

Bharat Cooking Coal Ltd.

Vs

State of Bihar and Others

With

Tata Iron and Steel Co. Ltd.

Vs

State of Bharat and Others

With

Central Coalfields Ltd. and Another

Vs

Industrial Fuel Marketing Company and Others

Civil Appeals Nos. 4521 of 1986

(K. N. Singh, M. H. Kania JJ)

17.08.1990

JUDGMENT

K. N. SINGH, J. -

1. In these appeals a common question of law is involved whether the State of Bihar had legal authority to execute lease in favour of the respondent for collection of slurry on payment of royalty to it. Since the questions involved in these appeals are common the same are being disposed of by a common judgment. Civil Appeal No. 4521 of 1986 and Civil Appeal Nos. 61-62 of 1987 are directed against the judgment of Patna High Court while Civil Appeal Nos. 230-231 of 1987 are directed against the judgment of the Division Bench of the Calcutta High Court.

2. In order appreciate the controversy in question it is necessary to recapitulate the facts M/s. Bharat Coking Coal Ltd. - appellant in C.A. 4521 of 1986 in a Government Company which carries coal mining operations in village Sudamdih in the State of Bihar. There is a coal washery adjacent to the appellant's coal mine in village Sudamdih. After the coal is extracted from the mines it is crushed into piece of different size for purposes of grading. Since the coal is mixed up with mud and other impurities same is brought to the washery for washing and cleaning the same for reducing the ash percentage and for use by metallurgical consumers. In the process of washing small coal particles escape from the washery in the form of slurry along with water and the same are deposited in the slurry ponds constructed for their storage by the appellant company. But when the ponds are full the slurry overflows the ponds and flows down into the river Damodar. After the water is soaked by the soil the small particles of coal get deposited in the river bed. These coal particles are collected and

formed into briquettes which are sold in the market for energy and fuel purpose. The slurry coal has acquired high economical value as it is of exceptional quality and high grade, it is used by steel plants and thermal power stations. The state of Bihar granted lease in favour of Ram Nath Singh - respondent 4 for collecting the coal particles settled in the Damodar river bed and other land including plot No. 370 of Mauza Sudamdih. The appellant claimed that plot No. 370 which formed part of river bed of Damodar belonged to it having been acquired under the Coal of Bearing area. (Acquisition and Development) Act, 1957 for the purpose of the mining of coal. Pursuant to the lease respondent 4 has been collecting the coal particles from plot No. 370. The appellant company raised objection before the revenue authorities of the State of Bihar claiming property right to collect and obtain slurry deposited in the river bed in plot No. 370, but its objections were over ruled and respondent 4 was permitted to collect the coal particles from the aforesaid plot. The appellant thereupon filed a writ petition in the High Court of Patna Challenging the State Governments action in granting lease to respondent 4 for lifting slurry from the river bed on the ground that the property belonged to the appellant company and the State Government had no authority in law to grant a mining lease without the prior approval of the Central Government under Section 5 of the Mines and Minerals (Regulation and Development) Act 1957.

3. Tata Iron & Steel Company Ltd. - the appellant in Civil Appeal Nos. 61-62 of 1987, is a company incorporated under the Companies Act. It own steel plant at Jamshedpur and it also owns captive coal mines in the District of Hazari Bagh and Dhanbad. These coal mines are commonly known as West Bokaro Collieries. There is no dispute that large area of land in the District of Hazari Bagh and Dhanbad have been settled with the appellant company for purpose of mining operations and the company enjoys mineral rights in respect of the surface and sub-soil. It is not necessary to refer to the historical facts relating to the acquisition of mining rights by the appellant as there is no dispute that under Section 10 of the Bihar Land Reform Act and appellants existing mining leases became statutory leases in the State of Bihar. The appellant has established washery plant in the District Hazari Bagh as well as in Jama Dhoba and Zora Pokhar in District Dhanbad for purposes of washing the coal after extraction from the coal mines and crushed into different sizes. In the process of washing the coal small particles of coal escape from the washery and overflow from the plant and the same are deposited in the storage pond constructed by the appellant. But some times they overflow from the storage pond and settle down in the raiyati land and in the Bokaro river bed. The appellant has been claiming right that the slurry which escaped from the washery belonged to it and no other person had right to collect the same. The State Government did not accept the appellants claim instead it settled the rights of collection of slurry with the respondents under the indentures granted in their favour. Under the settlement the respondent have been authorised by the State Government to collect sludge and slurry which settles down in the Bokaro river bed or in the raiyati land on payment of royalty to the State. The appellant filed two writ petitions before the Patna High Court challenging the authority of the State Governments action on the ground that slurry was a mineral being coal and as such its collection or mining was regulated by the provision of the Mines and minerals (Regulation and Development) Act 1957 (hereinafter referred to as the Act) and the State Government had no authority to grant any lease for collection of sludge/slurry without the previous sanction of of the Central Government.

4. The aforesaid petition were heard and disposed of by a Full Bench of the Patna High Court (Kundori Labour Coop. Society Ltd.v. State of Bihar, AIR 1986 Pat 242 : 1986 Pat LJR 837 : 1986 BBCJ (HC) 280). The Full Bench dismissed the writ petition on the finding that the slurry was neither coal nor mineral instead it was an industrial waste of coal mine which was not regulated by the provision of the Act. The collection of slurry did not involve any mining operation and the settlement made by the State Government in favour of the respondent for collecting the same was

not a mining lease therefore the State Government was not under any legal obligation to obtain previous sanction of the Central Government under the Act. The High Court further held that after the slurry escaped into the river bed or to some other land, the same ceased to belong to the appellants and the State Government was entitled to execute lease for collection of the same.

5. Civil Appeal Nos. 230-231 of 1987 are directed against the Judgment of a Division Bench of the Calcutta High Court *Industrial Fuel Marketing Co. v. Union of India*, AIR 1985 Cal 143). The Central Coalfields Ltd. and the Coal India Ltd. the appellants are Government Companies which own coal mines in the District of Giridih in the State of Bihar. The appellants have set up coal washeries at Kathara Kargali and Sawang in the District of Giridih for washing the coal extracted from its mines. In the process of washing particles of coal escape from washery along with water which ultimately flows into the river Damodar. The Mining Department of the State of Bihar granted lease of Industrial Fuel Marketing Company and others - respondents for removing the slurry from the river bed on payment of royalty but the appellants resisted the collection of the slurry from their land and they instituted criminal proceedings against the contractors. Thereupon the respondents contractors filed writ petitions before the Calcutta High Court for quashing the criminal case registered against them and also for the issue of a direction permitting them to collect slurry under the lease granted to them by the state of Bihar. Before the High Court the appellants herein contended that the slurry belonged to them and the State of Bihar had no authority in law to grant any lease in respect of the same. A learned Single Judge of the High Court dismissed the writ petition on the findings that the appellant herein are the owner of the slurry and the State Government had no authority to grant respondent any lease to the respondent contractors for removal of the same. On appeal by the contractors Division Bench of the Calcutta High Court vide its judgment (*Industrial Fuel Marketing Co. v. Union of India*, AIR 1985 Cal 143) held that the lease granted by the State of Bihar in favour of the contractor was not a mining lease and the provisions of the Act were not applicable to the grant of lease. On the question of appellants claim to the property rights for collecting slurry the bench held that slurry deposited on the appellants land belonged to them and the respondents had no right to collect the same but if the slurry settled down on others land the respondent have right to remove the same from the river bed. Aggrieved, the Central Coalfields Ltd. and Coal India Ltd. have challenged the correctness of the High Court view by these appeals.

6. The main question which falls for consideration is whether the state of Bihar has authority to grant lease/settlement to the respondents for collection lifting of coal slurry deposited in the river bed or on any other land after its escape from the appellants' washeries. Before the High Court the appellants contended that in view of the provisions of the Act the State of Bihar had no authority to grant any lease regarding collection of slurry without the prior approval of the Central Government. The state of Bihar and other respondents contended before the High Court that the slurry was not a mineral and its collection or lifting from the river bed involved no mining operation therefore the Act did not apply and the State Government was free to grant lease for collection of the same. The appellant further pleaded before the High Court that since slurry after its escape from their washeries settled down in their own land its continued to be their property and the state Bihar had no authority to grant lease for collection of the same from their land. The Full Bench mineral instead it was reject residue or waste of an industrial process consisting of mud ash and oily substance having carbonaceous ingredients. Since collection of slurry did not involve any mining operation the provisions of the Act did not apply and the State Government had authority to settle the removal of slurry with private parties. With the appellant land the Full Bench did not decide the question on the ground that these issues involved disputed question of fact which could properly be adjudicated in a civil suit.

7. The Division Bench of the Calcutta High Court held that the lease granted by the State of Bihar was not a mining lease as the river bed or the land from where the slurry was collected was not a mine as no winning or mining operations were involved in collecting the same. The bench further held that the lease granted by the State Government in favour of the respondent for collecting the slurry did not confer any right in them for carrying out coal mining operation nor such right relates to winning or mining of coal. However the bench held that the slurry deposited on the appellants' land belonged to them and the respondents lessee had no right to collect slurry from the appellants' land. But if the slurry was deposited on the land not owned by the appellants the lessee was entitled to remove the same under the settlement made by the State of Bihar. Thus both the High Court held that the slurry which escaped from the washeries and deposited in the river bed or on other land did not constitute a mineral and its was not regulated by the Central Act, consequently the State of Bihar had authority to settle the collection of slurry.

8. Learned counsel for the parties made elaborate submissions before us in support of their case. On behalf of the appellants it was urged that slurry/sludge the subject matter of dispute in the instant case in substance is coal a mineral specified in the First Schedule to the Act. The State Government had no authority in law to grant any lease to the respondents for the collection or removal or lifting of the slurry coal deposited in the river bed or on any raiyati land without obtaining the sanction of the Central Government under Section 5 of the Act. The counsel for the appellants further emphasised that slurry which escapes from washery of the coal mines contains small particles of coal having carbonaceous character and it is used for energy and fuel purpose. Assailing the findings of the Full Bench of the Patna High Court and the Division Bench of the Calcutta High Court the appellants' counsel submitted that slurry coal was not deposited in the river bed or other land by any artificial mode instead the same were deposited in the river bed and the land by natural process of flow of water discharged from the washeires. The process of collection or removal of the same from the river bed or raiyati land by the respondent/lessees involved winning operation. Winning or mining operation according to the learned counsel did not always require excavation or extraction of a mineral from the bowels of the earth instead a mineral like sand or gravel may be deposited on the earth and removal of the same would also involve winning or mining operation. The appellants further urged that if the slurry which is the subject matter of the lease or settlement is not a mineral the State Government had no authority in law to authorise any other person to remove the same from the appellants' land. There is no law made by the state legislature authorising the State Government to interfere with the appellants' property right. In the absence of any law the State of Bihar had no authority to interfere with the appellants' property right by executive orders. In the alternative learned counsel for the appellants urged that on the admitted pleadings of the parties slurry discharged from the washeries of the appellants' coal mines constituted waste and effluent of coal mines, its disposal was exclusively within the legislative competence of the Parliament. In view of the parliament's declaration under Section 2 read with Section 13 and 18 of the Act the state Government was denuded of all its powers in the matter relating to the disposal of slurry which would include its removal or collection. Since the State legislature is denuded of its legislative competence to make any law with regard to disposal of waste or effluent discharge of coal mines, the State Government has no executive power to deal with the same. Learned counsel for the State of Bihar and other respondents reiterated their stand as taken by them before the High Court that the slurry was not a mineral and its removal did not involve any mining operations consequently the settlement deed was not a mining lease under the Act. On behalf of the State Government it was further contended that once the slurry escaped from the washery plant of the appellants it ceased to belong to them and as it polluted the river water and affected the fertility of raiyati land the State Government was justified in providing for its collection and removal to prevent pollution. The

appellants could not have any right in the goods which they abandoned. It was further urged that the washeries do not form integral part of the mining operations therefore the slurry could not be treated as a waste of coal mine. In the alternative learned counsel contended that even if slurry was waste of a coal mine the State Government was competent to provide for its collection and removal as the Central Government had failed to make any rule under Section 18 of the Act regulating disposal of the slurry.

9. Before we consider the contentions of the Parties we think it necessary to briefly discuss the nature and characteristics of the slurry. There is no dispute that coal is found in seams mixed with mud and other impurities. After its extraction from the mines it is crushed into different size thereafter it is washed in the washeries of the coal mines for removing its impurities for purposes of making it fit for use for metallurgical purpose. In the washery plants coal is washed with the medium of water mixed with pine oil and sand through mechanical process. In the process of washing large quantity of water is discharged through pipe which carries the discharged water to storage ponds constructed for the purpose of retaining the slurry. Along with the discharged water small particles of coal are carried away to the ponds where the coal particles settle down on the surface of the pond and the same is collected after the pond is de-watered. The coal particles so collected are of fine quality ash free and the same is used as fuel. The slurry is a descriptive expression it may be cement slurry or coal slurry depending upon the character or quality of the mixture of mineral in the liquid form. In Webster's New 20th Century Dictionary slurry is defined as follows :

"A thin mixture of water and any of several fine, insoluble materials as clay, cement, soil etc."

In common parlance slurry is a liquid form mixed with some other material. In Encyclopaedia Britannica "slurry" is defined as under :

"Slurry - Watery mixture or suspension of insoluble matter. In the manufacture of portland cement a mixture of the raw materials with water is called a slurry. Cement may be piped as a slurry in building construction. Coal may be transported over long distances as a slurry via pipeline this method of transmission is economical between large producing areas and markets where large tonnages are used at a fairly uniform rates. The shipment of iron ore as slurry either by pipe line or by tanker also has increased. When slurry reaches its destination the material is separated from the water before use or further use or further processing."

10. Viewed in the light of the above meaning of slurry, there is no doubt that in the instant cases slurry is coal slurry, as admittedly small particles of coal escape from the washery plant along with water. After it overflows the storage pond the slurry flows into the river and is deposited on the river bed which is later on collected and used as fuel after it is formed into briquettes. The deposits which are collected from the river bed continue to be carbonaceous in character having all the elements of coal. Thus the slurry is coal in liquid form. A Division Bench of the Patna High Court in *Kesari Mal Jain v. State of Bihar* (AIR 1985 Pat 114 : 1985 Pat LJR 352 : 1984 BLJR 461) placing reliance on Nelson's Dictionary of mining which defined slurry as slurry inter alia means fine carbonaceous discharged from the coal. The bench further held that coal particles which flow out with the water from the coal washeries are formed into balls or briquettes for sale in the market for purposes of producing energy or heat therefore slurry was coal. The Division Bench's view was not accepted by the Full Bench of the Patna High Court as it held that the slurry deposit did not constitute a mineral.

We agree with the view taken by the Division Bench in Kesari Mal case (AIR 1985 Pat 114 : 1985 Pat LJR 352 : 1984 BLJR 461) in our opinion the slurry coal deposited in the river bed or land, in substance as well as in its character continues to be coal.

11. If slurry is coal the question is whether the leases in dispute granted by the State of Bihar constitute mine lease as contemplated Section 5(2)(a) of the Act. "Mining lease" as defined by Section 3(c) means "a lease granted for the purpose of undertaking mining operations and include sub-lease granted for such purpose." "Mining operations" as defined by Section 3(d) means "any operations for the purpose of winning any mineral". Section 5(1) places restriction on the grant of mining leases by a State Government section 5(2)(a) lays down that except with the previous approval of the Central Government no prospecting licence or mining lease shall be granted in respect of any material specified in the First Schedule. The First Schedule to the Act specifies minerals as contemplated by Section 5(2)(a) and "coal" is specified therein at Item No. 4. The Patna and Calcutta High Courts have held that the collection of slurry did not involve any mining operations, therefore, the lease in question was not a mining lease. Consequently, the State Government was not under any legal obligation to obtain approval of the Central Government before granting leases for collection of slurry.

12. These findings are assailed and the appellants contend that mining operations need not always involve extraction of mineral from the bowels of the earth, a mineral like sand, gravel may be deposited on this surface of the earth, and still its collection involves mining operations. It was strenuously urged that it is wrong to assume that mines and minerals must always be embedded under the sub-soil and there can be no mineral on the surface of the earth. See *Bhagwan Das v. State of U. P.* ((1976) 3 SCC 784 : (1976) 3 SCR 869) The definition of "mining operation" and "mine" are very wide. The Expression "mining of mineral" in the definition of "mining operation" under Section 3(d) of the Act is spacious enough to comprehend very activity by which a mineral is extracted or obtained from the earth irrespective of whether such activity is carried out on the surface or in the bowels of the earth. It is not a requirement of the definition of mining operation that the activity for winning the mining operation is that it must be an activity for winning a mineral whether under the surface or winning the surface of earth vide *Tarkeshwar Sio Thakur Jiu v. B. D. Dey & Co.* ((1979) 3 SCC 106 : AIR 1979 SC 1669) The slurry which is deposited on the river bed is not dumped there artificially by any human agency instead coal particles are carried to the river bed by the flow of water through natural process. Therefore the view taken by the High Court that the slurry which is deposited in the river bed is dumped by the appellants by artificial process is incorrect. Once the coal particles are carried away by the water which is discharged from the washery and the same are settled in the river bed any operation for the extraction or lifting of the coal particles from the river bed would involve winning operations within the meaning of Section 3(d) of the Act. We do not think it necessary to express any final opinion on this question as the appeal are bound to succeed on the ground of absence of legislative competence of the State legislature.

13. Shri K. K. Venugopal learned counsel for the appellant urged that the recovery of coal from slurry irrespective of whether slurry is a mineral or its collection involved mining operations or not the State of Bihar has no authority in law to regulate disposal of slurry. Under the Constitution conservation and development of mines and minerals is exclusively assigned to the Central Government and the State legislature has no power to make any lease with regard to the disposal of coal slurry which is waste of coal mining. He referred to the provisions of the Act and particularly to Section 2 and 18 in support of his contention that in view of Parliamentary legislation the State legislature has no legislative competence to enact any law on the subject consequently the State

Government has no executive authority to deal with the disposal of slurry. In order to appreciate this submission it is necessary to consider the constitutional provision and the Act.

14. Article 245 and 246 of the Constitution read with seventh Schedule and the legislative lists therein prescribe the extent of legislative competence of Parliament and State legislature. Parliament has exclusive power to make law with respect to any of the matters enumerated in List I in the Seventh schedule. Similarly state legislature has exclusive power to make laws with respect to any of the matters enumerated in List II. Parliament and the State legislature both have legislative power to make laws with respect to any matter enumerated in List III the Construction List. This is the legislative scheme under the Constitution but certain matter of legislation are overlapping which present difficulty. The subject matter of legislation with respect to regulation of mines and mineral development is enumerated under Entry 23 of List II and Entry 54 of List I. These entries are as under :

"23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation development under the control of the Union."

"54. Regulation of mines and mineral development to the extent to which such regulation and development under the Control of Union is declared by Parliament by law to be expedient in the public interest."

15. The State legislature is competent to enact law for the regulation of mines and mineral development under Entry 23 of State List but this power is subject to the declaration which may be made by Parliament by law as envisaged by Entry 54 of Union List. Thus the legislative competence of the State legislature to make law on the topic of mines and mineral is subject to Parliamentary legislation. The parliament has enacted the Mines and Minerals (Regulation and Development) Act, 1957. By Section 2 of the Act the parliament has declared that it is expedient in 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. In view of Parliamentary declaration as made in Section 2 of the Act, the State legislature is denuded of its legislative power to make any law with respect to the regulation of mines and mineral development to the extent as provided in the Act. In order to ascertain the extent parliamentary declaration, it is necessary to have a glance the provision of the Act. Section 3 of the Act defines various expressions occurring in the Act Sections 4 to 9 prescribe restrictions on undertaking, prospecting and mining operations under licence or lease. Sections 10 to 12 prescribe procedure for obtaining prospecting licences or mining leases in respect of the land in which minerals vest in government. Sections 13 to 16 provide for framing of rules for regulation the grant of prospecting licences or mining leases. In particular Section 13 empowers the Central Government to make rules for regulating the grant of prospecting licences and mining leases in respect of minerals and for the purposes connected therewith. Section 13(2) lays down that rules may provide for all or any of the matters as enumerated under various clauses therein. Clause (o) of Section 13(2) before its amendment by the Amending Act 37 of 1986 conferred power on the Central Government to frame rules for the disposal or discharge of any tailings, slime or other waste products arising from any mining or metallurgical operation carried out in a mine. This provision empowered the Central Government to frame rules for the disposal of waste products of effluent discharge from mines including a coal mine. Section 14 makes the provisions of Section 4 to 13 inapplicable to minor minerals. Section 15 empowers the State Government to make rules for regulating the grant of quarry leases, mining leases and other mineral concessions in respect of minor minerals and purposes connected therewith. Since in the instant cases, we are not concerned with the minor mineral concession in respect of minor minerals and purposes connected therewith.

Since in the instant cases, we are not concerned with the minor minerals, it is not necessary to deal with the question in detail. Section 17 confers special powers on Central Government to undertake prospecting or mining operation in certain lands. Section 18 and 18-A relate to the development of minerals. Sections 19 to 33 deal with miscellaneous matters.

16. Section 18(1) provides for mineral development, this section prior to its amendment by the Amending Act 37 of 1986 read as under :

"18. (1) It shall be the duty of the Central Government to take such steps as may be necessary for the conservation and development of minerals in India and for that purpose the Central Government may, by notification in the official Gazette, make such rules as it thinks fit."

Section 18(1) as amended by the Amending Act 37 of 1986 reads as under :

"18. (1) It shall be the duty of the Central Government to take such steps as may be necessary for the conservation and systematic development of minerals in India and for the protection of environment by preventing or controlling any pollution which may be caused by prospecting or mine operations and or such purpose the Central Government may, by notification in the official Gazette, make such rules as it thinks fit."

The amended and unamended sections both lay down that it 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 and for that purpose it may make such rules as it thinks fit. The Expression "for the conservation of minerals" occurring under Section 18(1) confers wide power on the Central Government to frame any rule which may be necessary for protecting the mineral from loss, and for its preservation. The expression 'conservation' means "the act of keeping or protecting from loss or injury". With reference to the natural resources, the expression in the context means preservation of mineral; the wide scope of the expression "conservation of minerals" comprehends any rule reasonably connected with the purpose of protecting the loss of coal through the waste of coal mine, such a rule may also regulate the discharge of slurry or collection of coal particles after the water content of slurry is soaked by soil. In addition to the general power to frame rules for the conservation of mineral, Section 18(2) confers specific power for framing rules regulating disposal of waste of a mine. The Amending Act 37 of 1986 deleted clause (o) of Section 13(2) and added the same as clause (k) to Section 18(2) of the Act. After the amendment Section 18(2)(k) reads as under :

18. (2) In particular, and without prejudice to the generality the foregoing power, such rules may provide for all or any of the following matters, namely :

* *##

(k) "the disposal or discharge of waste slime or tailings arising from any mining or metallurgical operations carried out in a mine."

Section 18(2)(k) confers express power on the Central Government for framing rules for the conservation and the development of mineral including the disposal or discharge of waste arising from any mining operation of a mine. Such a rule may regulate disposal of slurry discharged from washery which is an integral part of

mining operations.

17. The aforesaid analysis of the provisions of the Act makes the extent of Parliamentary declaration clear that the disposal and discharge of sludge or slurry emanating or coming from the washery of a coal mine is exclusively within the legislative power of Parliament. The Act further provides that the Central Government has exclusive power to frame any rule either under Section 13(2)(o) or under the amended Section 18(2)(k) of the Act regulating disposal of slurry. The effect of the Parliamentary declaration as contained in the Act is that the matters referred to in the declaration, stand abstracted from List II and those become matters of legislation in List I of the Seventh Schedule. As a result of the declaration made by Parliament, under Section 2 of the Act, the State legislature is denuded of its legislative power with respect to the regulation of mines and mineral development and the entire legislative field has been taken over by Parliament. In *Bajnath Kedia v. State of Bihar* ((1969) 3 SCC 838 : (1970) 2 SCR 100) this Court dealing with the extent of Parliament's declaration made under Section 2 of the Act, observed as follows : (SCC p. 847, para 13)

"To what extent such a declaration can go is for Parliament to determine and this must be commensurate with public interest, Once this declaration is made and the extent laid down, the subject of legislation by Parliament. Any legislation by the State after such declaration and trenching upon the field disclosed in the declaration must necessarily be unconstitutional because that field is abstracted from the legislative competence of the State legislature."

This Court has consistently taken this view in *Hingir-Rampur Coal Co. Ltd. v. State of Orissa* ((1961) 2 SCR 537 : AIR 1961 SC 459), *State of Orissa v. M. A. Tulloch & Co.* ((1964) 4 SCR 461 : AIR 1964 SC 1284), *State of Tamil Nadu v. Hind Stone* ((1981) 2 SCC 205 : (1981) 2 SCR 742).

18. The Central Government has not framed any rule either under Section 13 or under Section 18 of the Act. Does it affect the legal position as discussed earlier ? The answer must be in the negative. Prior to the Amending Act 37 of 1986 Section 13 (2)(a) conferred power on the Central Government to frame rules for the purpose of granting prospecting licences and mining leases including the disposal or discharge of any tailings, slime or other waste products. Sub-clause (o) of Section 13(2) was transposed into Section 18(2) as sub-clause (K) by the Amending Act 37 of 1986, As noted earlier, Section 18(1) confers general power on the Central Government to frame rules and to take all such steps as may be necessary for the conservation and development of minerals in India. Section 18(2) does not affect or restrict the generality or width of legislative power under Section 18(1) as the matters specified in various sub-clauses of section 18(2) are illustrative in nature. Even in the absence of sub-section (2) or its various sub-clauses, the Central Government was invested with the power of subordinate legislation in respect of any matter which could reasonably be connected with the purpose of "conservation and development of minerals" by Section 18(1) of the Act. Thus, power to frame rules, regulating the discharge or disposal of slime or slurry emanating from a coal mine including its collection from the river bed or from raiyati land after its escape from the washery of the coal mines, would clearly fall within the expression "conservation of mineral". Slurry admittedly contains coal particles, its collection from land or river is reasonably connected with the 'conservation of mineral'. Section 18 (2)(k) which expressly confers power on the Central Government to regulate disposal or discharge of waste of a mine makes the Parliamentary declaration apparent that the State legislature is not competent to regulate waste discharge of a coal mine. Mere absence of any rule framed by the Central Government under Section 13 or 18 of the Act with regard to the disposal of slime or waste of a coal mine does not

confer legislative competence on the State legislature to make any law or rule. Once a particular topic of legislation is covered by the Parliamentary declaration, the State legislature is denuded of its power to make any law or rule in respect of that topic or subject matter and the absence of rules would not confer legislative competence on the State. In *Hingir-Rampur Coal Co. Ltd. V. State of Orissa* ((1961) 2 SCR 537 : AIR 1961 SC 459) this Court held : (SCR p. 560)

"In order that the declaration should be effective it is not necessary that rules should be made or enforced; all that is required is a declaration by Parliament that it was expedient in the public interest to take the regulation of development of mines under the control of the Union. In such a case the test must be whether the legislative declaration covers the field or not."

Since Section 18 of the Act covers the field with respect to disposal of waste of a mine, there is no scope for the contention that until rules are framed the State legislature has power to make law or rules on the subject. Once the competent legislature with a superior efficacy expressly or impliedly evinces its legislative intent to cover the entire field on a topic, the enactments of the other legislature whether passed before or after would be overborne. Mere absence of rules framed by the Central Government, does not confer power on the State legislature to make law on the subject. Since the legislative field with regard to the framing of rules relating to the disposal of slime and waste of coal mine is fully covered by Section 18, the State legislature is denuded of its power of making any law with regard to those matters.

19. It was then urged that in the absence of a law being made by the State legislature, the State Government's action in executing lease/settlement in respondent's favour for collection of slurry is relatable to exercise of its executive powers. Learned counsel for the appellants contended that since Entry 23 of List II of the Seventh Schedule confers legislative power on the State legislature for making laws regulating mines and minerals, the State Government in the absence of any rule made by the Central Government has power to regulate disposal and collection of slurry. The State Government was justified in exercising its executive power making arrangements for the collection or removal of slurry which has been polluting the river water and affecting the raiyati land's fertility. Article 162 prescribes the extent of executive power of the State, it lays down that the executive power of a State shall extend to the matters with respect to which the legislature of the State has power to make laws. Thus, the executive power of the State Government is co-extensive with the legislative power of the State legislature. If the State List or in the Concurrent List the State has executive power to deal with those matters subject to other provisions of the Constitution. If a subject matter falls within the legislative competence of State legislature, the exercise of executive power by the State Government is not confined, as even in the absence of a law being made, the State Government is competent to deal with the subject matter in exercise of its executive power. See *Rai Sahib Ram Jaways Kapur v. State of Punjab* ((1955) 2 SCR 225 : AIR 1955 SC 549). In the absence of any law, the State Government or its officers in exercise of executive authority cannot infringe citizen's rights merely because the State legislature has power to make laws with regard to subject, in respect of which the executive power is exercised. See *State of Madhya Pradesh v. Thakur Bharat Singh* ((1967) 2 SCR 454 : AIR 1967 SC 1170). No doubt under Entry 23 of List II, the State legislature has power to make law but that power is subject to Entry 54 of List I with respect to the regulation and development of mines and minerals. As discussed earlier the State legislature is denuded of power to make laws on the subject in view of Entry 54 of List I and the Parliamentary declaration made under Section 2 of the Act. Since State legislature's power to make law with respect to the matter enumerated in Entry 23 of List II has been taken away by the Parliamentary declaration, the State Government ceased to have any executive power in the matter

relating to regulation of mines and mineral development. Moreover, the proviso to Article 162 itself contains limitation on the exercise of the executive power of the State. It lays down that in any matter with respect to which the legislature of a State and Parliament have power to make laws, the executive power of State shall be subject to limitation of the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authority thereof. The limitation as contained in the proviso to Article 162 was necessary to avoid conflict in the exercise of executive power of State and the Union Government in respect of matters enumerated in List III of the Seventh Schedule. If Parliament and the State legislature both have power to make law in a matter, the executive power of the State shall be subject to the law made by the Parliament or restricted by the executive power of the Union expressly conferred on it by the Constitution or any law made by Parliament. Parliament has made the law as contemplate by Entry 54 of List I an the law so made confers exclusive power on the Central Government to frame rules regulating the disposal of waste or industrial effluent of a mine, the State legislature has, therefore no power either to make law under Entry 23 of List II or to exercise executive power to regulate the disposal of slurry, a waste effluent discharge of a coal mine.

20. Learned counsel for the State of Bihar as well as for the respondent contractors contended that the lease executed by the state government in their favour was not a mining lease within the provisions of the Act, therefore, the provisions of the Act are not applicable to it. This submission is founded on the assumption that the slurry is not coal. We have already discussed the characteristic of slurry is not coal. We have already discussed the characteristic of slurry which shows that the coal can be transported in liquid form of slurry. The slurry which gets deposited on the river bed and on raiyati land contains fine particles of coal, on its resumption it is used for energy and fuel purposes. It is, therefore, difficult to accept the contention that the coal particles which escape from the washery and get deposited in the river bed or in raiyati land do not have the character of mineral. It is not, however, open to the State to raise this contention as while making settlement and granting lease in favour of the respondents for lifting or collecting slurry deposits the State itself proceeded on the assumption that the coal particles as deposited in the river bed and in the raiyati land on its escape from the coal washeries constituted 'mineral'. Since under the Bihar Land Reforms Act the minerals vest in the State, it claimed right to grant lease in favour of the respondents for collecting the same. In the indenture of settlement dated April 9, 1975 granted in favour of the M/s. Industrial Fuel Marketing Company and others in Civil Appeal Nos. 230-231 of 1987 the State Government itself stated : "and whereas these rejects/sludge being a mineral the State Government is the owner of the same by virtue of the entire State including the minerals having vested in the State Government under the provisions of Bihar Land Reforms Act". The indenture purported to confer right on the lessee for lifting rejects also known as sludge comprising fine particles of coal which are ejected in the process of coal being washed in the coal washeries and which flow into the nearby river or to the lands held by the raiyats. The lease was granted by the Mining Department of the State Government dealing with minerals. Similarly, the indenture of settlement dated April 9, 1981 granted in favour of respondent 4 in Civil Appeal Nos. 61-62 of 1987 permitting him to collect slurry after it is deposited in the river bed or in the land as specified in the lease, was also executed by the State of Bihar on the premise that the slurry as deposited in the river bed was a mineral, namely, coal. Thus, it is apparent that the State of Bihar itself has been treating the 'slurry deposits' as mineral and on that assumption it has been executing lease conferring rights on the respondents to collect the same on payment of royalty. In this view, it is not open to the State of Bihar and the lessees to contend that slurry is not coal or mineral within the meaning of the Act.

21. Learned counsel for the respondents attempted to justify State's action on the ground that the slurry as settled down in river bed or in raiyati land was not waste or industrial effluent of coal

mines as the washeries are not part of coal mines. We find no merit in the submission. Section 3 of the Act defines 'mining operation' which means any operation undertaken for the purpose of winning any mineral. The expression 'mine' is not defined by the Act instead Section 3(i) says that the expression 'mine' has the same meaning as assigned to it the Mines Act, 1952. 'Mine' as defined by Section 2(1)(i) of Mines Act, 1952 means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and it includes :

(xii) "any premises in or adjacent to and belonging to a mine on which any process ancillary to the getting, dressing or preparation for sale of minerals or of coke is being carried on."

The inclusive definition of mine is wide enough to include any premises belonging to a mine where any ancillary process is carried on for preparing the minerals or coke for sale. There is no dispute between the parties that the coal as extracted from the coal mine is crushed into pieces and thereafter it is washed to remove its impurities and ash contents to make the coal fit for sale. After the coal is washed, it assumes the form of coke which is sold to consumers. The washery, wherein the process of washing coal is carried on, for the purpose of preparing the coal for sale is an integral part of a mine as it involves ancillary process. Washery is included within the definition of mine under the Mines Act, 1952. Any waste discharge from the washery carrying small particles of coal in the form of slurry is the waste slime arising from operations carried out in a mine.

22. Moreover, it is not open to the respondents to contend that slurry is not a waste discharged from the washeries of coal mines. The respondents have all along pleaded before the High Court as well as before this Court that slurry is a waste discharged from the washery of the appellant's coal mines. In Civil Appeal No. 4521 of 1986 Ram Nath Singh - respondent 4 has stated in paragraph 2 of his affidavit before this Court that slurry/sludge is a waste substance of Sudamdih coal washery and in order to keep the river water clean and pollution free and to earn revenue the State Government settled the collection by slurry from the river bed in his favour. The State of Bihar also in its affidavit filed before the High Court expressly stated that the sludge/slurry was rejected property from the coal washery and the State of Bihar made settlement in favour of the respondents for collection the waste deposits from the river bed and other land. The Full Bench of Patna High Court also observed : "the sludge/slurry could not be raised to the status of being coal, as it was the consequential wastes of coal mining process, therefore the true nature of slurry was that it was a mere residue reject or waste of an industrial process consisting of mud, ash, oily substances, water and carbonaceous ingredients." The respondents have all along proceeded on the assumption that sludge/slurry was an industrial waste arising out of the mining operation of coal. The State of Bihar as well as the respondents in whose favour the right of collection of sludge/slurry has been settled have all along taken the stand that the discharge of slurry/sludge by the appellant's washery into the river has been polluting the river and affecting the fertility of land, therefore the State Government, permitted the removal of the slurry/sludge with a view to prevent pollution of the river and the land. On the admitted facts the entire activity relating to disposal of the industrial waste, slime or taking in the shape of sludge/slurry escaping from the washeries of the appellant's coal mines including the prevention of pollution of river water or land is covered by Section 18 of the Act. The High Courts confined themselves to the question whether sludge/slurry was a mineral under the Act and failed to consider the scope and effect of Section 18 of the Act. We are therefore of the opinion that in view of the admitted case of the parties disposal of sludge/slurry coming out from the washeries of appellant's coal mines is covered by the Act and the State Government had no authority in law to grant any lease or settlement authorising collection of the same from the river bed or from any other land. Consequently, the respondents in whose favour settlements have been made by the State

Government have no right or authority to collect sludge/slurry either from the river bed or from any other land.

23. In Civil Appeal No. 4521 of 1986 the appellants' claim that plot No. 370 situated in village Sudamdih belonged to them and the sludge/slurry discharged from their washery as settled down on that land also belonged to them therefore the State Government had no authority in law to permit respondents to collect slurry coal from their land. The High Court held that since the appellant's ownership rights in respect of plot No. 370 of village Sudamdih was seriously disputed the question should be decided by the civil court. Mr. Kapil Sibal learned counsel for the appellant urged that the High Court committed serious error as there was no scope for any dispute regarding the question of ownership of plot No. 370. We find force in his submission. There is sufficient material in record to show that Bharat Coking Coal Ltd. is the owner of the plot No. 370 situated at village Sudamdih and the respondents have failed to place any material in support of their claim. We find force in his submission. There is sufficient material on record to show that Bharat Coking Coal Ltd. is the owner of the plot No. 370. A Notification was issued by the Central Government on August 6, 1960 under sub-section (1) of Section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957, for purpose of prospecting coal in the land specified in the Schedule to the notification included the entire land of village Sudamdih District Dhanbad. By another Notification dated August 30, 1961 issued under Section 7 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 the Central Government declared its intention to acquire the lands measuring 778.45 acres specified in Schedule A to the notification Sudamdih village was mentioned in the Schedule. Plot No. 370 of Sudamdih was expressly specified therein. By another Notification dated December 16, 1961 the Central Government declared under Section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 that the land measuring 778.45 acres described in Schedule A and the rights to mine, quarry, bore, dig and search of win work and carry away minerals in the lands measuring 625.73 acres described in Schedule B are acquired. The Schedule to the notification clearly stated that all rights in village Sudamdih were acquired and plot No. 370 was expressly specified in the Schedule to the notification. On the issue of the aforesaid notifications the lands specified therein vested in the Central Government. The Central Government by its order dated January 27, 1962 transferred the aforesaid lands including plot No. 370 situated in village Sudamdih to National Coal Development Corporation, a government undertaking. In 1975 the Central Government reorganised the management structure of the coal industry in the public sector and a central company, i.e. Coal India Limited, was constituted having Bharat Coking Coal Limited as one of its subsidiaries. Bharat Coking Coal Ltd. was incorporated for running and managing the Sudamdih and Monidih coal mines of National Development Corporation. Since then the Sudamdih coal mines and the land in dispute have been under the control and management of the Bharat Coking Coal Ltd. During the pendency of the appeal before this Court proceedings were initiated against respondent 4 for the violation of interim orders of this Court. In the contempt proceedings respondent 4 contended that plot No. 370 of village Sudamdih belonged to the State of Bihar and the appellants had no ownership rights therein. This Court held that since plot No. 370 of Sudamdih has been acquired under Section 9(1) of the Coal Bearing Areas (Acquisition and Development) Act, 1957 the appellant company was its owner, and it was idle to contend the contrary. We therefore hold that the appellant is the owner of plot No. 370 of village Sudamdih and the State Government had no authority in law to make any arrangement or to settle any right with respondents for collecting slurry deposits from that plot No. 370 of Sudamdih.

24. In view of the above discussion, we hold that the slurry which escapes from the appellants' washeries is mineral and its regulation is within the exclusive jurisdiction of the Central Government. We further hold that in view of the Parliamentary declaration made by Section 2 of the

Act and having regard to Section 18 of the Act and State Government has no authority in law to make a settlements made a settlement or grant any lease to any person for the collection of slurry deposits either from the river bed or other land. The impugned settlements made in favour of the respondents by the State Government are illegal and the respondent-lessees have no right or title to collect the slurry deposits, therefore, they are restrained from lifting or collecting the same from the land in dispute. We, accordingly allow Civil Appeal No. 4521 of 1986 and Civil Appeal Nos. 61-62 of 1987 and set aside the order of the High Court of Patna and allow the writ petitions filed by the appellants before the Patna High Court. We further allow Civil Appeal Nos. 230-231 of 1987 and set aside the order of the High Court of Calcutta and dismiss the writ petitions filed by Industrial fuel Marketing Company and others. We further direct that the money deposited pursuant to the interim orders passed by the High Court and this Court will be paid to the successful party. There will be no order as to costs.

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