PATNA HIGH COURT

Kundori Labour Co-op. Socy. Ltd

Vs

State (Bihar)

Civil Writ Jurn. Cases Nos. 1530 of 1983(R), 1087, 1153 of 1984(R) and 472 of 1985

(S.S. Sandhawalia, C.J. S.K. Jha and U.P. Singh,JJ.)

20.12.1985

JUDGEMENT

S.S. Sandhawalia, C.J.

1. Whether the industrial effluent commonly known as 'slurry' flowing away from a colliery washery is 'coal' and thus within the ambit of the Mines and Minerals (Regulation and Development) Act, 1957 ? If no, whether it is otherwise a mineral within the meaning of the said Act? These are the two significant questions which emerge at the very threshold in this set of four closely connected writ petitions before this Full Bench. The reference has been necessitated by a frontal challenge to the correctness of the recent Division Bench judgment in *Keshri Mai Jain v. State of Bihar*[1]*,*

2. Learned counsel for the parties are agreed that the facts herein are similar and the issues of law virtually identical. The matrix of relevant facts giving rise to the pristinely legal questions aforesaid may be noticed with brevity from *(The Tata Iron and Steel Company Limited and another v. State of Bihar*[2]) despite the large volume of pleadings on the record.

3. The 1st petitioner-Messrs Tata Iron and Steel Company Limited - owns and is possessed of various captive mines in the districts of Hazaribagh and Dhanbad meant primarily for the consumption of its well-known steel factory in the town of Jamshedpur. These coal-mines and collieries are commonly known as West Bokaro Collieries and there are two coal washeries belonging to the petitioner company, which are part and parcel of the aforementioned West Bokaro Collieries. The history of the original lease in favor of Messrs Bokaro and Ramgarh Ltd. is traced to a grant in 1946 by Maharaja Kamakhya Narain Singh of Ramgarh. Subsequently there were sub-leases in favor of Messrs West Bokaro Ltd., and it is not in dispute that at all material times the petitioner company has been working the said mines and the West Bokaro Collieries, and one of the coal washeries is averred to be the oldest coal washery plant in India. In the wake of the Bihar Land Reforms Act, the Ramgarh Raj came to vest absolutely in the State of Bihar free from all encumbrances with effect
from the 3rd Nov. 1951 and consequently the earlier leases came to be statutory
mining leases under the State of Bihar by virtue of Section 10 of the Bihar Land Reforms Act.

Reference is made to a compromise agreement arrived at betwixt the State of Bihar and Messrs West Bokaro Ltd. (vide annex.-4) and to the merger of the other subsidiary companies of the petitioner. It is sought to be claimed that the coal washing plants owned by the petitioner company are also a mine in view of the definition contained in Section 2(1)(j) of the Mines Act, 1952. Reference has even been made to certain litigation in the High Court of Calcutta to which any detailed reference is unnecessary in view of what follows. The industrial process for washing coal in order to materially reduce its ash content and render it fit for high metallurgical use has been detailed in para 50 of the petition with repeated assertions that the petitioners cannot afford to abandon or forsake the slurry, sludge or middlings escaping from the coal washeries into the Bokaro river. The core of the claim laid is that the slurry escaping from the washery into the river is, in essence, coal and thus squarely within the ambit of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter to be referred to as the 'Act'). In the alternative it is suggested that it is in any case a mineral and thus equally within the scope of the Act aforesaid. Consequently, it is the claim that the State of Bihar has no right or jurisdiction to give what is labelled as mining leases for the collection of slurry from the river bed or the raiyati land to the private respondents 5 and 6. It is stated that the respondent State of Bihar wrongfully and illegally entertained the purported applications for grant of lease in respect of slurry coming out from the washeries owned by the petitioner company because, inter alia, the said slurry or sludge continued to remain the property of the petitioner. It is claimed that the leases executed or sought to be executed in favor of respondents 5 and 6 are mining leases in contravention of the statutory provisions and in any case the State of Bihar has no claim over the same. Equally, it is averred that the collection and removal of slurry from the river bed or raiyati land would amount to winning a mineral and thus constitute a mining operation and, therefore, the leases in favor of the private party respondents would be mining leases. Without prejudice to other claims, it is stated that the petitioners are ready and willing to take settlement of surface lands from the State of Bihar and grievance is made that notice should have been given to them before entertaining the applications filed by respondents 5 and 6. It is averred that the approval for the grant of mining leases in favor of respondents 5 and 6 is wholly illegal, without jurisdiction, arbitrary and unconstitutional.

4. In the counter affidavit filed on behalf of respondents 1 to 4 the basic stand is that the writ petition is based on a misconception of facts as well as law and the petitioner company has no *locus standi* to file this writ petition in respect of slurry or sludge beyond the premises of the coal washeries belonging to the petitioner company. It is claimed that the respondent State of Bihar is the only owner of the slurry or sludge which is being deposited either in the river bed or on the raiyati lands and no third person can collect or appropriate the same without the approval or order of the State of Bihar. It is highlighted that the function of the coal washing plants is only to wash and process coal which has already been extracted from mines and as such by no stretch of imagination the coal washing plant could be held to be a mine. Specifically and on facts, it is averred that the petitioner company itself voluntarily allows slurry or sludge to flow into the bed of river Bokaro and on to the other raiyati lands and does not exercise any control over the same. Thus, it is a clear case of abandonment and the doctrine of res derelicta would plainly apply thereto. It is then highlighted that the term "grant of mining lease in favor of respondents 5 and 6" employed by the writ petitioners is deliberately misleading because the same is a pure and simple settlement made in favor of the said respondents for the collection of slurry and sludge from the river bed of Bokaro and over an area of 105.83 acres of raiyati land in accordance with the Cabinet decision of the respondent State of Bihar. It is asserted that the use of isolated

expression here and there cannot convert a settlement of land or a lease thereof into a mining lease. It is categorically claimed that the State of Bihar is the sole owner of slurry or sludge in the river bed or the raiyati land and has every right to settle it with other persons for the collection thereof. It is alternatively asserted that slurry is neither coal strictu sensu nor is it a mineral within the ambit of the said Act.

5. The private respondents 5 and 6 have taken a stand identical with the respondent State of Bihar on the issues of law. However, on the various questions of fact these respondents have categorically controverted that the issues are the same as also with regard to the earlier litigation between the parties in the High Court of Calcutta and still pending in the Supreme Court.

6. Inevitably what first calls for pointed notice is the larger process which leads to the creation of the industrial effluent of slurry. This may be noticed in non-technical language from the virtually admitted pleadings of the parties. In the coal washery the raw coal mined from the colliery is first brought and broken into graded pieces and thereafter undergoes a wide variety of processes with the principal object of reducing its ash content to the minimum. In the west Bokaro Coal Washery this chemical process, on the petitioners' own showing, is what is called the "froth floatation process". This, inter alia, involves that the graded coal is mixed with the diesel oil, pine oil and many other chemical ingredients and is thereafter washed with lacs of gallons of water. The end product is the washed coal with minimal reduced quantity of ash content fit for high graded metallurgical process including the manufacture of steel.

7. The residual waste of the aforesaid process constituted of water, mud, oily and chemical substances, fine particles of coal and carbonaceous materials, which is commonly called slurry, is then put into a series of slurry pumps within the colliery premises. Nevertheless the surplus waste in the form of sludge/slurry is thereafter discharged as an effluent from the washery into the Bokaro river. Depending upon the weather conditions and where the river is not in high flood or otherwise this slurry would get deposited in the dry bed of the river or is then carried down on to the land of raiyati owners down stream when the sludge or slurry comes into contact with the sand or soil. The water content or other material gets soaked and absorbed in the same, leaving on the top a fine carbonaceous product or film on the soil. In view of the mounting inflation in the rising cost of coal, this residue can now be collected and after mixing it with other ingredients can be converted into briquettes or balls for burning furnaces and stoves, etc., or put to other commercial use.

8. Now, the basic reliance on behalf of the petitioners for contending that slurry is coal or in any case is otherwise a mineral is on the single Bench judgment in *Industrial Fuel Marketing Co. v. Union of India*[3], and the later Division Bench judgment of this Court in *Keshri Mal Jain v. State of Bihar*[4], Undoubtedly, in the said cases it has been held in no uncertain term that slurry is coal and, therefore, is a mineral, and since all minerals belong to the Central Government, nobody can appropriate them except in accordance with law. On the other hand, the respondents have basically invoked the reasoning and the ratio of the Division Bench in *Industrial Fuel Marketing Co. v. Union of India*[5], which, after reversing on appeal *Industrial Fuel Marketing Co. v. Union of India*[6], held that collection of slurry/sludge does not relate to any mineral and cannot be said to be a mining lease.

9. Having noticed the core of rival suggestions and, for a moment, keeping the precedents apart,

it seems apt to examine the matter on principle. In order to crystallize the basic issues for clarity sake, these may be individually enumerated as under :-

> (i) Whether slurry is coal for the purposes of Mines and Minerals (Regulation and Development) Act, 1957 and the two materials are either identical or interchangeable terms?
> (ii) If slurry is not coal then whether it is independently a mineral in its own right and thus within the scope of the Act?
> (iii) Whether the collection of slurry from the soil is a winning or mining operation?

10. The learned Advocate-General, in an incisive argument, took up the firm stand on behalf of the respondent State that slurry is not coal and further that it was not even otherwise a mineral and, consequently, the leases given by the State are not mining leases and, therefore, do not have to conform to the provisions 6f the Act.

11. In order to truly appreciate the rival arguments, it is necessary to focus on the true nature and the essence of the product commonly known as slurry. As a matter of history, it is not in dispute that in the earlier decades slurry had been allowed to go waste and was a pollutant which had to be painstakingly thrown in the rivers or stream in order to be washed away. It is common ground that some of the old coal washeries go back to the forties and fiftees (indeed, it is the petitioners' claim that one of the coal washeries in the present case is the oldest in the country) when slurry had no commercial value and was a mere polluting waste or a reject material. Undoubtedly, inflation and abnormal rise in the prices of coal and fuel have rendered slurry deposit to be of substantial commercial value, for which rival claims are now being raised. This by itself, however, cannot alter the basic nature of slurry as an industrial effluent or an industrial waste. Our attention was rightly drawn on behalf of the respondents to the following paragraphs in the writ petition itself :

> "25. The petitioner 1 has all along been processing coal raised from the said West Bokaro Colliery for the purpose of treatment and/or washing thereof, so as to reduce its ash percentage with a view to use the same in its Steel Plant, inasmuch as in the Steel Plants, only coking coal of high grade containing low
> ash percentage, can be used."
> "50(i). For the purpose of washing coal, the same is first crushed to minute sizes and screened, as a result whereof, huge quantity of slurry is generated.
> x x x
> (vi) The slurry containing fine particles of coal discharged through the tailings of the froth floatation unit, contains some of the diesel and pine oil, which are ingredients used in the washing process and have high calorific value, as a result whereof the calorific value of slurry is enhanced.
> (vii) The slurry, sludge and middlings are bye-products and/or waste products of a coal washery.
> X X X
> (x) In spite of the fact that slurry is deposited in the slurry ponds some amount thereof go

out of the plant by flowing out with the effluents ultimately into the Bokaro River".
x x x. "

It is manifest from the above that on the petitioners' own showing diesel oil and pine oil along with other unspecified chemicals are injected and introduced in the course of the chemical process for reducing ash content of coal and thus make it more suitable for metallurgical purposes. The petitioners themselves call this process as the "froth floatation process" which by its very nature is indicative of the same being a chemical industrial process. Slurry is consequently a residual or a waste product or at the highest a by-product of this chemical process which having been passed through the slurry ponds in the washery premises itself is designedly thrown or discharged in the Bokaro River. Learned counsel, Mr. Shree Nath Singh, rightly highlighted the point on behalf of the respondents that in a coal washery from the raw mined coal the end product is the ash-free coal. Consequently, a residue or waste product of processing coal industrially cannot possibly be identical with the material processed itself, or its end product. Therefore, the residuary rejects of the process of washing coal cannot be equated with coal itself. Slurry and sludge, therefore, cannot be raised to the pedestal of being coal itself for the processing of which they are the consequential wastes. It, thus, seems plain that the true nature of slurry is that it is a residue, reject or waste of an industrial process consisting of mud, ash, oily substances, water and carbonaceous ingredients. Therefore, intrinsically to label this industrial effluent as coal itself would, indeed, be far-fetched, if not absurd.

12. In order to buttress the argument that slurry was a rejected or waste product of coal washery, the learned Advocate-General forcefully argued that this was indeed an abandoned material. Relying on the pleadings of the petitioners themselves and the specific averments of the Tata Iron and Steel Co. it was pointed out that they discharge this effluent into the river Bokaro. Obviously enough thereafter they can exercise no possible control over the same. It was submitted with patent plausibility that the classic example of abandonment is the voluntary throwing of an article into a river or sea or the ocean. The facile claim that even thereafter the petitioners have any control or ownership over the said material is self-serving and farcical. Reverting to the classic Roman terminology, the learned Advocate-General contended that slurry is nothing else but res derelicta.

13. Coming now to the well-known and two significant tests in this context, it may first be noticed that the word 'coal' is not defined under the Act nor in the Bihar Minor Mineral Concession Rules, 1972 framed in the exercise of the power conferred by Section 15 thereof. As would be shown later, it is impermissible and somewhat hazardous to go to definitions under other statutes. One must, therefore, fall back on the ordinary dictionary meaning of the word 'coal' and what is understood by the word by the common man. In short, one must apply what is called the common parlance test. In the New Oxford Illustrated Dictionary, 'coal' has been given the meaning of "black or blackish sedimentary rock consisting mainly of carbonized plant tissue, found in seams or beds and used as fuel". It is plain from this meaning that it cannot include within its ambit even remotely an altogether different substance like slurry. In the New Oxford Dictionary the word 'slurry' means "thin sloppy mud, etc.". In Chambers's Dictionary the word 'slurry' is given the meaning of "as thin paste or semi-fluid mixture". Plainly enough this cannot, with the maximum stretch, include coal in its ambit. Tersely put, coal is coal and slurry is slurry, and, recalling the words of the poet, the twin shall never meet. They are neither synonymous nor

even possibly inter-changeable terms. Undoubtedly they are things apart. Learned counsel for the respondents rightly highlighted that in the mass of nearly 1000 pages of pleadings in these cases the two words have even by mistake never been used as interchangeable terms. Consequently, on the acid test of common and ordinary parlance it must be held that slurry is not coal.

14. Accepting for a moment that slurry has now come to be a commercial product, it is common ground that the same is not being marketed as coal strictu sensu. Applying what is another well-known criterion, namely, the market yard test, it is somewhat obvious that in the commercial world slurry is known and sold as a distinct and separate product from coal. In the commercial world nobody will mistake or label slurry as coal. On the petitioners' own showing, slurry may be marketed by manufacturing it into briquettes or somewhat simpler fuel balls and is thus something distinct and separate from coal or coke. On the anvil of the market yard test itself also, one cannot even remotely confuse coal and slurry.

15. On principle and in the light of the aforesaid discussion, there seems no option but to conclude that slurry is not coal either under the Act or the Rules or otherwise.
16. One must now advert to the alternative argument that slurry is independently a mineral in its own right. Inevitably, one must first advert to the statute in the context of this submission. In the Act the relevant definitions in Section 3 are as under:

> "3. Definitions. - In this Act, unless the context otherwise requires –
> (a) 'minerals' includes all minerals except mineral oil;
> (c) 'mining lease' means a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such purpose;
> (d) 'mining operations' means any operations undertaken for the purpose of winning any mineral;
> x x x
> Now, apart from the above, the expression 'mine' has been given a widely extended meaning in the Mines Act, 1952, which is as follows :
> "2. Definitions. - (1) In this Act, unless the context otherwise requires. -
> x x x
> (j) 'mine' means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes -
> (i) all borings, bore holes and oil wells;
> (ii) all shafts, in or adjacent to and belonging to a mine, whether in the course of being sunk or not;
> (iii) all levels and inclined planes in the course of being driven;
> (iv) all open-cast workings;
> (v) all conveyors or aerial ropeways provided for the bringing into or removal from a mine or minerals or other articles or for the removal of refuse therefrom;
> (vi) all adits, levels, planes, machinery, works, railways, tramways and sidings, in or adjacent to and belonging to a mine;
> (vii) all workshops situated within the precincts of a mine and under the same management and used solely for purposes connected with that mine or a number of mines

under the same management;
(viii) all power stations for supplying electricity solely for the purpose of working the mine, or a number of mines under the same management;
(ix) any premises for the time being used for depositing refuse from a mine, or in which operation in connection with such refuse is being carried on, being premises exclusively occupied by the owner of the mine;
(x) unless exempted by the Central Government by notification in the Official Gazette, any premises or part thereof, 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;
x x x x"

It would be somewhat plain from the above that the statute has not even attempted the nearly impossible task of precisely defining a 'mineral' and only an inclusive definition has been given to bring within its scope all minerals but excluding mineral oil therefrom. The rest of the definition noticed above tends to follow the same pattern and is, thus, in no way helpful to resolve the issue.

17. This at once brings to the forefront the issue that lies at the root of the controversy. What indeed is a 'mineral'? Is it a term of art having a fixed connotation? This question, to my mind, admits only of one answer. The word 'mineral' is incapable of definition and admits of a vast variety of meanings. It is not a term of art but a common English word which has no fixed connotation. In holding so, I am merely following, on principle, a view which seems to have gained universal legal acceptance and has so long and so unbroken a chain of precedent that it is futile now to entertain a contrary opinion. As early as in the authoritative pronouncement of the House of Lords in *Lord Provost and Magistrates of Glasgow v. Farie*[7], Lord Watson observed as follows :-

" 'Mines and Minerals' are not definite terms; they are susceptible of limitation or expansion, according to the intention with which they are used."

Then in *Scott v. Midland Rly. Co*[8]. Kennedy, J., observed as follows:-

"The word 'mineral' is one which at different times has been used with very different meanings. In some statutes it has a very restricted meaning, in other a very wide one. In order to determine in each case whether the word is used in a wide or narrow sense we must, as Lord Herschell said in *Glasgow v. Farie*[9], look at the object which the Legislature had in view."

18. Again Lord Loreburn in *Caledonian Rly. Co. v. Glenboig Union Fireclay Co*[10]., has held as follows :

"My Lords, the principle of the decision in this House in the Budhill and Carpalla cases 1910 AC 116 and 1910 AC 83 seems to me to have been this; the Court has to find what

> the parties must be taken to have bought and sold respectively, remembering that no definition of 'minerals' is attainable, the variety of meanings which the use of the word 'minerals' admits of being itself the source of all the difficulty".

It is unnecessary to multiply further English authorities as abovesaid view seems to have been consistently adhered to in the highest English Court.

19. An identical view has received ready acceptance in the American Courts as well. The Supreme Court of North Dakota in *Adams County v. Smith*[11], has observed as follows :

> "These cases disclose that the word 'mineral' is not a definite term susceptible to a rigid definition applicable in all instances. It is a term susceptible of limitations or extensions according to the intention with which it is used."

A similar view has been expressed in *Kalberer v. Grassham by the Court of Appeals of Kentucky* [12]*in* and also in *Hollo Way Gravel Co. v. Mckowen by the Supreme Court of Louisiann in*[13] The matter was authoritatively summed up by Mr. Justice Brown in *Northern Pacific Railway Co. v. John A. Soderbeg, United States Supreme Court Reports, (1902) 47 Law Ed 575(Supra)* in the following terms :

> "The word 'mineral' is used in so many senses, dependent, upon the context, that the ordinary definitions of the dictionary throw but little light upon its signification in a given case. Thus, the scientific division of all matter into the animal, vegetable or mineral kingdom would be absurd as applied to a grant of lands, since all lands belong to the mineral kingdom, and, therefore, could not be excepted from the grant without being destructive of it Upon the other hand, a definition which would confine it to the precious metals - gold and silver - would so limit its application as to destroy at once half the value of the exception. Equally subversive of the grant would be the definition of mineral found in the Century Dictionary; as 'any constituent of the earth's crust; and
> that of Bainbridge on Mine : 'All the substances that now form, or which once formed, a part of the solid body of the earth, Nor do we approximate much more closely to the meaning of the word by treating minerals as substances which are 'mined', as distinguished from those which are 'quarried', since many valuable deposits of gold, copper, iron, and coal lie upon or near the surface of the earth, and some of the most valuable building stone, such, for instance, as the Caen-stone in France, is excavated from mines running far beneath the surface. This distinction between underground mines and open workings was expressly repudiated in *Midland R. Co. v. Haunchwood Brick and Tile Co*[14]. and in *Hext v. Gill*[15]."

The settled judicial view noticed above is tersely laid in Halsbury's Laws of England as follows :

> "There is no general definition of the word 'mineral'. The word is susceptible of expansion or limitation in meaning according to the intention with which it is used; and the variety

> of meanings of which it admits is the source of all the difficulty in the attempt to frame any general definition."

It is in the aforesaid context of the nebulousness and the ambiguity of the word 'mineral' that the question - whether slurry is within its ambit - has to be considered. It would seem that even giving the widest amplitude to the word ' mineral ', it nevertheless has certain fundamental pre-requisites which must inevitably be satisfied. As ordinarily understood, a mineral must stem or emerge from a mine. A mining process may be a deep one going to the bowels of the earth or it may be relatively a shallower mining process. It is common ground that slurry does not emerge or stem from a mine whether by a deep or a shallower mining process. However, it is equally well settled that to be. a mineral it is not necessary that it must stem from the bowels of the earth. A mineral may well be found on the face or the surface of the earth, and its collection therefrom is sometimes given a technical terminology of winning a mineral. Sand, gravel or stone, even if found on the surface or sub-surface of the earth, may well be mineral and won by a process of collection. However, even in such a context, to be a mineral the material must be from a natural deposit in the earth. Reference in this connection may be made to *Elwes v. Brigg Gas Company*[16] The somewhat interesting facts are that the lessee company, in the course of their excavation on the demised land, discovered embedded in the clay, some feet below the surface and within a few yards of the River Ancholme, an ancient pre-historic ship or boat about 45 feet long and apparently hollowed out of a large oak tree. It was sought to be argued that this boat was a mineral. Categorically rejecting such a claim, Chitty, J., observed –

> "The terms of the definition are wide enough to include the boat; but I am not aware that the term 'minerals' has ever been held to include anything except that which is part of the natural soil. Unquestionably coal is deemed in law a part of the natural soil, without regard to what geologists may shew to have been its origin. In law the natural processes by which the trees of a forest have
> become coal are not investigated; the result only is considered. But the boat
> has not become petrified or fossilized; it always has been distinguishable from the natural soil itself. If, therefore, I were required to decide the question, I should hold that it is not a mineral."

20. A similar view has then been expressed in *Boileau v. Heath*[17] holding that mounds of tap-cinder are not a natural formation and, therefore, such mounds and like wastes would not be mineral. Later, in *Rogers v. Longsdon*[18], a similar view was again expressed. ‘

21. Learned counsel for the respondents, therefore, highlighted that on the petitioners' own showing slurry was a deposit resulting from the effluence of the industrial wastes and rejects from a coal washery. It is thus plainly artificial or, it may be said, a man-made deposit. Consequently, it lacks one of the fundamental pre-requisites that to be a mineral it must be a natural deposit on the surface or in the bowels of the earth. Reliance was placed on the observations in *Industrial Fuel Marketing Co. v. Union of India*[19], that in order to be a mine there must be a natural deposit of minerals and a dump of mineral by human agency at a place would not convert that place into a mine.

22. It thus seems plain that slurry would not satisfy the two basic tests for a mineral that it must at least come from a mine in the bowels of the earth or, if found on the surface, it must be a natural deposit therein. Therefore, it must be held that slurry is not even otherwise a mineral.

23. Once it is held that slurry is neither coal nor independently a mineral in its own right, the stand of the learned Advocate-General that the leases granted by the State for its collection are not mining leases, becomes virtually unimpeachable. The mere collection of sludge or slurry from a place where it may get deposited artificially or is dumped cannot possibly be equated with the winning of a mineral under the Act. It would be somewhat plain that winning in this context implies either the existence of a mine or that the material being won is in essence a mineral. If neither of the two conditions are satisfied then the process is neither mining nor of winning. The respondent State's stand is thus eminently justified that the leases granted are on the foundation of accretions on the land of a raiyat of which the State is the owner. It must, therefore, be held that these leases are not mining leases and consequently the provisions of the Act or the Rules framed thereunder would not even be attracted and, hence, no question of their infraction would arise at all.

24. In fairness to Mr. Chatterji, one must notice that he attempted to meet the argument that slurry was an artificial deposit by a submission which appears to us as extremely specious. It was sought to be contended that slurry flows down from the washery by gravitation and, therefore, even though it was an effluent from an industrial process, it was not a man-made deposit but a natural one. Rebutting this contention, Mr. Shree Nath Singh, learned counsel for the respondents, rightly contended that if such a hair-splitting was to be accepted, it would lead to absurd

results. It was pointed out that if a dump of earth or sand was collected by head-
loading labours, it would perhaps be argued that the baskets emptied by them fall to the ground by force of gravitation and, therefore, the dump would not be an artificial deposit but a natural one. The somewhat ingenious stand of Mr. Chatterji in this context would, therefore, be merely noticed to be rejected.

25. In a somewhat equally strained attempt, Mr. Gupta, the learned counsel for the petitioners had invited us to stray into the other statutes and the definitions given therein. Counsel relied on Clause (x) of Section 2(h) of the Coal Mines (Nationalisation) Act, 1973 for defining a mine in the Coal Mines (Nationalisation) Act. for the extreme contention that a coal washery is also a mine strictu sensu. Similar attempts were made to fall back on the provisions of the Colliery Control Order in an argument of desperation. Reliance was sought to be placed on *Commr. of Sales-tax, Madhya Pradesh, Indore v. Jaswant Singh Charan Singh*[20] and *District Co-operative Development Federation Ltd. v. Commr., Sales-tax, U.P. Lucknow*[21] wherein on the particular provisions of State statutes on sales-tax it has been held that coal includes charcoal or coal dust.
26. The submission of Mr. Gupta seems to forget the hallowed rule that it is not only impermissible but, indeed, dangerous whilst interpreting one Act, to travel beyond the same and apply definitions of other Acts except those of the General Clauses Act or to seek the meaning of a word used in an Act in the definition clauses of another statute even though dealing with cognate matter by the same legislature. It has been so held authoritatively way back in *Laurence Arthur Adamson v. Melbourne and Metropolitan Board of Works*[22], and *Jainarayan Ramkisan v. Motiram Gangaram*[23], and to my mind this rule has not been deviated from thereafter. Keeping

this salutary canon of construction in the forefront, it, therefore, becomes wholly unnecessary to advert to the variety of definitions or provisions cited before us in widely divergent provisions of other statutes even though cognate. The compliment of a detailed rational repudiation to such an argument thus need not be extended. Its basic fallacy can perhaps be well highlighted from the inclusive definition of a mine in Section 2(h) of the Coal Mines (Nationalisation) Act, 1973. It is well settled that an inclusive definition becomes necessary because in the ordinary and plain connotation of the word there are things which do not come within its meaning and are, therefore, artificially and expressly included therein by such definition. Clauses (vi) and (ix) of the aforesaid definition are as follows :

> "2. Definitions.
> In this Act, unless the context otherwise requires, -
> x x x
> (h) 'mine' means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes-
> (vi) all lands, buildings, works, adits, levels, planes, machinery and equipments, instruments, stores, vehicles, railways, tramways, and sidings in,
> or adjacent to, a mine and used for the purposes of the mine;x x x
> (ix) all power stations in a mine or operated primarily for supplying electricity for the purpose of working the mine or a number of mines under the same management;"

It is obvious from the above that for the purposes of nationalization of coal mines and of inclusive definition of a mine, it becomes compulsively necessary but that would be no ground for stretching that a mine means a power station or buildings, machinery, instruments, vehicles and the railways. It is thus manifest that the fallacy of adverting to definitions in other statutes for entirely different purposes can only lead one to greater pitfalls. Relying on such like definitions, the extreme contention of Mr. Gupta that a coal washery is a mine and that the effluents therefrom are minerals has only to be noticed and rejected.

27. Similarly Mr. Gupta's reliance on the Colliery Control Order issued earlier under the Defence of India Rules and continued under the Essential Commodities Act is not well warranted. Indeed, it may well boomerang on his stand. He has sought to draw our attention to the grades of coal specified therein which included a certain percentage of ash content. However, it was forcefully pointed out on behalf of the respondents that in the said Order the lowest grade of coal could, at the highest, have an ash content of 35 per cent, whereas admittedly slurry would have a much higher ash content rising up to 75 per cent, and is thus nearer to ash than coal. What, on the other hand, clinches the issue is that the Colliery Control Order, which could not have been unaware of slurry, does not even remotely mention slurry as coal nor does it pretend to specify any grades therefor, as has been done in the case of coal therein. Lastly, the Sales-tax Cases relied upon by Mr. Gupta are plainly distinguished and could not in any way advance his stand.

28. Inevitably one must now advert to Industrial Fuel Marketing Company's case AIR 1985 Calcutta 143 which is one of the sheet-anchors of the respondents. Therein on an identical issue the Division Bench whilst reversing the earlier single Bench view of *Industrial Fuel Marketing Co. v. Union of India*[24], unequivocally concluded as follows :

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> "In our opinion, although in the case of sand or gravel, mine the word 'winning" means collection of sand or gravel from the surface of the earth where there is natural deposit of sand or gravel, but that does not mean that collection of coal, sludge or slurry from a place where they are artificially deposited or dumped will be 'winning' within the meaning of the Act of 1957. In our view, where a mineral can be obtained from a mine, winning will mean collection of such mineral from the mine and not from any other place where such mineral is artificially deposited. In the instant case, the sludge or slurry which is deposited in the bed of river Damodar does not convert the bed of the river into a mine and, consequently, collection of sludge or slurry from the bed of the river or from any land where it is deposited cannot be said to be winning or a mining operation."

I am in respectful agreement with the view aforesaid which, in fact, has been elaborated in the earlier part of the judgment. In a somewhat ingenious attempt to distinguish the case, it was argued by Mr. Chatterji and Mr. Gupta on behalf of the petitioners that the said case has not in terms held that slurry is not coal or that it is independently not a mineral. According to them, it has only been held that the collection of slurry is not a mining operation and, therefore, the basic question that slurry is coal or a mineral remains unanswered. It is not easy to subscribe to such hair-splitting. Firstly, the said judgment is not to be read in isolation but in the light of the fact of its clear reversal of the learned single Judge judgment in AIR 1983 Calcutta 253, holding to the contrary. It is true that the Calcutta case did not focus itself pointedly on the two questions whether slurry was coal strictu sensu or whether it was a mineral. Nevertheless, the judgment is a clear one for the proposition that artificial deposits would not create a mine and the collection of such deposit is not a mining or a winning operation of mineral. From the reasoning in the judgment it inexorably follows that an artificial or man-made deposit on land would not create a mine or mineral as such. This rationale is clearly and directly attracted in the present case.

29. It remains to advert to the Division Bench judgment in *Keshri Mal Jain v. Stale of Bihar*[25], A perusal thereof would plainly indicate that the matter therein had turned primarily on the facts which were disputed and the Bench rightly declined to enter the thicket of tangled controversy. Indeed, it was observed by the Bench itself –

> "The writ petition could have been disposed of on this finding alone. But as Mr. Sahay Sinha strenuously contended that slurry was not coal, in the fitness of things, I may also give my finding on this question."

It is plain from the above that it was only as an additional ancillary proposition that the matter was considered even after finding that there was no merit in the writ petition. It is noticed in the judgment itself that the Bench did not think it necessary to hear the counsel appearing on behalf of respondents 18 and 19 who were to advocate a contrary view. Consequently the matter being not adequately canvassed before the Bench, the conclusion was arrived at almost in the shape of dictum that slurry is a coal and, therefore, is a mineral and all minerals belong to the State. It is plain that the matter was not considered in all its wide ranging ramifications which have been exhaustively discussed above. Neither principle nor precedent has been cited for arriving at the conclusion. With the deepest respect, the judgment in Keshri Mal Jain's case (supra) does not lay

down the law correctly and is hereby overruled.

30. To conclude, it is held –

(i) That slurry is not coal and is thus not within the ambit of the Mines and Minerals (Regulation and Development) Act, 1957. The two terms are neither identical nor interchangeable.
(ii) That slurry is not otherwise a mineral in its own right and is thus outside the ambit of the Mines and Minerals (Regulation and Development) Act.
(iii) That the collection of slurry from the soil is not a winning or a mining operation.
(iv) That *Keshri Mal Jain v. State of Bihar AIR 1985 Patna 114(Supra)* does not lay down the law correctly and has consequentially to be overruled.

31. Though the pristinely legal issues stand decided as above, it would appear that as regards the individual merits of each of the cases in the four writ petitions the same present a tangled dispute on facts on most of the material points. In particular, the petitioners and respondents are directly at loggerheads on the material question of the abandonment of the slurry from the washeries. Whilst on behalf of the Tata Iron and Steel Company Ltd. and Bharat Coking Coal Ltd. the stand sought to be taken is that in fact the petitioners have not abandoned the ownership or control over the same, on the other hand, the equally categoric stand taken on behalf of the respondents and pointedly raised in specific paragraphs of the counter affidavits is that there is a total and complete abandonment of the slurry when it is discharged as an effluent from the coal washeries. It was the firm stand on behalf of the respondents that the same is in a way what has, from Roman times, been designated as res derelicta. It is obvious that the question of abandonment is one of fact and intent which cannot but be proved by leading and rebutting evidence on the point. Indeed, Mr. Chatterji, the learned counsel for the petitioner company, was fair enough to concede that if it were to be held that the petitioner company has abandoned the slurry discharge (or no categoric finding on this issue can be arrived at) then a very substantial part of the petitioner's claim would indeed evaporate or would be rested on the quicksands of the finding of fact which may have to be arrived at.

32. Yet again the firm stand of the respondent State and of some of the private respondents clearly is that the agreements arrived at with regard to slurry are not mining leases. This again is a matter which can only be determined by construing individual documents, appraising evidence and resorting to all other means for determination of questions of facts. If it were to be held that the said leases are not mining leases then a substantial part of the argument rested on such an assumption would fall to the ground. This is further buttressed by the fact that *prima facie* the leases executed by the State are not, in terms, stated to be one under the Mines and Minerals (Regulation and Development) Act and, consequently, the submissions on the assumption that these are mining leases and beyond the respondent-State's competence would also lose significance. Equally, the *inter se* disputes of some of the 'respondents as betwixt respondents 4 and 5 in C.W.J.C. 1133 call for notice. It was fairly conceded by Mr. Basudeva Prasad on behalf of respondent 5 in the said writ petition that if the petition fails, he has no independent right of his own and as regards the dispute with the other private respondents he would have to seek his

relief separately by way of a suit or filing a fresh writ petition. On the other hand, Mr. Shreenath Singh even disputed the purported claim of a raiyati right in absolute terms and stated that this in itself is a hotly disputed question of fact.

33. It seems unnecessary and, indeed, would be pointlessly wasteful to advert to every detail of issues of fact on which the parties are in a headlong conflict. That this variance exists is not in serious dispute. Once it is found to be so, it seems well settled that within the inherent limitations of the writ jurisdiction it is not possible to enter the thicket of disputed questions of fact and to adjudicate thereon. Within this jurisdiction, this has been recently reiterated by the Full Bench in *Mahanth Dhansukh Giri v. State of Bihar*[26] Following the same, we dismiss all the four writ petitions and leave the parties to their ordinary remedies under the law. There will be no order as to costs.

S. K. JHA,J.

34. Having considered the matter in all its ramifications, I entirely agree with my Lord the Chief Justice that the term 'sludge' or 'slurry' cannot be equated with or put at par with either the term 'coal' or a 'mineral'. In deference, however, to the view taken by a Division Bench of this Court in the case of *Keshri Mal Jain v. State of Bihar AIR 1985 Patna 114(Supra)*, to which decision I happened to be a member of the Bench deciding that case, it is desirable to add a few words of my own. Without disowning the responsibility for whatever has been observed in para 9 in Keshri Mal Jain's case (supra) I think it pertinent to note that the least that can be said about the decision in so far as describing 'slurry' as conterminous with coal, that cannot be said to be the ratio decidendi of the decision. In that case the writ petition was dismissed on the ground that "in view of prevarication on the part of the petitioner and in view of the disputed question of facts, it cannot be decided in this application, if the petitioner has any interest of the plots in question. No relief can be granted to the petitioner". That was, as already observed by my Lord the Chief Justice, what led the Bench deciding that case to hold in para 7 that the "writ petition could have been disposed of on these findings alone. But as Mr. Sahay Sinha strenuously contended that slurry was not coal, in the fitness of things, I am also giving my finding on this question". Since that writ petition was bound to be dismissed and was dismissed in the view the Bench had taken in last part of para 6 of the judgment, all that has followed thereafter in paras 8 and 9 thereof cannot be said to be based on any meticulous examination of the question involved in the cases before us. I personally had agreed with the view that the writ petition be dismissed but had not deeply gone into the matter or meticulously examined this question in that case. At best, it can be said to be an obiter dictum. That case could have been distinguished by any other Division Bench on this ground alone. But since judicial decorum contemplates that even an obiter dictum or obiter dicta of the cases decided by a Division Bench lends them some weight, these cases have rightly been, if I may say so with great respect to the learned Chief Justice, placed before a larger Bench to test the correctness of the obiter dictum in para 9 of the judgment in Jain's case (supra).

35. The matter has been deeply gone into and discussed threadbare by my Lord the Chief Justice in his judgment but I am merely seeking to highlight a well settled principle of law. The terms in controversy in these cases are no terms of art. A residue or waste product of processing the coal itself cannot be connoted as the term 'coal' itself. Such terms must be understood, as has been laid down in numerous decisions not only of the foreign Courts but of the highest Court of this Land,

that they must be construed as a layman would understand them in common parlance. In the instant cases starting from a scratch, therefore, and testing the validity of the obiter in Jain's case (supra) on the rock of principle and as a matter of first impression, can it be said that in common parlance or even in the commercial sense a layman would understand
either 'slurry' or 'sludge' as the term 'coal' or mineral. The answer, in my view, would be definitely in the negative. Decisions on this point are legion to be enumerated. Unless, therefore, the law ropes in the term 'sludge' or 'slurry' within the meaning of the terms 'coal' and 'mineral', they cannot be equated or put at par. As has been fully discussed in the leading judgment of the learned Chief Justice, 'slurry' or 'sludge' is not included in the definition of the Mines Act, 1952 or in the Minor Mineral Concession Rules referred to in the main judgment. Even whether 'sludge' or 'slurry' could be called as coal in a commercial sense, I think it meet and proper to test these terms by giving a concrete example. If A sends his employee B to the market to purchase some coal, would B bring 'Gool' which is manufactured by bringing into it some amount of 'sludge' or 'slurry' or would the dealer give him Gool instead of coal? Conversely, if B goes to the market for purchasing Gool which, as already observed above, is manufactured by bringing in some other elements apart from sludge or slurry, would he bring coal in lieu thereof or would the dealer substitute one for the other in selling the article? The answer in either of the two cases would be definitely in the negative. Again, say, if coal is burnt into ashes and the ashes are thrown away with small particles or molecules of coal still remaining in them, can it be said that the ashes are conterminous with the term 'coal' itself? Definitely, not. It would bear repetition - and I think it worthwhile so - that in the absence of any statutory definition either in express terms or by legal fiction if or by necessary intendment if the term 'coal' or 'mineral' is made conterminous with the term either 'slurry' or 'sludge', they cannot be understood in the same sense either by the layman or even in commercial parlance irrespective of the fact whether they are strictu sensu so or not. Reliance made on the definition of the term 'sludge' or 'slurry' in the Encyclopaedia Britannica Vol. 9 p. 277 as giving an instance of the coal itself having been made liquid paste and conveyed through large underground pipes to distant places for the sake of convenience in carriage or transportation where at the point of its destination the liquid coal is again dried up and turned into solid coal is of no use to use in the instant cases. Coal whether as a solid block or turned into its liquid form for the purpose of transportation to distant places through underground pipes cannot make the liquid coal the same substane as sludge or slurry. It still remains and as at par with the term coal.

U.P. SINGH, J.

36. I agree with the views expressed by my Lord the Chief Justice.
Petitions dismissed.

Cases Referred.

[1] AIR 1985 Pat 114
[2] C.W.J.C. 472 of 1985(R)
[3] AIR 1983 Cal 253
[4] AIR 1985 Pat 114
[5] AIR 1985 Cal 143
[6] AIR 1983 Cal 253
[7](1888) 13 AC 657

[8](1901) 1 KB 317
[9](1888) 13 AC 657
[10]1911 AC 290
[11]23 NWR (2nd Series) 873
[12]138 SWR and series 900
[13]9 Sou Rep (2nd series) 228
[14](1882) 20 Ch D 552
[15](1872) 7 Ch 699
[16](1886) 33 Ch D 562
[17](1898) 2 Ch D 301 at page 306
[18](1966) 2 All England Reporter 49
[19] AIR 1985 Cal 143
[20](1967) 19 STC 469
[21](1970) 26 STC 464 (All)
[22] AIR 1929 PC 181
[23] AIR 1949 Nag 34
[24] AIR 1983 Cal 253
[25] AIR 1985 Pat 114
[26]1985 Pat LJR 235