

Viklad Coal Merchant, Patiala and Others

Vs

Union of India and Others

Dharam Singh Yadav and Others

Vs

Union of India and Others

Writ Petitions Nos. 6822, 7350, 7351, 1919 of 1981 and 13, 36, 112, 1, 868, 1270, etc. of 1982

(D. A. Desai, O. Chinnappa Reddy JJ)

28.10.1983

JUDGMENT

DESAI, J. -

1. When the hearing in this group of petitions concluded, we pronounced the following order :

All the writ petitions are dismissed and any interim order in each matter is hereby vacated. In the matters which are listed as ready, the petitioner shall pay cost to the respondents in one set in each petition and there will be no order as to costs in the matters which are shown as unready.

Reasons will follow.

Here are the reasons.

2. The petitioners, in this group of petitions, under Article 32 of the Constitution are coal merchants, who, according to them, have been denied the use of the railways for transport of coal from various coalfields and wayside stations to their destinations by the illegal and unconstitutional action of the railway administration. Constitutional conundrum invoked by them is the alleged violation of Article 14 in that while certain transporters of coal have been accorded priority in the matter of transport of coal such as the Central and the State Governments and the sponsored and recommended transporters, the petitioner who are coal merchants were denied equality of opportunity in the matter of transport of coal by railway. Their further grievance is that total prohibition of booking and transport of coal as requested by petitioners, by the railway administration, an instrumentality of the State envisaged by Article 12 imposed an unreasonable restriction on their fundamental freedom to carry on trade guaranteed by Article 19(1)(g) of the Constitution hence impugned orders are invalid.

3. There are different petitioners from different areas voicing their grievance against action of different zonal railway administrations but the running thread in the catalogue of grievances is the same and therefore a few representative facts to appreciate the convention as set out in Civil Writ Petition No. 8003-04 by M/s. Raniganj Coal Corporation may be briefly enumerated. This petition is adopted as representative for the additional reason that a very comprehensive counter-affidavit

has been filed in it on behalf of the respondents.

4. Petitioners aver that they are coal traders and undertake supply of coal and coke throughout India but in particular in the State of Punjab, Haryana and the Union Territory of Delhi. They carry on the additional business of supplying slack coal purchased from private collieries situated in the State of Meghalaya. In order to move coal from the collieries to consumers, petitioners have to transport coal from various stations served by North-Eastern Frontier Railways (Meter gauge) New Gauhati and Badarpur Ghat in Silchar District in the State of Assam and Meghalaya. For the purpose of transporting coal, they have to indent wagons as they want to transport coal in wagon-loads as the expression is understood in contradistinction to small and clubbing. They submit indent for wagons according to the procedure prescribed in the relevant rules. Petitioners aver that prior to April 1, 1972, there was no restriction on booking of coal in wagon-loads. The Government of India, Ministry of Railways issued an order dated April 1, 1972 which reads as under :

Government of India (Bharat Sarkar) Ministry of Railways (Rail Mantralaya),
Railway Board No. TCR/1510/71 New Delhi, dated 1st April, 1972 12th Chaitra,
1894 The General Manager 11, Indian Railways###

The Railway Board have decided that in the list of abbreviations at page 14, Chapter VI of the IRCA alphabetical list of railway stations in India (corrected up to 31.3.1979) an additional entry below the abbreviations 'G' should be incorporated as under :

GX - Open for goods, traffic of coal descriptions excluding livestock, horse, large animals such as camels, elephants etc. carriages on their wheels and motor cars but not open for outward booking of coal, coal-shale, lignite, patent fuel, soft coke and hard coke in wagon-loads.

The Railway Administrations are hereby directed to decide and notify the names of stations to which this new provisions would apply and advise the General Secretary, IRCA accordingly.

The General Secretary, IRCA on receipt of the advice from the Railway Administrations should arrange to issue the necessary corrections, to the alphabetical list of railway stations.

Sd. P. N. Kalra, Dy. Director, Traffic (Rates) Rly. Board, New Delhi, dated 1st
April 72/12 Chaitra 64###

This is one of the impugned orders in these petitions. The abbreviation IRCA used in the impugned order means Indian Railway Conference Association ('IRCA' for short). The IRCA has compiled and issued an alphabetical list of all-India railway stations and by a suitable abbreviation as shown against the name of each railway station indication is given about the facilities for traffic both goods and passenger available at different stations. As per the impugned order when abbreviation 'GX' is appended to any railway station it would inter alia mean that the station is not open for outward booking of coal, coal-shale etc. in wagon-loads. It appears that the abbreviation 'GX' has been appended to all wayside stations in the coal-belt; consequently no railway station in the coal-belt would be in a position to book coal in wagon-loads from each such station. Consequent upon the issuance of the impugned notification, the Government of India revised Rule 302(i) of the Goods Tariff No. 33 Part I issued by IRCA. Further, the Chief Commercial Superintendent, Eastern Railway by a circular dated April 15, 1972 informed the station superintendents and station-masters of all the stations served by the Eastern Railway that the entry 'GX' should be appended to all the stations

within its jurisdiction. Thereafter Government of India. Ministry of Railways by its order dated April 27 1972 issued an order revising Rules 1 and 2 of the Eastern Railway Coal Traffic Part I as under :

1. All traffic in coal, coal-shale, lignite, patent fuel, soft coke and hard coke in wagon-loads will be loaded only from colliery sidings, coke over plants and washeries on the Eastern Railways. Though invoices may be issued as from the stations serving these colliery washeries and coke over plants, loading of coal in wagons will not be permitted at those stations. Loading and booking of coal is also not permitted from any other station on the Eastern Railway. This traffic will be booked under the following forms of invoices :

- (a) "Weight only" invoices showing the weight and rate but not the calculated freight.
- (b) "Paid" invoices.
- (c) "To pay" invoices.

2. Coal will be booked under "Paid" invoices only on the written request of the sender despatching the coal and provided the freight is tenders at the time of despatch.

Wagons will be allotted only on availability and will be subject to observance of priority and other Rules that are in force.

A further restriction followed when the Divisional Operating Superintendent, Bilaspur for apparent reasons stopped booking of coal in small including clubbing at all stations North-Eastern Railway. This restriction came into force on December 4, 1979. On February 11, 1980, a telegraphic communication was issued explaining that coal in wagon-loads can be booked from colliery sidings by the collieries concerned. In other words, the colliery booking the wagons must specify its name in the indent. Booking of slack coal was wholly stopped as per a phone call dated April 9, 1981. Petitioners further contend that Union of India, Ministry of Railways has issued Preferential Traffic Schedule in exercise of power conferred by Section 27-A of the Indian Railways Act, 1890 ('Act' for short). This Preferential Traffic Schedule provides for preferential treatment in transport goods from various stations. It provides five intense Priorities A to E. Different kinds of coal fall under Priority C(iii) which reads as under :

(iii) Coal from collieries in accordance with commodity quotas laid down from time to time for certain types of coal and/or in accordance with programmes and movements sponsored or recommended by the Coal controller and/or any Committee appointed by him and/or the State Governments and/or other recommending authorities and accepted by the Railway Administrations and/or Director, Movement (Railways), Calcutta, and in accordance with the Zonal Scheme applicable to each field and the principles of transport rationalisation in force from time to time. A list of sponsoring authorities authorised to sponsor coal movements in this item is given in Annexure B.

Note - (a) Coal in the above item C(iii) means "Coal as defined in Colliery Control Order".

(b) Besides the sponsoring authorities mentioned in Annexure B movement of coal

may be sponsored by "any other authority who may be appointed by the Government from time to time".

(c) Recommendation for allotment of wagons by a sponsoring authority or acceptance of recommendations or issue of sanction by the Railway Administration/Director, Movement (Railways) does not guarantee allotment/supply of wagons. Allotment/supply of wagons would be regulated according to the availability of coal/transport and according to operational exigencies from time to time. Allotment/supplies of wagons may be cancelled or reduced by Director, Movement (Railways).

(d) The period of validity of programmes/sanctions for rakes/piecemeal movement may be laid down from time to time by Railway Administration/ Director, Movement (Railways). The validity of programme/sanction does not guarantee allotment/supply of wagons.

(e) Inter se seniority of the class of consumers would be laid down from time to time by Railway Administration/Director, Movement (Railways) and may be altered/modified from time to time. Within the same class or category of consumers seniority may be fixed from time to time depending upon the operational and other considerations. Railway Administration/Director, Movement (Railways) may permit distress allotment/supply of wagons when considered necessary. Nothing laid down herein shall be considered as contrary to note (a) to (b) appearing under Priority E.

Priority E also includes coal from collieries in accordance with the targets laid down from time to time from the different fields and in accordance with the zonal scheme applicable to each field and the principle of transport rationalisation already in force. Petitioners contend that sum total of various restrictions including one dated April, 1972 introducing abbreviation 'GX' and the Preferential Traffic Schedule specifying priorities under Section 27-A(1) of the Act in their cumulative effect impose a total ban on transport of coal by the Railways, at their instance and this action is violative of Article 14 and 19(1)(g) of the Constitution.

5. A very detailed affidavit has been filed on behalf of the respondents. Some of its highlights may be noticed.

6. Indian Railways network serve 7000 railway stations, scores of divisions and 9 zones. In such an extensive network, all kinds of facilities by their very nature cannot be provided at all stations, nor can all kinds of traffic be lifted and moved from all stations. The Railways, have therefore to plan out and rationalise movement of various commodities from various loading points to various destinations and in various directions. It is said that till recently coal was the primary source of energy. It being an important commodity it has to be accorded such high priority being the primary source of energy, that a senior officer called Director, Movement (Railways) is posted with headquarters at Calcutta and he controls and co-ordinates all movements of coal by rail. As far back as 1945, the Government of India by its resolution No. coal 119(1) dated December 4, 1945 appointed a Committee called the Indian Coalfields Committee which submitted its report in 1946. Amongst various other recommendations, the Committee suggested that in view of the shortage of transport, it is imperative that increased attention be given to zonal distribution of coal. It further notices that coal is invariably transported in full wagon-loads and therefore if any general revision of freight is under taken in consequence of increased cost of operation of the Railways, the

preferential treatment now accorded to coal should be maintained. Statistical data relied upon in the report was annexed to the counter-affidavit. It is averred that railway has to rationalise movement of coal because daily on an average 10,000 wagons are required for movement and transport of coal all over the country. In order to explain why booking of coal from wayside stations is prohibited, it is averred that the Director, Movement (Railways) assesses the likely availability of wagons in a coming year for the movement of coal. After ascertaining the available capacity he advises Central Government and various State Governments with a request to sponsor coal traffic as per the requirement and policies. The whole programme of transport of coal from coalfields and collieries to various points in India is worked out in advance keeping in view the daily despatch of loaded wagons and return of empty wagons so as to be available for daily requirement of empty wagons. A chart is annexed to this counter-affidavit in which the average loading of coal in wagons per day is set out. In a letter dated December 21, 1981 by the Director, Movement (Railways) to Chairman of the Railway Board, it is stated that coal loading during the month is 10,478 per day compared to 10,121 wagons per day during October, 1981. A comparative breakage of loading during some months has been set out showing the number of wagons indented, the number of wagons allotted and the number of wagons loaded and the percentage of loading against officer. It is also stated in the counter-affidavit that the Department of Coal, in the Ministry of Energy has set up a Standing Linkage Committee whose function is to assess and link the requirements to particular sources of coal so as to provide this primary energy material to establishments like the Railways, thermal power stations, fertiliser plants, cement plants, steel plants, textile factories, chemical industries and the like. The Committee assesses the requirements of various industrial units, consumers' establishments and other consumers located in different parts of the country and thereafter taking into account the production programme of various collieries, it links the requirements of various consuming units to different individual coalfields, and this linkage is reviewed from time to time as the situation may necessitate. The availability of wagons is an integral part of this linkage programme. After specifying these facts, it is averred that this annual allotment drawn in advance cannot be disturbed by casual indent for transporting coal. It is further averred that the railway is a carrier which has to chalk out its own priority programmes keeping in view the public interest of rushing various commodities to different parts of the country. If in the process some individuals may not get a chance to transport their commodities, the action of the railway administration is neither violative of Article 14 nor of 19(1)(g) of the Constitution.

7. There are some averments in the counter-affidavit casting some doubt about the trade carried on by the petitioners but we consider the same irrelevant for the purpose of disposing of these petitions.

8. A number of learned counsel addressed the Court on different facets of almost the same identical contentions. We would, however, only deal with the basic contentions raised in these petitions.

9. At the outset, a brief reference to some of the provisions of the Act would facilitate the examination of the contentions canvassed before us. Section 27 of the Act casts a duty on the railway administration to arrange for receiving and forwarding traffic without unreasonable delay and without partiality. Sub-section 1 of Section 27 reads as under :

27. Duty of railway administrations to arrange for receiving and forwarding traffic without unreasonable delay and without partiality. - (1) Every railway administration shall, according to its powers, afford all reasonable facilities for the receiving, forwarding and delivering of traffic upon and from the several railways belonging to or worked by it and for the return of rolling-stock.

Section 27-A which was introduced by the Amending Act No. 11 of 1950 confers power on the Central Government to give directions in regard to transport of goods by railway administration. It reads as under :

27-A. Power of Central Government to give directions in regard to transport of goods by railway administration. - (1) The Central Government may, if in its opinion it is necessary in the public interest so to do, by general or special order, direct any railway administration -

(a) to give special facilities for, or preference to, the transport of any such goods or class of goods consigned to the Central Government or to the Government of any State or of such other goods or class of goods, as may be specified in the order;

(b) to carry any goods or class of goods by such route or routes and at such rates as may be specified in the order.

(2) Any order made under sub-section (1) shall cease to have effect after the expiry of six months from the date thereof, but it may be renewed from time to time.

(3) Notwithstanding anything contained in this Act, every railway administration shall be bound to comply with any direction given under sub-section (1), and any action taken by a railway administration in pursuance of any such direction shall not be deemed to be a contravention of Section 28.

Section 28 prohibits giving undue preference by railway administration. It reads as under :

28. Prohibition of undue preference. - A railway administration shall not make or give any undue or unreasonable preference or advantage to, or in favour of, any particular person or railway administration, or any particular description of traffic, in any respect whatsoever, or subject any particular person or railway administration or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

In exercise of the power conferred by Section 27-A Central Government issued Preferential Traffic Schedule directing that all railway administrations shall give special facilities for or preference to the transport of goods or class of goods specified in the Schedule to the order. Amongst Priority A to E there is inter se priority and when under one priority various goods or class of goods are clubbed together, they have inter se priority amongst themselves. Coal falls under Priority C. Coal has to be moved from collieries in accordance with commodity quotas laid down from time to time for certain types of coal and/or in accordance with programmes and movements sponsored or recommended by the Coal Controller and/or any Committee appointed by him and/or the State Governments and/or other recommending authorities and accepted by the railway administrations and/or Director, Movement (Railways), Calcutta and in accordance with the Zonal Scheme applicable to each coalfield from time to time. A list of sponsoring authorities authorised to sponsor coal movements under Priority C(iii) is set out in Annexure B to the Schedule. The expression 'coal' has the same meaning as defined in the Colliery Control Order. There is a further provision under Item (iii) that besides the sponsoring authority mentioned in annexure B, movement of coal may be sponsored by "any other authority who may be appointed by the Government from time to time".

10. Section 27 provides for smooth flow of traffic throughout the length and breadth of the country. The expression 'traffic' is defined to include rolling-stock of every description as well as passengers,

animals and goods. A duty is cast on every railway administration to afford reasonable facilities for receiving, forwarding and delivering of traffic upon and from several railways belonging to or worked by it and of the return of rolling-stock. This is necessary because the railway network is divided into various railways such as Western Railway, Central Railway, meaning zonal railway administration and prior to nationalisation of the railways different companies operated different railways. Section 27 was enacted in the last decade of Nineteenth Century when different companies had set up the railway network in different parts of the country. In order to provide for smooth flow of traffic thwarting the railway administrations creating their own preferences, throughout the length and breadth of the country it was made obligatory by Section 27 that every railway administration shall afford reasonable facilities for receiving, forwarding and delivering traffic and for return of the rolling-stock. Section 27-A was introduced in 1950 with a view to conferring power on the Central Government to give directions in regard to transport of goods by railway administration. In 1950 Railways were the primary carriers of passengers and goods throughout the length and breadth of the country. Road transport was then in its infancy and river navigation was practically unknown. On the advent of the Independence and as a result of planned economy, there was a spurt in industrial activity with the result that demand from the Railways for rolling-stock escalated. Various projects were being set up in different parts of the country which necessitated uninterrupted flow of goods for speedy completion of the projects. By 1950, Constitution became operative. Article 14 loomed large so that unless a specific power was taken for serving larger public interest, the Railways, an instrumentality of the State would be guilty of violating Article 14 if it did not afford the same facility for transport of goods by individuals against the State requirements as also priority requirements. In order to arm the Central Government with power to give directions for according special facilities, or preferential treatment in transport of goods or class of goods consigned to the Central Government or the Government of any State or of such other goods or class of goods as may be specified in the order, Section 27-A was introduced in the Act. It also conferred power on the Central Government to give directions for the same purpose of carrying goods or class of goods by such route or routes and at such rates as may be specified in the order. The life of an order giving such facilities or preferential treatment was to be initially for a period of 6 months but it can be renewed from time to time. Section 28 prohibited giving of undue or unreasonable advantage or preference by the railway administration in the matter of transport of goods in favour of any particular person or railway administration or particular description of traffic. The scheme that merges from the combined reading of Sections 27, 27-A and 28 is that the railway administrations on their own shall not impede free flow of traffic and return of rolling-stock. Power was conferred on the Central Government for according special facilities or preferential treatment in the matter of transport of goods both in respect of consignees as well as class of goods, if in its opinion, it is necessary in the public interest to do so. However, Section 28 in the absence of general or special order in this behalf by the Central Government under Section 27-A denied to the railway administration power to accord any undue or unreasonable preference or advantage in favour of any particular person or any other body. The preferential treatment in the matter of transport of goods can be accorded to be the railway administration on its own which it is prohibited from doing by Section 28 but it is under an obligation to do so if the Central Government gives a direction by general or special order in public interest. In short, undue preference by railway administration is statutorily prohibited but preferential treatment in respect of goods or class of goods can be accorded if the Central Government by a special or general order public interest so directs.

11. Armed with the power conferred by Section 27-A the Central Government has issued what is called Preferential Traffic Schedule. It prescribed five Priorities A to E with inter se priorities amongst A to E be accorded by the Railways for transport of certain goods or class of goods

specified under each category. A brief reference to various Priorities A to E would at glance show how the priorities have been determined in public and national interest. The General Order No. 68 directs that in exercise of the powers conferred by Section 27-A of the Act, the Central Government directs that all railway administrations shall give special facilities for or preference to the transport of goods/class of goods specified in the Schedule to this order. Goods included in Priority A cover all moves of immediate and operational nature ordered by the Quarter Master General's Branch through Milrail, which will be marked 'Immediate' in respect of personnel, vehicles and stores, military special trains and immediate operational demands. Demands of the military have been accorded the highest priority for the security of the nation. Priority B includes foodgrains, fertilisers, edible groundnut cake, iron and steel etc. Next to national security hunger has been given priority. Priority C included inter se coal from collieries. Coal has till recently been the primary source of energy and yet it receives its place in Priority C. Energy thus gets Priority C. Priority D includes raw materials and finished products from asbestos cement industry, cotton seed, foodstuffs such as pulses, fresh dates, perishable commodities subject to quota etc. Priority E is practically a residuary clause which again involves coal from collieries in accordance with the targets laid down from time to time from the different fields and in accordance with the zonal scheme applicable to each field and the principle of transport rationalisation already in force but not falling within Priority C(iii).

12. In the backdrop of this legal position, we may now turn to the contentions raised on behalf of the petitioners.

1. Railway being a common carrier and by Section 28 of the Act being statutorily prohibited from giving undue preference by arbitrarily picking and choosing some out of those seeking to use its services and facilities, its action of giving priority to some transporters of coal denying use of its transport facilities to the petitioners who are similarly situated is discriminatory in character and hence violative of Article 14.
2. Impugned orders such as those dated April 1, 1972, December 31, 1980 and April 11, 1981 in their cumulative effect have imposed a total ban on the transport of coal offered by the petitioners by the Railways and thereby imposed unreasonable restrictions on the fundamental freedom of the petitioners to carry on their trade guaranteed by Article 19(1)(g) and hence they are unconstitutional.
3. If upon its true construction, Section 27-A enables the Central Government to impose a total ban on transport of coal offered by the petitioners who are traders in coal, it (Section 27-A) is violative of Article 19(1)(g) and hence unconstitutional.
4. In any view of the matter, para (iii) of Priority C of the Preferential Traffic Schedule issued by the Government of India in exercise of the power conferred by Section 27-A in so far as it permits special facility or preference to individuals or groups of persons selected by the sponsoring authority or recommending body for transport of coal is ultra vires Section 27-A of the Act.
5. Order No. TO(g) 1510/71 dated April 1, 1972 introducing abbreviation 'GX' and appending to all railway stations denoting that each such station is not open for outward booking of coal, coal-shale, lignite, patent fuel, soft coke and hard coke in wagon-loads is violative of Section 28 because thereby the railway administration has subjected the petitioners as well as the coal offered for transport to an undue and unreasonable prejudice or disadvantage in the matter of coal transport.

6. At any rate, total stoppage of booking of coal from wayside stations and colliery sidings unless the collieries in their own name book the wagons imposes a total ban on transport of coal offered by the petitioners and therefore, the order dated April 1, 1972 introducing 'GX' abbreviation and appending it to all railway stations is violative of Article 19(1)(g). We shall deal with these contentions seriatim.

13. Re Ground 1 : Railway is a common carrier and being State owned it is subject not only to the provisions of the Act but also the fundamental rights guaranteed by Part III of the constitution. However much before the advent of the Constitution when different railways were owned by incorporated companies, Section 28 of the Act precluded the different railway administrations from granting undue preference to any particular person or any particular traffic or to any particular railway administration, or subject anyone to any undue or unreasonable prejudice or disadvantage in the matter of transport of goods or passengers. Railway being a State monopoly, to checkmate its monopolistic power in the larger public interest it has to be subjected to regulatory measures. Simultaneously it became necessary to arm Central Government with power to direct railway administration to give preference in the matter of transport of the goods of the Government, Central or State or specified goods to meet the demands of various regions as well as needs of Government. Intention was to classify Government in a class by itself for the purpose of Article 14. To meet the challenge of Article 19(1)(g) the Central Government was armed with power to accord priority in transport of goods in larger public interest. Soon after the advent of the Constitution, to arm the Central Government with requisite power to direct the railway administration to give special facilities for or preference to the transport of any such goods or class of goods consigned to the Central Government or to the Government of any State or such other goods or class of goods as may be specified in the order, Section 27-A was introduced in the Act which enabled it by a general or special order to direct the railway administration to grant special facilities for or preference to the transport of goods. Such a general or special order can be issued by the Central Government if in its opinion it is necessary in the public interest to do so. Now indisputably the goods consigned to the Central Government or to Government of any State must obviously have a priority over what we may loosely describe as private transporters, because it is well-settled that the Central or the State Government is in a class by itself. This view is founded on the assumption that all activities of the State are in public interest in the sense that they are either undertaken on behalf of the public or that the loss or gain arising from the falls upon the public (see *Nav Rattanmal v. State of Rajasthan* ((1962) 2 SCR 324 : AIR 1961 SC 1704)). The goods consigned to the Central or the State Government are, unless shown to the contrary necessarily to be used to carry on governmental activity undertaken for the benefit of public or to subserve some public interest and which may as well include the efficient administration of the governmental agencies. Section 27-A also confers power to direct any railway administration to give special facilities for or preference to the transport of goods or a class of goods as may be specified in a general or special order that may be issued in this behalf. The Central Government is better equipped to know what class of goods are required to be sent to any particular area expeditiously to meet some shortage, or for national security or to meet an emergency or any natural or man-made catastrophe so as to accord special treatment in the matter of transport. Section 28 can be said to some extent to be a corollary to Section 27-A inasmuch as the railway administration on its own is prohibited from giving undue or unreasonable preference or advantage to, in favour of, any particular person or railway administration, or any particular description of traffic, in any respect whatsoever, or subject any particular person or railway administration or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. To repeat railway being a State monopoly undertaking, it had to be statutorily controlled from abusing its monopolistic character by

prohibiting it from giving any undue or unreasonable preference or advantage or acting in any manner which would evidence undue or unreasonable prejudice or disadvantage in any respect whatsoever. Equality guaranteed by Article 14 is translated into statutory provision in Section 28. A State monopoly like the railway administration cannot be trusted to act fairly and that is the object underlying Section 28. If everyone was to get equal facility for transport of his goods by railway without anyone claiming priority or anyone having power to grant preference or special facility, in an emergency this equal opportunity would create a havoc. Therefore on the other hand, the Central Government to meet the needs of the country arising in any eventuality can give directions for giving special facilities for or preference to the transport of goods or any class of goods. In the absence of power such as conferred by Section 27-A, floods, drought, nationals for national projects in a country of the dimensions of India cannot be effectively and adequately tackled. This is the genesis of the power conferred by Section 27-A.

14. Armed with power conferred by Section 27-A the Central Government has issued Preferential Traffic Schedule. Priorities A to E therein set out in the matter of transport of goods by railway clearly manifest a public policy framed to subserve public interest. Coal, the primary source of energy has been relegated below the military requirement (Priority A) and foodgrains and fertilisers, iron and steel material for wagon building, seeds etc. (Priority B) and then comes the primary source of energy in Priority C coal. Does this priority manifest undue preference prohibited by Section 28 or a general order issued by the Central Government in public interest ?

15. Let one confusion be cleared at the outset. Submission that there is virtually a total embargo on the transport of coal by Railways at the instance of the present petitioners or others similarly situated is substantially incorrect. Throughout the hearing of these petitions, it was repeated ad nauseam that cumulative effect of all orders, including the impugned order dated April 1, 1972, is to impose a total ban on the transport of coal offered by the petitioners. As will be presently pointed out, this statement is unfounded in facts and presents a distorted picture in the matter of transport of coal by Railways.

16. Priority C(iii) which deals with coal provides for transport of coal from collieries to various parts in India. It was subjected to varying constructions. It has been extracted earlier. In order to be eligible for obtaining allotment of wagon under Priority C, it is necessary for the person indenting the wagon to satisfy the various conditions specified therein. They are : (i) that the coal is to be loaded from the collieries; (ii) that the coal to be loading is in conformity with the commodity quotas laid down from time to time for certain types of coal and/or in accordance with the programmes and movements sponsored or recommended by the Coal Controller and/or any Committee appointed by him; (iii) or it is sponsored or recommended by the State Government and/or other recommending authorities and accepted by the railway administration; (iv) or it is sponsored or recommended by Director, Movement (Railways), Calcutta; (v) and it must be in accordance with the Zonal Scheme applicable to each field and the principles of transport rationalisation in force from time to time. In order to comply with the pre-conditions for eligibility under Priority C, a list of sponsoring authorities authorised to sponsor coal movements is drawn up and is set out in Annexure B to the Preferential Traffic Schedule. These general conditions are further subject to Notes a to E. Why such an exhaustive and detailed provision is made is not difficult to answer. Coal forms 32 per cent of the total transport of goods handled by the Railways. On an average more than 10,000 wagons will have to be allotted daily for transport of coal. Coal being a primary source of energy used by heavy industries, electricity generating plants, steel plants as also cooking fuel used in the remotest parts of the country, it is necessary to handle its transport with scientific precision. Therefore, there is a prior planning about a year in advance drawn up by

the Director, Movement (Railways) setting out Zonal Scheme of distribution applicable to each coalfield and the principles of transport rationalisation in force from time to time. The purpose underlying setting up of sponsoring and recommending authorities is to ascertain the needs of various regions of the country who in their respective regions would be in close and intimate contact with the consumers of coal both industrial and individual. Even though power has been conferred on them to sponsor or recommend indenting of wagons of coal from collieries this network of sponsoring and recommending authorities are subject to the Zonal Scheme applicable to each coalfield and the principles of transport rationalisation in force from time to time. The nerve-center is the Director, Movement (Railways) of all the activities connected with transport of coal. In addition to this the Government has set up a Standing Linkage Committee in the Department of coal in the Ministry of Energy. This Committee assesses the link and requirement of particular source of coal. The Committee keeps in view the requirements of such major industries and establishments using coal like the Railways, thermal power stations, fertiliser plants, cement plants, steel plants, textile factories, chemical industries and the like. This very narration would show that if there is disturbance in regular supply of coal to this priority sector resulting in their closure, there would be a ripple effect affecting various ancillary industries creating a major dislocation in the national economy and escalating haunted spectre of layoff and unemployment. That is why planning is undertaken every year in advance and but for any emergency it is considered inadvisable to disturb the advance planning because any such disturbance results in serious dislocation of this primary source of energy being distributed all over the country keeping in view national priorities.

17. With this background, it is not difficult to appreciate the various orders issued by the railway administration and the Central Government regulating the movement of coal.

18. Railway is a monopolistic undertaking in the matter of transport of coal by railways. Barring some tiny dots which may become visible only by a magnifying glass, the entire railway network is nationalised and the railway is a department of the Union of India. It is therefore, indisputably a State monopoly. A monopoly unless kept within bounds may prove to be a menace. Therefore, regulatory measures are necessary to prevent the abuse of monopolistic power. The reasons which led to the enactment of the Monopolies and Restrictive Trade Practices Act may have to be kept in view even while keeping a watch over the activities of a State monopoly. But there is a constitutional check on the State monopoly, namely, it being State within the meaning of Article 12 of the Constitution, all its actions will have to conform to the fundamental rights enshrined in Part III of the Constitution. Part III provided a positive and healthy check on the railway administration. Section 28 of the Act seeks to achieve the same result which on the advent of the Constitution, Article 14 would achieve. Section 28 undoubtedly prohibits railway administration from giving any undue preference by arbitrarily picking and choosing some out of those seeking to use its services and facilities. But Section 28 is subject to Section 27-A. If the railway administration accords priority in transport of goods by giving special facilities for or preference to the transport of goods, in compliance with any general or special order made by the Central Government in the public interest in this behalf, compliance with such special or general order could never be attacked as being violative of Section 28. Section 28 forbids discrimination by giving undue or unreasonable preference or advantage in respect of any particular traffic to any particular person or any other railway administration but this general prohibition against discrimination is subject to the overriding power conferred on Central Government under Section 27-A. If while giving effect to the orders of the Central Government issued under Section 27-A, priority is accorded in the matter of transport of goods consigned to Central or State Government or class of goods specified in the general or special order issued in this behalf, the action of the railway administration in complying with such special or general order could not be said as tantamounting to giving undue or unreasonable preference or

advantage to or in favour of any particular person or railway administration. What Section 28 forbids is discrimination in the matter of transport of goods against a class but this is subject to the permissible classification that would be introduced by a special or general order issued by the Central Government in exercise of the power conferred by Section 27-A. It may be recalled that the Preferential Traffic Schedule according Priority C to transport of coal by those mentioned therein has been issued in exercise of the power conferred by Section 27-A. It may be recalled that petitioners in the matter of transport of coal are similarly situated with the Central or State Government or transporters given priority by general or special order issued under Section 27-A cannot be entertained. This is all the more so because the petitioners are coal merchants who want to transport their coal by railway for carrying on business in coal and they may sell the coal to any intending purchaser while those accorded preferential treatment under Priority C of the Preferential Traffic Schedule are transporters of coal who have been recognised one year in advance under Zonal Distribution Scheme as persons who would be transporting the coal to satisfy fixed goals which subserve needs of the public at large. For this additional reason the contention of the petitioners that they are similarly situated with those set out in Priority C(iii) cannot be entertained. Classification of those covered by Priority C and the present petitioner is founded on intelligible differentia which distinguishes persons or things that are grouped together from other left out of the group and the differentia has a rational relation to the object sought to be achieved by the impugned orders. Those falling within Priority C (iii) would form a class by themselves and the petitioners clearly stand out of the group and for reasons herein stated petitioners could not be said to be similarly situated with those grouped together in Priority C (iii).

19. Re Ground 2 : It was next contended that the impugned orders dated April 1, 1972, December 31, 1980 and April 11, 1981 in their cumulative effect have imposed a total ban on the transport of coal offered by the petitioners by the Railways and thereby imposed an unreasonable restriction on their fundamental freedom to carry on their trade guaranteed by Article 19(1) (g) of the Constitution. It is factually incorrect to say that the impugned orders have in their cumulative effect imposed a total ban on the transport of coal offered by the petitioners by railway. Priority E in Preferential Traffic Schedule provides for transport of coal from collieries in accordance with the targets laid down from time to time from the different fields and in accordance with the Zonal Scheme applicable to each field and the principle of transport rationalisation already in force. Priority C(iii) caters to transport of certain types of coal as recommended and sponsored by recommending and sponsoring authorities. Priority E(ii) caters to a situation where coal is required to be transported from collieries in accordance with the targets laid down in advance. Therefore, if the petitioners are unable to obtain any sponsorship or recommendation for transport of coal by railway, they may as well come under Priority E(ii). Assuming they even do not come within the sweep of Priority E(ii), it is crystal clear that any available wagon after all priorities are satisfied can be made available to the petitioners. If even then wagons are not allotted to petitioners, they can complain of violation of Section 28. But it was urged that the Priority A to E have been so exhaustively drawn up that conceivably not a single wagon would be available after all the priorities are met with. That may be so but that is unavoidable when the law of demand and supply operates. There is always an yawning gap between the demand for the wagons and the available supply of the same. That situation itself would justify making of orders under Section 27-A. If the Railways were in a position to meet with every demand of the wagons for transport of goods, it was absolutely unnecessary gap between the demand for the wagons and the supply of the same that led to the necessity of introducing Section 27-A and making a general order drawing up Preferential Traffic Schedule in exercise of the power conferred by Section 27-A. Further it was said that coal can be transported in smalls from certain wayside stations not suffixed with abbreviation 'GX'. But the

petitioners want to transport their coal in wagon-loads. The Railways may not be able to provide wagon from the wayside stations because each empty wagon at wayside station is accounted for in the daily supply of wagons approximately 10,000 for transport of coal from colliery sidings to various destinations in the country. It may be as the petitioners contend that a loaded wagon may reach a wayside station and is unloaded but the counter-affidavit shows that each such empty wagon is accounted for, a year in advance towards supply of more than 10,000 wagons daily to the colliery sidings for transport of coal. And this pre-planning cannot be disturbed by excluding such wagons from the calculations about available wagons and handing it over to the petitioners. There is a further difficulty in making available wagons to the petitioners. Every small wayside station is not equipped with necessary equipment for loading of coal. Therefore, if the law of demand and supply, and non-availability of facility for loading coal in small at wayside stations result in not making available wagons to the petitioners because of pre-planning and priority it cannot be said that there has been a total ban on the transport of coal offered by the petitioners by the Railways, which would violate the fundamental freedom to carry on their trade guaranteed to the petitioners under Article 19(1)(g). If the impugned orders constitute a restriction on the freedom of carrying on trade, though we do not consider it to be so, the same is reasonable and imposed in larger public interest. The contention must accordingly be rejected.

20. Re Ground 3 : It was next contended that if upon its true construction Section 27-A enables the Central Government to impose a total ban on transport of coal offered by the petitioners who are traders in coal, Section 27-A would be violative of Article 19(1)(g) and should be declared unconstitutional. Article 19(1)(g) guarantees to the citizen the fundamental freedom to carry on any occupation, trade or business. This fundamental freedom is subject to reasonable restrictions that can be imposed by law relating to the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion complete or partial, of citizens or otherwise.

21. The first question that may be posed in this context is : what is the trade being carried on by the petitioners ? Are they coal transporters ? Is the transport of coal their business ? Or are they coal merchants who are dealers in coal and for the purpose of carrying on of business at a certain place they are required to transport coal from the colliery sidings to their place of business ? Obviously their business is not transport of coal. Transport is merely incidental to their business, namely, trade in coal. Assuming that the Railways have wholly banned transport of coal offered by the petitioners by wagons, could it be said that the action of the Railways would violate Article 19(1)(g) in relation to them. Whenever the Court is called upon to examine the complaint that restrictions imposed on the freedom to carry on trade are unreasonable, it is necessary to find out what is the trade or business of the complainant-petitioner and to what extent the restriction, if any, is imposed upon the freedom to carry on trade or business and then to determine whether the restriction is reasonable or otherwise. It is the direct impact of the restriction on the freedom to carry on trade that has to be kept in view and not the ancillary or incidental effect of the governmental action on the freedom to carry on trade. The petitioners are not transporters of coal. They are coal merchants scattered over various parts in India and now they complain that they are unable to transport coal because the Railways have so arranged its priorities in the matter of transport coal that the petitioners would never be able to obtain a single wagon for transport of their coal. Prima facie it appears that the petitioners' business or trade as coal merchant is in no way interfered with by the Railways by not being able to provide transport facility. Let it not be forgotten that the railway is not the only means of transport. There are other means of transport by which the coal can be transported by the petitioners to their respective places where they carry on their business as the coal merchants. Even assuming that the direct impact of the policy laid down by the railway administration pursuant to the

orders of the Central Government under Section 27-A results in denial of allotment of wagon to the petitioners, the restriction will nonetheless be reasonable because petitioners are not wholly denied the allotment of wagons.

22. A developing country with mixed economy and economic planning have certain targets to achieve. These targets are planned in advance and the economic activity is geared to the achievement of these targets. If the required resources necessary for achieving targets were readily available, no difficulty would arise. But a developing country has to so distribute its scarce resources as to achieve and accomplish desired targets. This situation is bound to lead to a gap between the demand and supply of various facilities. Transport is one such. Once there is a gap between the demand for transport service offered by the Railways and the supply of the service, the resources being not sufficient to meet with all existing demands, the scarce resources will have to be equitably distributed keeping in view the planned targets. This equitable distribution would necessitate imposing of reasonable restrictions and according of priorities. Coal as pointed out earlier being the primary source of energy, the demand for it to keep wheels of industry rotating is very high and it has to be accorded a fairly high priority and that is done by the Preferential Traffic Schedule. Only two other items have a priority over coal and they are in respect of personnel, vehicles and stores, military special trains and immediate operational demands that is national security. This does not require any explanation because national security has the highest priority, and it is accorded Priority A. Priority B provides for foodgrains, edible oils, goods in connection with relief and rehabilitation of displaced persons, sees etc. Hunger has been accorded Priority B. And coal falls in Priority C being the primary source of energy. Planned regulated movement of coal to meet priority needs if it results in denial of that facility to non-priority sector could not be rejected as placing an unreasonable restriction on the fundamental freedom to carry on trade or business. And that is the object underlying Section 27-A. It is therefore, idle to contend that the section being violative of Article 19(1)(g) is unconstitutional.

23. Re Ground 4 : It was next contended that in so far as Priority C(iii) in the matter of transport of coal from colliery sidings permits special facility or preference to individuals or groups of persons selected by sponsoring authority or recommending body for transport of coal, it is ultra vires Section 27-A of the Act. One has merely to look at the list of sponsoring and recommending authorities to reject this submission. Annexure B to Preferential Traffic Schedule sets out the list of sponsoring authorities. It is a long list but a bare perusal of its is sufficient to show at a glance that Central and State Governments as well as highly placed Central and State Government Officers have been appointed as sponsoring authority in respect of coal required by different area and industries. Again in various States various sponsoring authorities have been set up by State Government. Power is conferred on these sponsoring authorities to sponsor persons who would be accorded priority in transport of coal. These responsible persons and bodies set up in each State as sponsoring authority are expected to act in a responsible manner keeping in view the demands of the area and the industry, for coal in each State. It is therefore, idle to contend that setting up of sponsoring or recommending authority in Priority C(iii) of the Preferential Traffic Schedule is ultra vires Section 27-A of the Act.

24. Re Ground 5 : It was next contended that the Order No. TO(g) 1510/71 dated April 1, 1972, introducing abbreviation 'GX' and appending it to all railway station has resulted in every such station being not open for outward booking of coal, coal-shale, lignite etc. in wagon-loads and therefore it violates Section 28 of the Act because thereby petitioners are wholly prohibited from transporting their coal by railway and making every empty wagon available to those covered by Priority C(iii). It was said that the order dated April 1, 1972 has the pernicious tendency of giving

undue preference to Priority C(iii) transporters and subjects petitioners to undue or unreasonable prejudice or disadvantage, both situations being prohibited by Section 28. As pointed out earlier, transport of coal is according to a plain drawn up a year in advance. Further this plain is subject to the decision of the Standing Linkage Committee. Every meticulous detail is worked out in advance. A daily loading of maximum number of wagons is pre-planned. Loading of the wagons with coal at a targeted number daily requires rotational movement also according to plain. A wagon once loaded with coal when it moves out to its destination has a certain average return time stipulated and worked out in advance. There may be dislocations. In order to meet this eventuality in the counter-affidavit it is stated that no wagon-load of coal can be booked from wayside stations. It can only be booked from colliery sidings and that ought to be so. To achieve this desired end, an abbreviation 'GX' was devised and appended to all stations. Where a station has an abbreviation 'GX' appended to it, it would mean that the station is not open for outward booking of coal, coal-shale, lignite, patent fuel, soft coke and hard coke in wagon-loads. We fail to see how this regulatory arrangement violates Section 28. In fact, this incidental arrangement helps in smoothly working the Zonal Distribution Scheme and the planned movement of coal. And it is not disputed that the coal in smalls, if offered and if the space is available can be moved from wayside stations. Therefore, we find no merit in the submission.

25. Re Ground 6 : It was lastly urged that by affixing abbreviation 'GX' to all wayside stations, a total ban is imposed on the transport of coal offered by the petitioners and therefore, the Order dated April 1, 1972 is violative of Article 19(1)(g). It is the same submission slightly differently clothed. As stated earlier movement of coal is planned and regulated and no tinkering is permissible. Petitioners are equally subject to this planned and regulated movement. It cannot be tinkered with. To give effect to this planned movement abbreviation 'GX' is devised and appended to all the railway stations informing the transporters that the station is not open for transport of coal in wagon-loads. Coal in small can be offered for transport that is what the petitioner do not desire. All regulatory measures discussed in detail hereinbefore clearly indicate that transport of coal is scientifically planned and devised in advance. All the impugned orders are made for effective implementation of the planned movement of coal. If consistent with this planning, the Railways have stopped booking of coal in wagon-load from wayside stations, it cannot be said that this action has imposed such an unreasonable restriction on the fundamental freedom of the petitioners to carry on their trade as to be violative of Article 19(1)(g).

26. We cannot part with this judgment without recording our uninhibited appreciation of thorough study of the knotty issues, research and analysis of historical backgrounds, and scientific and painstaking presentation of the facts and issues of law involved in these petitions by Shri Gupta learned counsel, who appeared for the various railway administrations. The intense labour put in by him in collecting the most useful material and elucidating the same before the Court in a very able manner helped us considerably in disposing of these petitions.

27. These are the reasons which persuaded us to make the order set out at the commencement of the judgment.

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