**PATNA HIGH COURT**

State (Bihar)

Vs

Kunja Behari Chandra

Criminal Ref. No. 1 of 1952. with Criminal Revns. Nos. 877, 878 and 1202 of 1952

(Das,CJ. Narayan and Jamuar, JJ.)

11.08.1952. 30.08.1952. 29.04.1954

**JUDGMENT**

**Jamuar, J.**

1. The reference and the applications in revision have been heard together and they will be governed by this one judgment.

2. The reference has been made by the Sub ordinate Judge, Special Magistrate of Dhanbad and it purports to be under Section 432, Criminal Procedure Code, as re-enacted by the Codes of Civil and Criminal Procedure (Amendment) Act, 1951. In the court of the Special Magistrate, there are pending four criminal cases, being Nos. 19/1 of 1951/52, 20/2 of 1951/52 17/3 of 1951/52 and 149/4 of 1950/52, and they are being tried together with the consent of the parties as similar questions of law arise in each of them. The accused persons in those cases are colliery owners and managers.

3. In cases Nos. 19/1 and 20/2 of 1951/52, the colliery involved is one Kirkend Colliery. On the 11th October, 1950, one Miss Gulati, an Assistant Inspectress, went to inspect that colliery and she found that neither any pithead bath had been constructed at the colliery as required under the Coal Mines Pithead Bath Rules, 1946, nor any creche as required by the the Mines Creche Rules, 1946. The Mines Creche Rules have been made by the Central Government in exercise of the powers conferred upon it by sub-sections (bb) of Section 30, Coal Mines Act (4 of 1923) and the Coal Mines Pithead Bath Rules have also been made by the Central Government in exercise of the powers conferred by sub-section (bbb) of Section 30 of that Act. Rule 3(a) of the Mines Creche Rules provides that the owner of every mine shall construct thereat a creche in accordance with plans prepared in conformity with these Rules and previously approved by the competent authority; and rule 3(1) of the Coal Mines Pithead Bath rules provides that the owner of every coal mine shall construct thereat a pithead bath in accordance with plans prepared in

conformity with these Rules and approved by the competent authority. Accordingly, the colliery owners and the manager are being prosecuted under Section 39, Indian Mines Act, 1923 for contravening the provisions of Rule 3(a) of the Mines Creche Rules, and this prosecution has given rise to Case No. 19/1 of 1951/52; and they are further being prosecuted under Section 39, Indian Mines Act for a contravention of rule 3(1) of the Coal Mines Pithead Bath Rules, and this has given rise to Case No. 20/2 of 1951/52.

4. In Case No. 17/3 of 1951/52, the colliery involved is Benedih Colliery. The Junior Labour Inspector, D. C. Bhattacharjee, had gone to inspect this colliery on the 11th December, 1950, and he also found that neither any pithead bath had been constructed in this colliery as required by Rule 3(1) of the Coal Mines Pithead Bath Rules nor any Creche as required by Rule 3A of Mines Creche Rules. The colliery owner and the manager are, therefore, being prosecuted in this case under Section 39, Indian Mines Act for the contravention of Rule 3(a), Mines Creche Rules. No prosecution, however, appears to have been launched for the contravention of Rule 3(1) of the Pithead Bath Rules.

5. In Case No. 149/4 of 1950/52, the colliery in question is Ramkanali Colliery. In this case, the Junior Inspector, M. R. Gaikwar had inspected the colliery on 23.8.1950, and he found that pithead baths had not been constructed as required by the Pithead Bath Rules, nor any creche had been constructed as required by the Mines Creche Rules. This case is in respect of the prosecution of the owner and the manager under Section 39, Mines Act, for the contravention of rule 3(a) of the Mines Creche Rules. Here again no prosecution has been launched for contravention of Rule 3(1) of the Pithead Bath Rules.

6. On behalf of the defense, in all these cases, a common ground in respect of the validity of the Mines Creche Rules, 1946, as also of the Pithead Bath Rules, 1946, was taken before the Special Magistrate. Hence, he had made a reference to those cases to this Court, as stated above under Section 432 of the Code of Criminal Procedure in the following words :

> "It is clear that if the provisions of the Mines Creche Rules, 1946 and of the Coal Mines Pithead Bath Rules, 1946 are valid and legal then all the accused persons are guilty and they should be suitably punished. It is, at the same time, clear that if the provisions of the rules afore said are ultra vires and without jurisdiction, the accused persons cannot be found to be guilty. In view of the Codes of Civil and Criminal Procedure (Amendment) Act, 1951, this Court is not in a position to find that the rules afore said are ultra vires and without jurisdiction in entirety or in part. At the same time, I am satisfied that in the cases pending before me the question as to the validity of the rules properly arises and are necessary for determination for the disposal of these cases. In view of the discussion above, I am of opinion that the Indian Mines Pithead Bath Rules, 1946 and the Mines Creche Rules, 1946 are ultra vires and without jurisdiction in part, if not in entirety. I direct, therefore, that the order of this Court be referred to the High Court for a decision."

7. I consider this reference to be incompetent. The amended sub-section (1) of Section 432, Criminal Procedure Code, is as follows :

> "Where any court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the court shall state a case setting out its opinion and the reasons therefor, and refer the same for the decision of the High Court."

A reference of a case to the High Court under this provision can only lie where there is involved a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation. In the cases in respect of which this reference has been made, there is no question involved as to the validity of any Act, Ordinance or Regulation or of any of their provisions : the question for determination in these cases is regarding the validity of cer tain Rules framed under an Act, namely, the Indian Mines Act, 1923. Reference was, however, made to sub-section (4), Section 31, Mines Act, wherein it is provided that the rules made under this act shall be published in the Official Gazette and, on such publication, they "shall have effect as if enacted in this Act", and it was argued that in such circumstances the rules should be considered to be a part of the Act and the reference would then be competent. I am not disposed to accept this contention. The sub-section does not say that the rules, on such publication, will be deemed to be a part of the Act : it provides that they shall have effect as if enacted in the Act, that is to say, that they shall have the same force of law as the provisions of the Act, and this is quite a different thing from saying that they must be considered as provisions of the Act itself. Indeed, if this argument were to be accepted, an important argument raised in these cases that the Rules are themselves in excess of the powers conferred to make rules under the provisions of sub-sections (bb) and (bbb) of Section 30 of the Mines Act will have to be rejected 'in limine' as the rules would be no longer rules but, in effect, provisions of the Act enacted by the legislature itself, and no question of their being in excess of any powers will arise. In my judgment, these Rules must be considered as such and, though having the force of law, yet, not as provisions of the Act. Section 432(1), Criminal Procedure Code does not include a reference where there is involved a question as to the validity of any Rule framed under any Act. For these reasons, it is unnecessary to go into the merits of this reference, and the reference must be dis charged as incompetent.

8. We were, however, asked to apply the provisions of Article 228 of the Constitution, and to dis pose of the cases involved in the reference our selves. Article 228 of the Constitution provides that, if the High Court is satisfied that a case pending in a Court subordinate to it involves a substantial question of law as to the interpretation of this Constitution, the determination of which is necessary for the disposal of the case, it shall withdraw the case and may either dispose

of the case itself or determine the said question of law and return the case to the Court from which the case had been so withdrawn. The Article restricts the powers of the High Court to cases involving a substantial question of law as to the interpretation of the Constitution. In the cases which are the subject-matter of the reference, there is no substantial question of law involved as to the interpretation of the Constitution. It is, there fore, not possible to act under the provisions of Article 228 of the Constitution.

9. I now take up Criminal Revision No. 1202 of 1952 as this was the next case argued by Mr. T. K. Prasad. The petitioners in this case are the proprietors of Murpa Colliery. They have been convicted by the Subdivisional Magistrate of Hazaribagh under Section 39, Mines Act, 1923, for the contravention of Rule 3(a) of the Mines Creche Rules, 1946, and have been sentenced to pay a fine of Rs. 100/- each, and, in default, to suffer simple imprisonment for one month each. This colliery was inspected by the Colliery Inspector on 11.9.1950, and it was found that no creche had been constructed as required under Rule 3(a), Mines Creche Rules, and hence the prosecution of the petitioners.

10. In addition to certain arguments which are common to this application and to Criminal Revision No. 877 of 1952 and which will be examined presently, Mr. T. K. Prasad has argued three points in this application. He argued, in the first place, that Rule 3(a) of the Mines Creche Rules is in excess of the powers conferred to frame rules under Section 30(bb), Indian Mines Act, in so far as rule 3(a) of the Mines Creche Rules requires the owner of a mine to construct a creche. Rule 3 (a) is in the following terms :

> "The owner of every mine shall construct thereat a creche in accordance with plans prepared in conformity with these rules and previously approved by the competent authority."

11. Section 30 of the Indian Mines Act provides that the Central Government may, by notification in the Official Gazette, make rules consistent with this Act for a number of purposes, and the purpose mentioned in sub-sections (bb) is

> "for requiring the maintenance in mines wherein any women are ordinarily employed of suitable rooms to be reserved for the use of children under the age of six years.....".

Mr. T. K. Prasad argued that the legislature em powered the Central Government to make rules "for requiring the maintenance in mines" and it did not provide that the Central Government may make a rule directing the owner of a mine to construct a creche as Rule 3(a), Mines Creche Rules, provides. Mr. Prasad suggested that the legislature probably meant that the Government itself may construct and maintain a creche. I do not think that this argument can possibly be accepted. The words "for requiring the maintenance" indicate that the Central Government may

make rules requiring some other person to construct and maintain a creche. The verb "to require" means, according to the Oxford Dictionary, to order a person or to demand of a person to do something. To my mind, the verb "to require" connotes one person asking or demanding something from another person. I cannot construe Section 30(bb) as meaning that the Central Government could not make rules for the construction of creches and their maintenance by another. I think the words clearly mean that the Central Government may require another person so to do. Reference may be made to Section 16(1) of the Mines Act which provides that

> "the owner, agent and manager of every mine shall be responsible that all operations carried on in connection therewith are conducted in accordance with the provisions of this Act and of the regulations, rules and bye-laws and of any orders made thereunder".

Clearly, the owner, agent and manager of a mine are responsible for the compliance of even rules made under the Act. Mr. T. K. Prasad also argued that the term "maintenance" in Section 30(bb), Indian Mines Act, does not include construction. I am unable to accept this construction. The words "requiring the maintenance in mines" of "suitable rooms" must surely include, where there are no such rooms, their construction and then their maintenance. In order that one may maintain something, and if one is bound to maintain that thing, one must bring that thing into existence, if it does not already exist, and then maintain it. I do not think, therefore, that Rule 3(a) of the Mines Creche Rules can be found to be in excess of the powers conferred by Section 30(bb), Mines Act, on that ground.

12. The next argument advanced by Mr. T. K. Prasad was that the prosecution in this case was barred, and his line of reasoning was this. Rule 3 (b) of the Mines Creche Rules is in these terms :

> "Such creche shall be constructed within nine months of the date of publication of these rules, provided that where land has to be acquired for the purpose, the competent authority may extend the time limit to a period not exceeding twelve months from the said date."

The date of publication of the Rules is 23.7.1946, so that nine months from that date would expire on or about 22.4.1947. The argument of Mr. Prasad, accordingly, was that, no creche having been constructed by the owner of this mine within that time, the owner had committed the offence of the contravention of Rule 3(a), Mines Creche Rules, on 23.4.1947. Now, under Section 42, Mines Act, no Court can take cognisance of any offence under this Act unless complaint thereof has been made within six months of the date on which the offence is alleged to have been committed. The complaint in the present case was lodged on 8.11.1950. This date being much beyond six months from 23.4.1947, Mr. Prasad contended that the present prosecution was barred. Here again I am wholly unable to accept his contention. Section 42, just mentioned, lays down that no Court shall take cognisance of any "of fence" under the Act unless

complaint thereof has been made within six months of the date of the offence. The term "offence" has been defined in Section 3(38), General Clauses Act, as meaning "any act or omission made punishable by any law for the time being in force". The definition includes an omission. In the present case, there was an omission to construct the required creche. This omission may be completed offence or a continuing offence. The expression "continuing offence" means that, if an act or omission on the part of an accused constitutes an offence, and if that act or omission continues from day to day, then a fresh offence is committed on every day on which the act or omission continues. Not to have constructed the creche as required within the time allowed was a contravention of the rule, and to carry on mining operation without the creche is surely a continuing contravention of the same rule. Section 39, Indian Mines Act, provides for punishment for continuing contravention as well. It says :

> "Whoever contravenes any provision of this Act or of any regulation, rule or bye-law or of any order made thereunder for the contravention of which no penalty is hereinafter provided shall be punishable with fine which may extend to one thousand rupees, and in the case of a continuing contravention, with a further fine which may ex tend to one hundred rupees for every day on which the offender is proved to have persisted in the contravention after the date of the first conviction."

The section clearly contemplates a continuing contravention as well. I have no doubt in my mind that the contravention of rule 3(a) of the Mines Creche Rules by the petitioners was a continuing one, and there can be no question of the prosecution being barred under Section 42 of the Mines Act.

13. The third and the last contention raised by Mr. Prasad was that the Mines Creche Rules, though they purport to be rules made in respect of mines, cannot apply to mines; in fact, he said that these rules can apply to nothing. For his argument, he relied upon the definition of the word "mine" in Section 3(f) of the Mines Act. The word "mine" is defined as meaning

> "any excavation where any operation for the pur pose of searching for or obtaining minerals has been or is being carried on, and includes all works, machinery, tramways and sidings, whether above or below ground, in or adjacent to or be longing to mine"

Mr. Prasad contended that, since a mine means "any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on", the direction to construct a creche at the mine is a fruitless direction as no such creche can be made at that spot. This argument is too subtle. The definition of "mine" includes not only an excavation but also, as will appear from the latter part of the definition, all works, machinery, etc., whether above or below ground, in or adjacent to or belonging to a mine. The direction, therefore, to construct a creche at a mine is clearly a direction which can be well complied with.

14. Criminal Revision No. 877 of 1952 arises out of Case No. 46/303 of 1951/52. The first petitioner, D. R. Kashib, is the managing agent of Model Dhori Colliery, and the second petitioner, S. B. Chatterjee, is the manager of the same colliery. This colliery was inspected on 18.10.1951, by the Junior Assistant Inspector P. S. Murmu, and it was found that no creche had been constructed in the said colliery as required under Rule 3(a), Mines Creche Rules. The two petitioners were, accordingly, prosecuted, and have been convicted under Section 39, Indian Mines Act, 1923, for having contravened the provisions of Rule 3(a), Mines Creche Rules, 1946.

15. Mr. Shivanugrah Narayan, who appeared for the petitioners in this case, repeated, to begin with, the argument raised in the last case that, under Section 30(bb), Mines Act, 1923, a colliery owner cannot be required to make a construction of a creche, as the words "for requiring the maintenance" do not include for requiring a "construction" of a creche. I have already considered this argument and rejected it. It is unnecessary, therefore, to consider this point any further. His further arguments were adopted by Mr. T.K. Prasad, appearing in the last case, and I now proceed to examine them.

16. He contended that, if a colliery has already in its possession suitable rooms which can be re served for the use of children as required under Section 30(bb), Indian Mines Act, the colliery ought not to be required to make any fresh construction, and rule 3(a) of the Mines Creche Rules, having made no exception in this respect, was 'ultra vires'. This argument can have no force in the circumstances of the present case or of the last case for the reason that it was never urged in the Courts below that the collieries concerned possessed suit able rooms which could be reserved for the use of children, and no such defense was taken. Such an argument could only be urged if it could be shown that the collieries concerned had offered suitable rooms which could be reserved for the use of children and that would involve production of evidence; indeed, we were not informed that the collieries concerned possessed such rooms. The point does not arise as no evidence was ever offer ed, and this question cannot now be gone into in revision. It is, therefore, impossible to entertain this argument.

17. The next argument was that when, under Section 30(bb), the Central Government was empowered to make rules "for requiring the maintenance" of suitable rooms, etc., the Central Government was not empowered to require any owner of a colliery to pay the costs for the construction of such rooms, and that no owner of a mine, therefore, can be required to pay for the construction of such rooms. This argument is the same as that the owner cannot be directed to "construct" a creche but only to "maintain" one, though put in another form. It is amply clear from the provisions of the Act that the owner of a mine has to maintain such rooms before he can operate upon the mine, and if he has to construct them, the costs must be borne by him. Mr. Shivanugrah Narayan sought to support his argument by reference to sub-sections (a), Section 30A, Mines Act which is as follows :

> "The Central Government may, by notification in the Official Gazette, make rules under

this section requiring the establishment of central rescue stations lor groups of specified mines or for all mines in a specified area, and prescribing how and by whom such stations shall be established."

The argument was that here the legislature has empowered the Central Government to prescribe how and by whom such stations shall be establish ed, and, therefore, who shall pay for the establishment; but, no such direction having been given by the legislature in section 30(bb), the owner of a mine cannot be directed to pay for the establishment of these rooms. It is clear enough that, under sub-sections (a) of Section 30A, Mines Act, since rescue stations have to be established "for groups of specified mines or for all mines in a specified area", it had to be made clear as to which of the groups of the mines or as to which of the mines shall meet the expenses : such is not the case with an owner of a single mine. Where certain requirements have to be provided for in a single mine, they must be provided by the owner of the mine, and he shall have to meet the costs unless other wise provided.

18. It was next argued that Rule 3(a) Mines Creche Rules, 1946, is invalid as it offends against the principle 'delegates non potest delegare', that is to say, the rule savours of double delegation. The contention was that by Section 30(bb), Mines Act, 1923, the legislature empowered the Central Government to make the required rules, and, by rule 3(a), Mines Creche Rules, the Central Government has delegated those powers, which the legislature had given to it, to another authority, and this the Central Government could not have done. Rule 3(a) has already been quoted. It will be recalled that, while requiring an owner of a mine to construct a creche, it provides that the creche must be in accordance with plans which must be previously approved by "the competent authority". and "competent authority" has been defined in Rule 2(a) as meaning, in respect of coal mines, "the Coal Mines Welfare Commissioner", and including "any person authorized in writing by the said Commissioner". The argument was that the Central Government, by directing the construction of a creche in accordance with plans approved by the Coal Mines Welfare Commissioner, has delegated the authority given to it by the legislature to another person. The learned Advocate-General, appearing for the State, contended that there is, in fact, no delegation of any legislative authority; all that the Central Government said in rule 3(a) was, in effect, that the details regarding suitable plans shall be settled by the "competent authority". By virtue of the provisions of rule 3(a), the Central Government requires the owner of every mine to construct a creche; but, instead of itself approving a plan for its construction in each mine, it has directed that the plans would be drawn up by the competent authority : that, he argued, would at best, amount to giving the competent authority an administrative function and it will not be a delegation of any legislative function.

19. In support of his contention, Mr. Shiva nugrah Narayan cited - '*Allingham and another v. Ministry of Agriculture and Fisheries*[1]', (A). In this case, under Regulation 62(1) of the Defense (General) Regulations, 1939, the Minister of Agriculture was given powers to "give such directions with respect to the cultivation, management or use of land for agricultural purposes as he thinks necessary" for certain purposes. The direction was to be given by a notice and the land

in respect of which the notice was to be given had to be specified in the notice and the notice was to be served upon the person who was to comply with the direction. The Minister, under another Regulation, being Regulation No. 66 (1) was empowered to delegate his powers to an other person or body of persons, and the Minister accordingly delegated this power to the war agricultural executive committee. This committee decided that eight acres of sugar beet should be grown by the appellants of that case for the year 1947 season, and it became necessary to serve notice upon the appellants to that effect. The committee, however, said that this sugar beet was to be grown on a field to be named by their executive officer. In other words, the committee delegated to the executive officer the task of deciding the land - which task was of the Minister or his delegate, the committee itself. This, it was held the committee could not do as being against the principle 'delegatus non potest delegare'. In the case before us, the legislature, in enacting Section 30(bb) of the Mines Act, said :

> "The Central Government may.....make rules for requiring the maintenance of mines wherein any women are ordinarily employed of suitable rooms to bereserved for the use of children under the age of six years belonging to such women -"

Thereupon the Central Government made the Mines Creche Rules, and in Rule 3(a) it directed that the owner of every mine shall construct a creche according to plans prepared in conformity with those rules but previously approved by the Coal Mines Welfare Commissioner. It was contended that, whereas, in the English case cited above, the Minister or his delegate (the committee) had to select the site of the land, in the present cases before us, it was the Central Government which was bound to lay down the requirements, and those requirements could not be left to the discretion of the competent authority. It is pointed out that Section 30(bb), Mines Act, has authorized the Central Government to make rules for maintenance of "suitable rooms" in mines "wherein any women are ordinarily employed". It is further pointed out that the Central Government has given no indication in the rules that it would apply the rules only to mines wherein women are ordinarily employed nor has it given any indication as to what would be "suitable" rooms. It has been argued that, if the Central Government had given the specifications of the rooms or the number of the rooms with an approximate estimate of the cost of their construction for different categories of mines, one could get some idea of what it considered to be suitable rooms. If the approval of the plan had then been left to the competent authority, the latter's function would have been merely one of administrative nature. As it is, the power to decide what would be suitable rooms had been given to the competent authority, though the legislature gave this power to the Central Government. The contention is that the Central Government has thus delegated legislative function and not merely ad ministrative function to the competent authority. I am of opinion that the argument has merit and ought to b e accepted. Sub-section (bb) of Section 30 of the Mines Act, in substance, requires the maintenance of suitable rooms for the use of children below the age of six years. Now, the competent authority has required the construction and maintenance of a number of rooms according to a plan, such as, "Nurses" Room, Segregation Boom, Store, Kitchen, Nursing Hall" with chabutras, etc. The plan

approved by the competent authority was placed before us, and I think there is good justification for the argument that this plan goes much beyond the scope of Section 30(bb), inasmuch as this will not be maintenance of "suitable rooms" but, in fact, a construction of fully equipped house. Then there is a rule, rule 4(vi), which requires medicines for first aid and a number of cradles or beds, bed-sheets, linen, bedding, feeding bottles, utensils and toys for the use of children to be maintained in each creche on a scale approved by the competent authority. and the competent authority has prescribed a very lengthy list of a large number of articles which must be provided in the dormitory, sick-room, store-room, bathroom, nurses room, dining room, kitchen, etc., as also a considerable quantity of linen. Accordingly, it was argued that Section 30(bb), Mines Act, did not contemplate the maintenance of such rooms as are required to be constructed by the competent authority, nor does it empower the Central Government to make any rule for the provision of such articles as have been mentioned above, and, therefore, the Rules are also in excess of the powers conferred upon the Central Government. Similarly, it was argued that rule 6, which provides for medical arrangements, and rule 8, which requires the maintenance of certain records, are in excess of the powers conferred under Section 30(bb) of the Mines Act. 'Prima facie', there is force in this argument. It was, therefore, argued that, the Rules being invalid, the petitioners were not bound to obey them. The learned Advocate-General, however, contended that the conviction of the petitioners being for not constructing a creche at all - of any kind - the conviction ought to be maintained. I do not think that this reply of the Advocate-General is adequate. If the petitioners were bound to construct a creche, they had to do so according to the plan approved by the competent authority or not at all. If the rules requiring the petitioners to construct a creche according to the plan and to provide the requirements at the creche (as mentioned above) are invalid, the petitioners cannot be found guilty for non-compliance of these requirements.

20. Another argument was in respect of Rule 7 of the Mines Creche Rules. This rule makes a provision for the staff, and lays down that at every creche the owner shall appoint supervisory and inferior staff on a scale approved by the competent authority. There can be no valid objection to the first part of the rule as Section 30(bb) itself empowers the Central Government to make rules for the supervision of the creche as also for the nature and extent of the supervision. The objection, however, was that the scale should not have been left to the discretion of the competent authority. The objection appears to be valid.

21. It has been stated that "competent authority" has been defined as the Coal Mines Commissioner and includes "any person authorized in writing by the said Commissioner". It was argued that this later authorization is bad, and I am inclined to think so.

22. Having given my due consideration to the Mines Creche Rules, 1946, I come to the conclusion that the objections raised against their validity are sound. I do not think, the Central Government was entitled, under the powers granted to it by Section 30(bb) of the Mines Act, to delegate such functions as have been pointed out above to the "competent authority", and, furthermore, some of these rules are, in my opinion, in excess of the powers conferred to frame

rules under Section 30 (bb), and these rules are not severable from the other rules. The Rules as a whole, therefore, must be considered, and I would declare them in valid.

23. It was also argued that the Mines Creche Rules, 1946, are unconstitutional as they offend against Article 19(1)(g) of the Constitution. In the view I have taken of the Rules that they appear to me to be invalid, I do not think it is any longer necessary for me to express any opinion on this part of the argument.

24. Criminal Revision No. 878 of 1952 arises out of Case No. 48/302 of 1951/52. The petitioners are the same as in Criminal Revision No. 877 of 1952; but in this case they have been convicted under Section 39, Mines Act, for a contravention of Rule 3 (1), Coal Mines Pithead Bath Rules, 1946, and sentenced to pay a fine of Rs. 200/- each, and, in default, to suffer six months' rigorous imprisonment each. The Coal Mines Pithead Bath Rules, 1946, have been made by the Central Government under powers conferred by Section 30 (bbb), Indian Mines Act, 1923. This section empowers the Central Government to make rules :

> "for requiring the maintenance at or near pit heads of bathing places equipped with shower baths and of locker-rooms for the use of men employed in mines and of similar and separate places and rooms for the use of women in mines where women are employed, and for prescribing, either generally or with particular reference to the number of men and women ordinarily employed in a mine, the number and standards of such places and rooms".

25. Rule 3 (1) of these Rules is as follows :

> "The owner of every coal mine shall construct thereat a pithead bath in accordance with plans prepared in conformity with these rules and approved by the competent authority .....".

The competent authority in these Rules is, according to rule 2(c), the Coal Mines Welfare commissioner or any person authorised in writing by him in this behalf. The case against the petitioners is that, on 18.10.1951, P. S. Murmu, the Junior Assistant Inspector, inspected this colliery and found that pithead baths had not been constructed in the colliery as required under Rule 3(1) of the Coal Mines Pithead Bath Rules, 1946. Mr. Shivanugrah Narayan, who appeared for the petitioners in this case also, argued that some of the rules of the Coal Mines Pithead Bath Rules, 1946, were repugnant to Section 30 (bbb) of the Indian Mines Act. In these Rules, mines have been divided into four categories, according to Rule 2 (b), and the distinction between the four categories is based upon the average monthly output. Category 'A' mine is one of which the monthly average output exceeds 500 tons but does not exceed 2500 tons; category 'B' mine is one where the average monthly output exceeds 2,500 tons but does not exceed 10,000 tons; category 'C' mine is one where the average monthly output exceeds 10,000 tons but does not

exceed 20,000 tons; and category 'D' mine is one where the average monthly output exceeds 20,000 tons. According to these Rules, every pithead bath shall be provided with shower baths on the following scale, namely,

> "Category 'A' mine : 10 for men and 4 for women;

Category 'B' mine : 20 for men and 8 for women;
Category 'C' mine : 24 for men and 10 for women; and Category 'D' mine : 40 for men and 16 for women". It was argued that the classification of the mines on the basis of output was bad, and that the scale for providing pithead baths was also bad. Now, the average monthly output of the mine concerned is admitted to be below 500 tons. This mine, therefore, does not come within any of the four categories. Hence, the argument was that the Rules under consideration cannot apply to this class of mines. Only such mines which fall under one of the categories are required to construct the required number of pithead baths. A pithead bath is defined in Rule 2(d) of the Rules as meaning :

> "a bathing place at or near a pithead for the use of miners equipped with shower baths, locker rooms and ancillary facilities, such as latrines, urinals, and attendants' rooms".

This particular mine, therefore, not being in any of the four categories, cannot be governed by these Rules.

26. In this case also, it was argued that the Central Government could not authorise the competent authority to approve the plans, and the argument advanced as against the validity of Rule 3(a) of the Mines Creche Rules was adopted in respect of rule 3(1) of the Pithead Bath Rules. My conclusions in respect of this rule is the same. It was, furthermore, pointed out that under Section 30 (bbb) of the Mines Act, although shower baths and locker rooms are required to be provided, latrines, urinals and attendants' rooms are not required to be provided, and that, therefore, the rule requiring latrines, urinals and attendants' rooms also to be provided are bad. This part of the argument is also on similar lines as the argument in respect of rule 3(a) of the Mines Creche Rules, 1946, and I have already accepted that argument.

27. It was also argued that a manager of a colliery cannot be convicted. The reply to this argument is to be found in sub-sections (1) and (2) of Section 16, Mines Act, 1923. Sub-section (1) is as follows :

> "The owner, agent and manager of every mine shall be responsible that all operations carried on in connection therewith are conducted in accordance with the provisions of this Act and of the regulations, rules and bye-laws and of any orders made thereunder."

And sub-section (2) is as follows :

"In the event of any contravention of any such provisions by any person whomsoever, the owner, agent and manager of the mine shall each be deemed also to be guilty of such contravention unless he proves that he had taken all reasonable means, by publishing and to the best of his power enforcing those provisions, to prevent such contravention."

The provisos to this sub-section are immaterial for our purposes. Haying regard to these provisions, I am of opinion that a manager cannot escape liability. In the view, however, which I have taken of the mines Creche Rules and the Pithead Bath Rules, this point does not arise for decision.

28. I am of the opinion that both these sets of Rules ought to be held invalid. I would, accordingly, allow the applications in revision, and set aside the convictions of the petitioners and the sentences imposed upon them. The fines if paid, will be refunded. The reference, however, must be discharged.

29. Before I conclude this judgment, it must be stated that the Mines Creche Rules and the Pithead Bath Rules as made in the year 1946 under the Indian Mines Act, 1923, have been considered in these cases. The Indian Mines Act, 1923, has now been substituted by the Indian Mines Act, 1952 (Act 35 of 1952). No rules under the new Act (Act 35 of 1952) have been made, and, by reason of Section 24 of the General Clauses Act, both sets of the Rules of 1946 are still in force even under the new Act (Act 35 of 1952). We are not called upon in these cases to deter mine the validity of the rules or otherwise as under the new Act (Act 35 of 1952). My observations will be confined to the Rules as under the old Mines Act of 1923.

**Das, J.**

30. It is with some regret and great respect that I differ from my learned brother Jamuar, J. on some material points and also with regard to the final decisions at which he has arrived. It is not necessary to reiterate the facts; they have been set out clearly in the judgment of my learned brother, which I have had the advantage of perusing before preparing my own judgment Therefore, I proceed at once to state the points in respect of which I differ from him and my reasons for such difference as briefly and clearly as I can.

Criminal Reference No. 1 of 1952.

31. As has been pointed out, this reference is in respect of four criminal cases which were tried together by the learned Special Magistrate of Dhanbad. The learned Special Magistrate has made the reference under Section 432, Criminal Procedure Code. The learned Special Magistrate has stated his opinion in the following words :

"I am satisfied that in the cases pending before me, the question as to the validity of the rules (namely the Mines Creche Rules, 1946, and the Coal Mines Pithead Bath Rules,

1946) properly arises and is necessary for determination for the disposal of these cases. In view of the discussion above, I am of opinion that the Indian Mines Pithead Bath Rules, 1946, and the Mines Creche Rules, 1946 are 'ultra vires' and without jurisdiction in part, if not in entirety. I direct, therefore, that the order of this Court be referred to the High Court for a decision."

32. The question is if the reference is competent. Section 432, Criminal Procedure Code states, 'inter alia', that where any Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that court is subordinate or by the Supreme Court, the court shall state a case etc. The principal point for consideration is if the cases pending before the learned Special Magistrate of Dhanbad involve a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation.

'Prima facie', what is challenged as invalid or inoperative in the four cases pending before the Special Magistrate is not the Indian Mines Act, 1923, but certain rules made under Section 30 of the Act. Section 31(4), Mines Act, lays down that regulations and rules made under the Act shall be published in the Official Gazette and, on such publication, shall have effect as if enacted in the Act. It is by reason of this provision that it has been contended that the Mines Creche Rules and the Coal Mines Pithead Bath Rules, 1946, shall be deemed as if they are part of the Indian Mines Act, 1923, and any question as to their validity will then attract Section 432, Criminal Procedure Code

The expression "as if enacted in the Act" has been the subject of judicial consideration. The two leading decisions on the subject are - '*Institute of Patent Agents v. Joseph Lock-wood*[2]*',* (B) and - '*Minister of Health v. The King*[3]*',* (C). Both are decisions of the House of Lords. These decisions have been considered in some detail by Craies at pp. 281 to 283 (see Craies on Statute Law, 5th Edition). In 1894 AC 347 (B), Lord Herschell L. C. said in his speech that he felt very great difficulty in giving to the expression any other meaning than this, "that you shall for all purposes of construction or obligation or otherwise treat the rules exactly as if they were in the Act." Lord Herschell further explained that there might be some conflict between a rule and a provision of the Act. He observed :

"Well, there is a conflict sometimes between two sections to be found in the same Act. You have to try and reconcile them as best you may. If you cannot, you have to determine which is the leading provision and which the subordinate provision, and which must give way to the other. That would be so with regard to the enactment and with regard to rules which are to be treated as if within the enactment. In that case probably, the enactment itself would be treated as the governing consideration and the rule as subordinate to it."

It is no doubt true that the question of 'ultra vires' has to be approached from a somewhat different standpoint in England where there is no written constitution, and where an Act of Parliament cannot be questioned in a Court of law. In India the position is somewhat different by reason of various provisions in the Indian Constitution, details whereof need not now be discussed. Lord Herschell's view was supported by Lords Watson and Russell and not by Lord Morris. In England, much discussion followed - 'Lock-wood's case (B)'. The question was again examined in - '1931 AC 494 (C)', where Lord Dunedin examined the dicta of Lord Herschell. His Lordship quoted the observations of Lord Herschell which I have refer red to above, and pointed out that the confirmation of the scheme made by the Minister of Health (their Lordships were dealing in that case with an improvement scheme made under the Housing Act, 1925) made the scheme speak as if it was contained in an Act of Parliament, but the Act of Parliament in which it was contained was the very Act which provided for the framing of the scheme. His Lordship held that the mere confirmation would not save it; because if the scheme as made was in conflict with the Act, it would have to give way to the Act. The position would be otherwise if the scheme were embodied in a subsequent Act, for then the maxim to be applied would have been "posteriora derogant prioribus."

33. Section 30, Mines Act, which enables the Central Government to make rules states in ex press terms that the rules must be "consistent with the Act", though Section 31 (4) says that the rules, on publication in the Official Gazette, shall have effect as if enacted in the Act. It seems to me clear that so far as the Indian Mines Act is concerned, the rules made under Section 30 cannot have an "untouchable sanction", or "the high water-mark of inviolability", expressions which I have borrowed from the judgment of Viscount Dunedin. The rules made under Section 30 must be consistent with the Act; therefore, their consistency with the Act can be a matter of judicial consideration.

34. But the question still remains if Section 432, Criminal Procedure Code, is attracted to the rules made under Section 30, Mines Act. As explained by Lord Herschell and later by Viscount Dunedin in their speeches, the rules shall be taken for the purpose of construction as if they were in the Act. The position then is that in the same Act there are Section 30 as also the rules made thereunder; if the rules are inconsistent with Section 30 or with any other provision of the Act, the rules must give way as being subordinate to those sections : this irrespective of any question of legislative authority or 'ultra vires'. If the aforesaid view is correct, then Section 432, Criminal Procedure Code will be attracted to the rules; because the rules will be considered for the purpose of construction as if they were part of the Indian Mines Act, 1923, and their validity will be considered then in the light of any inconsistency which may exist between the rules and other provisions of the Indian Mines Act including Section 30. This seems to me to be a reasonable way of reconciling Section 31(4) of the Indian Mines Act with Section 30 of the said Act, in so far as section 30 says that the rules made must be consistent with the Act.

35. Therefore, I do not quite agree with my learned brother Jamuar that if the rules are treated as

if they were in the Act, the argument that they are inconsistent with other provisions of the Act, including section 30 has to be rejected 'in limine.' It seems to me that having regard to the object of Section 432, Criminal Procedure Code, as enacted in 1951, it is more in consonance with that object to include within the expression "any provision contained in any Act, Ordinance or Regulation" such rules as become part of the Act on publication; that does not necessarily mean that the rules become sacrosanct. The validity of the rules has still to be considered on the touchstone of their consistency with other provisions of the Act. To me this seems to be the correct position, and I am not prepared to hold that the reference is incompetent.

36. The question of the competency of the refe rence is, however, somewhat academic in the present case; because the questions which fall for decision in the Criminal Reference have to be decided by us in connection with the Criminal Revisions. Under Section 432, Criminal Procedure Code, what has to be referred for the decision of the High Court is the question of the invalidity or imperativeness of the Mines Creche Rules and the Coal Mines Pithead Bath Rules. The validity of both those sets of rules is under consideration in the Criminal Revisions. Therefore, the decision in the Criminal Revisions will be the decision in the Criminal Reference as well. If we hold the rules to be valid, the Criminal Reference will be answered accordingly; if we hold the rules to be invalid, then also the reference will be answered accordingly. I would, therefore, decide the Criminal Reference in accordance with the decision given in the Criminal Revisions.

37. 'Criminal Revisions Nos. 877, 878 and 1202 of 1952.' I am in agreement with my learned brother Jamuar with regard to the three points urged by Mr. T. K. Prasad in Criminal Revision no. 877 of 1952. In Criminal Revision no. 878 of 1952 Mr. Shivanugrah Narain has urged the defect of double delegation with regard to the rules in question. This has been upheld by my learned brother Jamuar. I do not agree with my learned brother on this point, though I agree with him with regard to the other points urged by Mr. Shivanugrah Narain. I proceed now to give my reasons why I do not agree with my learned brother Jamuar on the question of double delegation.

38. The relevant clauses of Section 30, under which the rules have been made are clauses (bb), (bbb), (c) and (k). Clause (bb) enables the Central Government to make rules consistent with the Act for the purpose of requiring the maintenance in mines wherein any women are ordinarily employed of suitable rooms to be reserved for use of children under the age of six years belonging to such women, and for prescribing, either generally or with particular reference to the number of women ordinarily employed in the mine, the number and standards of such rooms, and the nature and ex tent of the supervision to be provided therein. Clause (bbb) enables the Central Government to make rules consistent with the Act for requiring the maintenance at or near pit-heads of bathing places equipped with shower baths and of locker-rooms for the use of men employed in mines and of similar and separate places and rooms for the use of women in mines where women are employed and for prescribing, either generally or with particular reference to the numbers of men and women ordinarily employed in a mine, the number and

standards of such places and rooms. Clause (k) is, a general power to provide for any matter not provided for by the Act or the Regulations, provision for which is required in order to give effect to the Act. This clause is usually known as Henry VIII clause; because, says the Report of the committee on Ministers' Powers, that "King is regarded popularly as the impersonation of executive autocracy". In the context of the Indian Constitution, clause (k) pushed to its logical extreme, may in certain circumstances result in abdication of legislative function. That, however, is not a point which has been canvassed by Mr. Shivanugrah Narain. He has confined his argument within a very narrow compass. His argument is that Section 30, Mines Act, 1923, is good law; but the Mines Creche Rules, 1946 and the Coal Mines Pithead Bath Rules, 1946, are bad on the ground that the Central Government acting as a delegate under Section 30 of the Act cannot redele gate its powers, as it has done in the Mines Creche Rules and the Coal Mines Pithead Bath Rules. Mr. Shivanugrah Narain has invoked to his aid the principle "delagatus non potest delegare." The two rules which Mr. Shivanugrah Narain has particularly challenged are rule 3(a) of the Mines Creche Rules, 1946 and Rule 3(1) read with 2(c), of the Coal Mines Pithead Bath Rules. It is necessary to read these two rules at this stage. As I shall first deal with the Mines Creche Rules, I read first rule 3(a) of the said rules. The rule is in these terms :

> "The owner of every mine shall construct thereat a creche in accordance with plans prepared in conformity with these rules and previously approved by the competent authority."

My learned brother Jamuar has said in one part of his judgment that the Central Government has given no indication that the Mines Creche Rules would apply only to mines wherein women are ordinarily employed. In my opinion, the definition of the expression "creche" in Rule 2(b), Mines Creche Rules, 1946, makes the position quite clear. The definition says that "creche" means a room or rooms, with ancillary accommodation reserved for the use of children, under six years of age, of women employed in a mine. This makes it abundantly clear that the Mines Creche Rules apply only to such mines where women are employed and the rules are meant for providing a room or rooms with ancillary accommodation reserved for the use of children under six years of age. This is exactly what Section 30(bb) lays down.

The expression "competent authority" occurring in Rule 3(a) and other rules is explained in Rule 2(a) : "Competent authority" means, in respect of coal mines, the Coal Mines Welfare Commissioner and in respect of other mines, the Chief Inspector of Mines, and includes any person authorised in writing by the said Commissioner or Inspector in this behalf. The question which has been mooted before us is if the rules are bad on the ground that the plans for the construction of a creche have to be previously approved by a competent authority; in other words, the question is, is this double delegation? I am unable to hold that there is any delegation of the rule making power to the competent authority. Clause (bb), Section 30, enables the State Government to prescribe the number and standards of suitable rooms either generally or with particular reference to the number of women ordinarily employed in a mine; it also enables the State Government to prescribe the nature and extent of the supervision to be provided in the

rooms. The expression "standards" occurring in Clause (bb) has been the subject of some discussion before us. The Oxford dictionary gives the following as some of the meanings of the expression "standard" :

> "Degree of excellence etc. required for a particular purpose"; "minimum of material comfort with which a person or class or community may reasonably be content"; "thing recognized as a model for imitation etc."; "thing serving as a basis of comparison".

It seems to me that the word "standard" in Clause (bb) of Section 30 has been used in a wide sense. It is to be remembered that the object of Clause (bb) of Section 30 is apparently such regulation of a mine as will conduce to the welfare of women employed in it. The care of children under the age of six years becomes necessary, because women are employed in the mine. In considering such social legislation one must, to some extent, divest one's mind of narrow legislative interpretations, unless the words used in the statute are such that no wider interpretation is possible. If the word "standard" is given a wide connotation, it seems to me that most of the rules in the Mines Creche Rules are consistent with Section 30, Clause (bb) of the Act. The previous approval of plans prepared in conformity with the rules does not appear to me to be anything but a mere administrative act. It should be obvious that it is impossible for the Central Government to lay down all details, with meticulous care, in respect of all mines. Clause (bb) of Section 30 itself says that the rules may be made generally or with particular reference to the number of women ordinarily employed in a mine. It was, therefore, necessary to create an administrative agency for the approval of plans and also to give that authority power of exemption as has been given in Rules 3 (b), 3 (c) and 3 (d). Certain general standards have been laid down in Rule 4, but some of the details have been left to the discretion of the competent authority. There has been a concentrated attack before us on Rule 4 (vi) which makes it obligatory to provide medicines for first aid, a number of cradles or beds, bed sheet linen, bedding, feeding bottles, utensils and toys for the use of children etc. Our attention has also been drawn to a standard equipment laid down by the Coal Mines Welfare Commissioner. The standard equipment includes furniture, utensils and many other articles. Our attention has also been drawn to the type plan of a child welfare creche which consists of a nursery hall, nurses' room, bath and lavatory, segregation room and kitchen. It is contended that all these elaborate arrangements which have been prescribed by the competent authority make the rules invalid, because clause (bb) of Section 30 does not authorise the prescribing of such elaborate arrangements. It thus appears that the Mines Creche Rules are attacked on two grounds; first, on the ground of double delegation, and secondly, on the ground that some of the rules, particularly Rule 4 (vi), are in excess of the rule-making power. In my opinion, there is really no delegation of the rule-making power. What has been prescribed by the rule-making authority is the administrative act of a previous approval of the plans prepared in conformity with the rules by a competent authority. Some of the details as to the minimum requirements or standards have also been left in the discretion of the competent authority; that again, in my opinion, does not amount to double delegation.

39. As to the point that some of the rules are in excess of the rule-making power, it is necessary to point out that the only rule which needs consideration in the cases before us is Rule 3 (a) of the Mines Creche Rules, 1946. I am not at present speaking of the Coal Mines Pithead Bath Rules; I am speaking of only those cases in which the violation of the Mines Creche Rules, 1946, is under consideration. The rule in respect of which a violation is alleged is Rule 3 (a) of the Mines Creche Rules. That rule certainly is not in excess of the rule-making power. It has been contended that Rule 3 (a) is also in excess of the rule-making power, because it requires the owner of every mine to construct a creche in accordance with plans previously approved by the competent authority. It is pointed out that the owner of a mine cannot construct a creche unless it is in accordance with the type plan approved by the competent authority and unless it contains the necessary standard equipment. The argument is that judged from that point of view, Rule 3 (a) cannot be severed or taken separately from the other rules; there fore, all the rules must stand or fall together. I am unable to accept this argument. In my opinion, the standard of equipment 'inside the rooms', such as is mentioned of in Rule 4 (vi), can be easily separated from 'the standard of rooms themselves'. Assuming that the standard of equipment inside the rooms is in excess of the rule-making power, I do not see why Rule 3 (a) should fall on that ground. That rule does not talk of the standard of equipment inside the rooms; it talks of a previous approval of the plan of a creche (consisting of more than one room), prepared in conformity with the rules. My point is that the plan relates to the structure of the rooms and not necessarily to the equipment inside. No doubt, the building and the rooms must conform to Clauses (i), (ii), (iii) and (iv) of Rule 4. It has not been suggested to us that those clauses are in excess of the rule-making power. What has been contended is that Clause (vi) of Rule 4 is in excess of the rule-making power. In my view clause (vi) can be easily separated from the rest of the rules without any particular difficulty, and Rule 3 (a) cannot fall on the ground that Clause (vi) of Rule 4 may be in excess of the rule-making power. In the cases under our consideration it was possible for the owners of the mines to construct a creche in conformity with the rules and on a previously approved plan; it is to be noted that the Central Government may prescribe that a creche must consist of a room or rooms with ancillary accommodation, because Clause (bb) of Section 30, itself talks of "requiring the maintenance in mines wherein any women are ordinarily employed of 'suitable rooms'." I have underlined (here in ' ') the words "suitable rooms", which show that a creche may consist of more rooms than one. As I have said, it is possible for the owner of a mine to construct a creche in accordance with the rules and on a previously approved plan, and yet contend that he is not obliged to furnish it in the manner required or to include feeding bottles, toys etc. therein. In the cases under our consideration no creche has at all been construct ed, and we are not really called upon to pronounce on the validity or otherwise of any other rule except Rule 3 (a), unless Rule 3 (a) is held to be completely inseparable from the other rules. In my opinion, Rule 3 (a) is not so inseparable as to stand or fall with the other rules.

40. I now turn to the Coal Mines Pithead Bath Rules. Rule 2 (c) lays down that "competent authority" means the Coal Mines Welfare commissioner or any person authorised in writing by

him in this behalf. Rule 3 (1) lays down that the owner of every coal mine shall construct thereat a pithead bath in accordance with plans prepared in conformity with these rules and approved by the competent authority; the rule then gives some power of exemption or relaxation. Rule 3 (2) provides the scale of shower baths and for the purpose of the scale, mines have been put in four categories A, B, C and D. Rule 4 lays down the standards of construction. Rules 5 and 6 relate to water and lighting. Rule 7 relates to attendance, Rule 8 to locker rooms and Rules 9 and 10 to sanitary facilities and cleanliness. So far as sanitary facilities and the supply and maintenance of medical appliances and comforts are concerned, Clause (c) of Section 30, Mines Act, is relevant; because it enables the Central Government to make rules prescribing the scale of latrine and urinal accommodation to be provided at mines and the supply and maintenance of medical appliances and comforts. Rule 4 (vi) of the Mines Creche Rules and Rules 9 and 10 of the Coal Mines Pithead Bath Rules may be supported as coming within the ambit of Clause (c) of Section 30, Mines Act. As in the case of Mines Creche Rules, so also in the case of the Coal Mines Pithead Bath Rules, the only rule which really requires consideration is Rule 3 (1). In the cases before us, the violation complained of is the non-construction of any pithead bath; in other words, the complaint is the violation of Rule 3 (1). On the same reasoning, which I have explained in connection with the Mines Creche Rules, it is really unnecessary to consider the validity of any other rule except Rule 3 (1) of the Coal Mines Pithead Bath Rules, 1946. The rule, in my opinion, is neither hit by double delegation, nor is it bad on the ground of being in excess of the rule-making power. Under clause (bbb) of section 30 the Central Government is entitled to make rules (a) requiring the maintenance of bathing places equipped with shower baths and locker-rooms for the use of men employed in mines and of similar and separate places and rooms for the use of women in mines where women are employ ed, and (b) for prescribing, either generally or with particular reference to the numbers of men and women ordinarily employed in a mine, the number and standards of such places and rooms. It was, therefore, open to the Central Government to prescribe a scale laying down the number of shower baths or of locker-rooms; it was also open to the Central Government to make a rule laying down the standard of the shower baths or of the locker rooms. It was open to the Central Government to divide the mines into categories for the purpose of laying down the scale. A question was mooted before us as to what should be the scale of a mine which does not come even in category A, category A mine being a mine the average monthly output of which exceeds 500 tons but does not exceed 2500 tons. I do not see any difficulty in such a case. Clauses (i), (ii), (iii) and (iv) of sub-rule (1) of Rule 3 provide for exemptions in suitable cases, and a mine which does not come within category A can always come within the exemptions. In my opinion, there is nothing in the other rules which would make Rule 3 (1) of the Coal Mines Pithead Bath Rules, 1946, invalid or inoperative either on the ground of double delegation or on the ground of being in excess of the rule-making power.

41. I must now refer to some decisions bearing on the question of double delegation which have been cited at the Bar. It is perhaps not very accurate to use the expression "double delegation"; it must be more accurate to use the expression "sub-delegated legislation." When Acts of

Parliament delegate to Ministers or other authorities the power to make laws, those laws are normally the final instructions; sometimes, how ever, those laws in their turn empower the making of rules or regulations which have the force of law. The classic example is the Emergency Powers (Defense) Act, 1939, which authorized His Majesty in Council to make Defense Regulations; these Regulations frequently empowered Ministers to make Orders. Under these Orders directions were sometimes issued and licenses (?) might result from the directions. The number of "tiers" of instructions which are issued under an Act depends to a large extent on the degree of generality in the Act it self; speaking generally, there were four "tiers" under the Emergency Powers (Defense) Act, 1939. In India, we had a similar case in the Defense of India Act, 1939 and the rules made there under. The problem that arises in connection with legislation of that type, popularly known as grand-parent legislation, is somewhat different from the problem which we are now discussing. If the Act itself contains powers of delegation, such as were contained in the Defense Act of 1939, the problem is as to whether the legislature itself has abdicated its function; in other words, the problem is one which usually goes by the name of delegated legislation. Where, however, the statute empowers an authority to make sub ordinate laws by means of rules or regulations, can the authority make sub-delegated legislation where the statute does not expressly empower to do so? This question is usually known as sub-delegated legislation; in other words, the problem is the extent to which the recipient of a statutory power may delegate the exercise of the whole or any part of that power to another. The argument against such delegation is the fundamental rule of law usually expressed by the maxim 'delegatus non potest delegare' on which learned Counsel for the petitioners relies. Now, the first decision to which learned counsel has drawn our attention is 1948-1 All England Reporter 780 (A). That was a case in which the facts were like these; the Minister delegated to a county war agricultural committee his powers to give directions with respect to the cultivation, management or use of land for agricultural purposes; the committee left the decision to their executive officer; the Court held that they could not, being delegates, delegate to another this power of deciding what fields were to be cultivated. This was the short ground on which Lord Goddard, C. J. decided the case. His Lordship observed : "I can find no provision in any order having statutory effect or any regulation which gives the executive committee power to delegate that which the Minister has to decide and which he has power to delegate to the committee to decide for him." In the cases before us, so far as Rule 3(a), Mines Creche Rules, 1946 and Rule 3(1), Coal Mines Pit head Bath Rules, 1946, are concerned, there is no delegation of the rule-making power, the power given to the Central Government under Section 30, Mines Act. The Central Government has exercised the rule-making power, but in exercising that power the Central Government has given a cer tain administrative function to a competent authority as defined in the rules. In 'Allingham's case (A)' Reg. 62(1) of the Defense (General) Regulations, 1939, gave a power to the Minister of Agriculture to make certain directions : the Minister could also delegate his power under Reg. 66(1). The Minister did actually delegate his power to the war agricultural executive committee; therefore, the war agricultural committee could alone make the direction. My view is that the facts of 'Allingham's case (A)' are different from the facts of the cases under our consideration, and the principle laid down therein does not apply in the present cases. I can do no better than

quote an extract from the Principles of Administrative Law by Griffith and Street (1952 Edition, pp. 68 and 69) :

> "It is the statute which must be looked at. If the Minister is empowered to take a multitude of actions over the whole area of the country, then it is possible that an authority to delegate this power to local officials, whether of the Ministry or of the local government authority, will be implied. If it were otherwise, the exercise of the power might be administratively impossible. It seems to follow that the Minister may issue instructions to such dele gates and the courts may hold these instructions to be legislative. If the Minister is em powered to make subordinate legislation, it is suggested that his power to authorise himself or others by such subordinate legislation to make sub-delegated legislation depends on the generality of the statute and the extent to which the powers to legislate are there denned. If the statute is so widely phrased that two or more "tiers" of subordinate legislation are necessary to reduce it to specialised rules on which action can be based, then it may be that the courts will imply the power to make the necessary sub-delegated legislation. In the absence of authority, it is not possible to be more dogmatic."

I am aware that the test applied in some Eng lish decisions as to whether the sub-delegation is a legislative or executive act may not be decisive in India where the constitutional position is somewhat different; yet, unless, it is possible for the rule-making authority to provide for an ad ministrative agency, when the rules cover a multitude of actions in several mines, the exercise of the power would be administratively im possible.

42. A number of decisions on delegated legislation were cited at the Bar. I do not think that those decisions have any direct bearing on the problem before us, except to this extent that it is now well recognized that the Legislature may delegate the power to administer standards, as in the case of commerce department, the land department, industrial commissions, public utility commissions, tax commissions etc. (see Willis on Constitutional Law, p. 138, 1936 Edition). I do not, therefore, propose to examine those decisions in the present case. The matter was put very tersely by Fazl Ali, J. (as he then was) in his judgment - 'In re Article 143, Constitution of India and Delhi Laws Act, 1912, etc.'. AIR 1951 Supreme Court 332 at p. 361 (D). His Lordship said :

> "I have referred to these instances to show that the complexity of modern administration and the expansion of the functions of the State to the economic and social sphere have rendered it necessary to resort to new forms of legislation and to give wide powers to various authorities on suitable occasions."

43. One other ground on which the rules have been attacked is that they contravene the fundamental right of every citizen of India to carry on any occupation, trade or business, as guaranteed by clause (g) of Article 19(1) of the Constitution. The answer to this attack is to be found in clause (6) of Article 19. The restrictions im posed are undoubtedly in the interests of the

general public; because the welfare of women labourers and their children under the age of six years, when they cannot look after them selves, is in the interest of the community as a whole. Indeed, it is a measure of social welfare.

44. For the reasons given above, I would hold that neither Rule 3(a), Mines Creche Rules, nor Rule 3(1), Coal Mines Pithead Bath Rules, 1946, is in valid or inoperative. Both those rules are, in my opinion, good rules, and their violation is liable to be penalised. I would accordingly hold that the Criminal Revisions are without merit and must be dismissed. As to the liability of a manager, I agree with my learned brother and need not say anything more. I also agree with my learned brother that the cases before us have to be decided on the basis of the provisions of the Indian Mines Act, 1923. That Act has now been replaced by the Indian Mines Act, 1952; but we are not called upon in these cases to deter mine the validity of the Mines Creche Rules or the Coal Mines Pithead Bath Rules under the new Act. The contraventions in these cases took place before the Act of 1952 came into force; therefore, the legal position must be considered with reference to the position of the rules under the Indian Mines Act, 1923, as it existed at the time of the alleged contravention of the rules.

**Narayan, J.**

45. I have had the advantage of reading the judgments of my learned brothers, and though I had some difficulty in making up my mind in this case, I am now inclined to agree generally with the views of my learned brother Das, J., on the two main points of difference.

46. The most important point on which my learned brothers are not able to agree is the point as to whether this is a case of "double delegation". My learned brother Das, J., has quoted a passage from the Principles of Administrative Law by Griffith and Street to support his view that there could be a sub-delegation in favour of the Coal Mines Welfare Commissioner. According to Section 30, Mines Act, 1923, the Central Government had to make rules consistent with this Act

> (1) "for requiring the maintenance in mines wherein any women are ordinarily employed of suitable rooms to be reserved for the use of children under the age of six years belonging to such women, and for prescribing either generally or with particular reference to the number of women ordinarily employed in the mine, the number and standards of such rooms, and the nature and extent of the supervision to be provided therein;"

and

> "(2) for requiring the maintenance at or near pit-heads of bathing places equipped with shower baths and of locker-rooms for the use of men employed in mines and of similar and separate places and rooms for the use of women in mines where women are employed, and for prescribing, either generally or with particular reference to the numbers of men and women ordinarily employed in a mine, the number and standards of such

places and rooms."

Under notifications dated 23.7.1946 the rules framed by the Central Government were published, and they have been called the Mines Creche Rules, 1946, and the Coal Mines Pit-head Bath Rules, 1946. According to these rules, the Coal Mines Welfare Commissioner or any person authorized in writing by the said Commissioner is the competent authority who has to prepare the plans for the construction of the creche or the pit-head bath.

> "One of the settled maxims in constitutional law is that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the State has located the authority, there it must remain; and by the constitutional agency alone the laws must be made until the constitution itself is changed. The power to whose judgment, wisdom, and patriotism this high prerogative has been entrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom, and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust." - Cooley.

Because the legislative power of the government is vested exclusively in the legislature, the general rule enunciated by Cooley, is that the legislature cannot surrender or abdicate such power and any attempt to do so will be unconstitutional and void. There is also the well-known maxim 'dele gatus non potest delegare', which means that the power to make laws cannot be delegated by the legislature to any other authority. But, notwithstanding these observations against delegation, the extent of delegation went so far as to make an American writer say that "because of the rise of the administrative process, the old doctrine prohibiting the delegation of legislative power has virtually retired from the field and given up the right". Fazl Ali, J., (as he then was) said in - ' AIR 1951 Supreme Court 332 ', that this was in one sense an over-statement, because the Ame rican Judges had never ceased to be vigilant to check any undue or excessive authority being dele gated to the executive authorities as would appear from certain recent decisions of the American Supreme Court in - '*Panama Refining Co. v. Ryan*[4]*',* and - '*Schechter Poultry Corp. v. United States*[5]*',* While referring to the maxim 'delegatus non potest delegare', Mukherjea, J., observed in - ' AIR 1951 Supreme Court 332 ', that too much importance need not be attached to this maxim, although as an epigrammatic saying it embodied a general principle. I think the weight of judicial authority now favours the view that what can be delegated is only "the task of subordinate legislation which by its very nature is ancillary to the statute which delegates the power to make it". I should like to quote the following passage from the judgment of Mukherjea, J. :

> "Provided the legislative policy is enunciated with sufficient clearness or a standard laid down the courts cannot and should not interfere with the discretion that undoubtedly rests with the legislature itself in determining the extent of delegation necessary in a particular

> case. These, in my opinion, are the limits within which dele gated legislation is constitutional provided of course the legislature is competent to deal with and legislate on the particular subject-matter. It is in the light of these principles that I propose to examine the constitutional validity of the three legislative provisions in respect to which the reference has been made."

The legislature has always to declare the policy of the law and fix the legal principles, and after it has done that, it can, under certain circumstances, delegate to executive officers the authority to make rules and regulations. If the policy has been clearly laid down and a proper standard fix ed, there is no unconstitutional delegation if the legislature leaves to certain selected officers or certain administrative bodies the duty of making subordinate rules within the prescribed limits. With the growth in the necessities of a modern State and in the ever present complexity of the conditions with which Governments have to deal, we must have different kinds of statutes, and for enforcing those statutes it is essential to frame rules and regulations. The authority to make rules and regulations in order to carry out an ex press legislative purpose, or to effect the operation and the enforcement of a law, is not a power exclusively legislative in character but is rather ad ministrative in its nature. It was, therefore, in my opinion, within the competence of the Central Government to give certain powers to the Coal Mines Welfare commissioner in connection with the construction of the creche or the pit-head bath. I think, I must agree with my learned brother Das, J., that the use of the word "standard" in clause (bb) is very important and that the word has been used in a very wide sense. But, certainly, the rules regarding the supply of medicines, linen, bedding, utensils and toys are in excess of the powers, and neither the Central Government nor the competent authority can enforce such rules. Though the competent authority could prepare plans for the construction of "suitable rooms", they could not direct the construction of a 'chautra'. Some of the clauses in the rules that are to be found in the notifications are, certainly, in excess of the rule-making powers, but I am not able to disagree with my learned brother Das, J., that these rules are "not so inseparable as to stand or fall with the other rules". In the circumstance. I also have reached the conclusion that this is not a case of double delegation.

47. The next question of importance is whether these convictions can be sustained, inasmuch as the defense can legitimately contend that if some of the clauses are in excess of the powers, they were at liberty to disregard the entire rules; in other words, because some of the clauses are in excess of the rule-making power, it was open to them not to construct either a pit-head bath or a creche. Undoubtedly, the law is that penal statutes should be construed strictly. But even in penal laws, the intention of the legislature is the best method to construe the law.

> "If a statute is to be strictly construed, nothing should be included within its scope that does not come clearly within the meaning of the language used. Its language must be given its exact and technical meaning, with no extension on account of implications or equitable considerations; or, as has been aptly asserted, its operation must be confined to

> cases coming clearly within the letter of the statute as well as within its spirit or reason. Or stated perhaps more concisely, it is the close and conservative adherence to the literal or textual interpretation.....The rule of strict construction is not applicable where the meaning of the statutes is certain and unambiguous, for under these circumstances, there is no need for construction. If the language is clear, it is conclusive of the legislative intent, for the object of all construction is simply to ascertain that in tent, and, of course, the rule of strict construction is subordinate thereto." - Crawford.

I think, I ought to agree with my learned brother Das, J., that when no creche or pit-head bath had been constructed, the persons responsible cannot escape conviction, and it is not open to them to contend that because some of the clauses are in excess of the rule-making power, they were at liberty to disregard the entire rules. The clauses to which exception has been taken are easily separable, and there does not appear to be any justification for completely disregarding the rules as to the construction of the creche or the pit head bath which, according to Sections 30(bb) and 30 (bbb) had to be constructed.

48. The question of the competency of the referenc'e is not at all important, but, if it is necessary for me to express an opinion on this point as well, I would say that I am inclined to adopt the view taken by my learned brother Das, J.

49. In the result, therefore, I must dismiss the criminal revisions.
Revisions dismissed.

Cases Referred.

[1]1948-1 All England Reporter 780
[2](1894) AC 347
[3](1931) AC 494
[4](1935) 293 US 388
[5](1935) 295 US 495