondents, though not violative of the terms of the injunction granted by this Court, could have the effect of circumventing the order of this Court and rendering it ineffective. It had, prima facie, a tendency to affect the efficacy of, and defeat the object with which this Court had passed the interim order dated 19.8.88. This is the reason why we passed the second order dated 25.8.88 and also declined to modify or vary it at 1he request of the counsel for the newspapers on the next day. I am of opinion that the said order was rightly passed and that the contention of learned counsel for the respondent that no such injunction ought to have been granted at all is not acceptable.

The position today, however, has radically changed. We are told that the issue has been over-subscribed. In my opinion, this stage having been completed, there is no necessity to continue the interim order passed by us on the 25th of August, 1988.

Counsel for the petitioner, however, vehemently contended that there has been no material change in the situation. He submitted that many lakhs of people have subscribed to the debentures and, within a strict time schedule laid down by the statute, the petitioner is bound to scrutinise all the applications, decide on the issue of

allotment and send out allotment letters or refund the application moneys received. It is submitted that even at this stage there is a potential danger that continued publication of articles by the respondents attacking the validity of the debenture issue will have the effect of causing a large number of applicants for the debentures to panic and to seek refund of the application moneys already paid by them. In fact, it is said, a writ petition of that nature has already been filed in the Allahabad High Court. Counsel submitted that, in a sensitive matter like issue of debentures, even the request for return of money by any one person could trigger off several applications of the same type and that the danger, that the petitioner company might be asked to refund moneys sent in respect of subscriptions already made on the basis of the allegations in such articles as the one already published, is real and imminent. He submitted that it is therefore as much necessary today to continue the injunction as it was when it was granted on the 25th of August, 1988.

I have given careful thought to this contention urged on behalf of the petitioner company. It is of course difficult in the absence of any reliable data for any person to come to a conclusion as to how exactly the publication of

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articles of the type published by the respondents would cause prejudice in the manner contended for by the petitioner. It seems to me, however, that the danger apprehended by the petitioner company is not so real or substantial as to warrant the continuance of the injunction order passed by us on the 25th of August, 88. Even if, for the purpose of argument, one were to assume that such claims for refund will be made, they cannot straightaway harm the interests of the petitioner company. There is no possibility that, pending determination of the issues raised, any court will order interim relief to such applicants by way of grant of such refunds. The petitioner will be liable to make any such refund only if it is ultimately decided by this court or any other court that the issue of debentures is invalid and that the application moneys have to be refunded. That of course the company will have to do in any event. There is, however, no immediate cause for apprehension on the part of the petitioner that the publication of any such article could abort the debenture issue in the manner it could have done before 31.8.88. I, therefore, agree that there is no justification for the continuance of the interim order dated 25.8.88 any longer.

R.S.S.