Tara Prasad Singh V. Union of India, 1980

Supreme Court of India, Judgment of 7 May 1980

PETITIONER:
TARA PRASAD SINGH ETC. ETC.

Vs.

RESPONDENT:
UNION OF INDIA & OTHERS

DATE OF JUDGMENT07/05/1980

BENCH:
CHANDRACHUD, Y.V. ((CJ)
BENCH:
CHANDRACHUD, Y.V. ((CJ)
BHAGWATI, P.N.
KRISHNAIYER, V.R.
SARKARIA, RANJIT SINGH
UNTWALIA, N.L.
KAILASAM, P.S.
TULZAPURKAR, V.D.

CITATION:
1980 AIR 1682 1980 SCR (3)1042
1980 SCC (4) 179
CITATOR INFO :
RF 1980 SC2031 (2)
O 1983 SC 239 (2)
E 1984 SC1130 (49)
RF 1986 SC2123 (6)
D 1989 SC1629 (23)

ACT:
Coal Mines (Nationalisation) Amendment Act, 67 of 1976-Legislative competence of the Parliament to enact Nationalisation Amendment Act-Whether the Amending Act is violative of the provisions of Articles 14, 19(1)(f), 19(1)(g) and 31 of the Constitution of India-Applicability of the Act to leases of composite mines in which there are alternate seams of coal and fire clay.

HEADNOTE:
Article 246(1) of the Constitution of India confers upon the Parliament, notwithstanding anything contained in clauses 2 and 3 of that Article, the exclusive power to make laws with respect to any of the matters enumerated in List I of the Seventh Schedule, called the Union List, Clause 2 of Article 246 deals with the power of the Parliament and the State Legislatures to make laws with respect to any of the matters enumerated in the Concurrent List, while clause 3 deals with the power of the State Legislatures to make laws with respect to any of the matters enumerated in the State List.

Entry 23 List II, Schedule VII of the Constitution read with Article 246(3) confers legislative power on the State Legislatures in respect of "Regulation of mines and mineral development" but that power is "subject to the provisions of List I with respect to regulation and development under the control of the Union". Entry 54 List I enables Parliament to acquire legislative power in respect of "Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public

interest". Entry 24 List II relates to "Industries subject to the provisions of entries 7 and 52 of List I". Entry 7, List I, relates to Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war. Entry 52, List I, enables Parliament to acquire legislative power in respect of "Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest".

Pursuant to these powers the Parliament enacted the Industries (Development & Regulation) Act, 65 of 1951, the Mines Act 35 of 1952, the Mines and Minerals (Regulation and Development) Act 67 of 1957, the Coking Coal Mines (Emergency Provisions) Act, 64 of 1971, the Coking Coal Mines (Nationalisation) Act, 36 of 1972, the Coking Coal Mines (Nationalisation) Amendment Act, 56 of 1972, the Coal Mines (Taking over of Management) Act, 15 of 1973 and the Coal Mines (Nationalisation) Act 26 of 1973. Thereafter the Coal Mines (Nationalisation) Amendment Act 67 of 1976 was passed, the objects and reasons being:

1043

> "After the nationalisation of coal mines, a number of persons holding coal mining leases unauthorisedly started mining of coal in the most reckless and unscientific manner without regard to considerations of conservation, safety and welfare of workers. Not only were they resorting to slaughter mining by superficial working of outcrops and thereby destroying a valuable national asset and creating problems of water-logging fires, etc. for the future development of the deeper deposits, their unsafe working also caused serious and fatal accidents. They were making larger profits by paying very low wages, and by not providing any safety and welfare measures. Thefts of coal from adjacent nationalised mines were also reported after the commencement of these unauthorised operations which had shown an increasing trend of late. Areas where illegal and unauthorised operations were carried on, were without any assessment of reserves in regard to quality and quantity of coal which could be made available after detailed exploration work was undertaken and results analysed. No scientific exploitation of these deposits could be undertaken in the nationalised sector without these details. It was, therefore, considered that it would not be appropriate either to nationalise these unauthorisedly worked mines after taking them over under the Coal Mines (Taking over of Management) Act, 1973 or to get the concerned mining leases prematurely terminated and regranted to Government Companies under the Mining and Minerals (Regulation and Development) Act, 1957. In view of the policy followed by the Central Government that the Coal Industry is to be in the nationalised sector, it was decided that the Coal Mines Nationalisation Act, 1973 should be enacted to provide for termination of all privately held coal leases except those held by privately owned steel companies, so that it may be possible for the Central Government, Government Company or Corporation to take mining leases where necessary, after necessary exploration has been made as to the extent of the deposits of coal etc."

The petitioners who were the lessees of coal mines by the State Government, being aggrieved by the provisions of the Amendment Act 67 of 1976, challenged the competence of Parliament to enact the Amendment Act and also the validity of the Act and contended:

(a) Laws made in the exercise of power conferred by Entry 54 must stand the test of public interest because the very reason for the Parliament acquiring power under that entry is that it is in public interest that the regulation of mines and minerals should be under the control of the Union. In other words, Entry 54 confers a legislative power which is purposive, that is to say, any law made in the exercise of the power under Entry 54 must be designed to secure the regulation and development of coal mines in public interest or else it must fail. The Nationalisation Amendment Act is not such a law which Parliament can pass under Entry 54 because, that Act not only terminates all leases but it destroys the contracts of service of thousands of workmen, and indeed it destroys all other contracts and all securities for moneys lent without even so much as making a provision for priorities for the payment of debts. Since the Nationalisation Amendment Act terminates all leases, it is a complete negation of the integrated scheme of taking over the management of mines, acquisition of the rights of lease-holders and the running of the mines.

(b) The word 'Regulation' in Entry 54 does not include 'Prohibition'. 'Regulation' should not also be confused with the expression 'Restrictions' occur-
1044
ring in Article 19(2) to (6) of the Constitution. In the very nature of things, there cannot be a power to prohibit the regulation and development of mines and minerals'. Section 3(4) inserted by the Nationalisation Amendment Act imposes no obligation on the Central Government or any other authority to obtain a mining lease and work the mines, the leases in respect of which stand terminated under the Act. The words "it shall be lawful" for the Central Government to obtain a lease are words of discretionary power which create no obligation. They only enable the Central Government to obtain a lease, making something legal and possible for which there would otherwise be no right or authority to do. Section 3(4) does not confer a power coupled with a duty; it merely confers a faculty or power. No Court can by a Writ of Mandamus or otherwise compel the Central Government to obtain a lease of a coal mine and to run it under any of the provisions of the Nationalisation Amendment Act.

(c) Where the Legislative power is distributed among different legislative bodies, the Legislature may transgress its legislative power either directly or manifestly, or covertly or indirectly. In the instant case, the exercise of power by the Parliament is colourable because although in passing the Nationalisation Amendment Act it purported to act within the limits of its legislative power, in substance and in reality it transgressed that power, the transgression being veiled by what appears on proper examination to be a mere pretence or disguise.

(d) In order to tear off the veil or disguise and in order to get at the substance of the law behind the form, the Court must examine the effect of the legislation and take into consideration its object, purpose and design. Where the legislative entry is purposive, like Entry 54 of the Union List, it is the object or purpose of the legislation which requires consideration. The purpose for which the Parliament is permitted to acquire legislative power of Regulation and Development of mines must dictate

the nature of law made in the exercise of that power because public interest demands that power. Under the provisions of the Nationalisation Amendment Act, not only is there no obligation on the Central Government to run a mine, but there is no obligation imposed upon it even to carry out prospecting or investigation in order to decide whether a particular mine should be worked at all. Section 3(4) merely authorises the Central Government to apply for "a prospecting licence or a mining lease in respect of the whole or part of the land covered by the mining lease which stands determined". A close examination of the Act thus discloses that far from providing for regulation and development of coal mines, it totally prohibits all mining activity even if the State Government wants to run a mine. It does not impose prohibition as a step towards running the mines since there is neither any obligation to carry out the prospecting or investigation nor to run the mines.

(e) The Nationalisation Amendment Act runs directly counter to the whole policy of the Coal Mines (Nationalisation) Act of 1973, to acquire and run the mines. The Parent Act becomes a dead letter in regard to several of its provisions as a result of the Amendment Act. It only adopts a colourable device to amend the Nationalisation Act while completely negativing it in fact. The Act therefore lacks legislative competence and is, in the sense indicated, a colourable piece of legislation.

1045

(f) Article 31(A)(1)(e) only lifts a restriction on the legislative competence in so far as violation of fundamental rights is concerned. The most benign motive cannot make a law valid if the legislative competence is lacking.

(g) Under Article 31(1) of the Constitution, no person can be deprived of his property without the authority of law. Article 31A(1) which exempts the laws mentioned in clauses (a) to (e) from invalidity under Articles 14, 19 and 31 does not dispense with the necessity of the authority of law for depriving a person of his property, because the opening words of Article 31A(1) are "..... no law providing for ....." matters mentioned in clauses (a) to (e) shall be deemed to be void as offending Articles 14, 19 and 31.

(h) The Nationalisation Amendment Act confers no authority to terminate a composite lease for mining coal and fire-clay. The right to mine fire-clay is given to the petitioner by law and it can only be taken away by law.

(i) Though the Nationalisation Amendment Act does not in terms prohibit the petitioner from mining fireclay, the effect of the law, in a practical business sense, is to prohibit the petitioner from mining fireclay and, therefore, the position is the same as though the Act had enacted the prohibition in express terms. The Court must look at the direct impact of the law on the right of the party, and if that impact prohibits him from exercising his right, the fact that there is no express prohibition in the Act is immaterial.

(j) The Nationalisation Amendment Act by making it punishable, to mine coal, in substance and in a practical business sense, prohibits the petitioner from mining fireclay. For this prohibition the Amendment Act does not provide, and therefore, there is no authority of law for it. Coal and fireclay are two distinct minerals as shown by Schedule II to the Mines and Minerals (Regulation and Development) Act, 67 of 1957 wherein item 1 is coal and item 15 is fireclay. The dictionary meanings of coal and fireclay also show that they are two distinct minerals.

(k) The Nationalisation Amendment Act affects, in substance, two kinds of transfers: the transfer of the lease-hold interests of the lessees in favour of the lessor, namely the State; and the transfer of the mining business of the lessees in favour of the Central Government. Since these transfers amount to acquisition within the meaning of Article 31(2), the Act is open to challenge under Articles 14, 19(1)(g) and 31 of the Constitution.

(l) The Nationalisation Amendment Act is open to challenge under Article 14 because lessees who fall within that Act are patently discriminated against in comparison with lessees of other mines, both coking and non-coking, who were paid compensation when their property was taken over first for management under the Management Acts and then under the Nationalisation Acts.

(m) The Nationalisation Amendment Act is open challenge under Article 19(1)(g) because the prohibition against lessees from carrying on their business and the transfer of their business, in substance, to the Central Government or a Company is an unreasonable restriction on the right of the lessees to hold their lease-hold property and to carry on their business of mining.

(n) The Act is open to challenge under Article 31 because no provision is made for the payment of any amount whatsoever to the lessees whose mining business is taken over under the Act. No public purpose is involved either in the
1046
termination of the lessees' interest or in the acquisition of their business. Expropriation without payment of any amount requires a very heavy public purpose.

(o) Since no provision whatsoever is made for the payment of any amount to the lessees whose leases are terminated, the Nationalisation Amendment Act is not a 'Law' within the meaning of Article 31(2) and therefore Article 19(1)(f) is attracted.

(p) The Act is not saved from the challenge of Articles 14, 19 and 31 by Article 31A (1) (e) because that Article provides for extinguishment which does not amount to acquisition by the State. If extinguishment amounting to acquisition was intended to be saved under Article 31A(1) (e), the subject matter dealt with by clause (e) would have been included in clause (a) of that Article.

Dismissing all the Writ Petitions except Writ Petitions Nos. 111, 178, 220, 221, 257, 352, 600 & 1130-1134/77 which are allowed in part, the Court,

^

HELD : (1) The provisions of the Amendment Act 67 of 1976 are not a mere facade for terminating mining leases without any obligation in the matter of regulation of mines and mineral development. [1071H, 1072A]

Grating that Entry 54, List I is purposive since it qualifies the power to pass a law relating to "Regulation of Mines and Mineral Development" by the addition of a restrictive clause, "to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest", the provisions of the Nationalisation Amendment Act show that they are designed to serve progressively the purpose of Entry 54. [1972 A-B]

The Coal Mines (Nationalisation) Act was passed in order to provide for the acquisition and transfer of the right, title and interest of the owners in respect of the Coal mines specified in the Schedule to that Act. This was done with a view to re-organising and reconstructing such

coal mines so as to ensure the rational, co-ordinated and scientific development and utilisation of coal resources consistent with the growing requirements of the country. The high purpose of that Act was to ensure that the ownership and control of such resources are vested in the State and thereby so distributed as best to subserve the common good. [1072 D-F]

The several provisions of the Nationalisation Amendment Act, are, (1) by section 3(3) (a) of the Coal Mines (Nationalisation) Act, 1973 which was introduced by the Nationalisation Amendment Act, no person other than those mentioned in clauses (i) to (iii) can carry on coal mining operations after April 29, 1976, being the date on which section 3 of the Nationalisation Amendment Act came into force; (2) by section 3 (3) (b) all mining leases and sub-leases stood terminated except those granted before April 29, 1976 in favour of the Central Government, a Government company or corporation owned, managed or controlled by the Central Government; (3) section 3(3) (c) prohibits the granting of a lease for winning or mining coal in favour of any person other than the Government, a Government company or a corporation of the above description provided that a sub-lease could be granted by these authorities to any person if the two conditions mentioned in the proviso are satisfied; and (4) when a mining lease stands terminated under section 3(3), "it shall
1047
be lawful" for the Central Government or the Government company or the corporation owned or controlled by the Central Government to obtain a prospecting licence or a mining lease in respect of the whole or part of the land covered by the mining lease which stands terminated. Section 4 of the Nationalisation Amendment Act introduced an additional penal provision in the parent Act. The provisions of Ss. 3 and 4 are not a direct negation of the principles of the parent Act and they do not destroy the integral scheme of taking over the management of mines, of acquiring the rights of lease-holders and continuing to run the mines. On the contrary, the Nationalisation Amendment Act is manifestly in furtherance of the object of nationalisation mentioned in the preamble to the parent Act and effectuates the purpose mentioned in sections 3(1) and 3(2) of that Act by the addition of a new sub-section, sub-section (3), which terminates all coal mining leases and sub-leases except those referred in sub-section (3) (b). The circumstance that the marginal note to section 3 and the title of Chapter II of the Nationalisation Act are not amended by the Nationalisation Amendment Act, despite the addition of a new sub-section, is of little or no consequence. That sub-section is a logical extension of the scheme envisaged by the original sub-sections (1) and (2) of section 3. [1073 C-H, 1074A-B]

2. Besides, marginal notes to the sections of a statute and the titles of its chapters cannot take away the effect of the, provisions contained in the Act so as to render those provisions legislatively incompetent, if they are otherwise within the competence of the legislature to enact. One must principally have regard to the object of an Act in order to find out whether the exercise of the legislative power is purposive, unless, of course, the provisions of the Act show that the avowed or intended objects is a mere pretence for covering a veiled transgression committed by the legislative upon its own powers. Whether a particular object can be successfully achieved by an Act, is largely a matter of legislative policy. [1074 B-D]

3. The Nationalisation Amendment Act needs no preamble, especially when it is backed up by a statement of objects and reasons. Generally, an amendment Act is passed in order to advance the purpose of the parent Act as reflected in the preamble to that Act. Acquisition of coal mines, is not an end in itself but is only a means to an end. The fundamental object of the Nationalisation Act as also of the Nationalisation Amendment Act is to bring into existence a state of affairs which will be congenial for regulating mines and for mineral development. In regard to the scheduled mines, that purpose was achieved by the means of acquisition. In regard to mines which were not included in the Schedule, the same purpose was achieved by termination of leases and sub-leases and by taking over the right to work the mines. Termination of leases, vesting of lease-hold properties in the State Governments and the grant of leases to the Central Government or Government Companies are together the means conceived in order to achieve the object of nationalisation of one of the vital material resources of the community. [1074 D-G]

4. Section 18 of the Mines and Mineral (Regulation and Development) Act 67, 1957 contains a statutory behest and projects a purposive legislative policy. The later Acts on the subject of regulation of mines and mineral development are linked up with the policy enunciated in section 18. Therefore, nothing contained in the later analogous Acts can be construed as in derogation of the principle enunciated in section 18 of the Mines and Minerals (Regulation and Development) Act, 67 of 1957, which provides that it shall be the duty of the
1048
Central Government to take all such steps as may be necessary for the conservation and development of minerals in India. Therefore, even in regard to matters falling under the Nationalisation Amendment Act which terminates existing leases and makes it lawful for the Central Government to obtain fresh leases, the obligation of section 18 of the Act of 1957 will continue to apply in its full rigour. [1074 G-H, 1075 A-B]

5. Entry 54 refers to two things : (1) regulation of mines and (2) mineral development. It is true that the Entry is purposive, since the exercise of the power under Entry 54 has to be guided and governed by public interest. But neither the power to regulate mines nor the power to ensure mineral development postulates that no sooner is a mining lease terminated by the force of the statute, then the Central Government must begin to work the mine of which the lease is terminated. It is possible that after the Nationalisation Amendment Act came into force, there was a hiatus between the termination of existing leases and the granting of fresh ones. But, the Nationalisation Amendment Act does not provide that any kind of type of mine shall not be developed or worked. Conservation, prospecting and investigation, developmental steps and finally scientific exploitation of the mines and minerals, is the process envisaged by the Nationalisation Amendment Act. It is undeniable that conservation of minerals, which is brought about by the termination of existing leases and subleases, is vital for the development of mines. A phased and graded programme of conservation is in the ultimate analysis one of the most satisfactory and effective means for the regulation of mines and the development of minerals. [1075 D-G]

6. The Nationalisation Amendment Act is not destructive of the provisions of the Parent Act. The destruction which the Nationalisation Amendment Act brings about is of the

lease or the sub-lease and not of its subject matter, namely, the mine itself. In terminating the lease of a house one does not destroy the house itself. It may be arguable that prohibiting the use of the house for any purpose whatsoever may, for practical purposes, amount to the destruction of the house itself. The Nationalisation Amendment Act neither contains provisions directed at prohibiting the working of mines, the leases in respect of which are terminated. A simple provision for granting sub-leases shows that the object of the Nationalisation Amendment Act is to ensure that no mine will lie idle or unexplored. Interregnums can usefully be utilised for prospecting and investigation. They do not lead to destruction of mines. In fact, it is just as well that the Amendment Act does not require the new leases to undertake an adventure, reckless and thoughtless, which goes by the name of 'scratching of mines', which ultimately results in the slaughtering of mines. [1075H, 1976A-D]

Natural resources, however, large are not inexhaustible, which makes it imperative to conserve them. Without a wise and planned conservation of such resources, there can neither be a systematic regulation of mines nor a scientific development of minerals. The importance of conservation of natural resources in any scheme of regulation and development of such resources can be seen from the fact that the Parliament had to pass in August 1974 an Act called the Coal Mines (Conservation and Development) Act, 28 of 1974, in order, principally, to provide for the conservation of coal and development of coal mines, Section 4(1) of that Act enables the Central Government, for the purpose of conservation of coal and for the development of coal mines, to exercise such powers and take or cause to be taken such measures as it may be necessary or proper or as may be prescribed. By section 5(1), a duty is cast on the
1049
owners of coal mines to take such steps as may be necessary to ensure the conservation of coal and development of the coal mines owned by them. Measures taken for judicious preservation and distribution of natural resources may involve restrictions on their use and even prohibition, upto a degree, of the unplanned working of the repositories of such resources. [1076 D-F, 1077 B]

Attorney-General for Ontario v. Attorney-General for Canada [1896] A.C. 348, 363; Municipal Corporation of City of Toronto v. Virgo [1896] A.C. 88 explained and referred to.

7. Section 3(4) of the Act uses an enabling or permissive expression in order that regulation of mines and mineral development may be ensured after a scientific prospecting, investigation and planning. It is doubtless that, in the language of Lord Cairns in Julius (1880) 5 Appeal Cases 214, 222, there is something in the nature of the things which the Nationalisation Amendment Act empowers to be done, something in the object for which it is to be done and something in the conditions under which it is to be done which couples the power conferred by the Act with a duty, the duty being not to act in haste but with reasonable promptitude depending upon the nature of the problem under investigation. An obligation to act does not cease to be so merely because there is no obligation to act in an ad-hoc or impromptu manner. It is in the context of a conglomeration of these diverse considerations that one must appreciate why, in section 3(4) which was introduced by the Nationalisation Amendment Act, Parliament used the permissive expression "it shall be lawful". [1078 H, 1079 A-

C]

A broad and liberal approach to the field of legislation demarcated by Entry 54, List I, an objective and practical understanding of the provisions contained in the Nationalisation Amendment Act and a realistic perception of constitutional principles will point to the conclusion that the Parliament had the legislative competence to enact the Nationalisation Amendment Act. [1079 C-D]

Julius v. Bishop of Oxford [1880] 5 Appeal cases 214,222 referred to.

8. The Coking Coal Mines (Nationalisation) Act of 1972 and the Coal Mines (Nationalisation) Act of 1973 cover the whole field of "Coal" which was intended to be nationalised. The titles of the two Acts and the various provisions contained therein show that what was being nationalised was three distinct categories of mines: mines containing seams of coking coal exclusively; mines containing seams of coking coal along with seams of other coal; and mines containing seams of other coal. Though Parliament had power under Article 31A(1)(e) of the Constitution to terminate mining leases without payment of any compensation or 'amount', it decided to nationalise coal mines on payment of amounts specified in the Schedules to the Nationalisation Acts of 1972 and 1973. Besides, even when something apart from coking coal mines was acquired, namely, 'coke oven plants', provision was separately made in section 11 of the Nationalisation Act of 1972, read with the 2nd Schedule, for payment of amounts to owners of coke oven plants. Thus, whatever was intended to be acquired was paid for. This scheme is prima facie inconsistent with the Parliament intending to acquire leasehold rights in other minerals, like fireclay, without the payment of any amount. [1082 B-E]

Coupled with this is the unambiguous wording of section 3(3)(b) and section 3(3)(c) of the Nationalisation Act of 1973 which were introduced therein by
1050
section 3 of the Nationalisation Amendment Act. These provisions carry the scheme of the Nationalisation Acts to their logical conclusion by emphasising that the target of those Acts is coal mines, pure and simple. What stands terminated under section 3(3)(b) is certain mining leases and sub-leases in so far as they relate to the winning or mining of coal. The embargo placed by section 3(3)(c) is on the granting of leases for winning or mining coal to persons other than those mentioned in section 3(3)(a). [1082 E-F, H, 1083-A]

The definition of 'coal mine' in section 2(b) of the Coal Mines (Nationalisation) Act, 1973 has an uncertain import and the scheme of that Act and of the Coking Coal Mines (Nationalisation) Act, 1972 makes it plausible that rights in minerals other than coke and coal were not intended to be acquired under the two Nationalisation Acts. A comparison of the definition of "coal mine" in section 2(b) of the Act of 1973 with the definition of "coking coal mine" in section 3(c) of the Coking Coal Mines (Nationalisation) Act of 1972 makes it clear that whereas in regard to coking coal mines, the existence of any seam of other coal was regarded as inconsequential, the existence of any seam of another mineral was not considered as inconsequential in regard to a coal mine. The definition of coal mine in section 2(b) of the Act of 1973 scrupulously deleted the clause, "whether exclusively or in addition to" any other seam. The same Legislature which added the particular clause in the definition of 'coking coal mine' in the 1973 Act, deleted it in the definition of 'coal mine in

the 1973 Act. In so far as coal mines are concerned, by reason of the definition of coal mine contained in section 2(b) of the Act of 1973, and the definition of coking coal mine in section 3(c) of the Act of 1972 which presents a striking contrast to the definition in section 2(b), composite coal mines, that is to say, coal mines in which there are seams of coal and fireclay do not fall within the scope of the definition of "coal mine" in section 2(b) of the Act of 1973. [1083 A-B, C-E, G-H]

9. The lessees of composite mines, therefore, who hold composite mining leases of winning coal and fireclay, cannot continue their mining operations unabated despite the provisions of the Nationalisation Amendment Act. It is one thing to say that a composite mine is outside the scope of the definition of coal mine in section 2(b) of the Nationalisation Act of 1972 and quite another to conclude therefrom that the other provisions introduced into that Act by the Nationalisation Amendment Act will have no impact on composite leases for winning coal and fireclay. Section 3(3)(a) which was introduced into the parent Act by the Nationalisation Amendment Act provides expressly that on and from the commencement. Of section 3 of the Amendment Act, that is, from April 29, 1976, no person other than those mentioned in clauses (i) to (iii) shall carry on "coal mining operation, in India, in any from." These provisions of sections 3(3)(a) and 30(2) of the parent Act will apply of their own force, whether or not the lessee holds a composite lease for winning coal and fireclay and whether or not the mine is a composite mine containing alternate seams of coal and fireclay. In other words, if a person holding a composite lease can do fireclay mining without mining coal, he may do so. But if he cannot win or mine fireclay without doing a coal mining operation, that is, without winning or mining coal, he cannot do any mining operation at all. If he does so, he will be liable for the penal consequences provided for in section 30(2) of the Nationalisation Act of 1973. The provision contained in section 3(3)(a) totally prohibiting the generality of persons from carrying on coal mining operation in India in any form and the penal provision of section 30(2)

1051

virtually leave with the lessees of composite mines the husk of a mining interest. That they cannot win or mine coal is conceded and, indeed, there is no escape from that position in view of the aforesaid provisions. [1084 B-H, 1085 A]

The lessees of composite mines cannot win or mine fireclay though their composite lease is outside the scope of section 2(b) of the Nationalisation Act of 1973. The lessees of composite mines will, for all practical purposes, have to nurse their deeds of lease without being able to exercise any of the rights flowing from them. On their own showing, they will be acting at their peril if they attempt to win fireclay. If they cannot win fireclay without winning coal, they cannot win fireclay either, even if they hold composite leases under which they are entitled to win coal and fireclay. [1085 C-D]

(10). Though the Parliament provided for the payment of amounts for acquisition of certain interests under the Nationalisation Acts of 1972 and 1973, it did not intent to pay any compensation or amount for the termination of lease-hold rights in respect of composite mines. Mines which have alternate seams of coal and fireclay are in a class by themselves and they appear to be far fewer in number as compared with the coking coal mines and coal mines, properly so called. The authority of law for the termination of the

rights of composite lessees is the provision contained in section 3(3)(a), the violation of which attracts the penal provisions of section 30(2) of the Nationalisation Act of 1973. The Parliament has deprived composite lessees of their right to win fireclay because they cannot do so without winning coal. The winning of coal by the generality of people is prohibited by section 3(3)(a) of the Act of 1973. [1085 E-H]

This is just as well, because Parliament could not have intended that such islands of exception should swallow the main stream of the Nationalisation Acts. Obviously, no rights were intended to be left outstanding once the rights in respect of coking coal mines and coal mines were brought to an end. [1085 G-H]

11. A close and careful examination of the provisions of the Coal Mines (Nationalisation) Act, 1973 and of the amendments made to that Act by Nationalisation Amendment Act makes it clear that by the Nationalisation Amendment Act, neither the petitioners' right to property has been acquired without the payment of any amount nor they have been unreasonably deprived of their right to carry on the business of mining. [1087 E-F]

The Coal Mines (Nationalisation) Act, 1973 nationalised coal mines by providing by section 3(1) that on the appointed day, that is on May 1, 1973, the right, title and interest of the owners in relation to the coal mines specified in the Schedule shall stand transferred to, and shall vest absolutely in, the Central Government free from all incumbrances. The scheduled mines, 711 in number and situated in reputed coal bearing areas, were the ones which were engaged openly, lawfully and uinterruptedly in doing coal mining business. Since it was possible to ascertain and verify the relevant facts pertaining to these undertakings, they were taken over on payment of amounts mentioned in the Schedule to the Act, which varied from mine to mine depending upon the valve of their assets, their potential and their profitability. In the very nature of things, the list of mines in the Schedule could not be exhaustive because there were, and perhaps even now there are, unauthorised mines worked by persons who did not possess the semblance of a title or right to do mining business. Persons falling within that category cannot cite the Constitution as their charter

1052

to continue to indulge in unauthorised mining which is unscientific, unsystematic and detrimental to the national interest by reason of its tendency to destroy the reserve of natural resources. But alongside these persons, there could conceivably be mine operators who may have been doing their business lawfully but who were not easily or readily identifiable. Section 3(2) of the Nationalisation Act, 1973 made provision for taking over the management of such mines by declaring for "the removal of doubts" that if, after the appointed day, the existence of any other coal mine comes to the knowledge of the Central Government, the provisions of the Coal Mines (Taking Over of Management) Act, 1973, shall, until that mine is nationalist by an appropriate legislation, apply to such mine. Owners of mines whose mines were not included in the Schedule but whose right, title and interest was to vest eventually in the Central Government under "an appropriate legislation" envisaged by section 3(2) of the Nationalisation Act were, by this method, placed on par with the owners of mines of which the management was taken over under the Coal Mines (Taking Over of Management) Act, 1973. That Act provides by section 7(1) that every

owner of a coal mine shall be given by the Central Government an amount in cash for the vesting in it, under section 3, of the management of such mine. By section 7(2), for every months during which the management of a coal mine remains vested in the Central Government, the amount referred to in sub-section (1) shall be computed at the rate of twenty paise per tone of coal on the highest monthly production of coal from such mine during any month in the years 1969, 1970, 1971 and 1972. The two provisos to that subsection and the other sub-sections of section 7 provide for other matters relating to payment of amounts to the owners of coal mines of which the management was taken over. The Nationalisation Amendment Act carried the scheme of these two Acts to its logical conclusion by terminating the so-called leases and sub-leases which might have remained outstanding. [1087 G-H, 1088 A-G]

Thus, the purpose attained by these Acts is (1) to vest in the Central Government the right of management of all coal mines; (2) to nationalise the mines mentioned in the Schedule; (3) to provide for the taking over of management of coal mines the existence of which comes to the knowledge of the Central Government after the appointed day and lastly (4) to terminate all mining leases. The Management Act and the Nationalisation Act provide for payment of amounts, by no means illusory, to the owners of coal mines whose rights were taken over. In the normal course of human affairs, particularly business affairs, it is difficult to conceive that owners of coal mines who had even the vestige of a title thereto would not bring to the notice of the Central Government the existence of their mines, when such mines were not included in the Schedule to the Nationalisation Act. Those who did not care to bring the existence of their mines to the knowledge of the Central Government, even though amounts are payable under the Management Act for the extinguishment of the right of management did not evidently possess even the semblance of a title to the mines. The claims of lessees, holding or allegedly holding under such owners, would be as tenuous as the title of their putative lessors. [1088 G-H, 1089 A-C]

12. The Nationalisation Amendment Act by section 3(3)(b) undoubtedly terminates all existing leases and sub-leases except those already granted in favour of persons referred to in clauses (i) to (iii) of section 3(3)(a). Similarly section 3(3)(a) imposes an embargo on all future coal mining operations except in regard to the persons mentioned in clauses (i) to (iii). But the
1053
generality of leases which are alleged to have remained outstanding despite the coming into force of the Management Act and the Nationalisation Act, were mostly precarious, whose holders could at best present the familiar alibi that the origin of their rights or of those from whom they derived title was lost in antiquity. Neither in law, nor in equity and justice, nor under the Constitution can these lessees be heard to complain of the termination of their lease-hold rights without the payment of any amount. The provision contained in section 3(3)(b) of the Nationalisation Amendment Act was made ex majore cautela so as not to leave any lease of a coal mine surviving after the enactment of the Management Act and the Nationalisation Act. There was no reasonable possibility of a lawful lease surviving the passing of those Acts; but if, per chance, anyone claimed that he held a lease, that stood terminated under section 3(3)(b). [1089 C-G]

13. Section 3(3)(b) of the Nationalisation Amendment

Act brings about an extinguishment simpliciter of coal mining leases within the meaning of Article 31A(1) (e) of the Constitution. The termination of the mining leases and sub-leases brought about by section 3(3)(b) of the Nationalisation Amendment Act is not a mere pretence for the acquisition of the mining business of the lessees and sub-lessees. The true intent of the Nationalisation Amendment Act was not to "acquire" anyone's business. This would be so whether the word 'acquire' is understood in its broad popular sense or in the narrow technical sense which it has come to possess. Whatever rights were intended to be acquired were paid for by the fixation of amount or by the laying down of a formula for ascertaining amounts payable for acquisition. Having provided for payment of amounts for acquisition of management and ownership rights, it is unbelievable that the legislature resorted to the subterfuge of acquiring the mining business of the surviving lessees and sub-lessees by the device of terminating their leases and sub-leases. The legislative history leading to the termination of coal-mining leases points to one conclusion only that, by and large, every lawful interest which was acquired was paid for; the extinguishment of the interest which survived or which is alleged to have survived the passing of the Management Act and the Nationalisation Act was provided for merely in order to ensure that no loophole was left in the implementation of the scheme envisaged by those Acts. Persons dealt with by section 3(3)(b) of the Nationalisation Amendment Act are differently situated from those who were dealt with by the two earlier Acts, namely, the Management Act and the Nationalisation Act. No violation of Article 14 is, therefore, involved.

[1089 G-1090 D-H, 1091 A-B]

14. The public purpose which informs the Nationalisation Amendment Act is the same which lies behind its two precursors, the Management Act and the Nationalisation Act. The purpose is to re-organise and re-structure coal mines so as to ensure the rational, co-ordinated and scientific development and utilisation of coal resources consistent with the growing requirements of the country. The Statement of Objects and Reasons of the Nationalisation Amendment Act points in the same direction. Public purpose runs like a continuous thread through the well-knit scheme of the three Acts under consideration.

[1091 B-D]

15. Making every allowance in favour of the right to property which was available at the relevant time and having regard to the substance of the matter and not merely to the form adopted for terminating the interest of the lessees and the sub-lessees, the Nationalisation Amendment Act involves no acquisition of the interest of the lessees and the sub-lessees. It merely brings about in

1054

the language of Article 31A(1)(e) "the extinguishment" of their right, if any, to win coal. Whichever right, title and interest was lawful and identifiable was acquired by the Management Act and the Nationalisation Act. And whichever interest was acquired was paid for. Tenuous and furtive interests which survived the passing of those Acts were merely extinguished by the Nationalisation Amendment Act. [1091 F-H, 1092 A]

The interest of the lessees and sub-lessees which was brought to termination by section 3(3)(b) of the Nationalisation Amendment Act does not come to be vested in the State. The Act provides that excepting a certain class of leases and sub-leases, all other leases and sub-leases

shall stand terminated in so far as they relate to the winning or mining of coal. There is no provision in the Act by which the interest so terminated is vested in the State; Nor does such vesting flow as a necessary consequence of any of the Provisions of the Act. Sub-section (4) of section 3 of the Act provides that where a mining lease stands terminated under sub-section (3), it shall be lawful for the Central Government or a Government Company or a corporation owned or controlled by the Central Government to obtain a prospecting licence or a mining lease in respect of the whole or part of the land covered by the mining lease which stands so terminated. The plain intendment of the Act, which is neither a pretence nor a facade, is that once the outstanding leases and sub-leases are terminated, the Central Government and the other authorities will be free to apply for a mining lease. Any lease-hold interest which the Central Government, for example, may thus obtain does not directly or immediately flow from the termination brought about by section 3(3)(b). Another event has to intervene between the termination of existing leases and the creation of new interests. The Central Government etc. have to take a positive step for obtaining a prospecting licence or a mining lease. Without it, the Act would be ineffective to create of its own force any right or interest in favour of the Central Government a Government Company or a Corporation owned, managed or controlled by the Central Government. The essential difference between "acquisition by the State" on the one hand and "modification or extinguishment of rights" on the other, is that in the first case the beneficiary is the State while in the second the beneficiary is not the State. The Nationalisation Amendment Act merely extinguishes the rights of the lessees and the sublesses. It does not provide for the acquisition of those rights, directly or indirectly, by the State. Article 31A(2A) will therefore come into play. It follows that the Nationalisation Amendment Act must receive the protection of Article 31A(1)(e) of the Constitution, that is to say, that the Act cannot be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Articles 14, 19 and 31.

[1092 F-H, 1093 A-H]

Ajit Singh v. State of Punjab [1967] 2 SCR 143; Madan Mohan Pathak v. Union of India & Ors. [1978] 3 SCR 334 discussed and distinguished.

Dwarkadas Shrinivas v. The Sholapur Spinning & Weaving Co. Ltd. [1954] SCR 674, 733-734 applied.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petitions Nos. 111,150-151, 180, 205-210, 220,226, 270-271, 346-352, 355, 403, 396-398, 599, 541, 543, 626, 635-639, 661, 687-692 and 758/77, 154, 178, 571-574, 600, 603, 605, 610, 611,257,221 and 1134-1134/77.

1055

(Under Article 32 of the Constitution)

A. K. Sen, S. C. Banerjee, Y. S. Chitale, K. K. Sinha, S. K. Sinha, Pradeep Hajela, S. K. Verma, A. K. Srivastava, M. P. Jha, C. K. Ratnaparkhi, B. N. Lala, Surajdeo Singh, D. P. Mukherjee and A. K. Ganguli for the Petitioners in W.Ps. Nos. 111, 150-151, 154, 178, 610-611 661, 180, 270-271, 599, 220, 226, 205-210, 396-398 and 600 of 1977.

H. M. Seervai, Kamal Nayan Choubey, A. K. Srivastava, B. P. Singh and Bimal Kumar Sinha for the Petitioners in WP

Nos. 237, 571-574, 603, 605, 355, 346 of 1977.

D. Goburdhan for the Petitioners in WP Nos. 687, 692, 635-639, 352, and Respondent No. 12 in WP Nos. 150-151/77.

A. K. Sen, S. C. Bannerjee, Y. S. Chitale, S. B. Sanyal, A. K. Banerjee and A. K. Nag for the Petitioners in WP Nos. 626, 541, 543 and Respondent No. 15 in WP 154/77.

S. V. Gupte, S. N. Kacker, U. R. Lalit, S. P. Nayar, R. N. Sachthey and Gobind Mukhoty for the Respondents Nos. 1, 9-12 in WP No. 111, RR. 1, 7, 11 in WP Nos. 150-151, RR. 1, 8 to 12 in WP. 154, RR. 1&7 in WP. 178, RR. 1&7 in WPs. 610-611 RR. 1,5,6 & 8 in WP. 661, RR. 1 & 7 in WP Nos. 270-271, RR 1 & 7 in WP in 599, RR. 1, 8, 9-12 & 15 in WPs. Nos 571-574, RR. 1, 8-13 & 16 in WP No. 603. RR. 1,2&9 in WP 605,RR.1,2,10,11,14&15 in WP. 355, RR. 1, 8-12 in WP 346, RR. 1, 3-5, 8, 9 in WP No. 626, RR. 1, 6-10 & 14 in WP. 541, RR. 1-5 & 9 in WP. 543, RR. 1, 8 & 12 and 15 in WP. 758, RR 1, 7 in WP. 257, RR. 1&7 in WPs. 220 and 226 RR. 1&8 in WPs. 205-210, RR. 1&8 in WP. 600, RR. 1, 3, 11-15 in WP 403, RR. 1, 9 & 10 in WP No. 180/77.

Lal Narain Sinha, U. P. Singh, Shambhu Nath Jha and U. S. Prasad for the Respondents Nos. 2-8 in WP Nos. 111, 2-7 in 154, 2-6 in 610-611, 2-4, 7 & 8 in 661, 2-8 in 180, 2-6, 10-12 in 270-271, 2-6 and 10-13 in 599, 2-7 in 571-574, 2-7, 14-15, 17-20 & 23 in 603, 2-7 in 605, 3-8, 12, 13, 16-18 in 335, 2-6 in 687-692, 2-6 in 635-637, 2-6 in 352, 2, 6, 7 & 10 in 626, 2-5, 11-13 in 541, 6-8 in 543, 2-6 in 758/77, 2-7, 13, 14 & 16 in 257, 2-6 in 220 and 226, 2-6, 13, 14 in 205-210, 2-7 in 600, 2-6 in 638-639, 2, 4 to 10 in 403/77.

Mr. P. S. Khera for Intervener No. 1 in WP. 111/77.

S. K. Verma for the Intervener No. 2 in WP. 111/77.

A. P. Chatterjee and G. S. Chatterjee for Respondents 2 & 6 in WPs. 150-151 & 2 to 6 in 396-398/77.

M. P. Jha for the Petitioner in WP. No. 758/77.

1056

The Judgment of the Court was delivered by

CHANDRACHUD, C. J.-This is a group of 61 Writ Petitions under article 32 of the Constitution challenging the validity of the Coal Mines (Nationalisation) Amendment Act 67 of 1976, on the ground that it is violative of the provisions of articles 14, 19(1)(f), 19(1) (g) and 31 of the Constitution. For understanding the basis of that challenge, it will be enough to refer to the broad facts of two representative groups of petitions. The facts of writ petitions 270 and 271 of 1977 are, by and large, typical of cases in which the petitioners claim to be lessees of coal mines, while the facts of writ petition 257 of 1977 are typical of cases in which the petitioners claim to be lessees of composite mines containing alternate seems of coal and fireclay. Most of the facts are undisputed and only a few of them are in controversy.

In writ petitions 270 and 271 of 1977, petitioner No. 1 claims to be the sole proprietor of 'S.D. Coal Company' which is engaged in coal business and coal mining operations. Petitioner No. 2 is said to be the agent of the company. Both the surface and underground rights in Mouza Bundu in the District of Hazaribagh, Bihar, previously belonged to the Raja of Ramgarh from whom or whose successors-in interest, the South Karanpura Coal Co. Ltd. appears to have obtained a lease of 242 Bighas of coal bearing lands in Mouza Bundu, called the 'Bundu Colliery'. After the enactment of the Bihar Land Reforms Act 30 of 1950, all rights of tenure-holders landlords and Zamindars, including the rights in mines and minerals, vested in the State of Bihar but, by virtue of section 10 of that Act, subsisting leases of mines and minerals in any estate or

tenure became leases under the State Government. It is alleged that on 12th June, 1975 the South Karanpura Coal Co. Ltd. entered into an agreement with the S. D. Coal Company or prospecting, developing, raising and selling coal from the Bundu Colliery and that on the strength of that agreement, petitioner No. 1 was put in possession of the entire area of 242 Bighas of coal bearing land. The S. D. Coal Company is stated to have made large investments in the colliery and to have started paying rents and royalty to the State of Bihar. The petitioners have cited various facts and figures in support of their contention that they have been in working possession of the coal mine area in question and that they were entitled to remove nearly 30,000 tonnes of coal raised by them at a heavy cost. It appears that in a proceeding under section 144 of the Criminal Procedure Code, the Sub-divisional Magistrate (Sadar), Hazaribagh, had made the rule absolute against the South Karanpura Coal Co. Ltd. as well as the S. D. Coal Company, on the ground that
1057
the State Government had taken over the Bundu Colliery. But, in C.R. Case No. 18318(W) of 1975, the High Court of Calcutta is stated to have set aside the order of the State Government cancelling the lease of petitioner 1 in respect of the Bundu Colliery. Since that lease stands terminated under the Coal Mines (Nationalisation) Amendment Act 1976, the petitioners have filed writ petitions to challenge the validity of that Act.

On the factual aspect, the contention of the State of Bihar is that the lease of the Bundu Colliery which was held by M/s South Karanpura Coal Co. Ltd. was terminated by the Bihar Government on November 24, 1975 on account of the violation of Rule 37 of the Mineral Concession Rules, 1960 and that, actual possession of the colliery was taken by the State Government on November 26, 1975 prior to the coming into force of the Amendment Act of 1976.

In writ petition No. 257 of 1977, the petitioner Nirode Baran Banerjee made an application dated September 17, 1966 for the grant of a mining lease in respect of fireclay covering an area of 1640.60 acres of the Hesalong Colliery. On September 19, 1966 he made a similar application in respect of the same area, for a coal mining lease. These applications were deemed to have been rejected since the State Government did not pass any order thereon within the prescribed period. In a Revision application preferred by the petitioner, the Central Government directed the State Government to consider the petitioner's application for the grant of a mining lease in respect of fireclay. The dispute relating to the petitioner's application for a coal mining lease was brought to the Supreme Court, as a result of which the Central Government on April 1, 1972 directed the State Government to grant a coal mining lease to the petitioner. On October 17, 1973 a formal lease was executed by the State of Bihar in favour of the petitioner in respect of both coal and fireclay. The lease was registered on October 18.

According to the petitioner, the Hesalong Colliery in respect of which he holds the mining lease for coal and fireclay is situated in an interior area of the hilly portion of the District of Hazaribagh which has its own peculiar nature, trait and character. The reserves of coal in the area are said to be in isolated small pockets and are not sufficient for scientific or economical development in a co-ordinated and integrated manner. The coal is ungraded and is not required to be transported by rail.

On the composite nature of the mine, the petitioner has made a specific averment in paragraph 6 of his writ petition

to the following effect:
1058

> The coal and fireclay deposits in the said area are so mixed up that one cannot work either for extraction of coal or for extraction of fireclay without disturbing each of the said two minerals. The deposits are such that at one layer there is coal, the next layer is fireclay, the other layer is coal, the next layer is again fireclay and so on.

In paragraph 15 of his writ petition the petitioner has stated that in the Hesalong Mines, the deposit of fireclay is spread over the entire area of 1640.60 acres in the first layer and just beneath that, there is a deposit of coal in the second layer, so on and so forth. According to the petitioner, it is absolutely impossible to carry on mining operations in coal without disturbing the fireclay and any such disturbance and inadvertent extraction of either coal or fireclay by different lessees, if the composite lease is split up, will amount to unauthorise mining.

The petitioner contends that he employs about 9,000 workers, has invested a huge amount for making the colliery workable and that a large amount of coal, which was lying exposed and unprotected, was ready for despatch. Since his composite lease too was in jeopardy under the Amendment Act, he filed a writ petition in this Court to challenge the validity of the Act, contending in addition that the Act is not applicable to composite mines having alternate layers of fireclay and coal.

Some of the petitioners had filed writ petitions in the High Courts under article 226 of the Constitution challenging the validity of the Amendment Act of 1976. Rules were issued in those petitions and interim orders were passed under which the status quo was maintained on certain terms and conditions. After the passing of the 42nd Constitution Amendment Act, the High Courts became incompetent to grant any relief in those petitions whereupon, writ petitions were filed in this Court.

The petitions were argued on behalf of the petitioners by Shri A. K. Sen, Shri H. M. Seervai, Shri Y. S. Chitale, Shri B. K. Sinha, Shri D. Goburdhan and Shri A. K. Nag. The Attorney General argued in support of the validity of the impugned Act and so did the Solicitor General, appearing on behalf of the Union of India. Shri Lal Narain Sinha and Shri A. P. Chatterjee argued respectively on behalf of the State of Bihar and the State of West Bengal. Shri P. S. Khera and Shri S. K. Verma appeared on behalf of the interveners.

Before examining the contentions advanced before us by the various learned counsel, it will be useful to trace briefly the history of laws bearing on the working of mines and exploitation of minerals,
1059
the taking over of management and the nationalisation of mines and finally the termination of certain leases under the impugned Act.

According to "India 1976" (Publications Division, Ministry of Information and Broadcasting, Government of India), coal mining was first started at Raniganj, West Bengal, in 1774. Coal is an important mineral as a source of energy and in India it constitutes a prime source of energy. On the attainment of independence, the importance of coal to industrial development was realised by the Planners and the problems of the coal industry were identified by the Planning Commission in its report on the First Five Year Plan. The Fifth Plan provided for a production target of 13.5 million tonnes of coal by 1978-79, which amounted to an

increase of 5.7 million tonnes from the level of production of 7.79 million tonnes at the end of the Fourth Five Year Plan. In 1950, after coal mining was stepped up, the production was 32 million tonnes. In 1974-75 it reached a record figure of 88.4 million tonnes. The overall reserves of coal, both coking and non-coking were estimated in 1976 at 8,095 crore tonnes.

But, howsoever high the coal reserves may be, they are not inexhaustible, which underlines the need for a planned development of the natural resources. The reckless and unscientific methods of mining which were adopted by most of the colliery owners without regard to considerations of conservation of the mineral and safety and welfare of workers led the Parliament to pass various legislations on the subject in the light of its accumulated experience. The coking coal mines were nationalised in 1972 and the non-coking coal mines were nationalised in the following year. The production of coal in the country is now almost completely controlled by the public sector with the exception of isolated pockets wherein reserves are not sufficient for scientific and economical development and the production is consumed locally. The only important mines which are not nationalised are the captive coking coal mines of the two private sector Steel Companies coking coal being a vital ingredient in the production of Steel.

The production of coal in the public sector is organised through three companies: the Coal Mines Authority Ltd., the Bharat Coking Coal Ltd., and the Singareni Collieries Company Ltd. A holding company, Coal India Limited, was formed in 1975 incorporating the Coal Mines Authority, the Bharat Coking Coal and the Coal Mines Planning and Design Institute as separate Divisions, besides other subsidiaries.

Entry 23 List II, Schedule VII of the Constitution read with article 246(3) confers legislative power on the State legislatures in respect of

1060

"Regulation of mines and mineral development" but that power is "subject to the provisions of List I with respect to regulation and development under the control of the Union". Entry 54 List I enables Parliament to acquire legislative power in respect of "Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest". Entry 24 List II relates to "Industries subject to the provisions of entries 7 and 52 of List I". Entry 7, List I, relates to Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war. Entry 52, List I, enables Parliament to acquire legislative power in respect of "Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest".

The Industries (Development and Regulation) Act, 65 of 1951, which came into force on May 8, 1952 contains a declaration in section 2 that it was expedient in the public interest that the Union should take under its control the industries specified in the First Schedule. Item 2(1) of the First Schedule comprises 'coal, lignite, coke and their derivatives' under the heading 'Fuels'. The Act provides for the establishment of a Central Advisory Council and Development Councils, registration and licensing of industrial undertakings, the assumption of management or control of industrial undertakings by the Central Government control of supply, distribution and price of certain

articles, etc.

The Mines Act, 35 of 1952, which came into force on July 1, 1952, was passed by the Parliament in order to amend and consolidate the law relating to the regulation of labour and safety in mines. That Act was evidently passed in the exercise of power under Entry 55, List I, "Regulation of labour and safety in mines and oil fields".

The Mines and Minerals (Regulation and Development) Act, 67 of 1957, which came into force on June 1, 1958 was passed in order to provide for the regulation of mines and the development of minerals under the control of the Union. Section 2 of that Act contains a declaration that it was expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent provided in the Act. The Act provides, inter alia, for general restrictions on undertaking prospecting and mining operations, the procedure for obtaining prospecting licences or mining leases in respect of lands in which the minerals vest in the Government, the rule making power for regulating the grant of prospecting licences and mining leases, special powers of 1061
Central Government to undertake prospecting or mining operations in certain cases, and for development of minerals.

There was a lull in legislative activity in regard to the enactment of further regulatory measures for controlling mines and minerals. The Coking Coal Mines (Emergency Provisions) Ordinance, 12 of 1971, was passed on October 16, 1971, It was replaced by the Coking Coal mines (Emergency Provisions) Act, 64 of 1971, which received the President's assent on December 23, 1971 but was given retrospective operation from the date of the Ordinance. The Act was passed to provide for the taking over, in the public interest, of the management of coking coal mines and coke oven plants, pending nationalisation of such mines and plants. By section 3 (1), the management of all coking coal mines vested in the Central Government from the appointed day-October 17, 1971. Section 6(1) provided that every owner of coking coal mine shall be given by the Central Government an amount, in cash, for vesting in it, under section 3, the management of such mine.. Such amount was to be calculated in accordance with the provisions of section 6(2). The Coking Coal Mines (Nationalisation) Act, 36 of 1972, was passed in order, inter alia, to provide for the acquisition and transfer of the right, title and interest of the owners of the coking mines and coke even plants. Sections 30 and 31 of that Act dealing respectively with penalties, and offences by companies came into force at once but the remaining provisions were deemed to have come into force on May 1, 1972. Section 3(c) defines "coking coal mine" to mean-

> "a coal mine in which there exists one or more seams of coking coal, whether exclusively or in addition to any seam of other coal".

By section 4(1) the right, title and interest of the owners in relation to the coking coal mines specified in the First Schedule shall stand transferred to, and shall vest absolutely in, the Central Government, free from all incumbrances. By section 4(2), after the appointed day, that is May 1, 1972 if any other coal mine was found to contain coking coal the provisions of the Coking Coal Mines (Emergency Provisions) Act, 1971 were to apply to such mine until it was nationalised by an appropriate legislation. By section 6(1), the Central Government becomes the lessee of the State Government where the rights of the owner under any

mining lease granted in relation to a coking coal mine by the State Government or any other person, vest in the Central Government under section 4. Section 7(1) empowers the Central Government to direct that the right, title and interest of
1062
the owners in relation to coking coal mines or coke oven plants shall vest in a government company. Sections 10 and 11 of the Act provide for payment of the amounts to owners of the coking coal mines and coke oven plants for the vesting of their right, title and interest in the Central Government.

By an Amendment Act, 56 of 1972, which came into force on September 12, 1972, section 4A was added to the Mines and Minerals (Regulation and Development) Act 1957. That section provides for premature termination of mining leases and the grant of fresh leases to Government companies or Corporations owned or controlled by Government.

The Coal Mines (Taking over of Management) Act, 15 of 1973, which received the assent of the President on March 31, 1973 was given retrospective effect from January 30, 1973 except section 8(2) which came into force at once. The Act was passed in order "to provide for the taking over, in the public interest, of the management of coal mines, pending nationalisation of such mines, with a view to ensuring rational and co-ordinated development of coal production and for promoting optimum utilisation of the coal resources consistent with the growing requirements of the country, and for matters connected therewith or incidental thereto." Section 2(b) of the Act defines a "coal mine" to mean a mine

"in which there exists one or more seams of coal."

Section 3(1) provides that on and from the appointed day (that is, January 31, 1973) the management of all coal mines shall vest in the Central Government. By section 3(2), the coal mines specified in the Schedule shall be deemed to be the coal mines the management of which shall vest in the Central Government under sub-section (1). Under the proviso to section 3(2), if, after the appointed day, the existence of any other coal mine comes to the knowledge of the Central Government, it shall by a notified order make a declaration about the existence of such mine, upon which the management of such coal mine also vests in the Central Government and the provisions of the Act become applicable thereto. Section 3(5) casts an obligation on every person in charge of the management of a coal mine, immediately before the date on which the Act received the assent of the President, to intimate the Central Government within 30 days from the said date the name and location of the mine as well as the name and the address of the owner, if the mine is not included or deemed to be included in the Schedule. All contracts providing for the management of any coal mine made before the appointed day between the owner of the mine and any per-
1063
son in charge of the mine and any person in charge of the management thereof are to be deemed to have been terminated on the appointed day, under section 4, Section 6(1) empowers the Central Government to appoint Custodians for the purpose of taking over of the management of the mines. Section 7(1) provides that every owner of a coal mine shall be given by the Central Government an amount in cash for the vesting in it under section 3, of the management of such mine. Section 18(1)(a) excludes from the operation of the Act any coal mine owned, managed or controlled by the Central Government, or by a Government Company or by a corporation which is

owned, managed or controlled by the Government. Clause (b) of section 18(1) also excludes from the operation of the Act a coal mine owned by or managed by a company engaged in the production of iron and steel.

The Coal Mines (Nationalisation) Act, 26 of 1973, was given retrospective operation with effect from May 1, 1973 except sections 30 and 31 which came into force at once. This Act was passed,

> "to provide for the acquisition and transfer of the right, title and interest of the owners in respect of the coal mines specified in the Schedule with a view to re-organising and reconstructing such coal mines so as to ensure the rational, co-ordinated and scientific development and utilisation of coal resources consistent with the growing requirements of the country, in order that the ownership and control of such resources are vested in the State and thereby so distributed as best to subserve the common good, and or matters connected therewith or incidental thereto."

Section 2(b) defines a coal mine in the same way as the corresponding provision of the Management Act viz., a mine "in which there exists one or more seams of coal." Section 3(1) provides that on the appointed day (that is, May 1, 1973) the right, title and interest of the owners in relation to the coal mines specified in the Schedule shall stand transferred to, and shall vest absolutely in the Central Government free from all incumbrances. Section 4(1) provides that where the rights of an owner under any mining lease granted, or deemed to have been granted, in relation to a coal mine, by a State Government or any other person, vest in the Central Government under section 3, the Central Government shall, on and from the date of such vesting, be deemed to have become the lessee of the State Government or such other person, as the case may be, in relation to such coal mine as if a mining lease in relation to such coal mine had been granted to the Central Government. The period of such lease

1064

is to be the entire period for which the lease could have been granted by the Central Government or such other person under the Mineral Concession Rules and thereupon all the rights under the mining lease granted to the lessee are to be deemed to have been transferred to, and vested in, the Central Government. By section 4(2), on the expiry of the term of any lease referred to in sub-section (1), the lease, at the option of the Central Government, is liable to be renewed on the same terms and conditions on which it was held by the lessor for the maximum period for which it could be renewed under the Mineral Concession Rules. Section 5(1) empowers the Central Government under certain conditions to direct by an order in writing that the right, title and interest of an owner in relation to a coal mine shall, instead of continuing to vest in the Central Government, vest in the Government company. Such company, under section 5(2), is to be deemed to have become the lessee of the coal mine as if the mining lease had been granted to it. By section 6(1), the property which vests in the Central Government or in a Government company is freed and discharged from all obligations and incumbrances affecting it. The mortgagees and other holders of incumbrances are required by section 6(2) to give intimation thereof to the Commissioner within the prescribed time. Section 7(1) provides that the Central Government or the Government company shall not be liable to discharge any liability of the owner, agent, manager or managing contractor of a coal

mine in respect of any period prior to the appointed day. Section 8 requires that the owner of every coal mine or group of coal mines specified in the second column of the Schedule shall be given by the Central Government in cash and in the manner specified in Chapter VI, for the vesting in it under section 3 of the right, title and interest of the owner, an amount equal to the amount specified against it in the corresponding entry in the fifth column of the Schedule. By section 11(1), the general superintendance, direction, control and management of the affairs and business of a coal mine, the right, title and interest of an owner in relation to which have vested in the Central Government under section 3, shall vest in the Government company or in the Custodian as the case may be. For the purpose of disbursing the amount payable to the owner, the Central Government is required by section 17(1) to appoint a Commissioner of Payments. By section 18(1), the Central Government shall within thirty days from the specified date, pay, in cash, to the Commissioner for payment to the owner of a coal mine, an amount equal to the amount specified against the coal mine in the Schedule and also such sums as may be due to the owner under section 9. Section 26(1) provides that if out of the monies paid to the Commissioner, any balance is left after meeting the liabilities of all the secured and un-
1065
secured creditors of the coal mine, he shall disburse the same to the owner.

The Coal Mines (Nationalisation) Amendment Ordinance which was promulgated on April 29, 1976 was replaced on May 27, 1976 by the Coal Mines (Nationalisation) Amendment Act, 67 of 1976. The Amendment Act consists of five sections by which certain amendments were introduced into the Principal Act, namely, the Coal Mines (Nationalisation) Act, 26 of 1973. The Statement of objects and Reasons of the Nationalisation Amendment Act reads thus:

> "After the nationalisation of coal mines, a number of persons holding coal mining leases unauthorisedly started mining of coal in the most reckless and unscientific manner without regard to considerations of conservation, safety and welfare of workers. Not only were they resorting to slaughter mining by superficial working of outcrops and thereby destroying a valuable national asset and creating problems of water-logging fires, etc. for the future development of the deeper deposits, their unsafe working also caused serious and fatal accidents. They were making larger profits by paying very low wages, and by not providing any safety and welfare measures. Thefts of coal from adjacent nationalised mines were also reported after the commencement of these unauthorised operations which had shown an increasing trend of late. Areas where illegal and unauthorised operations were carried on, were without any assessment of reserves in regard to quality and quantity of coal which could be made available after detailed exploration work was undertaken and results analysed. No scientific exploitation of these deposits could be undertaken in the nationalised sector without these details. It was, therefore, considered that it would not be appropriate either to nationalise these unauthorisedly worked mines after taking them over under the Coal Mines (Taking Over of Management) Act, 1973 or to get the concerned mining leases prematurely terminated and regranted to Government Companies under the Mining and Minerals (Regulation and

Development) Act, 1957. In view of the policy followed by the Central Government that the Coal Industry is to be in the nationalised sector, it was decided that the Coal Mines Nationalisation Act, 1973 should be enacted to provide for termination of all privately held coal leases except those held by privately owned steel companies, so that it may be possible for the Central Government, Government company or Corporation to take
1066
mining leases where necessary, after the necessary exploration has been made as to the extent of the deposits of coal, etc".

Sections 2 and 3 of the Nationalisation Amendment Act were brought into operation with effect from April 29, 1976. By section 2 of the Amendment Act a new section, section 1A, was introduced under Sub-section (1) of which it was declared that it was expedient in the public interest that the Union should take under its control the regulation and development of coal mines to the extent provided in subsections 3 and 4 of section 3 of the Nationalisation Act and subsection 2 of section 30. By sub-section 2 of section 1A, the declaration contained in sub-section (1) was to be in addition to and not in derogation of the declaration contained in section 2 of the Mines and Minerals (Regulation and Development) Act, 1957. By section 3 of the Amendment Act a new sub-section, namely, sub-section 3, was introduced in section 3 of the principal Act. Under clause (a) of the newly introduced sub-section 3 of section 3, on and from the commencement of section 3 of the Amendment Act no person other than (i) the Central Government or a Government company or a corporation owned, managed or controlled by the Central Government, or (ii) a person to whom a sub-lease, referred to in the proviso to clause (c) has been granted by any such Government, company or corporation, or (iii) a company engaged in the production of iron and steel, shall carry on coal mining operation, in India, in any form. Under clause (b) of sub-section 3, excepting the mining leases granted before the Amendment Act in favour of the Government, company or corporation referred to in clause (a), and any sub-lease granted by any such Government, company or corporation, all other mining leases and sub-leases in force immediately before such commencement shall in so far as they relate to the winning or mining of coal, stand terminated. Clause (c) of the newly introduced sub-section 3 of section 3 provides that no lease for winning or mining coal shall be granted in favour of any person other than the Government, company or corporation referred to in clause (a). Under the proviso to clause (c), the Government, the company or the corporation to whom a lease for winning or mining coal has been granted may grant a sublease to any person in any area if, (i) the reserves of coal in the area are in isolated small pockets or are not sufficient for scientific and economical development in a co-ordinated and integrated manner, and (ii) the coal produced by the sub-lessee will not be required to be transported by rail. By sub-section 4 of section 3, where a mining lease stands terminated under sub-section 3, it shall be lawful for the Central Government or a Government company or corporation owned
1067
or controlled by the Central Government to obtain a prospecting licence or mining lease in respect of the whole or part of the land covered by the mining lease which stands terminated. Section 4 of the Amendment Act introduces an additional provision in Section 30 of the Principal Act by

providing that any person who engages, or causes any other person to be engaged, in winning or mining coal from the whole or part of any land in respect of which no valid prospecting licence or mining lease or sub-lease is in force, shall be punishable with imprisonment for a term which may extend to two years and also with fine which may extend to ten thousand rupees. Section 5 of the Nationalisation Amendment Act repeals the Coal Mines (Nationalisation) Amendment Ordinance, 1976.

As stated at the beginning of this Judgment, we are concerned in these writ petitions to determine the validity of the Coal Mines Nationalisation (Amendment) Act, 67 of 1976, to which we will refer as 'The Nationalisation Amendment Act'.

Shri Seervai, who appears on behalf of the petitioners in writ petition No. 257 of 1977, challenges the legislative competence of the Parliament to enact the Nationalisation Amendment Act. Article 246 (1) confers upon the Parliament, notwithstanding anything contained in clauses 2 and 3 of that Article, the exclusive power to make laws with respect to any of the matters enumerated in List I of the Seventh Schedule, called the 'Union List'. Clause 2 of Article 246 deals with the power of the Parliament and the State Legislatures to make laws with respect to any of the matters enumerated in the Concurrent List, while clause 3 deals with the power of the State Legislatures to make laws with respect to any of the matters enumerated in the State List.

The relevant entries in List I are Entries 52 and 54 which read thus:

> Entry 52:-Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.
>
> Entry 54:-Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

Entry 24 of the State List reads thus:

> Entry 24:-Industries subject of the provisions of entries 7 and 52 of List I.

1068

We are not concerned here with Entry 7 of List I which relates to 'Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war'.

Shri Seervai's argument runs thus:

(a) Laws made in the exercise of power conferred by Entry 54 must stand the test of public interest because the very reason for the Parliament acquiring power under that entry is that it is in public interest that the regulation of mines and minerals should be under the control of the Union. In other words, Entry 54 confers a legislative power which is purposive, that is to say, any law made in the exercise of the power under Entry 54 must be designed to secure the regulation and development of coal mines in public interest or else it must fail. The Nationalisation Amendment Act is not such a law which Parliament can pass under Entry 54 because, that Act not only terminates all leases but it destroys the contracts of service of thousands of workmen, and indeed it destroys all other contracts and all

securities for moneys lent without even so much as making a provision for priorities for the payment of debts. Since the Nationalisation Amendment Act terminates all leases, it is a complete negation of the integrated scheme of taking over the management of mines, acquisition of the rights of lease-holders and the running of the mines.

(b) The word 'Regulation' in Entry 54 does not include 'Prohibition'. 'Regulation' should not also be confused with the expression 'Restrictions' occurring in Article 19(2) to (6) of the Constitution. In the very nature of things, there cannot be a power to prohibit 'the regulation and development of mines and minerals'. Section 3(4) inserted by the Nationalisation Amendment Act imposes no obligation on the Central Government or any other authority to obtain a mining lease and work the mines, the leases in respect of which stands terminated under the Act. The words "it shall be lawful" for the Central Government to obtain a lease are words of discretionary power which create no obligation. They only enable the Central Government to obtain a lease, making something legal and possible for which there would otherwise be no

1069

right or authority to do. Section 3 (4) does not confer a power coupled with a duty; it merely confers a faculty or power. No Court can by a Writ of Mandamus or otherwise compel the Central Government to obtain a lease of coal mine and to run it under any of the provisions of the Nationalisation Amendment Act.

(c) Where the Legislative power is distributed among different legislative bodies, the Legislature may transgress its legislative power either directly or manifestly, or covertly or indirectly. In the instant case, the exercise of power by the Parliament is colourable because although in passing the Nationalisation Amendment Act it purported to act within the limits of its legislative power, in substance and in reality it transgressed that power, the transgression being veiled by what appears on proper examination to be a mere pretence or disguise.

(d) In order to tear off the veil or disguise and in order to get at the substance of the law behind the form, the Court must examine the effect of the legislation and take into consideration its object, purpose and design, Where the legislative entry is purposive, like Entry 54 of the Union List, it is the object or purpose of the legislation which requires consideration. The purpose for which the Parliament is permitted to acquire legislative power of Regulation and Development of mines must dictate the nature of law made in the exercise of that power

because public interest demands that power. Under the provisions of the Nationalisation Amendment Act, not only is there no obligation on the Central Government to run a mine, but there is no obligation imposed upon it even to carry out prospecting or investigation in order to decide whether a particular mine should be worked at all. Section 3(4) merely authorises the Central Government to apply for "a prospecting licence or a mining lease in respect of the whole or part of the land covered by the mining lease which stands determined". A close examination of the Act thus discloses that far from providing for regulation and development of coal mines, it totally prohibits all mining activity even if the State Government wants to run a mine. It does

1070

not impose prohibition as a step towards running the mines since there is neither any obligation to carry out the prospecting or investigation nor to run the mines.

(e) The Nationalisation Amendment Act runs directly counter to the whole policy of the Coal Mines (Nationalisation) Act of 1973, to acquire and run the mines. The Parent Act becomes a dead letter in regard to several of its provisions ass a result of the amendment Act. It only adopts a colourable device to amend the Nationalisation Act while completely negativing it in fact. The Act therefore lacks legislative competence and is, in the sense indicated, a colourable piece of legislation.

(f) Article 31(A)(1)(e) only lifts a restriction on the legislative competence in so far as violation of fundamental rights is concerned. The most benign motive cannot make a law valid if the legislative competence is lacking.

In support of his submission that the provisions of the Nationalisation Amendment Act are not conceived in public interest and therefore they transgress the limitations of Entry 56, List I, learned counsel relies on the circumstance that whereas the Coal Mines Management Act and the Coal Mines Nationalisation Act of 1973 contain elaborate preambles, the Amendment Act contains no preamble setting out the mischief to be remedied or the benefit to be secured, for which the parent Act had failed to provide. At first blush, it is said, it would appear that the preamble to the parent Act can be read into the Nationalisation Amendment Act but that is impermissible since that preamble provides for acquisition and running of the mines and can have no application to an Act which provides for termination simpliciter of all mining leases. The preambles to the Management Act and the Nationalisation Act are said to be significant in that they show that those Acts were enacted in public interest with a view to rational and co-ordinated development of coal production and for promoting the optimum utilisation of coal production consistently with the growing requirements of the country. Learned counsel has also compared and contrasted the provisions of these two Acts with the provisions of the Nationalisation Amendment Act for making good his point that the latter serves no public

interest since it merely terminates all existing leases. The contrast, it is argued, is also provided by section 4A of the Mines and Mineral Regulation and Development Act 1957 which, while providing for premature termination of mining leases, requires that
1071
such termination has to be followed by the granting of a fresh mining lease so that the mines will continue to work. Reliance is placed by counsel on the decision of this Court in K. C. Gajapati Narayan Deo & Ors. v. The State of Orissa to show how although the legislature in passing an Act purports to act within the limits of its legislative power, in substance and in reality it can transgress that power, the transgression being veiled by what appears on proper examination to be a mere pretence or disguise. Attention is then drawn to the decision in Attorney General of Alberta v. Attorney General of Canada as showing that in order to tear off the veil or disguise or in order to get at the substance of the law behind the form, the court can examine the effect of the legislation and take into consideration its object, purpose or design. In support of the submission that the word regulation in Entry 54 does not include prohibition, reliance is placed on the decision of the Federal Court in Bhola Prasad v. The King Emperor wherein after setting out two decisions of the Privy Council in Municipal Corporation of City of Toronto v. Virgo and Attorney-General for Ontario v. Attorney-General for Canada in which it was held that 'regulation' did not include 'prohibition', Gwyer, C.J. Observed that he saw no reason to differ from the view expressed in those cases.

The central theme of these diverse points is only one: that the laws made in the exercise of power conferred by Entry 54, List I, must stand the test of public interest since the very reason for the Parliament acquiring power under that Entry is that it is in the public interest that the regulation of mines and mineral development should be under the control of the Union. The contention is that since the Nationalisation Amendment Act does not impose upon the Government the duty to run the mines which are taken over or even to carry out prospecting and investigation but simply provides for the termination of mining leases, the Act is not in public interest. What is in public interest is the regulation and development of coal mines, not total prohibition of their working.

On a careful consideration of this argument which was made plausible in its presentation, we see no substance in it. The learned Attorney General and the learned Solicitor General have drawn our attention to various facts and circumstances and to the provisions of various Acts including the Nationalisation Amendment Act which make it impossible to hold that the provisions of that Act are a mere
1072
facade for terminating mining leases without any obligation in the matter of regulation of mines and mineral development.

Granting that Entry 54, List I is purposive since it qualifies the power to pass a law relating to "Regulation of Mines and Mineral Development" by the addition of a restrictive clause, "to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest", the provisions of the Nationalisation Amendment Act show that they are designed to serve progressively the purpose of Entry 54.

The Nationalisation Amendment Act, as its very title shows, is an amending Act. It amended the Coal Mines (Nationalisation) Act, 26 of 1973. One must primarily have regard to the object and purpose of that Act in order to find out whether the Nationalisation Amendment Act destroys the structure of that Act and is a mere pretence for acquiring new rights without providing for payment of any amount for such acquisition.

The Coal Mines (Nationalisation) Act was passed in order to provide for the acquisition and transfer of the right, title and interest of the owners in respect of the Coal mines specified in the Schedule to that Act. This was done with a view to reorganising and reconstructing such coal mines so as to ensure the rational, co-ordinated and scientific development and utilisation of coal resources consistent with the growing requirements of the country. The high purpose of that Act was to ensure that the ownership and control of such resources are vested in the State and thereby so distributed as best to subserve the common good. In order to achieve that purpose, the Nationalisation Act provides by section 3(1) that:

> On the appointed day, the right, title and interest of the owners in relation to the coal mines specified in the Schedule shall stand transferred to, and shall vest absolutely in, the Central Government free from all incumbrances.

The appointed day is May 1, 1973. For the removal of doubts it was declared by section 3(2) that:

> If, after the appointed day, the existence of any other coal mine comes to the knowledge of the Central Government, the provisions of the Coal Mines (Taking over of Management) Act, 1973, shall until that mine is nationalised by an appropriate legislation, apply to such mine.

1073

By section 4, the Central Government became the lessee of the scheduled coal mines while, section 5 empowers it to transfer its leasehold rights to a Government company. Chapter II of the Coal Mines (Nationalisation Act deals with acquisition of the rights of owners of coal mines, Chapter III with payment of amounts to owners of coal mines, Chapter IV with management of coal mines, Chapter V lays down provisions relating to employees of coal mines, Chapter VI contains provisions governing the payments of amounts to be made by the Commissioner of Payments and the last Chapter, Chapter VII, contains miscellaneous provisions.

We have already set out the provisions of the Nationalisation Amendment Act in extenso, a little before enumerating the various points made out by Shri Seeravai during the course of his argument. It will now be enough to say by way of a summing-up of the provisions of the Nationalisation Amendment Act that: (1) by section 3(3) (a) of the Coal Mines (Nationalisation) Act, 1973 which was introduced by the Nationalisation Amendment Act, no person other than those mentioned in clauses (i) to (iii) can carry on coal mining operations after April 29, 1976, being the date on which section 3 of the Nationalisation Amendment Act came into force; (2) by section (3)(3)(b) all mining leases and sub-leases stood terminated except those granted before April 29, 1976 in favour of the Central Government, a Government company or corporation owned, managed or controlled by the Central Government; (3) section (3)(c) prohibits the granting of a lease for winning or mining coal in favour of any person other than the Government, a Government company or a corporation of the above description

provided that a sub-lease could be granted by these authorities to any person if the two conditions mentioned in the proviso are satisfied; and (4) when a mining lease stands terminated under section 3(3), "it shall be lawful" for the Central Government or the Government company or the corporation owned or controlled by the Central Government to obtain a prospecting licence or a mining lease in respect of the whole or part of the land covered by the mining lease which stands terminated. Section 4 of the Nationalisation Amendment Act introduced an additional penal provision in the parent Act.

We are unable to appreciate the argument so meticulously woven that these provisions are a direct negation of the principles of the parent Act and that they destroy the integral scheme of taking over the management of mines, of acquiring the rights of lease-holders and continuing to run the mines. On the contrary, the Nationalisation Amendment Act is manifestly in furtherance of the object of nationalisation mentioned in the preamble to the parent Act and effec-

1074

tuates the purpose mentioned in sections 3(1) and 3(2) of that Act by the addition of a new sub-section, sub-section (3), which terminates all coal mining leases and sub-leases except those referred in sub-section (3)(b). The circumstance that the marginal note to section 3 and the title of Chapter II of the Nationalisation Act are not amended by the Nationalisation Amendment Act, despite the addition of a new sub-section, is of little or no consequence. That sub-section is a logical extension of the scheme envisaged by the original sub-sections (1) and (2) of section 3. Besides, marginal notes to the sections of a statute and the titles of its chapters cannot take away the effect of the provisions contained in the Act so as to render those provisions legislatively incompetent, if they are otherwise within the competence of the legislature to enact. One must principally have regard to the object of an Act in order to find out whether the exercise of the legislative power is purposive, unless, of course, the provisions of the Act show that the avowed or intended object is a mere pretence for covering a veiled transgression committed by the legislature upon its own powers. Whether a particular object can be successfully achieved by an Act, is largely a matter of legislative policy.

The Nationalisation Amendment Act needs no preamble, especially when it is backed up by a statement of objects and reasons. Generally, an amendment Act is passed in order to advance the purpose of the parent Act as reflected in the preamble to that Act. Acquisition of coal mines, be it remembered, is not an end in itself but is only a means to an end. The fundamental object of the Nationalisation Act as also of the Nationalisation Amendment Act is to bring into existence a state of affairs which will be congenial for regulating mines and for mineral development. In regard to the scheduled mines, that purpose was achieved by the means of acquisition. In regard to mines which were not included in the Schedule, the same purpose was achieved by termination of leases and sub-leases and by taking over the right to work the mines. Termination of leases, vesting of lease-hold properties in the State Governments and the grant of leases to the Central Government or Government Companies are together the means conceived in order to achieve the object of nationalisation of one of the vital material resources of the community. An infirmity in Shri Seervai's

argument is its inarticulate premise that mere acquisition of coal mines is the end of the Nationalisation Act.

It is also important to bear in mind while we are on the purposiveness of the Nationalisation Amendment Act that nothing contained in the later analogous Acts can be construed as in derogation of the principle enunciated in section 18 of the Mines and Minerals Regulation and (Development) Act, 67 of 1957, which provides that it
1075
shall be the duty of the Central Government to take all such steps as may be necessary for the conservation and development of minerals in India. Therefore, even in regard to matters falling under the Nationalisation Amendment Act which terminates existing leases and makes it lawful for the Central Government to obtain fresh leases, the obligation of section 18 of the Act of 1957 will continue to apply in its full rigour. As contended by the learned Solicitor General, section 18 contains a statutory behest and projects a purposive legislative policy. The later Acts on the subject of regulation of mines and mineral development are linked up with the policy enunciated in Section 18.

Much was made by Mr. Seervai of the circumstance that the Nationalisation Amendment Act, While providing by section 3(4) that "it shall be lawful" for the Central Government, etc., to obtain a prospecting licence or a mining lease, did not impose an obligation on any one to work the mine of which the mining lease stood statutorily terminated. No mandamus, it was urged, could therefore issue to compel, for example the Central Government to work any particular mine. This argument overlooks that Entry 54 refers to two things: (1) regulation of mines and (2) mineral development. It is true that the Entry is purposive, since the exercise of the power under Entry 54 has to be guided and governed by public interest. But neither the power to regulate mines nor the power to ensure mineral development postulates that no sooner is a mining lease terminated by the force of the statute, than the Central Government must begin to work the mine of which the lease is terminated. It is possible that after the Nationalisation Amendment Act came into force, there was a hiatus between the termination of existing leases and the granting of fresh ones. But, the Nationalisation Amendment Act does not provide that any kind or type of mine shall not be developed or worked. Conservation, prospecting and investigation, developmental steps and finally scientific exploitation of the mines and minerals is the process envisaged by the Nationalisation Amendment Act. It is undeniable that conservation of minerals, which is brought about by the termination of existing leases and sub-leases, is vital for the development of mines. A phased and graded programme of conservation is in the ultimate analysis one of the most satisfactory and effective means for the regulation of mines and the development of minerals.

Learned counsel contended that the Nationalisation Amendment Act is destructive of the provisions of the parent Act. This contention
1076
is wholly unjustified. The destruction which the Nationalisation Amendment Act brings about is of the lease or the sub-lease and not of its subject matter, namely, the mine itself. In terminating the lease of a house one does not destroy the house itself. It may be arguable that prohibiting the use of the house for any purpose whatsoever may, for practical purposes, amount to the destruction of the house itself. But we cannot accept the contention that

the Nationalisation Amendment Act contains provisions directed at prohibiting the working of mines, the leases in respect of which are terminated. A simple provision for granting sub-leases shows that the object of the Nationalisation Amendment Act is to ensure that no mine will lie idle or unexplored. Interregnums can usefully be utilised for prospecting and investigation. They do not lead to destruction of mines. In fact, it is just as well that the Amendment Act does not require the new lessee to undertake an adventure, reckless and thoughtless, which goes by the name of 'scratching of mines', which ultimately results in the slaughtering of mines.

Natural resources, howsoever large, are not inexhaustible, which makes it imperative to conserve them. Without a wise and planned conservation of such resources, there can neither be a systematic regulation of mines nor a scientific development of minerals. The importance of conservation of natural resources in any scheme of regulation and development of such resources can be seen from the fact that the Parliament had to pass in August 1974 an Act called the Coal Mines (Conservation and Development) Act, 28 of 1974, in order, principally, to provide for the conservation of coal and development of coal mines. Section. 4(1) of that Act enables the Central Government, for the purposes of conservation of coal and for the development of coal mines, to exercise such powers and take or cause to be taken such measures as it may be necessary or proper or as may be prescribed. By section 5(1), a duty is cast on the owners of coal mines to take such steps as may be necessary to ensure the conservation of coal and development of the coal mines owned by them. While moving the Nationalisation Amendment Act in the Lok Sabha on May 17, 1976, the Minister of Energy said that:

> for proper scientific working of coal mines, you have to have the geological data; you have to have mine plans; you have to know the size of the coal reserves, the quantity of coal that can be mined; the quality of coal etc. For this, the detailed exploration has to be undertaken. It is only after all this is done that the experts can decide whether it will be economically viable and technically feasible-technical feasibility comes first and then economic viability-to
>
> 1077
>
> mine the coal in that particular area. No scientific exploration of coal is possible from these areas until all the facts are known, until investigation is done. The nationalised sector cannot step in unless all this information is gathered. (Lok Sabha Debates, 5th series, volume 61, May 17, 1976, columns 91-92.)

Measures taken for judicious preservation and distribution of natural resources may involve restrictions on their use and even prohibition, upto a degree, of the unplanned working of the repositories of such resources. We may in this connection refer usefully to a passage at page 383 of the First Five Year Plan:

> "Though a mining industry has been in existence in this country for about half a century, only a comparatively small number of mines are being worked in an efficient manner under proper technical guidance. Many units are too small in size or too poorly financed for such working. Lack of a conservation policy is also responsible for the present condition of the industry. There is large wastage, especially in minerals of marginal grades, as these are either abandoned in the mines or thrown away on the mine dumps. Ways and means

must be devised for the mining and recovery of these low grade materials. Ores which it is not possible to work economically under normal conditions should be left in the mines so that they may be extracted at a later date without serious loss. The mine dumps all over the country have to be carefully examined and sampled so that their valuable mineral content may be recovered by methods of beneficiation now available. It should be a rule that selective mining of high grade minerals alone should not be undertaken and that all grades should be worked and wherever possible, blended to produce marketable grades."

It was observed in Attorney-General for Ontario (supra) that a power to regulate assumes, naturally if not necessarily, the conservation of the thing which is to be made the subject of regulation. This position does not militate against what was observed by Lord Davey in Virgo (supra) that "there is marked distinction to be drawn between the prohibition or prevention of a trade and the regulation or governance of it, and indeed a power to regulate and govern seems to imply the continued existence of that which is to be regulated or governed". In the former case, the Canada Temperance Act, 1886 was held ultra vires the Dominion as it purported to repeal the prohibitory clauses of a provincial Act, but its own provisions were held

1078

valid when duly brought into operation in any provincial area as relating to the peace, order, and good Government of Canada. In Virgo the question turned on the scope of power to frame by-laws and the decision of the Privy Council was that a statutory power conferred upon a municipal corporation to make by-laws for 'regulating and governing' a trade, "does not authorise the making it unlawful to carry on a lawful trade in a lawful manner". It may be borne in mind that different considerations apply in the construction of power to frame by-laws but even then, the Privy Council qualified the above statement of law by adding the clause, "in the absence of an express power of prohibition".

In support of his submission that under the Nationalisation Amendment Act there is no obligation on any person or authority to run a mine, Shri Seervai relies on a passage in Craies on Statute Law, 6th edition, page 284, to the following effect:

> Statutes passed for the purpose of enabling something to be done are usually expressed in permissible language, that is to say, it is enacted that 'it shall be lawful', etc. or that 'such and such a thing may be done'. Prima facie, these words import a discretion, and they must be construed as discretionary unless there be anything in the subject-matter to which they are applied, or in any other part of the statute, to show that they are meant to be imperative".

But the very passage, after enunciating this principle, refers to a decision in Julius v. Bishop of Oxford in which Lord Cairns said that though the words 'it shall be lawful' are words making that legal and possible which there would otherwise be no right or authority to do and that though those words confer a faculty or power, still

> "there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the

duty of the person in whom the power is reposed to exercise that power when called upon to do so".

It seems to us clear, and we have discussed that aspect at length, that section 3(4) uses an enabling or permissive expression in order that regulation of mines and mineral development may be ensured after a scientific prospecting, investigation and planning. It is doubt-
1079
less that, in the language of Lord Cairns in Julius, there is something in the nature of the thing which the Nationalisation Amendment Act empowers to be done, something in the object for which it is to be done and something in the conditions under which it is to be done which couples the power conferred by the Act with a duty, the duty being not to act in haste but with reasonable promptitude depending upon the nature of the problem under investigation. An obligation to act does not cease to be so merely because there is no obligation to act in an ad-hoc or impromptu manner. It is in the context of a conglomeration of these diverse considerations that one must appreciate why, in section 3(4) which was introduced by the Nationalisation Amendment Act, Parliament used the permissive expression "it shall be lawful".

Thus, a broad and liberal approach to the field of legislation demarcated by Entry 54, List I, an objective and practical understanding of the provisions contained in the Nationalisation Amendment Act and a realistic perception of constitutional principles will point to the conclusion that the Parliament had the legislative competence to enact the Nationalisation Amendment Act.

The argument which we have just disposed of is common to all the matters before us. The contention to which we will now turn is limited in its application to composite mines which contain layers of coal and some other mineral, usually fireclay. This branch of Shri Seervai's argument relates to the construction of the Coal Mines (Nationalisation) Act, 26 of 1973, and the Nationalisation Amendment Act. The argument is that leases of composite mines in which there are alternate seams of coal and fireclay do not fall within the scope of these Acts.

The pleadings in this behalf are full and complete in Writ Petition No. 257 of 1977 argued by Shri Seervai and they are tolerably adequate in a few other petitions. It is expressly averred and not effectively traversed in Writ Petition 257 of 1977 that:

> the coal and fireclay deposits in the said area are so mixed up that one cannot work either for extraction of coal or for extraction of fireclay without disturbing each of the said two minerals. The deposits are such that at one layer there is coal, the next layer is fireclay, the other layer is coal, the next layer is again fireclay and so on.

Nirode Baran Banerjee, who is the petitioner in that Writ Petition, holds a composite lease dated October 17, 1973 for mining coal as well as fireclay.
1080

It is urged by the learned counsel that the Nationalisation Amendment Act terminates mining leases in respect of coal only and that the law terminating leases for mining coal cannot apply to a mine which contains not only coal but fireclay also. The totality of the submission on this point may be put thus:

> (a) Under Article 31(1) of the Constitution, no person can be deprived of his property without the authority of law. Article 31A(1) which exempts the laws

mentioned in clauses (a) to (e) from invalidity under Articles 14, 19 and 31 does not dispense with the necessity of the authority of law for depriving a person his property, because the opening words of Article 31A(1) are ".... no law providing for ..." matters mentioned in clauses (a) to (e) shall be deemed to be void as offending Articles 14, 19 and 31.

(b) The Nationalisation Amendment Act confers no authority to terminate a composite lease for mining coal and fireclay. The right to mine fireclay is given to the petitioner by law and it can only be taken away by law.

(c) Though the Nationalisation Amendment Act does not in terms prohibit the petitioner from mining fireclay, the effect of the law in a practical business sense, is to prohibit the petitioner from mining fireclay and, therefore, the position is the same as though the Act had enacted the prohibition in express terms. The Court must look at the direct impact of the law on this right of the party, and if that impact prohibits him from exercising his right, the fact that there is no express prohibition in the Act is immaterial,

(d) The Nationalisation Amendment Act by making it punishable to mine coal, in substance and in a practical business sense, prohibits the petitioner from mining fireclay. For this prohibition the Amendment Act does not provide, and therefore, there is no authority of law for it. Coal and fireclay are two distinct minerals as shown by Schedule II to the Mines and Minerals (Regulation and Development) Act, 67 of 1957, wherein item 1 is coal and item 15 is fireclay. The dictionary meanings of coal and fireclay also show that they are two distinct minerals.

In support of these submissions Shri Seervai relies very strongly on the definition of 'coal mine' in section 2(b) of the Coal Mines (Nationalisation Act, 26 of 1973, and the definition, by contrast, of 'coking coal mine' in section 3(c) of the Coking Coal Mines (Nationalisation) Act, 36 of 1972.

1081

These submissions are met by the learned Attorney General with the answer that if a mine has a seam of coal it is a coal mine within the meaning of section 2(b) of Act 26 of 1973, and that, for the purposes of that definition, it makes no difference whether the mine has seams of fireclay also. The Attorney General says further that the definition of 'coking coal mine' in section 3(c) of Act 36 of 1972 contains words of surplusage which ought rather to be ignored than be allowed to determine the scope of the definition contained in section 2(b) of Act 26 of 1973. The contention, in other words, is that a coal mine is a mine in which there is at least one seam of coal, no matter whether there are seams therein of fireclay or any other mineral.

The learned Solicitor General contends that the authority of Law extends to whatever is the necessary consequence of that which is authorised. In other words, authority to do a thing necessarily includes the authority to do all other things which are necessary for the doing of that which is authorised. If law authorises the termination of coal mining leases, it must be taken to authorise whatever is necessarily incidental to and consequential upon it. Therefore, composite leases cannot be excepted from the provisions of an Act which terminates coal mining leases. Section 3(3) (a) introduced by the Nationalisation Amendment

Act, it is contended, prohibits persons other than those mentioned in clauses (i) to (iii) from carrying on coal mining operation in any form. If a person holding a composite lease can do fireclay mining without mining coal, he may do so; otherwise section 3(3) (a) is the authority of law to prevent him from mining fireclay. In other words, according to the learned Solicitor General, the necessary implication of law is that though a composite lease for mining coal and fireclay may remain outstanding after the enactment of the Nationalisation Amendment Act, the lessee cannot work it, if it involves a coal-mining operation.

The point raised by Shri Seervai is so nicely balanced that it is as difficult to reject it wholly as it is to accept it wholly. The contrast in definitions favours him. The Coal Mines (Nationalisation) Act, 26 of 1973, defines a coal mine by section 2(b) thus:

> "Coal mine" means a mine in which there exists one or more seams of coal.

If this definition is considered in isolation, the learned Attorney General could perhaps be right in his submission that any mine in which there is one seam of coal, at least one, is a coal mine. The definition takes no account of whether there are seams of other minerals, and if so, how many, in the mine. One seam of coal is enough to make a mine a coal mine. For reasons which we will presently mention, it is not easy to

1082

stretch the definition as far as logic may take it, for that will produce the result that just one seam of coal at the roof of a mine or at its base will be enough to bring a mine within the definition contained in section 2(b).

The scheme of the Coal Nationalisation Acts on which Shri Seervai relies has a relevance of its own on this point. The Coking Coal Mines (Nationalisation) Act of 1972 and the Coal Mines (Nationalisation) Act of 1973 cover the whole field of 'Coal' which was intended to be nationalised. The titles of the two Acts and the various provisions contained therein show that what was being nationalised was three distinct categories of mines: mines containing seams of coking coal exclusively; mines containing seams of coking coal along with seams of other coal; and mines containing seams of other coal. Though Parliament had power under Article 31A(1) (e) of the Constitution to terminate mining leases without payment of any compensation or 'amount', it decided to nationalise coal mines on payment of amounts specified in the Schedules to the Nationalisation Acts of 1972 and 1973. Besides, even when something apart from coking coal mines was acquired, namely, 'coke oven plants', provision was separately made in section 11 of the Nationalisation Act of 1972, read with the 2nd Schedule, for payment of amounts to owners of coke oven plants. Thus, whatever was intended to be acquired was paid for. This scheme is prima facie inconsistent with the Parliament intending to acquire lease-hold rights in other minerals like fireclay, without the payment of any amount.

Coupled with this is the unambiguous wording of section 3(3) (b) and section 3(3) (c) of the Nationalisation Act of 1973, which were introduced therein by section 3 of the Nationalisation Amendment Act. Section 3(3)(b) says that excepting the mining leases and sub-leases granted before the commencement of the Act in favour of or by certain bodies or authorities, all other mining leases and sub-leases in force before such commencement,

> "shall in so far as they relate to the winning or mining of coal, stand terminated". (emphasis supplied)

Section 3(3)(c) provides that:

"no lease for winning or mining coal shall be granted in favour of any person other than the Government, company or corporation, referred in clause (a)". (emphasis supplied).

These provisions carry the scheme of the Nationalisation Acts to their logical conclusion by emphasising that the target of those Acts is coal mines, pure and simple. What stands terminated under

1083

section 3(3)(b) is certain mining leases and sub-leases in so far as they relate to the winning or mining of coal. The embargo placed by section 3(3)(c) is on the granting of leases for winning or mining coal to persons other than those mentioned in section 3(3)(a).

Since the definition of 'coal mine' in section 2(b) of the Coal Mines (Nationalisation) Act, 1973 has an uncertain import and the scheme of that Act and of the Coking Coal Mines (Nationalisation) Act, 1972 makes it plausible that rights in minerals other than coke and coal were not intended to be acquired under the two Nationalisation Acts, it becomes necessary to compare and contrast the definition of 'coal mine' in section 2(b) of the Act of 1973 with the definition of 'coking coal mine' in section 3(c) of the Coking Coal Mines (Nationalisation) Act of 1972. Section 3(c) of the latter Act says:

"'coking coal mine' means a coal mine in which there exists one or more seams of coking coal, whether exclusively or in addition to any seam of other coal". (emphasis supplied).

This definition justifies Shri Seervai's argument that whereas in regard to coking coal mines, the existence of any seam of other coal was regarded as inconsequential, the existence of any seam of another mineral was not considered as inconsequential in regard to a coal mine. The definition of coal mine in section 2(b) of the Act of 1973 scrupulously deleted the clause, "whether exclusively or in addition to" any other seam. The same Legislature which added the particular clause in the definition of 'coking coal mine' in the 1972 Act, deleted it in the definition of 'coal mine' in the 1973 Act.

The position in regard to the coking coal mines is crystal clear, namely, that by section 4(1) of the Act of 1972, the right, title and interest of owners in relation to the coking coal mines specified in the First Schedule to the Act stood transferred to and vested absolutely in the Central Government free from all incumbrances on the appointed day. The same position obtained under section 5 of that Act in regard to coke oven plants specified in the Second Schedule. But in so far as coal mines are concerned, we have, willy-nilly, to proceed on the basis that by reason of the definition of coal mine contained in section 2(b) of the Act of 1973, and the definition of coking coal mine in section 3(c) of the Act of 1972 which presents a striking contrast to the definition in section 2(b), composite coal mines, that is to say, coal mines in which there are seams of coal and fireclay (we are only concerned with fireclay in these petition), do not fall within the scope of the definition of 'coal mine' in section 2(b) of the

1084

Act of 1973. To that extent Shri Seervai's contention must succeed.

But what then is the sequitur? Can the lessees of composite mines (like the petitioners in Writ Petitions Nos. 257, 220, 111, 600, 1130-1134, 352, 221 and 178 of 1977) who

hold composite mining leases for winning coal and fireclay, continue their mining operations unabated despite the provisions of the Nationalisation Amendment Act? We think not. It is one thing to say that a composite mine is outside the scope of the definition of coal mine in section 2(b) of the Nationalisation Act of 1973 and quite another to conclude therefrom that the other provisions introduced into that Act by the Nationalisation Amendment Act will have no impact on composite leases for winning coal and fireclay. Section 3(3) (a) which was introduced into the parent Act by the Nationalisation Amendment Act provides expressly that on and from the commencement of section 3 of the Amendment Act, that is, from April 29, 1976, no person other than those mentioned in clauses (i) to (iii) shall carry on "coal mining operation, in India, in any form". Section 4 of the Nationalisation Amendment Act which introduced sub-section (2) in section 30 of the parent Act provides:

> "Any person who engages, or causes any other person to be engaged in winning or mining coal from the whole or part of any land in respect of which no valid prospecting licence or mining lease or sub-lease is in force, shall be punishable with imprisonment for a term which may extend to two years and also with fine which may extend to ten thousand rupees".

These provisions of sections 3(3)(a) and 30(2) of the parent Act will apply of their own force, whether or not the lessee holds a composite lease for winning coal and fireclay and whether or not the mine is a composite mine containing alternate seams of coal and fireclay. In other words, as contended by the learned Solicitor General, if a person holding a composite lease can do fireclay mining without mining coal, he may do so. But if he cannot win or mine fireclay without doing a coal mining operation, that is, without winning or mining coal, he cannot do any mining operation at all. If he does so, he will be liable for the penal consequences provided for in section 30(2) of the Nationalisation Act of 1973.

The provision contained in section 3(3)(a) totally prohibiting the generality of persons from carrying on coal mining operation in India in any form and the penal provision of section 30(2) virtually
1085
Leave with the lessees of composite mines the husk of a mining interest. That they cannot win or mine coal is conceded and, indeed, there is no escape from that position in view of the aforesaid provisions. The only surviving question then is whether they can win or mine fireclay since their composite lease is outside the scope of section 2(b) of the Nationalisation Act of 1973. The answer has to be in the negative on the basis of the very averments made by the petitioners in their Writ Petitions. For example, the petitioner in Writ Petition No. 257 of 1957 has stated in his petition, more particularly in paragraph 5 thereof, that the seams of coal and fireclay are so situated in the mine of which he is a lessee, that it is not possible to mine fireclay without mining coal. This position was not only admitted but reiterated by Shri Seervai, both during the course of his oral argument and in his written brief. The conclusion is therefore inevitable that the lessees of composite mines will, for all practical purposes, have to nurse their deeds of lease without being able to exercise any of the rights flowing from them. On their own showing, they will be acting at their peril if they attempt to win fireclay. If they cannot win fireclay without winning coal, they cannot win fireclay either, even if they hold composite

leases under which they are entitled to win coal and fireclay.

This position fortifies the argument of the learned Solicitor General that though the Parliament provided for the payment of amounts for acquisition of certain interests under the Nationalisation Acts of 1972 and 1973, it did not intend to pay any compensation or amount for the termination of leasehold rights in respect of composite mines. Mines which have alternate seams of coal and fireclay are in a class by themselves and they appear to be far fewer in number as compared with the coking coal mines and coal mines, properly so called. The authority of law for the termination of the rights of composite lessees is the provision contained in section 3(3) (a), the violation of which attracts the penal provisions of section 30(2) of the Nationalisation Act of 1973. The Parliament has deprived composite lessees of their right to win fireclay because they cannot do so without winning coal. The winning of coal by the generality of people is prohibited by the section 3(3) (a) of the Act of 1973.

This is just as well, because Parliament could not have intended that such islands of exception should swallow the main stream of the Nationalisation Acts. Obviously, no rights were intended to be left outstanding, once the rights in respect of coking coal mines and coal mines were brought to an end.

1086

The petitioners in Writ Petitions Nos. 257, 220, 111, 600, 1130 1134, 352, 221 and 178 of 1977 hold composite mining leases for mining fireclay and coal. In these Petitions we had passed the following order on May 5, 1978:

> "These petitions are allowed partly in that the petitioners therein shall be entitled, for the duration of the unexpired portion of their existing leases, to carry on mining operations for the purpose of winning fireclay so long as, and to the extent that, they do not carry on any coal mining operation or engage in winning or mining coal. In these Writ Petitions there will be no order as to costs".

As we have already stated, no tangible benefit will accrue to the petitioners from this order because, on their own showing, they cannot carry on mining operations for the purpose of winning fireclay without carrying on a coal mining operation or without engaging in winning or mining coal. That is how the matter rests.

The only other arguments which requires consideration is the one made principally by Shri A. K. Sen which, like Shri Seervai's argument of legislative competence, is common to all the writ petitions. Shri Sen's argument may be stated thus:

> (1) The Nationalisation Amendment Act affects, in substance, two kinds of transfers: the transfer of the leasehold interests of the lessees in favour of the lessor, namely the State; and the transfer of the mining business of the lessees in favour of the Central Government. Since these transfers amount to acquisition within the meaning of Article 31(2), the Act is open to challenge under Articles 14, 19(1) (g) and 31 of the Constitution.
>
> (2) The Nationalisation Amendment Act is open to challenge under Article 14 because lessees who fall within that Act are patently discriminated against in comparison with lessees of other mines, both coking and non-coking, who were paid compensation when their property was taken over, first for management under the

Management Acts and then under the Nationalisation Acts.

(3) The Nationalisation Amendment Act is open to challenge under Article 19(1) (g) because the prohibition against lessees from carrying on their business and the transfer of their business, in substance, to the Central Government or a Company is an unreasonable restriction on the

1087

right of the lessees to hold their lease-hold property and to carry on their business of mining.

(4) The Act is open to challenge under Article 31 because no provision is made for the payment of any amount whatsoever to the lessees whose mining business is taken over under the Act. No public purpose is involved either in the termination of the lessees' interest or in the acquisition of their business. Expropriation without payment of any amount requires a very heavy public purpose.

(5) Since no provision whatsoever is made for the payment of any amount to the lessees whose leases are terminated, the Nationalisation Amendment Act is not a 'Law' within the meaning of Article 31(2) and therefore Article 19 (1) (f) is attracted.

(6) The Act is not saved from the challenge of Articles 14, 19 and 31 by Article 31A(1)(e) because that Article provides for extinguishment which does not amount to acquisition by the State. If extinguishment amounting to acquisition was intended to be saved under Article 31A(1) (e), the subject matter dealt with by clause (e) would have been included in clause (a) of that Article.

It shall have been noticed that the entire argument hinges around the premise that, by the Nationalisation Amendment Act, the petitioners right to property has been acquired without the payment of any amount and that they have been unreasonably deprived of their right to carry on the business of mining. A close and careful examination of the provisions of the Coal Mines (Nationalisation) Act, 1973 and of the amendments made to that Act by the Nationalisation Amendment Act will show that there is no substance in either of these contentions.

The Coal Mines (Nationalisation Act, 1973) nationalised coal mines by providing by section 3(1) that on the appointed day, that is on May 1, 1973, the right, title and interest of the owners in relation to the coal mines specified in the Schedule shall stand transferred to, and shall vest absolutely in, the Central Government free from all incumbrances. The Scheduled mines, 711 in number and situated in reputed coal bearing areas, were the ones which were engaged openly, lawfully and uninterruptedly in doing coal mining business. Since it was possible to ascertain and verify the relevant facts pertaining to these undertakings, they were taken over on payment of amounts

1088

mentioned in the Schedule to the Act, which varied from mine to mine depending upon the value of their assets, their potential and their profitability. In the very nature of things, the list of mines in the Schedule could not be exhaustive because there were and perhaps even now there are, unauthorised mines worked by persons who did not possess the semblance of a title or right to do mining business. Persons falling within that category cannot cite the Constitution as their charter to continue to indulge in unauthorised mining which is unscientific, unsystematic and

detrimental to the national interests by reason of its tendency to destroy the reserve of natural resources. But alongside these persons, there could conceivably be mine operators who may have been doing their business lawfully but who were not easily or readily identifiable. Section 3(2) of the Nationalisation Act, 1973 made provision for taking over the management of such mines by declaring for "the removal of doubts" that if, after the appointed day, the existence of any other coal mine comes to the knowledge of the Central Government, the provisions of the Coal Mines (Taking Over of Management) Act, 1973, shall, until that mine is nationalised by an appropriate legislation, apply to such mine. Owners of mines whose mines were not included in the Schedule but whose right, title and interest was to vest eventually in the Central Government under "an appropriate legislation" envisaged by section 3(2) of the Nationalisation Act were, by this method, placed on par with the owners of mines of which the management was taken over under the Coal Mines (Taking Over of Management) Act, 1973. That Act provides by section 7(1) that every owner of a coal mine shall be given by the Central Government an amount in cash for the vesting in it, under section 3, of the management of such mine. By section 7(2), for every month during which the management of a coal mine remains vested in the Central Government, the amount referred to in sub-section (1) shall be computed at the rate of twenty paise per tonne of coal on the highest monthly production of coal from such mine during any month in the years 1969, 1970, 1971 and 1972. The two provisos to that sub-section and the other sub-sections of section 7 provide for other matters relating to payment of amounts to the owners of coal mines of which the management was taken over. The Nationalisation Amendment Act carried the scheme of these two Acts to its logical conclusion by terminating the so-called leases and sub-leases which might have remained outstanding. Thus, the purpose attained by these Acts is (1) to vest in the Central Government the right of management of all coal mines; (2) to nationalise the mines mentioned in the Schedule; (3) to provide for the taking over of management of coal mines the existence of which comes to the knowledge of the Central Government after the appoint-
1089
ed day and lastly (4) to terminate all mining leases. The Management Act and the Nationalisation Act provide for payment of amounts, by no means illusory, to the owners of coal mines whose rights were taken over. In the normal course of human affairs, particularly business affairs, it is difficult to conceive that owners of coal mines who had even the vestige of a title thereto would not bring to the notice of the Central Government the existence of their mines, when such mines were not included in the Schedule to the Nationalisation Act. Those who did not care to bring the existence of their mines to the knowledge of the Central Government, even though amounts are payable under the Management Act for the extinguishment of the right of management, did not evidently possess even the semblance of a title to the mines. The claims of lessees, holding or allegedly holding under such owners, would be as tenuous as the title of their putative lessors.

The Nationalisation Amendment Act by section 3(3) (b) undoubtedly terminates all existing leases and sub-leases except those already granted in favour of persons referred to in clauses (i) to (iii) of section 3 (3)(a). Similarly, section 3 (3)(a) imposes an embargo on all future coal mining operations except in regard to the persons mentioned

in clauses (i) to (iii). But the generality of leases which are alleged to have remained outstanding despite the coming into force of the Management Act and the Nationalisation Act, were mostly precarious, whose holders could at best present the familiar alibi that the origin of their rights or of those from whom they derived title was lost in antiquity. Neither in law, nor in equity and justice, nor under the Constitution can these lessees be heard to complain of the termination of their lease-hold rights without the payment of any amount. The provision contained in section 3(3)(b) of the Nationalisation Amendment Act was made ex majore cautela so as not to leave any lease of a coal mine surviving after the enactment of the Management Act and the Nationalisation Act. There was no reasonable possibility of a lawful lease surviving the passing of those Acts; but if, per chance, anyone claimed that he held a lease, that stood terminated under section 3(3)(b).

Once the real nature of the scheme envisaged by the Management Act the Nationalisation Act and the Nationalisation Amendment Act is appreciated, it will be easy to see that section 3(3) (b) of the Nationalisation Amendment Act brings about an extinguishment simpliciter of coal mining leases within the meaning of Article 31A (1)(e) of the Constitution. That Article, as it stood prior to the 44th Amendment, read thus:

1090

> "31A. (1) Notwithstanding anything contained in Article 13, no law providing for
>
> (e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence,
>
> shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31".

We are not concerned with the amendment introduced by the 44th Amendment Act which deleted the reference to Article 31, since that Amendment Act came into force prospectively with effect from June 20, 1979.

We are unable to accept that the termination of the mining leases and sub-leases brought about by section 3(3)(b) of the Nationalisation Amendment Act is a mere pretence for the acquisition of the mining business of the lessees and the sub-lessees. We have already shown how, in the context of the scheme of the Management Act, the Nationalisation Act and the Nationalisation Amendment Act, it is impossible to hold that the true intent of the last mentioned Act was to 'acquire' anyone's business. This would be so whether the word 'acquire' is understood in its broad popular sense or in the narrow technical sense which it has come to possess. Whatever rights were intended to be acquired were paid for by the fixation of amounts or by the laying down of a formula for ascertaining amounts payable for acquisition. It is hard to believe that having provided for payment of amounts for acquisition of management and ownership rights, the legislature resorted to the subterfuge of acquiring the mining business of the surviving lessees and sub-lessees by the device of terminating their leases and sub-leases. The legislative history leading to the termination of coal-mining leases points to one conclusion only that, by and large, every lawful interest which was acquired was paid for; the extinguishment of the interest

which survived or which is alleged to have survived the passing of the Management Act and the Nationalisation Act was provided for merely in order to ensure that no loophole was left in the implementation of the scheme envisaged by those Acts.

1091

This will provide a short answer to Shri Sen's argument that persons whose leases and sub-leases are terminated without payment of any amount are discriminated against in comparison with other lessees who were paid amounts when their property was taken over. The answer is that persons dealt with by section 3(3)(b) of the Nationalisation Amendment Act are differently situated from those who were dealt with by the two earlier Acts. No violation of Article 14 is therefore involved.

Likewise, we see no substance in the contention that no public purpose is involved in the termination of the interest of the lessees and sub-lessees which was brought about by the Nationalisation Amendment Act. The public purpose which informs that Act is the same which lies behind its two precursors, the Management Act and the Nationalisation Act. The purpose is to reorganize and re-structure coal mines so as to ensure the rational, coordinated and scientific development and utilisation of coal resources consistent with the growing requirements of the country. The Statement of Objects and Reasons of the Nationalisation Amendment Act points in the direction. Public purpose runs like a continuous thread through the well-knit scheme of the three Acts under consideration.

This discussion is sufficient to meet the contention of the petitioners that the interest of the lessees and sub-lessees has been "acquired" under the Nationalisation Amendment Act by the termination of leases and sub-leases. But, we may examine that contention in the light of the relevant Constitutional provisions and principles. It was observed in Dwarkadas Shrinivas v. The Sholapur Spinning & Weaving Co. Ltd. that the provisions of the Constitution touching fundamental rights must be construed broadly and liberally in favour of those on whom the rights have been conferred. "The form is unessential. It is the substance that we must seek". Making every allowance in favour of the right to property which was available at the relevant time and having regard to the substance of the matter and not merely to the form adopted for terminating the interest of the lessees and the sub-lessees, we are of the opinion that the Nationalisation Amendment Act involves no acquisition of the interest of the lessees and the sub-lessees. It merely brings about in the language of Article 31A(1)(e) "the extinguishment" of their right, if any, to win coal. Whichever right, title and interest was lawful and identifiable was acquired by the Management Act and the Nationalisation Act. And whichever interest was acquired was paid for. Tenuous and furtive interests

1092

which survived the passing of those Acts were merely extinguished by the Nationalisation amendment Act.

In Ajit Singh v. State of Punjab, it was observed by Hindayatullah, J. in the dissenting judgment which he gave on behalf of himself and Shelat, J., that in the case of extinguishment within the meaning of Article 31A, if all the rights in a property are extinguished the result would be nothing else than acquisition, because no property can remain in suspense without the rights therein being vested in some one or the other. These observations made by the learned Judge are not contrary to anything contained in the

majority judgment delivered by Sikri, J., and naturally therefore, great reliance is placed upon them by the petitioners. Even greater sustenance is drawn by the petitioners from the judgment of a 7-Judge Bench of this Court in Madan Mohan Pathak v. Union of India & Ors. In that case, a settlement which the Life Insurance Corporation had arrived at with its employees was substantially set at naught by the Life Insurance Corporation (Modification of Settlement) Act, 1976. It was held by this Court that the Act was violative of Article 31(2) since it did not provide for payment of any amount for the compulsory acquisition of the debts owed by the Life Insurance Corporation to its employees; that the direct effect of the impugned Act was to transfer ownership of the debts due and owing to Class III and Class IV employees in respect of annual cash bonus to the Life Insurance Corporation and that, since the Corporation is owned by the State, the impugned Act was a law providing for compulsory acquisition of the debts by the State within the meaning of Article 31(2A).

These decisions have no application to the instant case because the interest of the lessees and sub-lessees which was brought to termination by section 3(3) (b) of the Nationalisation Amendment Act does not come to be vested in the State. The Act provides that excepting a certain class of leases and sub-leases, all other leases and sub-leases shall stand terminated in so far as they relate to the winning or mining of coal. There is no provision in the Act by which the interest so terminated is vested in the State; Nor does such vesting flow as a necessary consequence of any of the provisions of the Act. Sub-section (4) of section 3 of the Act provides that where a mining lease stands terminated under sub-section (3), it shall be lawful for the Central Government or a Government company or a corporation owned or controlled by the Central government to obtain a prospecting licence or a mining lease in respect of the whole or part of the land covered by the mining lease which stands so terminated.

1093

The plain intendment of the Act, which, may it be reiterated, is neither a pretence nor a facade, is that once the outstanding leases and subleases are terminated, the Central Government and the other authorities will be free to apply for a mining lease. Any lease-hold interest which the Central Government, for example, may thus obtain does not directly or immediately flow from the termination brought about by section 3(3)(b). Another event has to intervene between the termination of existing leases and the creation of new interests. The Central Government, etc. have to take a positive step for obtaining a prospecting licence or a mining lease. Without it, the Act would be ineffective to create of its own force any right or interest in favour of the Central Government, a Government Company or a Corporation owned, managed or controlled by the Central Government. As observed by Sikri, J., in Ajit Singh, (supra) the essential difference between "acquisition by the State" on the one hand and "modification or extinguishment of rights" on the other, is that in the first case the beneficiary is the State while in the second the beneficiary is not the State. The Nationalisation Amendment Act merely extinguishes the rights of the lessees and the sub-lessees. It does not provide for the acquisition of those rights, directly or indirectly, by the State. Article 31(2A) will therefore come into play, by which,

> "Where a law does not provide for the transfer of the ownership or right to possession of any property to

> the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property."

The position in Madan Mohan Pathak (supra) was entirely different because the direct effect of the impugned Act was to transfer ownership of the debts due and owing to Class III and Class IV employees in respect of annual cash bonus to the Life Insurance Corporation; since the L.I.C. is a Corporation owned by the State, the impugned Act was held to be a law providing for compulsory acquisition of these debts by the State within the meaning of clause (2A) of Article 31.

Shri Sen's argument on the question of acquisition of the rights of lessees and sub-lessees by the State therefore fails. It follows that the Nationalisation Amendment Act must receive the protection of Article 31A(1)(e) of the Constitution, that is to say, that the Act cannot be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Articles 14, 19 and 31.

1094

These are our reasons for the order passed by us on May 5, 1978 which reads thus :

> The stay orders passed in these Writ Petitions are vacated except in those Writ Petitions, viz., Writ Petitions Nos. 257, 220, 111, 600, 1130-1134, 352, 221 and 178/77 in which composite mining leases have been granted for mining both fireclay and coal. The stay orders in these latter petitions shall stand modified as from to-day on the lines of the order recorded below.
>
> All the Writ Petitions are dismissed with costs except Writ Petitions Nos. 257, 220, 111, 600, 1130-1134, 352, 221 and 178/77 in each of which there is a composite mining for mining fireclay and coal. These Petitions are allowed partly in that the petitioners therein shall be entitled, for the duration of the unexpired portion of their existing leases, to carry on mining operations for the purpose of winning fireclay so long as, and to the extent that, they do not carry on any coal mining operation or engage in winning or mining coal. In these writ petitions there will be no order as to costs.

We have already indicated how, though the petitioners holding composite leases were permitted to carry on mining operations for the purpose of winning fireclay, they, according to their own showing, cannot win or mine fireclay without doing a coal mining operation or without engaging in winning or mining coal. It is self-evident that in attempting to win fireclay, they will have to act at their own peril since they will run the risk of being prosecuted under section 30(2) of the Coal Mines (Nationalisation) Act, 1973.

Petition Nos. 111, 178, 220, 221, 257, 352, 600 and 1130-1134 partly allowed.

Petition Nos. 150, 151, 180, 205-210, 226, 270-271, 346, 355, 403, 396-398, 599, 541, 543, 626, 635-639, 661, 687-692, 758/77 and 154, 571-574, 603, 605, 610 and 611/77 dismissed.

S. R.

1095