

(1992) 01 AHC CK 0009

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 29448 of 1991

Dalmia Industries Limited and Another

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 24-01-1992

Acts Referred:

Companies Act, 1956 — Section 270, 270(1), 283(1)
Constitution of India, 1950 — Article 125, 131, 134A, 14, 19(1)
Evidence Act, 1872 — Section 106
Government of India Act, 1935 — Section 88(1)
Industries (Development and Regulation) Act, 1951 — Section 2, 20
Uttar Pradesh State Cement Corporation Limited (Acquisition of shares) Ordinance, 1991 — Section 3, 4

Citation : (1992) 1 AWC 449 : (1992) 1 UPLBEC 509

Hon'ble Judges : S.K. Dhaon, J;K. Narayan, J

Bench : Division Bench

Advocate : N.B. Singh and Bharati Sapru, for the Appellant;

Final Decision : Dismissed

Judgement

S.K. Dhaon, J.—The validity of the Uttar Pradesh State Cement Corporation Limited (Acquisition of shares) Ordinance, 1991 (hereinafter referred to as the Ordinance) has been challenged in this petition by two Petitioners. The first is the company incorporated under the Companies Act, 1956. The second, a citizen of India, is a share holder of the aforesaid company.

2. The U.P. State Cement Corporation Limited (hereinafter referred to as the corporation) was incorporated as a Government company wherein all the share holders were of the State Government. The Corporation comprises three cement factories which were situated at Chruk, Dalla and Chunar (Kajhrahath). The corporation sustained huge losses right from the year 1972 every year except during the year 1982-83 On 16th April, 1990, the Principal Secretary, Industries, Uttar Pradesh Government, gave out that the State Government intended to privatise the Corporation. On 20th April, 1990, a Cabinet decision was taken to

convert the corporation, a wholly public sector, into a joint sector corporation. For this purpose a meeting was convened on 19th May, 1990 and in that meeting leading manufactures of cement in the country were invited. On the said date a meeting was held at the office of the Principal Secretary, Industries, which was attended by 25 manufacturers. They were informed that the State Government proposed to convert the corporation into a joint sector unit and that the State Government would not make any further investment and that there would be no retrenchment of workmen or workers. The Chief Minister in his budget speech on 15th June, 1990, stated that the losing concern will be put into joint sector. On 27th August, 1990, the State Government issued an order whereby it appointed a Privatising committee (hereinafter referred to as PC) on 11th September, 1990 PC held its meeting and considered the offer of a number of cement manufacturers including the Dalmia Industries Limited. On 11th October, 1990, SB Billimoria and Company, Bombay, was appointed to value the shares of the Corporation. The said company, in December, 1990, submitted its report valuing the shares at Rs. 20/- each against the face value of Rs. 100/-. On 16th October, 1990, the Union of the workmen of the corporation preferred writ petition No. 26223 of 1990 in this Court challenging the Government's decision to privatise the corporation. This Court, as an interim measure, stayed the final implementation of the decision over the factories run by the corporation. On 19th November, 1990 a second meeting of the PC took place. In the meanwhile all the other cement manufacturers, who had responded to the invitation, backed out and only the Dalmia Industries remained in the field. The P.C. considered the offer of the Petitioner and finally accepted the same and the Cabinet accepted the recommendation of the P.C. on 14th February, 1991, a Memorandum of Understanding (hereinafter referred to as MOU) was entered into by the State Government with the Dalmia Industries. This memorandum, inter alia, provided that the Dalmia Industries and its associates will hold 51% of the shares of the Corporation, it will take over the management of the Corporation with all its assets and liabilities, it will have a right to nominate 5 Directors: whereas the State Government will have a right to nominate 4 Directors and the Dalmia Industries would be entitled to have one of its Directors as the Managing Director. The State Government passed an order incorporating the MOU. On February 21/22, 1991 shares transfer agreement and financial agreement were entered into providing the transfer of 49% of the shares to the Dalmia Industries pending the order passed in the aforesaid writ petition. On 7th March, 1991, a meeting of the Board of Directors of the Corporation was held. 5 Directors, who had been nominated by the State Government resigned and 5 Directors nominated by the Dalmia Industries were imported at their place. On 12th March 1991, Churk Cement Adhikari Kalyan Samiti filed writ petition no 1003 of 1991 in the Lucknow Bench of this Court praying therein for the quashing of the order of the State Government dated February 13/23, 1991 aforementioned. On 15th March, 1991, in that petition, an interim order was passed staying the implementation of the decision of the Board dated 7th March, 1991. On 10th April, 1991, the said interim was vacated. The writ petition was transferred from

Lucknow to Allahabad and was renumbered here as writ petition No. 10607 of 1991. On 12th April, 1990, Sri Pravin Kumar, one of the 5 Directors nominated by Dalmia Industries, was appointed as the Managing Director of the Corporation.

3. On 22nd July 1991 writ petition No. 26223 of 1990 and writ petition No. 1067 of 1991, came up for hearing before a Division Bench consisting of Hon'ble B.P. Jeevan Reddy, CJ (as he then was) and Hon'ble R.B. Mehrotra, J. The counter affidavits filed on behalf of the corporation as well as the Dalmia Industries were before the court. After considering the versions of the Petitioner, the corporation and the Dalmia Industries, the learned Judges recorded certain findings, which, in our opinion, are apposite. They are:

Once a decision to privatise was taken, and before any offers were invited, one would have expected the Government to have ordered a thorough valuation of the assets and liabilities of the corporation to find out what it is worth. Any reasonable and prudent owner of property would do this before he puts his property for sale. He would first assess for himself the value of the property he is selling, since that alone would enable him to judge the offers received unless, of course, it is a distress sale. This ought to have been done by the State Government both as a prudent owner and also because it is in the nature of a trustee of the public property. It is, however, surprising to note that no such effort was made. The first move towards privatisation was made by the Government by its letter dated 16-4-1990 addressed to IDDI seeking its guidance about privatisation and requesting them to send a nominee to finalise the details of the proposal. No follow up action was taken. Then followed the advertisement in the newspaper "Economic Times" on 1-5-1990. 25 persons responded and there was a preliminary meeting on 15-5-1990. Even then, no attempt was made to value the net worth of the corporation. What is significant in this connection is that in the very first meeting of the P.C. on 11-9-1990 one of the members Sri A.K. Puri suggested that before taking any step in this behalf, it is essential to determine the present value of these units. He suggested that valuation of these units should be undertaken without any delay. He also suggested the names of five agencies, including A.F. Ferguson and Co. New Delhi and Price Waterhouse Associates, New Delhi, for this purpose. The committee agreed with this suggestion and constituted a sub committee comprising five members to select valuers, for the purpose and have these units valued. It appears rather inexplicable that no steps whatsoever were taken to have the assets of the corporation valued through any of those five agencies, nor through any other agency. What happened is that during the course of negotiations with ACC, they suggested on 13-9-1990 that report of a chartered accountant be obtained to determine the present value of the shares of the corporation and also to have a physical verification of its assets. The ACC also indicated their choice of the chartered accountant, namely. Billimoria and Co. Accordingly, the said firm of chartered accountant was asked to value the shares. They valued the shares at Rs. 20/- per share. They did not undertake valuation of assets. A good amount of criticism has been levelled against the basis adopted by the said firm for valuing

the shares and the manner in which they went about their job. It is really unnecessary to dilate upon the correctness of their report, "-because no one appears to have attacked any value to it. The Dalmia Industries offered to purchase 51 per cent shares of the corporation at Rs. 45/- per share, without asking for any kind of concession, facility or accommodation. This shows that the valuation made by the Billmoria & Co. was wide off the mark. In this context, it would be appropriate to refer to the pleadings of the parties. According to the Petitioners, the value of the assets of the corporation is more than rupees 700 crores. In the counter affidavit filed by the Government, this figure has been disputed as exaggerated and incorrect, but the Government has made no effort to give its own figure. Evidently, it could not, in the absence of any valuation by a competent agency. The fact remains that the corporation owns 136 sq.kms. of land, wherein are situated factories and other allied buildings, six residential colonies comprising five thousand dwelling units, six recognised educational institutions, besides limestone mines and a building called Cement Bhawan at Lucknow. There is a subsisting contract for supply of slag with Bokaro Steels, whereunder, according to the Petitioners, the corporation gets slag at 1/3rd of the market value. The above particulars relating to the assets of the corporation are not denied in the counter affidavit. It may be remembered that the paid up capital of the corporation is about Rupees 64 crores. As against this, the corporation has run up an accumulated loss of about rupees 180 crores. About Rupees 10 crores is due to the Financial Agencies and about 10 and odd crores to the State Government. In the above circumstances, it cannot be said that the liabilities of the Corporation are almost equal to its assets. It is well known that value of land and buildings has been appreciating over the last several decades. Even allowing for depreciation, their value should be substantial. Evidently, it was for this reason that the Dalmias offered to purchase the shares at Rs. 45/- each, even without asking for any type of concession, facility or accommodations, and ultimately, they agreed to pay Rs. 75/- per share, subject to the Government granting concessions, facilities and accommodations mentioned in the MOU and the GOs. We are told that a formal agreement has also been entered into between the Government and the Dalmia Industries, but a copy of the agreement has not been made available to us. (We presume that the agreement is in the same terms as the MOU and GOs aforementioned).

Two questions have to be answered. What is it, the Dalmia Industries have got under the deal, and what is it, they have paid. We know what they have paid. According to the MOU, the total amount payable by them for 51 per cent of the shares at Rs. 75/-, per share is a little above 26 crores. Of this amount, they paid one crore at the time of signing the agreement. Two crores they agreed to pay within three months of the signing of the agreement. (We are told at the time of the hearing of the petitions that this amount has been paid) Another two crores they have agreed to pay within six months of the signing of the agreement. The balance amount of about rupees 21 crores is payable within 24 months of the date of the MOU. It, no doubt, carries interest at 12% per annum,

but this amount when paid to Government, has to be re-invested by the Government as secured loan or against secured debentures, in the Corporation. These loans are to carry interest at 12% and are redeemable after five years in four equal instalments. Certain units controlled by the Dalmia Industries were to furnish a corporate guarantee for this balance amount. Under Clause 9 of the MOU, it was agreed that all the employees of the corporation will be taken over on as is where is basis, which means that they will be continued on the same basis. As against four directors on the Government, the Dalmias are to have five directors. Managing Director is to be appointed out of the five directors nominated by the Dalmias, The State Government clearly declared that they will not give any guarantee for funds to be raised in future by the corporation. As against this, the following concessions were extended by the State Government. For a period of five years, the Corporation was exempt from payment of Sales Tax. The amount collected by it on account of Sales Tax during this period has to be paid in five equal annual instalments. Payment of these instalments is to begin after the expiry of eight years. The debts due to the State Government and its agencies to the extent of rupees 25 crores were re-scheduled. There was to be a moratorium for a period of three years, whereafter the said debts were to be repaid in five equal instalments.

When A factory/industry/company is acquired by Government. They do not merely pay the prevailing value of the shares (in a case where shares of such company are quoted on Stock Exchange; such values are determined by a complex array of considerations. The normal method of determining the compensation in such cases is to value the assets, determine the liabilities and find out its net worth-unless, of course the compensation is fixed by the enactment itself.

It cannot be denied that by selling 51% share holding in the corporation, the Government has in truth transferred 51 per cent of its ownership. Before determining the price, at which the share were to be sold, the Government ought to have, as a reasonable and prudent owner, and more so because it is in the nature of trustee vis-a-vis public property got a thorough valuation done of the assets and liabilities to find out the net worth of the Corporation. It would then have known what it was selling and would have been in a better position to determine which offer to accept and at what figure. Without such a valuation, the determination of rate of shares for the purpose of the sale was without any basis. We are left wondering whether any of the person responsible for the deal would have acted in the same fashion, if they had been selling 51 per cent share in a company owned by him.

4. Shri D.K. Mittal. the Special Secretary, Government of Uttar Pradesh, Lucknow, has filed a counter affidavit on behalf of the State of Uttar Pradesh, the Respondent No. 1. In paragraph 20(b) to (f) of this affidavit, the averments, inter alia are these, after the transfer of 49 per cent shares of the Corporation, it was found that the Corporation suffered deterioration in the production of the

cement and over all market position in respect of availability of cement became worse. The complete unit of the corporation at Dalla came to stand-still due to stiff opposition against the transfer of shares to the Dalmia Industries, and Ors. put up by the employees of the Corporation. The production of cement at Churk and Chunar was also adversely affected to an extent of about 90 per cent due to non functioning of the Dalla Unit and also due to non-cooperation of the workers. The workers of all the units abstained from work to a large extent. As a result of steep fall in production in the corporation, which is the only State undertaking engaged in the production of the cement in U.P. prices of cement went up considerably with the result that the construction work in the entire state suffered badly. Workers of the Corporation were opposed to the privatisation. On coming to know of the transfer of shares, they intensified their agitation virtually paralysing the unit. Workers of the other State Corporations including State Industrial units jointed them. Events took an ugly turn. On 22nd June, 1990, the police had to open fire resulting in the death of 9 persons and injuries to many. The work stopped at Dalla unit. The situation had the potential of major labour unrest. Only a small percentage of workers were on duty and no one was working at the Dalla unit since June, 1991. Due to very low production, the workers engaged on daily wages and on casual basis under the management of the corporation were also deprived of employment. The deteriorating condition of the corporation affected the financial resources of the Government in so far as there was a reduction in the revenue receipts of the State Government through various taxes which the corporation was paying to the Government before the transfer of shares. It was in the public interest to acquire the shares and, therefore, the State Government took a policy decision to do so.

5. We permitted the Churk Cement Adhikari Kalyan Samiti to be impleaded as one of the Respondents to the writ petition and we also permitted it to file a counter affidavit. On its behalf, Shri Bhupendra Singh, the President of the Churk Cement Adhikari Kalyan Samiti, Churk has filed that affidavit. Annexure-4 to this affidavit is a copy of the order dated 2nd May, 1991, passed by this Court in writ petition No. 10607 of 1991. The relevant portion of the order runs:

At this stage we think it appropriate to give notice to and hear the financing Agencies, namely, the Industrial Development Bank of India, State Bank of India and Allahabad Bank. They have lent a substantial amounts to the Corporation and according to a document shown to us their prior approval was necessary for any such joint venture agreement. We would like the aforesaid Banks to clarify the following aspects:

1. Whether the joint venture agreement between the Government and Dalmia Industries Ltd. was arrived at with their knowledge or consent?
2. Whether they have given prior approval or for that matter, subsequent approval to the said agreement?
3. Whether they have examined the terms of agreement and were satisfied that

the agreement represents a fair deal?

4. The letter of the Chairman of the Privatisation Committee dated 19-1-91, addressed to the Chief Secretary also says that Shri Nadkarni, Chairman, I.D.B.I. has vouchsafed the credit worthiness of the Dilmia Industries. Whether he did so?....

Annexure 5 to this affidavit is a true copy of the affidavit of V. Mahand Shaima, the Manager in the Regional Office of the Allahabad Bank, Mirzapur. His reply to the first query is; No. his reply to the second query is No. He also states that neither any previous nor any subsequent approval had been Sought for or given. With respect to the third query he states that there was no occasion to examine the agreement and, therefore, no question of any opinion being expressed arose as the Bank was not taken into confidence. No copy of the agreement had been made available to the bank either by the State Government or the Corporation. The reply to the last query is that the bank was unaware of any such letter.

6. The aforementioned is the background in which the impugned ordinance has been promulgated The preamble of the Ordinance at the very outset states that the acquisition of the shares of the Corporation is in public interest. It also states that as the agreement of collaboration between the State Government and Dalmia Industries could not be given effect to on account of the interim order dated 16th October, 1990, passed by this Court, and, therefore, only 49 per cent shares were transferred by the State Government at the rate of seventy five rupees for every share of the face valued of one hundred rupees fully paid and since the purpose of such transfer could not be achieved and, therefore, it is expedient in the public interest to acquire back the shares in the Corporation hereby held by the Dalmia Industries Limited

7. Section 3 of the Ordinance provides that on the date of its commencement all the shares in the companies in the share capital of the Corporation shall stand transferred to and shall vest in the State Government "Companies" means the companies specified in the Schedule, which contains the name of the Dalmia Company and its associates. Section 4 ensures the payment by the State Government of the full amount at which the Corporation had transferred its shares to Dalmia Industries and its associates within a specified period viz., thirty days. It also provides that on the failure of the State Government to pay up the amount within a period of thirty days, it (State Government) shall pay on the unpaid amount simple interest at the rate of twelve per cent per annum from the date of vesting till the date of payment.

8. We may first examine the question as to whether the management of of the Corporation vested in the Dalmia Industries and its associates, as that is the sheet anchor of the petitioners" case. The salient features of the MOU are referred to in the order of this Court in the aforementioned two writ petitions as extracted above. However, we may point out that in paragraph 20 of the MOU it is clearly stated that the same is subject to the decision of the Court. Paragraph

12 of the communication dated February 13/23 of the Joint Secretary to the Government of Uttar Pradesh addressed to the Chairman of the Corporation states that the representation on the Board of Directors will be in the ratio of the participation in the share capital. On the Board of Directors, the Chairman and three Directors will be nominated by the State Government and a full-time Managing Director and four Directors will be appointed by Dalmia Industries. This shows that in fact, the Dalmia Industries were not entitled to nominate five Directors including a full time Managing Director unless and until it held a share capital of 51 per cent. The memorandum of financial arrangement dated 22nd February, 1991, clearly provides that the parties agree to collaborate in such manner to run and manage the business of the Corporation in accordance with the terms and conditions contained in the MOU dated 14th February, 1991 and which shall form of the financial; agreement. This again emphasises that the Dalmia could nominate five Directors only when they acquire 51 per cent share holdings. The financial arrangement further stipulates in paragraph 15 that while the U.P. Government has decided to sell 51 percent of the shares of the Corporation to Dalmia and others due to pending stay of the High Court only 49 per cent share will be transferred at present. The balance 2 per cent shares will be transferred only after the stay is vacated though all the other formalities will be completed as per Clause 6. Clause 6 states that the State Government will have four Directors and Dalmia 5 in the Board of Corporation. The Chairman will be nominated by the State out of four Directors and the full-time Managing Director by Dalmias out of the five Directors. It may be noted here "that paragraph 6 does not either expressly or impliedly provies that the number of Directors will be only 9 in all. The proceedings of the Board of Directors dated 7th March, 1991, and before us in the form of Annexure 2 to the counter-affidavit of Sri D.K. Mittal. In this meeting, it is to be remembered, four Additional Directors, namely, Sarvasn Sanjai Dalmia, Anurag Dalmia, Pravin Kumar and I.P. Singh who represent the Dalmia group, were appointed. The last paragraph of the proceedings relating to the said appointment is relevant and is extracted:

It was further resolved that the appointment of these four Directors would be subject to such orders as the Hon"ble High Court at Allahabad may be pleased to pass in writ petition Cement Mazdoor Sangh Chruk and Ors. v. State of U.P. and Ors. pending before it.

At this stage two features may be noted. The first is that Parvin Kumar is one of the Directors, who is later on elected as Managing Director. The second is that the resolution made it clear that the appointment of the four Additional Directors did not have immediate effect. The same was conditional upon the High Court passing an appropriate order in the writ petition referred to therein. It is thus evident that the four Additional Directors could not act as such on the basis of the resolution dated 7th March, 1991. For doing so they had yet to get a clearance from this Court. The communication dated 14th March, 1991, of the Joint Secretary in the Government of Uttar Pradesh to the Chairman of the

Corporation Annexure CA-I to the counter-affidavit of Sri D.K. Mittal, made it clear that the appointment of Sri Pravin Kumar as the Managing Director was subject to the orders of this Court. The order dated 22nd July, 1991, passed by this Court in Writ Petition No. 26223 of 1990 and 10607 of 1991 (Annexure G to the writ petition) indicates that a counter--affidavit had been filed on behalf of Government of Uttar Pradesh and the same had been adopted by the Corporation and its officers and the Dalmia Industries. The relevant portion of the affidavit is summarised by their Lordships thus:

...Even today the Board of Directors of the Corporation consist of 15 Directors of which 4 would be the nominees of the State Government, 5 of the Dalmias 2 of the financial institutions, one of the State Bank of India and 2 of the Railways. In other words, Dalmias do not have a majority in the Board of Directors.... The properties of the Corporation continue with the Corporation as they are not transferred to the 5th Respondent (Dalmias are the 5th Respondent).

Dalmias, therefore, clearly admit in proceedings in this Court that they do not have a majority in the Board of Directors.

9. We now advert to the interim order passed by this Court in Writ Petition No. 26223 of 1990. It is quoted in paragraph 8 of the writ petition. It reads:

The learned Counsel for the Petitioner has stated that the State Government has taken a decision to privatise the U.P. State Cement Corporation Ltd. and necessary step are being taken to implement the said decision.

Until further orders, the final implementation of the decision to hand over the factory, run by the Corporation, shall remain stayed during pendency of the writ petition. However, in the meantime, other formalities may be completed.

The prayer to the application for interim relief made in the said writ petition was:

It is, therefore, most respectfully prayed that this Hon''ble Court may kindly be pleased to pass an ad-interim order commanding the Respondents Nos. 1, 2 and 3 not to transfer the ownership of U.P. State Cement Corporation Ltd., Sonbhadra or to otherwise privatise it and to continue to run it as government company with continuance in service of all its workers and employees with their full salary and privileges, during the pendency of the present writ petition.

In the context of the contents of the writ petition, the application for interim relief and in view of the legal position that a Corporation is an artificial legal person quite separate and distinct from the human beings who may claim its membership at any given time and a company limited by shares it may be presumed that the learned Single Judge was sware that a Company could not be transferred. It is only the share holding of the Company which could be trasferred. He was also aware that a Company or a factory owned by a Corporation cannot, in law, be handed over to anybody. Its management can, however, be changed by changing the composition of the Board of Directors. Therefore, this Court clearly meant that until further orders there should be no

change in the composition of the Board of Directors. As already indicated above, the Law Department and all other concerned interpreted and understood the aforequoted interim order in the sense we have emphasised. We are, therefore, convinced that so long as the interim order continued there could not be change in the directorate of the Corporation so as to bring about a change in the management.

10. This Court on 24th May, 1991, directed the Registrar of Companies, Kanpur, to verify whether transfer of 49 per cent share of the Corporation has been effected in favour of Dalmia Industries or their nominees, as the case may be, as on 24th May, 1991. This Court had also directed that if on verification, the Registrar was satisfied that such a transfer was effected he shall issue a certificate to that effect to the State Government, the Corporation and the Senior Advocate appearing for the Petitioners in Writ Petition No. 26223 of 1990. This Court further directed that if the certificate was issued by the Registrar of Companies verifying the transfer of shares "the present Board of Directors will be allowed to manage the affairs of the Corporation pending disposal of these writ petitions and subject to further orders and directions as may be issued by this Court in these matters". It appears to us from the material on record that the transfer of shares became effective from 1st June, 1991. If that be so, the appointment of the 4 Directors, including Sri Pravin Kumar on 7th March, 1991, became void after the expiry of two months from that date (Section 270 Companies Act). Under the Articles of Association of the Corporation no one can be appointed or elected as a Director unless and until he holds the minimum number of qualification shares. Therefore, when this Court used the expression "the present Directors" it clearly meant those Directors who could be legally appointed as Directors. The Board of Directors was permitted to manage the affairs of the Corporation during the pendency of the writ petitions alone. The Petitioners cannot get any advantage of the application filed on behalf of the Petitioners of Writ Petition No. 10607 of 1991 praying that the Dalmias should be displaced from the management of the Corporation and the State Government may be directed to run the Corporation. It is apparent that Dalmia Industries, if at all, came into the management only because this Court, on 24th May, 1991, permitted to do so. That order was sought to be modified or recalled. The said prayer cannot by any stretch of imagination be construed as an admission on the part of the workmen that the Dalmias were in the management from the very inception, that is after 7th March, 1991. This Court merely made an interim arrangement.

11. The Articles of Association of the Corporation defines inter alia, "Managing Director" to mean a Director, who by virtue of an agreement with the Company is entrusted with substantial powers of management which would not otherwise be exercisable by him. It is not the case of the Petitioner that apart from the MOU and the other related document there was any other agreement or resolution passed by the Corporation in the general meeting of the Board of Directors or there was any other provision in the Articles of Association under which Sri

Pravin Kumar could be given substantial powers of management as a Managing Director. Even in the agreement there is no entrustment of any power much less substantial power of management in Sri Pravin Kumar. The agreement merely says that from the Directors nominated by Dalmias it will be entitled to have a Managing Director.

12. We now come to the Articles of Association of the Corporation Article 89 provides that there shall no be less than 8 or more than 15 Directors. Here on the relevant date there were 15 Directors. Article 125 provides that the general powers of the Corporation shall be vested in the Board Article 131 provides that subject to the provisions of the Act and subject to the control and superintendence of the Board, the business and affairs of the Company shall be carried out and managed by the Managing Director, for the time being of the Company. Article 135 lays down, inter alia, that the Board may from time to time, entrust to and confer upon the Managing Director for the time being such of the powers exercisable, under these presents by the Board as it may think fit, and may confer such powers for such time and to be exercised for such objects and purposes, and upon such terms and conditions, and with such restrictions as it thinks fit, and the Board may confer such powers, either collaterally with, or to the exclusion of, and in substitution for all or any of the powers of the Board in that behalf and may from time to time revoke, withdraw, alter or vary all or any of such powers. We have thus seen that by the mere fact that one of the Dalmias nominees was appointed as the Managing Director will not entitle it to contend that it came into the Management of the Corporation. A combined reading of the relevant material referred to above indicate that the Managing Director is subject to the direction, control and superintendence of the Board of Directors, we have also shown that it was the Petitioners' own case that there were 15 directors and out of them only 5, including the Managing Director, belonged to the Dalmia group. Further it is the Petitioner's own case that the 5 directors were in minority. We emphasise that Managing Director, if in the minority group, could not claim to be in the control and management as he had to all along depend upon the wishes, directions, control and superintendence of the majority of directors. The management, therefore, remained with the Board of Director.

13. From a conspectus of the factual and legal position, as stated above, and keeping in view the fact that the Dalmia group came in management, if at all, on the basis of interim orders of this Court during the pendency of the writ petition, the learned Advocate General is right in his submission that the appointment of the members of Dalmia group as Directors and Managing Director was a stop-gap or make-shift arrangement. We therefore, do not have any hesitation in taking the view that factually as well as legally the Dalmias were not in the management of the Corporation on the day when the impugned Ordinance was promulgated.

14. Entry 24, List II, (Schedule 7 of the Constitution) reads:

Industries subject to the provisions of (Entries 7 and 52) of List I". Entry 7, List

I, talks of Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war. This entry is, therefore, irrelevant for our purpose. Entry 52, List I, reads

Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.

Cement is an industry. Under Entry 52 Parliament has enacted the Industries (Development and Regulation) Act, 1951 (hereinafter referred to as IDR Act). Section 2 of this said Act says that it is hereby declared that it is expedient in the public interest that the Union should take into control the industries specified in the First Schedule. Item No. 35 in the First Schedule to the IDR Act is referable to cement and Gypsum products. Therefore, there can be no escape from the conclusion that the Union has taken under its control the industry of cement. It follows that the State Legislature cannot legislate with respect to a cement industry under Entry 24, List II. That entry, so far as cement as an industry is concerned, stands transferred to the Parliament and it alone can legislate under Entry 52, List I.

15. The impugned Ordinance on the face of it purports to acquire shares. Therefore, prima facie, Entry 42, List III, which is "Acquisition and requisitioning of property" is attracted. On a plain reading of this entry alongwith Entry 53, List I, it is crystal clear that there is nothing in the latter Entry to either delimit or modify or control the power to legislate under the former Entry. It is trite that legislative entries really contain topics of legislation and such topics are to be given the widest possible connotation. While construing the scope of a legislative entry we have to keep in mind the well settled principle of construction that an interpretation which may obliterate the well-recognised distinction between two legislative powers, which in their essence are distinct and separate, should be eschewed.

16. The crucial enquiry is as to whether the declaration made u/s 2 of the IDR Act has resulted in the denudation or deprivation of the State legislative power under Entry 42, List III. We have, therefore, to ascertain the extent of the intrusion of the provisions of the IDR Act upon the exercise of the legislative power under the said Entry. This is so, as, beyond the extent, the legislative power of the State remains unimpaired. We, therefore, immediately come to the scope and purpose of the IDR Act. Having gone through the same carefully we find that its tentacles do not extend beyond control and management. In spite of acquisition the control or management under the IDR Act will remain unaffected. The same will not be impaired at all. The field of acquisition under Entry 42, List III, is not occupied by the IDR Act which deals with the control or management, or regulation or development of a declared industry. The power conferred upon the Union under the IDR Act can as well effectively be exercised after the acquisition of the shares of the Company as it could be exercised before the acquisition.

17. u/s 2 of the IDR Act declaration was made that the Union should take under its control the sugar industry. The validity of the U.P. Sugar Undertaking (Acquisition) Ordinance, 1971, which was replaced by the Sugar Undertakings (Acquisition) Act, 1971 was challenged as under the Ordinance as well as under the Act sugar undertakings, as they stood in the Scheduled to the Ordinance as well as to the Act, were transferred to and vested in the Uttar Pradesh State Sugar Corporation Limited. This Court repelled the attack upon its validity. The decision of this Court is reported in 1979 ALJ 730 . The matter came up before the Supreme Court in the case of Ishwari Khetan Sugar Mills (P) Ltd. and Others Vs. State of Uttar Pradesh and Others, . The Constitution Bench unanimously held that the power to legislate for acquisition of property is an independent and separate power and is exercised only under Entry 42, List III and not as an incidence to other power to legislate in respect of specific legislation in any of the three Lists. This power of the State Legislature remains intact and untrammelled except to the extent where on assumption of control of an industry by a declaration as envisaged in Entry 52, List I a further power of acquisition is taken over by a specific legislation. It has also held that in pith and substance the U.P. Sugar Undertakings (Acquisition) Act, 1971 is one for acquisition of scheduled undertakings and that field of acquisition is not, occupied by the IDR Act, which deals with control of management, regulation and development of a declared industry and there is no repugnancy between the U.P. Sugar legislation and the IDR Act. Both can co-exist because the power acquired by the Union under the IDR Act can as well be effectively exercised after the acquisition of the scheduled undertakings as it could be exercised before the acquisition. Therefore, the contention that the State legislature lacked legislative competence to enact the U.P. Sugar Undertakings (Acquisition) Act, 1971 was negatived. This case, in our opinion, applies on all fours to the present case. We, therefore, hold that the impugned Ordinance had been validly promulgated under Article 213 of the Constitution read with Entry 42, List III.

18. A number of other authorities have been cited on behalf of the Respondents which are in conformity with view taken in Ishwari Khetan's case. It is not necessary to burden the judgment with the said authorities.

19. Section 20 of IDR Act has been pressed into service on behalf of the Petitioners and on its basis it is urged that the impugned Ordinance is void. The said provision reads as under.

After the commencement of this Act, it shall not be competent for any State Government or a local authority to take over the control and management of any industrial undertaking under any law for the time being in force which authorises any State Government or local authority so to do.

This provision has also been considered in Ishwari Khetan's case. It will be profitable to extract paragraph 28 in its entirety:

The impugned legislation was not enacted for taking over management or control

of any industrial undertaking by the State Government. In pith and substance it was enacted to acquire the scheduled undertakings. If an attempt was made to take over management or control of any industrial undertaking in a declared industry indisputably the bar of Section 20 would inhibit exercise of such executive power. However, if pursuant to a valid legislation for acquisition of scheduled undertaking the management stands transferred to the acquiring body it cannot be said that this would be in violation of Section 20. Section 20 forbids executive action of taking over management or control of any industrial undertaking under any law in force which authorises State Government or a local authority so to do. The inhibition of Section 20 is on exercise of executive power but if as a sequel to an acquisition of an industrial undertaking the management or control of the industrial undertaking stands transferred to the acquiring authority. Section 20 is not attracted at all. Section 20 does not preclude or forbid a State legislature exercising legislative power under an entry other than entry 24 of List II, and if in exercise of that legislative power, to wit, acquisition of an industrial undertaking in a declared industry the consequential transfer of management or control over the industry or undertaking follows as an incident of acquisition, such taking over of management or control pursuant to an exercise of legislative power is not within the inhibition of Section 20. Therefore, the contention that the impugned legislation violates Section 20 has no merit." In plain words, the Supreme Court emphasises that Section 20 may have application if a State Legislature exercises legislative power under Entry 24, List II. Their Lordships clearly mean that if a legislation is brought under an entry other than Entry 24, List II, Section 20 will have no application. Here, we have already indicated that the impugned Ordinance squarely falls under Entry 42, List III.

20. Learned Senior Counsel appearing for the Petitioner, vehemently contended that the pith and substance of the impugned Ordinance is the taking over of the management of the Corporation by the State Government from the Dalmias. The phraseology used in the Ordinance is a mere device. He has, therefore, described the Ordinance as a colourable legislation. We have already held that, in law and in fact, the management did not vest in the Dalmias. Assuming it did vest, then too the argument will not be available to the Petitioners. Section 283(1)(a) of the Companies Act, 1956 provides that the office of a Director shall become vacant if he ceases to hold the share qualification, if any, required by him by the Articles of Association of the Company. Article 92 of the Articles of Association of the Corporation provides that unless otherwise determined by the Company in general meeting, the qualification of a Director shall be the holding, in his own name or jointly with any person, whether beneficially or as a trustee for any Company or person or otherwise, of at least 3 of shares of the nominal value of Rs. 100/- each in the share capital of the Company. However, this will not apply to persons who are appointed by the Governor of Uttar Pradesh as Directors of Company. Article 97(a) posits that the office of a Director shall ipso facto become vacant if he fails to obtain the requisite shares within the time specified in Sub-

section (1) of Section 270 of the Act, or at any time thereafter ceases to hold the share qualification, if any, required of him-under Article 92. Back to Article 92, we find that it is, not the Petitioner's case nor can it be, that the 5 additional Directors were appointed by the Governor of Uttar Pradesh. It is the Petitioner's own case that they were merely sponsored by the Governor as nominees of Dalmias and they had been duly appointed by the Board of Directors. Therefore, the share qualification as laid down in Article 92 will be applicable. The immediate effect and the legal consequences of the acquisition of the share under the impugned Ordinance is or will be that the 5 directors will cease to hold the share qualifications. Therefore, incidentally the effect of the operation of the provisions of the Ordinance will be that the Dalmias will go out of the management even if they were in management. We may here remind ourselves of the oft-quoted dictum of Sri Maurice Gwyer, C.J. of the Federal Court as approved by the Judicial Committee in the case of AIR 1945 60 (Privy Council) . It reads as under:

It must inevitably happen from time to time that legislation though, purporting to deal with a subject in one list, touches also upon a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the Legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee, whereby the impugned statute is examined to ascertain its pith and substance or its true nature and character for the purpose of determining whether it is legislation with respect to matters in this list or in that.

We are satisfied that the pith and substance or the true nature or character of the Ordinance is to acquire the shares and no more and, therefore, the legislation is with respect to matters under Entry 42, List III.

21. We also take the view that the power to legislate under the said Entry cannot be denied on the ground that it has some effect on the entries contained under Entry 52, List 1. The effect is not the same as the subject matter. We are satisfied that by promulgating the Ordinance the Governor has not entered the forbidden field. He has not transgressed the powers given to legislate under Entry 42, List III. The transgression, if any, is neither disguised nor indirect nor covert. We, therefore, repel the argument based on the theory of colourable exercise of power.

22. The decision to privatise the Corporation, as evidenced by the MOU, was surely taken in the backdrop that the Corporation was suffering constant losses for past 20 years except during one year. Its paid up capital of Rs. 68,00,00,000 (rupees sixty eight crores) had been wiped out. It had incurred a liability of about one hundred crores towards the financial institutions, the Government was not in a position to make substantial fresh investments, there may have been inefficiency in the management. It cannot be said that the decision to privatise

was a malafide one. The decision could not also be characterised as colourable one for achieving any ulterior oblique motive. No unconstitutionality could be attached to the decision. The decision to privatise could be considered as an act of prudent management. The decision also may have been taken in view of the fresh event of changes flowing across the globe, namely, the wind of privatisation. Therefore, it is argued that there is no basis or foundation for the Governor's satisfaction (a) that the acquisition of the shares is in the public interest, or (b) that circumstances exist which render it necessary for him to take necessary steps by promulgating the Ordinance.

23. In the earlier part of the judgment we have extracted the order of this Court (Division Bench consisting Hon'ble B.P. Jeevan Reddy, C.J., as he then was, and Hon'ble Mr. Justice R.B. Mehrotra) that prior to the signing of the MOU prima facie no steps were taken to assess the net worth of the assets of the Corporation. Even financial institutions, whose interests were affected by the decision to privatise, had not been consulted. This is evident from the averments in the affidavit of Sri Bhupendra Singh, referred to above. It is pertinent to note that in the rejoinder affidavits filed on behalf of the Petitioners in this petition there is no averment whatsoever that the financial institutions were at all consulted. We have also referred in some detail to the averments made in the counter affidavit of Sri D.K. Mittal, Secretary to the Government. This affidavit has highlighted the events which took place after the induction of the 5 additional Directors of the Dalmias. The averments made therein that not only the production of the cement fell but also a law and order problem of great dimension had been created have remained un-controverted. As emphasised by this Court, the State Government was not only the owner of the Corporation but it was also the trustee of the public interest. The decision to privatise was under challenge in this Court. This Court had appointed A.F. Ferguson and Company, New Delhi and Price Water House Associates, New Delhi for the purpose of evaluating the assests of the Corporation. There was a strong possibility of this Court recording a finding that the decision to privatise had been taken rather hastily and 51 per cent of the shares of the Corporation had been agreed to be transferred for a song. In these circumstances, if the State Government revised its decision not to privatise the Corporation and give yet another chance to the Corporation to set it's house in order so that optimum production of cement in the State may be secured, it cannot possibly be said that the State Government acted either arbitrarily or with an oblique motive. It cannot also be said that the purpose or the object of the promulgation of the Ordinance was really to take over the management from the Dalmias. The State Governmet could, on relevant considerations, honestly and bonafide believe that the experiment of privatisation will not succeed, particularly when it was aware that the terms of the MOU could not be acted upon on account of the interim order passed by this Court. It was also well aware that the 5 additional Directors of the Dalmias had been inducted as an interim measure and as a stop-gap arrangement. All these factors are enough to repel the contention advanced on behalf of the Petitioners that the

purpose or object of the Ordinance is really to take over the management.

Reliance is placed on behalf of the Petitioners upon a decision in the case of *Shashi Kant Laxman Kale v. Union of India* (1990) 4 SCC 366 wherein a passage from Francis Bennion's *Statutory Interpretation* had been quoted with approval. This passage reads.

The distinction between a purpose or object of an enactment and the Legislative intention governing it is that the former relates to the mischief to which the enactment is directed and its remedy, while the latter relates to the legal meaning of the enactment.

It is also held that for determining the purpose and object of the legislation, it is permissible to look into the circumstances which prevailed at the time when the enactment was passed and which necessitated the passing of that law. The averments made in the counter affidavit of Sri D.K. Mittal give the details of the state of affairs which were prevalent at the time when the Ordinance was promulgated. We need not repeat them again. It is sufficient to say that there was a cry that public interest had been thrown to the winds. A bad bargain had been struck and the assets of the Corporation had been given over to the Dalmias for a paltry sum. That apart, the production of cement went down to its lowest ebb. There was a threat of a general strike of the workmen all over the State. The purpose was, therefore, very clear and that was that the policy of privatising the Corporation had been reversed and a policy decision had been taken to that effect. Such a decision could be implemented by acquiring the shares

24. It is next urged that there was no basis or foundation for the Governor's satisfaction that (a) there was no public interest for the acquisition of the shares or (b) that the circumstance existed which made it necessary for him to take immediate steps by promulgating the Ordinance. We have already averted in brief to the recitals in the preamble of the Ordinance. It is written therein that it is in the public interest to acquire the shares and that in view of the interim order passed by this Court 51 per cent shares cannot be transferred to the Dalmias and the Governor was satisfied that the circumstances existed necessitating the promulgation of the Ordinance.

25. In *Sardar Inder Singh Vs. The State of Rajasthan*, , it was held that the correctness of the recital in the preamble of an Ordinance cannot be disputed. In *T. Venkata Reddy and Others Vs. State of Andhra Pradesh*, , it was held that an Ordinance promulgated under Article 213 has the same force and effect as an Act of the State Legislature. When the Constitution says that the Ordinance making power is legislative power an Ordinance shall have the same force as an Act, an Ordinance should be clothed with all the attributes of an Act of Legislature carrying with it all its incidents immunities and limitations under the Constitution. It cannot be taken as an executive action or an administrative decision. It is impermissible to strike down an Ordinance on the ground of non-

application of mind or malafides or that the prevailing circumstances did not warrant the issuance of the same. The power to issue an Ordinance is not an executive power but the power of the executive to legislate. This power is plenary within its field like the power of the State Legislature to pass laws and there are no limitations upon that power except those to which the legislative power of the State Legislature is subject.

26. In *Lakhi Narain Das v. The Province of Bihar* AIR 1950 FC 59 Section 88(1) of the Government of India Act, 1935, which conferred an Ordinance making power was under consideration and it was held that the satisfaction of the Governor that it was expedient to promulgate an Ordinance was not justiciable.

27. Constitution (Thirty eighth Amendment) Act, 1975 Section 88(1)(4) to Article 213 had been added. In substance, this Article laid down that the satisfaction of the Governor was final and conclusive. By the Constitution (Forty-fourth Amendment) Act, 1978 the said Section 88(1)(4) was deleted. In *A.K. Roy's* case, AIR 1982 SC 710, it was held that it was arguable that the Forty fourth Constitution Amendment leaves no doubt that judicial review is not totally excluded in regard to the question relating to the President's satisfaction. It was also held that it could not be said with certainty that the principle underlying Section 106 of the Evidence Act will apply when a challenge is made to the Governor's satisfaction. However, it was observed:

But before casting the burden on the executive to establish those circumstances, at least a *prima facie* case must be made out by the challenger to show that there could not have existed any circumstance necessitating the issue of the Ordinance.

In our opinion, the Petitioners have not been able to make out a *prima facie* case that no circumstance necessitating the issue of the impugned Ordinance existed.

28. In *State of Rajasthan and Others Vs. Union of India and Others*, , Article 356 of the Constitution was under consideration. In paragraph 144 it is emphasised that if the satisfaction is malafide or is based on wholly extraneous and irrelevant considerations the Court will have jurisdiction to examine it, because in that case there would be no satisfaction of the President in regard to the matter in which he is required to be satisfied. In case of the promulgation of an Ordinance the question of the satisfaction being malafide cannot arise because a legislative act is being performed. We are neither satisfied nor the Petitioners have been able to demonstrate to us that the satisfaction of the Governor as recited in the impugned Ordinance is based on wholly extraneous and irrelevant grounds. We have already emphasised that sufficient ground existed so as to enable the Governor to come to the bonafide conclusion that it was necessary to issue the impugned Ordinance. This case, therefore, is of no assistance to the Petitioners.

29. The power compulsorily to acquire or requisition movable or immovable property has frequently been described as a power of "eminent, domain", that is, a power of the sovereign to take private properties compulsorily for public

purpose and on payment of compensation even against the will of the owner of that property. Basing on this principle, it is urged on behalf of the Petitioners that in the impugned Ordinance the element of public purpose is missing. The argument is that there is no public interest for the acquisition of the shares. In fact it is contrary to the public interest to take a somersault and revert to a monopoly trade. The preamble categorically states that it is in the public interest to acquire shares. We repeat that, on the material on record, it cannot be said that it was not in the public interest to promulgate the impugned Ordinance. State Government's decision to promulgate the Ordinance for the purpose of acquiring the shares cannot be characterised as an act against the public interest. We have already indicated that the Ordinance fixed the compensation, indeed a just compensation. The owners of the property, who are affected by the Ordinance, are being given the same price of shares at which they purchased them. Thus it will be seen that even if "eminent domain" applies its requirements have been fully met by the impugned Ordinance

30. learned Counsel for the Respondents has contended that after the Constitution (Seventh Amendment) the concept of public purpose had disappeared in the matter relating to acquisition of properties under the Indian Constitution. The submission further is that after the deletion of Articles 19(1)(f) and 31 from the Constitution and in view of the provisions as contained in Article 300-A, the only consideration which survives is legislative competence. However, it is contended that any legislation providing for the acquisition of the property can be tested on the anvil of Article 14. It is not necessary to examine the question any further. However, we may indicate that no argument has been advanced before us on the ground that the shareholders have been arbitrarily segregated or they have been irrationally put into two different categories or classifications.

31. It is urged that the impugned Ordinance is arbitrary and unreasonable and as such violative of Article 14 of the Constitution. An arbitrary action, even if it is a legislative exercise of power, is liable to attract the prohibition of Article 14. It is said that the impugned Ordinance smacks of palpable arbitrariness. We find no merit in this submission. We have already referred to the conditions prevailing on the date immediately preceding the date of the promulgation of the Ordinance. On an over all view of the situation, a reasonable person could have taken the view that it was in the public interest to under the step taken towards privatisation of the Corporation and therefore, take back the shares through a legislative Act in the form of the impugned Ordinance.

32. Infraction of Article 19(1)(g) has also been complained of by the Petitioners. It is to be noted that no restrictions have been imposed upon the right to trade etc. by the impugned Ordinance. Petitioners' business has not been affected. In Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, , a route on which private operators were operating their stage carriages had been taken over by the Road Transport Corporation to

their exclusion (private operators) with the result that the permits held by them on that route were to be cancelled and they were stopped from plying their vehicles on that route. The argument that such an action resulted in the deprivation of their trade and business was repelled and it was held that their right to trade and to carry on the activity of transporting passengers elsewhere had not been taken away and the same remained intact. In *Fertilizer Corporation Kamgar Union Registered Sindri v. Union of India* AIR 1981 SC 344, it is held that the closure of an establishment in which a workman is for the time being employed does not by itself infringe his fundamental right to an occupation which is guaranteed by Article 19(1)(g) of the Constitution. Article 19(1)(g) confers a broad and general right which is available to all persons to do work of any particular kind and of their choice. It does not confer the right to hold a particular job or to occupy a particular post of one's choice. Assuming Article 19(1)(g) is available to the Petitioners, Article 19(6) is there to ward off the attack on the impugned Ordinance. It is not only recited in the preamble that it is in the public interest that the shares should be taken over but also Article 19(6) raises the presumption that such a measure as the impugned Ordinance is in the public interest and the restriction imposed upon the rights of the Petitioner, if any, are reasonable. The last argument advanced on behalf of the Petitioners, with considerable emphasis, is that the impugned Ordinance is bad and ultra vires because there has been an impermissible exercise on judicial power while exercising legislative power. In Writ Petition No. 26223 of 1990 this Court held, on 16th October, 1990, passed an interim order whereby the final implementation of the decision to hand over the factories run by the Corporation was to remain stayed during the pendency of the writ petition. On 24th May, 1991, a Division Bench of this Court while considering Writ Petition No. 26223 of 1990 passed an interim order, the relevant portion of which runs:

...the present Board of Directors will be allowed to manage the affairs of the Corporation pending disposal of these writ petitions and subject to such further orders or directions as may be issued by this Court in these matters.

Thereafter on 22nd June, 1991, the Court passed a detailed order, some portions of which have been extracted by us above. Ultimately, this Court appointed two agencies, namely, A.F. Ferguson and Company, New Delhi and Price Water House Associates, New Delhi and requested them to independently evaluate the net worth of the assets of the Corporation as on 1st February, 1991. After the said order dated 22nd July, 1991, an application was made on behalf of the Churk Cement Adhikari Kalyan Samiti praying that the Dalmia Industries should be displaced from the management of the Corporation and the State Government should be directed to run the Corporation. This application was disposed of by this Court by order dated 21st August, 1991. While disposing the application this Court observed:

...The writ petitions are not finally disposed of. The hearing will continue after the report of the valuers is received in pursuance of the order dated July 22, 1991.

At this state, we do not wish to alter the status quo obtaining as on today. ...It will be neither proper nor advisable to Displace Dalmia Industries and restore the status quo (ante) obtaining prior to 1st March, 1991, even during the pendency of the writ petitions.

The argument is that the Ordinance has set at naught the aforequoted order of this Court and this tantamount to an inroad into the judicial power of the State. This submission, though attractive, cannot hold water on a deeper scrutiny.

33. It is crystal clear from a reading of the three orders referred to in the preceding paragraphs that they were interim orders passed during the pendency of the writ petitions. Their Lordships had taken care to emphasise that the writ petitions were not being disposed of finally and the status quo had been maintained pending final disposal of the writ petitions. None of the aforesaid orders finally determined the right of any party to a specific temporary relief. They are orders made on applications and are merely steps towards obtaining a final adjudication. The orders are neither final judgments nor preliminary judgments. They are also not interlocutory judgments. A "judgment" which is not final is called "interlocutory", i.e. an interlocutory judgment is one which determines some preliminary or subordinate point or plea or settles some subject, question or default arising in the progress of the case but does not adjudicate the ultimate rights of the parties or finally put the case out of Court. See Black on judgments cited by Krishna Swami Iyer in *Tuijaram Row v. Alaggappa Chettiar* ILR Mad. 1. In *Mozley and Whitley's Law Dictionary* an interlocutory judgment is defined as "a judgment in an action at law, given upon some defence, proceeding, or default, which is interlocutory and does not finally determine or complete the action." It is thus clear that the interim order on which reliance is placed on behalf of the Petitioners does not fall in the category of a judgment either final, preliminary or interlocutory. No decision affecting the rights of the parties was given by this Court, while disposing of the application of the workmen to recall the earlier order whereby the then existing Board of Directors were allowed to function. If this Court did not purport to adjudicate upon any of the rights of the parties while disposing of the application seeking the modification of the earlier interim order by using the words "it will neither be proper nor desirable to displace Dalmia industries" the question of the issue of an implied direction by the State Government, through the impugned Ordinance, to disobey or disregard either a judgment or an order of this Court did not arise. Moreover, this is not a case where the impugned Ordinance has directly or in any way indirectly given a mandate that a judicial order should be either disregarded or ignored or disobeyed. To the facts of the present case, the argument that by the exercise of legislative power the State Government encroached upon the judicial power is not available to the Petitioners. The cases cited by the learned Counsel for the Petitioners? are those where final orders has been passed or final judgments had been given and thereafter the legislature gave a direction that those orders and judgments should not be given effect to.

34. In the matter of In the matter of : CAUVERY WATER DISPUTES TRIBUNAL, , the problem was slightly different. Inter State Water Disputes Act, a Central Act, had been made under Article 262 of the Constitution. Under the said Act, the Cauvery Water Disputes Tribunal was appointed. The Tribunal issued an interim injunction directing the State of Karnataka to release certain amount of river water to the State of Tamil Nadu. Instead of obeying the order of injunction the State of Karnataka promulgated an Ordinance. Section 3 of the Ordinance cast a duty upon the State Government to protect, preserve and maintain the irrigation from Cauvery water and distributors in the irrigable area under the various projects. If the mandate as contained in Section 3 was carried out no water could be released from the river Cauvery with the result that the order of injunction could not be carried out. Section 4 provided, inter alia, that the provisions of the Ordinance etc shall have effect notwithstanding anything contained in any order, report or decision of any Court or Tribunal. The Supreme Court summed up the position:

The principle which emerges from these authorities is that the Legislature can change the basis on which a decision is given by the Court and thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter-parties and affect their rights and liabilities alone. Such an act on the part of the Legislature amounts to exercising the judicial power of the State and to functioning as an appellate court or tribunal.

In the Cauvery Water's case an interlocutory judgment in the form of an injunction binding on the parties to the dispute had passed. It was a decision. Here, in the present case, we may repeat that this Court did not give any decision inter-parties.

35. The dispute before this Court in the earlier writ petitions was as to whether the MOU should be allowed to be acted upon and 51 per cent shares of the Corporation should be allowed to be taken over by the Dalmias. The dispute was still pending. Therefore, it can be said, without much discussion, that indirectly the Governor while promulgating the Ordinance and providing for the acquisition of the shares changed the basis on which the decision, if at all, was given by this Court to the effect that for the time being there will be no interference with the right of the Dalmias to manage the affairs of the Corporation. Even on this ground the submission made on behalf of the Petitioners, is, therefore, repelled.

36. None of the contentions advanced on behalf of the Petitioners are tenable.

37. The petition fails and is dismissed with costs.

38. An oral prayer has been made by Sri Sudhir Chandra, the learned Senior Advocate under Article 134-A of the Constitution for the grant of a certificate for preferring an appeal to the Supreme Court. We are satisfied that this case does involve a substantial question of law of general importance and in our opinion the same needs to be decided by the Supreme Court. We, accordingly, grant the

same.

39. A certified copy of the judgment delivered today and a copy of this order may be given to the learned Counsel for the Petitioners on payment of usual charges today, if possible.