

(1970) 09 PAT CK 0005

In the Patna High Court

Case No : Civil Writ Jurdn. Case No's. 992, 1042, 1088, 1089, 1096 to 1101, 1146, 1148 to 1150, 1194, 1244 to 1247 of 1968, 146 and 1722 of 1969

Khas Karanpura Collieries Ltd. and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 03-09-1970

Acts Referred:

Bihar Land Reforms (Amendment) Act, 1957 — Section 10
Bihar Land Reforms Act, 1950 — Section 10(1)
Constitution of India, 1950 — Article 14, 31A(1)
Mineral Concession Rules, 1949 — Rule 41
Mines and Minerals (Development and Regulation) Act, 1957 — Section 29, 30A, 9, 9(1)

Citation : AIR 1971 Patna 328

Hon'ble Judges : S.C. Misra, C.J.; S. Wasiuddin, J.; K.B.N. Singh, J.; G.N. Prasad, J.; A.B.N. Sinha, J

Bench : Full Bench

Advocate : C.K. Daphtary, Ranadev Choudhury, S.C. Banerjee, K.D. Chatterjee, Balbhadra Prasad Singh, Soren Bose, R.N. Banerjee, Sushil Kumar Mazumdar, A.K. Mitter, Arun Chandra Mitra, S.B. Sanyal, Nagendra Prasad Singh, Umesh Prasad Singh, S.N. Misra, Bishwanath Agarwal and Yogendra Misra, for the Appellant; Lakshman Saran Sinha, General, Ray Paras Nath and S.K. Sinha, for the Respondent

Final Decision : Allowed

Judgement

A.B.N. Sinha, J.—Except In C. W. J. C. No. 1146 of 1968, in all the rest of these applications under Article 226 of the Constitution of India, common questions of law arise for determination. Broadly speaking, the questions relate to the vires, true scope and construction of Section 30A of the Mines and Minerals (Regulation and Development) Act 1957, (hereinafter referred to as the "1957 Act"). In all these cases the petitioners are holders of mining leases, either under a head-lease or under a sub-lease in respect of coal and have obtained a rule nisi calling upon the respondents to show cause why the demand through relevant letters

and notices or certificate cases in respect thereof for royalty at the rate of five per cent. F. O. R, price of coal, less such amount as might have been paid already, in respect of coal removed by them as lessees or sub-lessees, either during the period 3rd November 1951 to the 31st December, 1965, or during the period the 29th December, 1961 to the 31st December, 1965, be not quashed as wholly illegal and appropriate writs or orders be not issued in that connection. In two cases only, namely, C. W. J. C. Nos. 1101 and 1194 of 1968, the period involved is the 27th October, 1964 to the 31st December 1965. In C, W. J. C. No. 1146 of 1968, however, different - considerations arise and that case will be, therefore, considered separately.

2. Circumstances which have led to the filing of these applications may now be briefly set out. Proprietors of Estates, like Raja of Ramgarh and Raja of Jharia. had granted mining leases in respect of coal of large areas of land situate in the district of Hazaribagh, Dhanbad or Singhbhum to different parties. In the permanently settled areas of Bengal and Bihar from which States come about 80% or more of the total coal production of the country, the Zamindars enjoyed an unfettered discretion in regard to granting mining leases for working and extracting different minerals including coal, and, thus no uniformity of policy or practice as to terms of the leases was possible. Yet, generally speaking, the mining leases were for a duration of 999 years, with stipulations as to payment of premiums and a certain fixed annual rental, but in regard to royalty either there was no stipulation for any such payment or it was at very low rates. With very few exceptions, the lessees of such mining leases did not work the mines themselves, they invariably granted sub-leases on more or less similar terms. It is in consequence of that trend that save in C. W. J. C. Nos. 1097, 1098, 1101 of 1968 and partly in C. W. J. C. Nos. 1244 of 1968 and 1722 of 1969, the rest are all cases of sub-leases. The one common feature in regard to all these mining leases or sub-leases was that they were all of dates earlier to the 25th October 1949, on which date, for the first time, as a result of the coming into operation of the Mines and Minerals (Regulation and Development) Act 1948 (hereinafter referred to as the "1948 Act") and the Mineral Concession Rules, 1949 made u/s 5 of the said Act, the granting of mining leases and development of minerals were made subject to statutory regulations and restrictions. The Mineral Concession Rules, 1949, as per provisions of Section 5 of the 1948 Act were made for regulating the grant of mining leases or prohibiting the grant of such leases in respect of any mineral or in any area, and naturally did not apply to leases granted before the 25th October 1949 -- the date on which the 1948 Act as also those Rules had come into operation. The restrictions or provisions in those Rules regarding, for instance, areas, duration or rate of royalty payable did not apply to the leases or sub-leases of the petitioners. Even the Rules made in September 1956 u/s 7 of the 1949 Act known as "The Mining Leases (Modification of Terms) Rules 1956" providing for the modification or alteration of the terms and conditions of mining leases granted prior to the commencement of the said Act so as to bring them in conformity with the terms and conditions of

mining leases granted after the commencement of the Act in accordance with the Mineral Concession Rules 1949, were expressly made inapplicable to mining leases in respect of coal and certain other minerals specified in Rule 2 (c) thereof though similar mining leases in respect of other minerals were covered. The result was that the mining leases or sub-leases of the petitioners remained unaffected by the regulatory or the restrictive provisions of the 1948 Act or of the rules made thereunder. No attempt was made to modify any of the terms or conditions of the leases or subleases. This was the position when the 1957 Act came into operation on the 1st of June 1958. Section 9(i) of that Act made it obligatory on holders of mining leases in respect of all minerals except mineral oils, granted before the commencement of the Act, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, to pay royalty at 5% F.O.R. price of coal subject to the minimum of 50 paise per Ton. which was the rate for the time being specified in the second schedule to the said Act. Thus Section 9(i) served to effect a statutory modification in the rates of royalty payable in respect of mining leases which might have been granted before the 1st June 1958, and thus the mining leases or subleases of the petitioners were automatically and adversely affected. So far as the question of modifying other terms and conditions in respect of mining leases granted before the 25th of October 1949 were concerned, so as to bring them in conformity with the terms and conditions of new leases to be granted under the Act in accordance with the rules made under Sections 13 and 18 thereof, Section 16(1) of 1957 Act imposed a statutory duty of effecting the necessary modifications as soon as any be after the commencement of the Act. The provisions of Sections 9(1) and 16(1) of the 1957 Act thus amounted to a sudden departure from the policy which was being followed by the Government in regard to mining leases in respect of coal. The case of the petitioners is that on account of the proposed sudden increase in the rate of royalty over the rates hitherto payable or being paid, a steep rise in the cost of production of coal was apprehended. Likewise the almost immediate certainty of other terms and conditions being modified, thus bringing in all the restrictive and regulatory provisions in regard to duration and area, was also likely to have an unsettling effect on the working of the coal industry as a whole. In such circumstances, according to the petitioners, representations were made to the Government of India to reconsider the whole matter and take some steps for preventing the aforesaid adverse effect on the production of coal, a vital and basic material for the industrial development of the country. The representations, according to the petitioners, had their effect and Section 30A of the 1957 Act was brought in by Section 2 of the Mines and Minerals Regulation and Development (Amendment) Act 1958, with retrospective effect. Section 2 of the Amendment Act which inserted Section 30A expressly stated that Section 30A shall be deemed always to have been inserted. In the result by virtue of Section 30A, the provisions of Sub-section (1) of Section 9 and of Sub-section (1) of Section 16 were to remain inapplicable to or in relation to mining leases in respect of coal granted before the 25th day of October 1949 until the Central Government was satisfied that it

was expedient to make them applicable to those leases with such exceptions and modifications, by notification in the official Gazette, The provisions of Sections 9(i) and 16(i) having been thus suspended so far as mining leases in respect of coal were concerned, the petitioners went on paying royalty, if any, at the contractual rates. Finally, however, the Central Government in exercise of the powers conferred by Section 30A issued a notification dated the 29th December 1961, directing that the provisions of Section 9(1) shall apply with immediate effect to or in relation to mining leases in respect of coal granted before the 25th October 1949, subject to this modification that the lessees concerned shall pay royalty at the rates specified in any agreement between the lessee and the lessor or at 21/2% F.O.R. price of coal whichever was higher in lieu of the 5% F.O.R. price of coal which was the rate specified in respect of coal in the second schedule to the 1957 Act. The petitioners thereupon began to pay royalty at the rate of 21/2% F.O.E. price of coal from the 29th December 1961 onwards in place of rate of royalty mentioned in the instrument of lease or sublease. In case of sub-lessees though there was no privity of contract or privity of Estate with respondent No. 1. the State of Bihar and as such they had no liability to pay any royalty to the State direct, yet in many cases, either on account of arrangement between the lessee and the sub-lessee or on account of duress or coercion, payments at 21/2% F.O.R. price of coal was made directly to the State. In any case, after the introduction of Section 10A by Section 3 of the Bihar Act 4 of 1965 into the Bihar Land Reforms Act 1950, all sub-lessees whose leases were not subject to further subleases came to hold their leases directly under the State Government and the payment of royalty at the rate specified in the notification of the Central Government dated the 29th December 1961, referred to above, continued until by another notification dated the 1st of January 1966, the previous notification dated the 29th December 1961 was superseded and the provisions of Section 9(1) of the 1957 Act without any modification became applicable with immediate effect to and in relation to mining leases in respect of coal granted before the 25th October 1949. It is the common case of the parties that from the 1st January 1966 onwards, the petitioners have been paying royalty at the rate of 5% F.O.R. price of coal as specified in the second schedule to the 1957 Act. Respondent No. 2, District Mining Officer, has, notwithstanding the fact that royalty at the uniform rate of 21/2% F.O.R. price of coal in respect of coal removed from the leased area during the period 29th December 1961 to 31st December 1965, has already been paid by the petitioners, as per notification dated the 29th December 1961, issued by the Central Government in exercise of their powers u/s 30A of the 1957 Act, demanded further payment of different sums of money from different petitioners by way of royalty calculated at the rate of 5% F.O.R. price of coal, in respect of the period from the 3rd November 1951 till the 31st December 1965 in some cases, and from the 29th December 1961 to the 31st December 1965 In other cases. This demand according to the petitioners, was wholly illegal and when their protests and representations to the respondents against the illegal demand have proved futile, and, indeed, the respondents had in the case of some of the petitioners initiated

certificate proceedings for realisation of the aforesaid illegal demand and have been holding out threats of adopting coercive measures in other cases for realisation of the sums of money demanded by way of royalty, the present applications were filed for the reliefs already specified above.

3. The case of the petitioners is that the respondents are not entitled to demand or realise royalty at 5% F.O.R. price of coal for any period prior to the 1st January 1966 because for the period between the 3rd November 1951 -- the date on which the estates of the head-lessors are alleged to have vested in the State of Bihar under the Bihar Land Reforms Act 1950, and the 1st of June 1958 -- the date on which the 1957 Act was brought into operation, Rule 41 of the Mineral Concession Rules 1949 requiring royalty to be paid at the rate specified in the first schedule to those rules applied to leases granted under those Rules after the commencement of the 1948 Act and the Mineral Concession Rules themselves, and, as such had no application to the petitioners' leases or sub-leases, and so far as the claim or demand for the period between the 1st June 1958 and the 28th December 1961 was concerned, royalty at the contractual rates alone was payable, because, firstly, the provisions of Section 9(1) of the 1957 Act did not cover and had no application to statutory leases deemed to have come into existence u/s 10(1) of the Bihar Land Reforms Act 1950, and alternatively because by virtue of Section 30A of the 1957 Act which must be deemed to have come into operation on the 1st of June 1958 itself, the provisions of Section 9(1) was not applicable to or in relation to the mining leases in respect of coal granted before the 21st day of October 1949 until the Central Government by notification had decided otherwise. So far as the claim in respect of the period 29th December 1961 to the 31st December 1965 was concerned, the case of the petitioners is that royalty at 21/2% F.O.R. price of coal for the said period has already been paid by the petitioners as per notification of the Central Government issued in exercise of their powers u/s 30A of the 1957 Act, and the State having itself invited and accepted those payments in full discharge of the petitioners' liability on the score of royalty payable during the said period, was not entitled to unilaterally revoke the aforesaid discharge or satisfaction and claim further royalty at 21/2% F.O.R. price of coal over and above what has already been paid and accepted.

4. Out of the two respondents, the State of Bihar alone has shown cause. Its case, on the other hand, is that the same rate of royalty as is payable u/s 9(1) read with the second schedule of the 1957 Act was also specified in the Mineral Concession Rules 1949, and as by virtue of Section 29 of the 1957 Act. those rules must be deemed to have been made under the said Act as if the 1957 Act had been in force on the date on which those rules were made, the combined effect of Sections 9 and 29 of the 1957 Act read with Mineral Concession Rules 1949 was that the petitioners were liable to pay royalty to the State at the rate of 5% F.O.R. price of coal from the date of the vesting of the respective estates of the proprietors who had granted head-leases, in the State of Bihar, throughout, for the entire period in question. According to the State, Section

9(1) was comprehensive in terms and applied to all leases -- whether contractual or statutory, which had come into existence before the 1957 Act had come into operation. In regard to the true meaning and scope of Section 30A of the 1957 Act, it was contended on behalf of the State that the said Section in terms applied only to leases in respect of coal which had been granted before the 25th of October 1949, but so far as the petitioners were concerned, they were all holders of new statutory mining leases in respect of coal deemed to have been granted by the State u/s 10 (1) of the Bihar Land Reforms Act 1950, and as such those leases could by no means be described as leases granted before the 25th of October 1949, and were, accordingly, outside the ambit of Section 30A. Relying mainly on the decision of the Supreme Court in the case of Bihar Mines Ltd. Vs. Union of India (UOI), and on certain other decisions including a Bench decision dated the 22nd December 1967 of this Court in C.W.J.C. No. 653 of 1966 (Pat) Nagendar Nath Mandal v. The State of Bihar, it was urged that the effect of the vesting of the interest of the proprietor or tenure holder including his rights in mines and minerals, inclusive of rights of a lessee of mines and minerals in the State under the provisions of the Bihar Land Reforms Act 1950, was that all mining leases or sub-leases which had been granted before the 25th of October 1949 and were subsisting immediately before the date of the vesting of the estate or tenure came to an end, and new statutory leases u/s 10 replaced them, and, accordingly, it was contended that on the law, as settled by the Supreme Court in the aforesaid Bihar Mines Case, it must be held that Section 30A had no application to new statutory leases deemed to have been granted by the State of Bihar u/s 10 (1) of the Bihar Land Reforms Act 1950. On this view of the matter, it was contended that so far as the petitioners' leases or sub-leases were concerned, the provisions of Section 9(1) cannot be taken to have been suspended by virtue of Section 30A, and, accordingly, notwithstanding the notification issued by the Central Government on the 29th day of December 1961, the petitioners were liable to pay royalty with effect from the 1st of June 1958 at the rate specified for the time being in respect of coal in the second schedule to 1957 Act, i.e., at 5% F.O.R. price of coal. The demand for payment of royalty for different sums of monies from the different petitioners calculated at the above rate after adjusting the amounts already received, was, therefore, lawful and justified. Though the vires of Section 30A was not challenged in the show cause petition filed on behalf of the State of Bihar, a supplementary affidavit on their behalf was put in stating as an averment of fact that the provisions of Section 30A were discriminatory and violative of Article 14 of the Constitution of India in "so far as they had selected mining leases granted before the 25th of October 1949 for preferential treatment by giving them exemption from the provisions of Section 9 and other provisions of the 1957 Act. On the validity of Section 30A, of the 1957 Act being challenged, the Union of India was impleaded as a party respondent and on notices being issued to them, a show cause on their behalf by way of rejoinder to the supplementary affidavit filed on behalf of the State of Bihar was filed, and the same was affirmed by an officer in the Ministry of Petroleum and Chemicals and Mines and Metals.

5. On the cases of the parties, as summarised above, broadly speaking, two main questions arise for determination; (i) in regard to the vires or otherwise of the provisions of Section 30A of the 1957 Act and (ii) in regard to the proper construction, true effect and scope of Section 10 of the Bihar Land Reforms Act 1950 and Sections 9 and 30A of the 1957 Act. In respect of the claim for the period prior to the 1st June 1958, the applicability of the Mineral Concession Rules 1949 by virtue of Section 29 of the 1957 Act or otherwise to or in respect of the petitioners' leases or sub-leases will be another relevant question, which will arise for determination.

6. When some of these applications were listed for hearing before a Bench of this Court, the above questions and their bearing on the correctness or otherwise on the decision of this Court in Nagendra Nath Mandal's case, C. W. J. C. No. 653 of 1966 (Pat) on the basis of which the respondents had made the demand for royalty in all these cases were canvassed. While on behalf of the petitioners it was contended that on a proper interpretation of Sections 9, 29 and 30A of the 1957 Act and of the Mineral Concession Rules 1949 read in the context of the decision of the Supreme Court in the Bihar Mines case, it must be held that the decision in Nagendra Nath Mandal's case was incorrect in certain vital particulars. On behalf of the State it was urged that the decision in that case, in the main, was based on the various decisions of the Supreme Court including the one in the Bihar Mines case and as such was quite correct and could not be departed from. In view of the importance of the questions involved and the issues at stake, all these applications have been referred to this Bench for decision.

7. The challenge to the validity of Section 30A of the 1957 Act was made, as stated earlier, for the first time through a supplementary affidavit filed on behalf of the State on the 20th February 1970. The point sought to be made out therein is that the provisions of Section 30A of the 1957 Act were violative of Article 14 of the Constitution in so far as they made an unjustifiable discrimination in favour of the leases granted before the 25th of October 1949 by exempting them from the provisions of Section 9(1) and thus from paying royalty at the rate of 5% F.O.R. price of coal when, in fact, the lease-hold properties thus favoured were economically and commercially in a better position than those which under the leases granted after that date had gone into operation. It was urged that the classification thus made was unreasonable and artificial, having no relevancy to the object of the Act. In substance, the plea amounts to saying that as between the mining leases in respect of coal granted before the 25th October 1949. and those granted after that date, the latter had been discriminated against on no rational basis. An additional point, not covered by the supplementary affidavit, was raised during the course of arguments. This was to the effect that when, in fact, the 1948 Act and the Mineral Concession Rules 1949 had been extended to Chhotanagpur where the lease-hold properties were situate on the 16th January 1950, as per notification of that date issued u/s 92 of the Government of India Act 1935, the date 25-10-1949 could have no relevancy at least so far as

Chhotanagpur area was concerned, because in that area the Act and the Rules must be taken to have commenced from the 16th January 1950, and not from the 25th of October 1949. and the effect of fixing the 25th October 1949 as the relevant date both in Section 16(1) and in Section 30A was that leases granted between the 25th October 1949 and the 16th January 1950 in Chhotanagpur were left untouched by those two sections and thus they could neither be subjected to modification as contemplated by Section 16(1) nor were protected from the operation of Section 9(1) by virtue of Section 30A. This according to the learned Advocate General, introduced into Section 30A as also in Section 16(1) the element of ex facie discrimination and on that account alone it was urged that both Sections 30A and 15(1) should be struck down as violative of Article 14 of the Constitution. The present challenge was, however, confined to Section 30A alone. The petitioners as also the Union of India besides combating the above arguments advanced in support of the challenge to the validity of Section 30A as wholly untenable, challenged the locus standi of the State of Bihar to raise the point of Section 30A being violative of Article 14 of the Constitution. The first question for decision, therefore, is whether the State of Bihar has any locus standi to urge that the provisions of Section 30A were violative of Article 14 of the Constitution.

8. It is firmly established that no one except those whose rights are directly affected by a law can raise the question of constitutionality of that law. In the words of Hughes J.. (McCabe v. Atchison (1914) 235 US 151 quoted with approval in Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, : "The complainant cannot succeed because someone else may be hurt..... It is a fact clearly established, of injury to the complainant -- not to others --which justifies judicial interference."

In the present cases, on the very case of the State of Bihar, the person or persons, directly affected and discriminated against are such lease-holders who acquired mining leases after the 25th October 1949 vis-a-vis lease-holders whose leases had been granted prior to that date. The State of Bihar does not and cannot fall in their category. In the case of Hans Muller of Nuremburg Vs. Superintendent, Presidency Jail, Calcutta and Others, the rule was established that a person who is not a member of a certain class and as such is not aggrieved, cannot attack a provision of an Act on the ground that the classification implied therein contravened Article 14 of the Constitution. Repelling the argument on behalf of Hans Muller, who was not a British subject and was said to be a West German subject, that certain provisions of the Foreigners Act 1946 were ultra vires the Constitution as violative of Article 14 thereof in so far as in Section 2(a) of the said Act giving the definition of a "Foreigner" there was an ex facie discrimination in the same group viz., in the group of British Subject, their Lordships observed as under:--

"We do not intend to examine this contention because, even if it be true that there is the discrimination alleged, namely, between one class of British subject

and another, that will not give the petitioner a right of challenge on this ground. He is not a British subject and so he is not a member of the only class that could claim to be aggrieved on this score. This Court has decided in earlier cases that the only persons who can impugn any piece of legislation under Article 32 are those who are aggrieved thereby. As the petitioner is not a person aggrieved, so far as this point is concerned, he not being a British subject, he cannot attack the section on this ground."

Applying the rule laid down in the passage extracted above to the facts of this case, there can be no doubt that the State of Bihar not falling within the class of persons, who, it is alleged have been discriminated against, cannot be allowed to raise this question of the provisions of Section 30A being bad as violative of Article 14 of the Constitution. In short, it is the person or persons discriminated against who alone can be said to have been aggrieved and thus entitled to challenge the relevant provision on the ground that it contravened Article 14 of the Constitution. It was, however, urged by the learned Advocate General that the State was vitally and adversely affected by the provisions of Section 30A in so far as those provisions in effect served to keep under suspension until the Central Government decided otherwise the right of the State of Bihar as lessor in respect of the mining leases concerned to realise royalty at the rate higher than the contractual rate, and, conferred on it, by virtue of Section 9(1) read with the second schedule of the 1957 Act. In substance, the argument is that how can it be said that the State of Bihar was not adversely and vitally affected when, but for Section 30A it would have as a lessor of all the mining leases in question deemed to have been granted u/s 10 (1) of the Bihar Land Reforms Act 1949 on the vesting of the respective estates under the said Act, realised from each of the petitioners royalties at the rate of 5% F.O.R. price of coal instead of at 21/2% F.O.R. price of coal or even lower. This argument, in my opinion, overlooks the fact that Sections 9(1) and 30A are part of the self same statute. The effect of reading Sections 9(1) and 30A together, and, for the purposes of deciding the question of locus standi, the presumption in favour of the constitutionality of the provisions of Section 30A will have to be assumed, is that the so-called right of realising royalty at the rate higher than the contractual rate said to have been conferred on the lessor u/s 9(1) was itself in abeyance, and, therefore, during the continuance of the ban on the operation of Section 9(1), it must be held that no right whatsoever to realise royalty at the rate specified in Section 9(1) read with the second schedule to the Act, accrued. It follows that the State of Bihar has no locus standi to raise the question of Section 30A being violative of Article 14 of the Constitution.

9. On the above conclusion it does not appear to be necessary to decide two other questions which were argued in connection with locus standi of the State of Bihar, yet, as the questions themselves were debated at length and are of some importance, they may also be briefly disposed of. The first question is whether the State was a "person" within the meaning of Article 14 of the Constitution. The form of Article 14 may suggest that there is an opposition between the State

and a "person" and the State itself is not protected by Article 14. In my opinion, speaking theoretically, if there was only one State in India, there would have been something to be said for this view, - but in view of the existence of multiplicity of States in India and the Union of India being also a State, question might arise whether when State A enacts a law, it can deny to States B, C and D equality before the law or equal protection of the laws. The consequences of holding that fundamental rights are not available to the States was pointed out by Sinha C. J. in delivering the majority judgment, in the case of State of West Bengal Vs. Union of India, . It is true that the discussion in that case was in relation to Article 31 of the Constitution. If in given circumstances Article 31(1) can be availed of by a State and deprivation of its property by another State without the authority of law can be prevented by appropriate proceedings, I can see no reason why the State cannot seek the protection of Article 14 of the Constitution. A hypothetical instance has been given at page 191 by Shri H. M. Seervai in his book entitled "Constitutional Law of India". The illustration postulates the States of West Bengal, Mysore and Maharashtra maintaining separate Government Depots in Rajasthan for the sale of the same variety of cloth. Assuming that Rajasthan State were to impose a tax on the same goods sold by the three depots at three different rates, it would be strange if in such circumstances, the State aggrieved were denied the protection of Article 14 on the ground that the State was not a person. In any case, the decision of the Supreme Court in the case of referred to above quite clearly establishes that the State was a "person" within the meaning of Section 31(1) and on parity of reasoning it must be held that the State was a "person" within the meaning of Article 14 as well.

The other question debated was whether Article 31A(1)(e) of the Constitution protects Section 30A of the 1957 Act. According to the learned counsel, Sri Chaudhary, who appeared for the petitioners in some of these cases, the provisions of Section 30A were protected under Article 31A(1)(e) of the Constitution and could not be questioned as violative of Article 14, because in so far as it suspended the operation of Sections 9(1) and 16(1), though temporarily, it amounted to a modification of rights accruing by virtue of a mining lease. In support of this contention reliance was placed on three decisions of the Supreme Court, namely, in the cases of Burrakur Coal Co., Ltd. Vs. The Union of India (UOI) and Others, and Gujarat Pottery Works Vs. B.P. Sood, Controller of Mining Leases for India and Others, . On behalf of the State of Bihar, on the other hand, it was submitted that Article 31A(1)(e) gave protection only against infringement of rights of a lessee and not to modifications or curtailments of the rights of a lessor. It was urged that u/s 30A there was a suspension of the obligation to pay at the rate as required by Section 9(1), and therefore, the provisions of Section 30A were not covered by Article 31A(1)(e) of the Constitution. In my opinion, the contention on behalf of the State of Bihar is well founded and must be accepted. Article 31A(1)(e) reads as under:--

"Notwithstanding anything contained In Article 13, no law providing for the

extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any minerals or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31."

The two provisos to the said clause are not relevant for our purpose. It is plain that Article 31A(1)(e) excludes a challenge under Articles 14, 19 and 31 the extinguishment or modification of any rights which might have accrued by virtue of an agreement, lease or licence arrived at or granted for the purpose of searching for, or winning any minerals or mineral oil. It also protects from such challenge, premature termination or cancellation of any such agreement, lease or licence. In other words, the rights which might have accrued to a lessee or a licensee under an instrument or lease or licence enabling him to carry on mining operations, or the premature termination or cancellation of the lease or licence or of the agreement, as the case may be, are protected from being challenged under Articles 14, 19 and 31. The very cases on which Mr. Chaudhary placed reliance are instances of cases where rights of lessees were infringed either permanently or temporarily and thus I am afraid they do not support the contention that the provisions of Section 30A as well are protected from being challenged under Article 14. In *Burrakur Coal Co., Ltd. Vs. The Union of India (UOI) and Others*, the petitioners namely, M/s. Burrakur Coal Co. Ltd. and M/s. East Indian Coal Co. Ltd. claimed to have acquired mining rights in certain areas situate in the district of Dhanbad. The Central Government had passed a notification u/s 4 of the Coal Bearing Areas (Acquisition and Development) Act 1957, stating its intention to prospect for coal in an area which included the collieries of the petitioners. In consequence of the issue of the aforesaid notification, mining operations by the petitioners in the area in question had to remain suspended for two years or more. In an application under Article 32 of the Constitution it was urged on behalf of the aforesaid petitioners that the notification was ultra vires as it interfered with their fundamental rights to own property and to carry on business. It was conceded that the effect of Section 4(1) of the Coal Bearing Areas (Acquisition and Development) Act 1957 read with Section 5(b) thereof was to prevent an owner or lessee of a mine from working his mine for a certain period of time. His rights were thus modified by the said notification. In those circumstances and holding that a right may well be modified for all times or for a limited duration, their Lordships held that the provisions of Article 31A(1)(e) debarred the petitioners from challenging the validity of Sections 4 and 5 of the Act on the ground that they infringed the provisions of Article 31(2) of the Constitution. In the second case referred to by the learned counsel, namely *Bihar Mines Ltd. Vs. Union of India (UOI)*, it was again a case of a mining lease and Bachawat, J., in delivering the judgment of the minority held that in law providing for the premature termination of a lease for getting or extracting a mineral was protected by Article 31A(1)(e) and could

not be attacked on the ground that it contravened Articles 14, 19 and 31. In the third and the last case of Gujarat Pottery Works Vs. B.P. Sood, Controller of Mining Leases for India and Others, the appellants M/s. Gujarat Pottery Works (P.) Ltd. had acquired by transfer in the year 1954, the right, title and interest in a particular lease granted to one Jairam Jagmal by the owners of mineral rights for excavating white clay from the area leased and for taking it away. On September 29, 1960, the Controller of Mines effected modifications in the terms of the lease after following the procedure laid down in that regard under the Mining Leases (Modification of Terms) Rules 1956. The modifications were that the period of lease had been reduced to 25 years from December 2, 1939. and further renewal was to be regulated in accordance with the law in force. The lease was further made subject to the rules made or deemed to have been made under Sections 13 and 18 of the 1957 Act and royalty was to be payable in accordance with Section 9 of that Act. The modifications so made were challenged in revision before the Central Government and when it failed, the correctness of the modification orders came to be challenged in the appeal before the Supreme Court on various grounds. Their Lordships came to the conclusion that though the formal execution of the lease-deed was in November 1951, the lease in favour of Jagmal was really granted in December 1939, and as such it came within the expression "existing mining leases" within Rule 2 (c) of the 1956 Rules. The next point which was contended for the appellant was that the relevant rules under which the modification had been made contravened Article 31 of the Constitution and that Article 31A(1)(e) did not protect those rules from being so challenged. This contention was repelled and it was held that the lease being a lease for the purpose of winning coal, came within Article 31A(1)(e) of the Constitution and that, therefore, the rules for the modification of any right acquired under this lease cannot be deemed to be void on the ground that they took away the rights conferred under Articles 14, 19 and 31 of the Constitution. It is clear that in all these three cases Article 31A(1)(e) was pressed into service to save from challenging infringement of the rights of a lessee and in no case of a lessor. Indeed, on the very terms of Article 31A(1)(e), it must be held that it protects from challenging only infringement of rights of a lessee under a lease, or licence or agreement. It follows from what has been discussed above that though the State of Bihar was a "person" within the meaning of Article 14 of the Constitution, and the provisions of Article 31A (1) (e) of the Constitution did not afford any protection to Section 30A if the same was violative of Article 14 of the Constitution, yet as the State of Bihar does not and cannot fall within that class of persons who, on the case sought to be made out on behalf of the State of Bihar itself, had been discriminated against by reason of the provisions of Section 30A, it must be held that the State of Bihar has no locus standi at all to raise the question of the invalidity of Section 30A on the ground of the same being violative of Article 14 of the Constitution.

10. Even if it were assumed that the State of Bihar had locus standi to challenge the validity of Section 30A as violative of Article 14 of the Constitution, it appears

to me that the challenge is wholly without merit. In the first place, the respondent-State of Bihar was not entitled to attack the validity of Section 30A on any ground which did not find any mention in its pleadings, i.e., in its supplementary affidavit filed on the 20th February 1970; its show cause petition filed on the 4th November 1968 being wholly silent on this issue. In the supplementary affidavit the attack on the validity of Section 30A is only on the ground that there was no rational basis for giving preferential treatment to leases granted before the 25th October 1949, over those which had come to be granted after that date. Accordingly, no notice can be taken of the additional point urged on behalf of the State that the provisions of Section 30A were ex facie discriminatory at least in so far as Chhotanagpur area was concerned, because though the 1948 Act and the rules made thereunder had come into force in that area with effect from the 16th January 1950, yet a general provision as to classification of leases into two periods, namely, one granted before the 25th October 1949. and the other granted after the 25th October 1949 was adhered to without any rational basis. There is no mention about this point in the supplementary affidavit filed on behalf of the State. We do not even know if any mining leases in respect of coal were in fact granted by proprietors or tenure-holders or other owners of coal bearing areas and, if so, how many, between the period 25-10-1949 and 16-1-1950. It may be that no such leases were granted at all or those that were granted were more or less on the same terms and conditions as were required to be incorporated in respect of leases granted under the Act or the Rules made thereunder. All these particulars are wanting. Moreover, this argument proceeds on the assumption that though Section 30A in the context and scheme of the 1957 Act. may not by itself be violative of Article 14 of the Constitution, it suffered from that infirmity if considered, as it should be so far as Chhotanagpur was concerned, in conjunction with the effect of operation of Section 92 of the Government of India Act 1935, which enabled the authority mentioned therein to extend the Act and the Rules concerned on such date as it might choose. The Rule, however, is that in order that a law may be struck down under Article 14, the inequality must arise under the same piece of legislation or under the same set of law which have to be treated together as one enactment. Inequality, even if any, resulting from two different enactments made by two different legislatures is not liable to attack under Article 14. In the case of *The State of Madhya Pradesh Vs. G.C. Mandawar, Venkata-rama Ayyar, X*, delivering the judgment of the Supreme Court pointed out as under:--

"The power of the court to declare a law void under Article 13 has to be exercised with reference to the specific legislation which is impugned. It is conceivable that when the same legislature enacts two different laws but in substance they form one legislation, it might be open to the court to disregard the form and treat them as one law and strike it down, if in their conjunction they result in discrimination. But such a course is not open where, as here, the two laws sought to be read in conjunction are by different Governments and by different legislatures".

This rule was reiterated in the majority judgment in Lachhman Das on Behalf of Firm Tilak Ram Ram Bux Vs. State of Punjab and Others, For this reason as well, the challenge to the validity of Section 30A based on the consequences of the notification issued u/s 92 of the Government of India Act 1935 has to be ignored.

11. Now as to the ground on which the validity of Section 30A has been attacked in the supplementary affidavit filed on behalf of the State. It is well settled that in considering the validity of an impugned provision in a statute on the ground that it violates Article 14, it is necessary to ascertain the policy underlying the statute, and the object intended to be achieved by it, and in this process the preamble to the Act and material provisions can and must be considered. It is only after the policy and the object of the Act or of the provision is ascertained the court has to apply the dual test in examining its validity : (i) Is the classification rational and based on intelligible differentia and (ii) has the basis of differentiation any rational nexus with its avowed policy and object of the Act? If both these tests are satisfied, the statute must be held to be valid; and in such a case the consideration as to whether the same result could not have been better achieved by adopting a different classification would be foreign to the scope of the judicial enquiry vide *Kangshari Haldar and Another Vs. The State of West Bengal*, . Now in the instant case, on the policy underlying the enactment in question and the object intended to be achieved by it as apparent from its preamble and from its material provisions, such as, Sections 4 and 9, it is reasonably clear that the whole class of mining leases in respect of minerals except mineral oils were intended to be brought within the purview of Section 9(1) read with the second schedule to the Act and the mere fact that by virtue of Section 30A at a particular point of time, namely, on the 1st of June 1958, only a section of that class was going to be affected forthwith, but the remaining sections were also going to be affected though at a later date will not make the provision bad under Article 14, because it is obvious from the provisions of Section 30A read as a whole that the class exempt for the time being was also going to be affected in due course. Thus the objective of the Act was to apply the provisions of Section 9(1) uniformly to all holders of mining leases; Section 30A merely served to postpone the application for the time being. Such a legislation, in my opinion, cannot be attacked under Article 14 of the Constitution. This principle is implicit in the case of *Biswambhar Singh and Others Vs. The State of Orissa and Another*, and in the case of *Thakur Amar Singhji Vs. State of Rajasthan*, . In the former case, the provisions of Section 3 of the Orissa Estates Abolition Act 1951 which in terms conferred some discretion on the State Government to choose their own time in the matter of issuing notification declaring one or another estate specified therein as having passed to and become vested in the State free from all encumbrances was challenged as violative of Article 14 of the Constitution, but Das, J., delivering the majority judgment repelled that argument in the following words:--

"The long title of the Act and the two preambles which have been quoted above clearly indicate that the object and purpose of the Act is to abolish all the rights,

title and interest in land of Intermediaries by whatever name known. This is a clear enunciation of the policy which is sought to be implemented by the operative provisions of the Act. Whatever discretion has been vested in the State Government u/s 3 or Section 4 must be exercised in the light of this policy and, therefore, it cannot be said to be an absolute or unfettered discretion, for sooner or later "all" estates must perforce be abolished.....".

His Lordship further discussed that in the very nature of things a certain amount of discretionary latitude has to be given to the State Government to proceed to abolish the estates gradually. In the latter case, the provisions of Rajasthan Land Reforms and Resumption of Jagirs Act 1952 were challenged as violative of Article 14 in so far as Section 21 of the said Act provided that the Government may appoint a date for the resumption of any class of jagir land which, it was urged, meant that under that Section it was not obligatory on the Government to resume all Jagirs and that it would be within its powers to resuming some of them while leaving others untouched and thus the Act was discriminatory. The court after examining the provisions of Sections 4 and 20 which had a bearing on the question, came to the conclusion that there was no doubt that it was the intention of the Legislature that all jagir lands should be resumed and, accordingly, the mere fact that u/s 21, the State was authorised to resume different classes of jagir lands on different dates could not be said to result in the law operating unequally. It was pointed out that the provision in Section 21 of the Act authorising the Government to appoint different dates for resumption of different classes of jagir lands in view of the clear intention of the Legislature that ultimately all Jagir lands were to be resumed, was not at all discriminatory. It follows that if from the preamble or the object and purpose of the Act and from the relevant provisions thereof, it was reasonably clear that the intention of the Legislature was that a whole class of persons or things have to come within the purview of the law, then the mere fact that at a particular point of time only certain members of that class are affected will not make the legislation or the exercise of the power in that behalf bad under Article 14 of the Constitution. In the instant cases on the preamble and on reading Section 30A in the context of the scheme apparent from Sections 1, 3, 4 and 9 of the 1957 Act. it is quite clear that in the provisions of Section 30A no discrimination whatsoever is involved. The preamble enacts that the object and purpose of the Act is regulation of mines and development of minerals under the control of the Union to the extent provided under the Act. List of specified minerals in respect of which as required by Sections 5(2)(a), 7(2) and 8(2) of the Act no prospecting licence or mining lease can be granted or renewed except with the previous approval of the Central Government, are given in Schedule I of the Act and the same is fairly exhaustive and amongst 25 other minerals include coal as well. Sub-sections (2) and (3) of Section 1 show that the Act is to apply to the whole of India and to come into force as a whole from such date as the Central Government might appoint. Section 3, the definition section, by the very terms of the definitions of the various crucial expressions, is also indicative of the comprehensive sweep and

ambit of the Act, for instance, "minerals" include all minerals except mineral oils; "mining operations" mean any operations undertaken for the purpose of mining any mineral and "mining lease" means a lease granted for the purpose of undertaking mining operations and includes a sub-lease granted for such purpose. These provisions, in my opinion, show that the intendment of the Act is to cover the entire field of mining operations and mineral development. Section 4 places a general restriction on all prospecting and mining operations carried on or to be carried, anywhere in the country and in respect of any mineral except under a prospecting licence or mining lease, as the case may be, granted either before or after the commencement of the Act. Section 9, the particular section, besides Section 30A with which we are concerned in these cases, is also in comprehensive terms and is all embracing in its scope. That Section read with Schedule II to the Act statutorily determines the rate of royalty in respect of any mineral removed from any leased area at rates different for different minerals, and, enjoins the rate so fixed to be paid not only by holders of mining leases granted on or after the commencement of the Act, but also by all holders of mining leases granted before the commencement of the Act "notwithstanding anything contained in the instrument of leases or in any law in force" at the commencement of the Act. Thus the scheme of the Act and Section 9 in terms mean this that the entire class of holders of mining leases in respect of different minerals including coal irrespective of the date on which they might have come into existence, are intended to be covered by the rate of royalty as fixed u/s 9 read with Schedule II of the Act. The Legislature has made no discrimination whatsoever in respect of the rate of royalty payable by any member of that class and thus under the statute in the matter of payment of royalty no differentiation is envisaged. Now Section 30A of the Act if read in the above context means a mere postponement, inter alia, of the application of Section 9(1) and of certain other provisions of the Act or rules made thereunder with which we are not directly concerned in these cases "to or, in relation to mining leases granted before the 25th of October, 1949 in respect of coal" for the time being only, leaving to the Central Government to terminate the postponement in stages or all at once, as it might consider expedient. The essential thing is that the necessary intendment of Section 30 as well is to eventually bring the type of mining leases exempted for the time being from the operation of Section 9(1) within the purview of the said section. In my opinion, therefore, as there is no discrimination involved in mere postponement, the provisions of Section 30A are not liable to be attacked under Article 14 of the Constitution. Section 30A is rather a measure for doing away with discrimination and not for perpetuating discrimination, all that it does is to give some respite to the holders of mining leases in respect of coal granted before a certain date or in relation to the same from, being affected by the provisions of Section 9(1) forthwith. Accordingly, in my opinion, the attack on Section 30A on the ground that it discriminates against or in favour of a class of holders of mining leases is wholly misconceived.

12. Even apart from the above consideration, it appears to me that the

classification of mining leases into pre-1949 and post-1949 leases is founded on an intelligible differentia which distinguishes the one class from the other and the differentia has a rational relation to the object sought to be achieved by the enactment in question. It is well settled that not only there is a presumption in favour of constitutionality of an enactment, it is equally recognised that in order to sustain that presumption, the court may take into consideration matters of common knowledge, matters of common report, the history of the times and court may assume every state of facts which can be conceived as existing at the time of the legislation in question. Another presumption to which reference may be made is that the legislature understands and correctly appreciates the needs of its own people that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds (vide *State of Bombay v. F. N. Balsara* AIR 1951 SC 318 and, *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, . It is a matter of history that it was for the first time on the 25th October 1949, that regulatory and restrictive measures in respect of grant of mining leases and carrying on of mining operations were introduced in this country by bringing into operation the 1948 Act and the Mineral Concession Rules, 1949 made u/s 5 thereof. It is also well known that mining leases granted during the pre-regulatory period, namely, prior to the 25th October 1949 had been granted on such terms as the lessor and the lessee had agreed to and generally speaking in absence of any regulation or restriction, there was no uniformity in the terms and conditions on which those leases had been granted, but post-1949 leases had to be granted on the terms and conditions envisaged for them under the 1949 Act read with the Mineral Concession Rules 1949. Thus, there can be no doubt that to classify mining leases into one of those which had been granted prior to October 1949, and another which were to be granted after that date was a reasonable classification and it rested on a real and substantial difference between the two. Indeed, the pre-October 1949 leases constituted a class by themselves and it is obvious that with the ultimate objective of modifying their terms and conditions so as to bring them in conformity with the terms and conditions envisaged for leases to be granted after 1949, they had to be put in a class by themselves so that the modifications might be affected in such a manner which may not interfere with the main objective of the Act of ensuring development of the mineral resources of the country and thereby secure their continued and increased production. Accordingly, there is no merit in the contention that the classification of the mining leases with reference to a particular date, namely, the 25th October, 1949, was arbitrary or irrational. In my opinion, the 25th October, 1949 marks the commencement of a new epoch in the mining industry and the Legislature in the circumstances must be held to have adopted a rational basis of differentiation between the two classes of mining leases, and so long as a rational basis can be found for the scheme of things adopted by the Legislature, the mere fact that a better or a more scientific scheme may have been possible will not attract the provisions of Article 14 of the Constitution. The challenge to the vires of the provisions of Section 30A on the ground that they were violative

of Article 14 of the Constitution must, therefore, fail. It will be noticed that for coming to the above conclusion apart from referring to the matters of common knowledge, practically no use has been made of the counter-affidavit filed on behalf of the Union of India, because the said affidavit, it may be mentioned, is more or less an elaborate restatement of the object and reasons and of the memorandum regarding the delegated legislation appended to bill No. 33 of 1948, which was later passed as the Mines and Minerals (Regulation and Development) Act, 1948. Indeed, the principle and the basis on which the pre-1949 leases have been placed in a class by themselves as distinguished from the post-1949 leases, is apparent from the very legislative history of the enactment in question and in such circumstances, reference to an affidavit filed on behalf of the Union of India was neither necessary nor justified. It was in this view of the matter and also in view of the legal position that the State of Bihar had no locus standi to raise the question that the provisions of Section 30A were violative of Article 14 of the Constitution and even otherwise there was no substance in the challenge, that we did not accede to the prayer made on behalf of the State of Bihar to be afforded an opportunity to cross-examine Shri G. Ramaswami who had affirmed the affidavit on behalf of the Union of India.

13. The main grounds, however, on which these applications have been resisted are broadly divisible into two parts: (i) in regard to the claim for royalty prior to 1-6-1958 on which date the 1957 Act came into force and (ii) in regard to the claim for royalty for the period from 1-6-1958 to 31-12-1965. So far as the claim for the period prior to 1-6-1958 is concerned, it has been sought to be rested on Section 29 of the 1957 Act read with Rule 41 of the Mineral Concession Rules, 1949 and Schedule I of those rules. The claim in respect of the period from 1-6-1958 till 31-12-1965 has been rested on Section 9(1) of the 1957 Act read with the second schedule thereto. The claim in regard to both the periods, has been sought to be sustained on a Bench decision of this Court in C.W.J.C. No. 653 of 1966, D/- 22-12-1967 (Pat). On behalf of the petitioners, however, the correctness of the view taken in the aforesaid Bench decision of this Court was seriously challenged and it was urged that so far as the claim for the period prior to the 1st June, 1958 was concerned, neither Section 29 of the 1957 Act nor Rule 41 of the Mineral Concession Rules, 1949 were of any assistance and royalty was payable on contractual rates only. In regard to the period from the 1st June, 1958 onwards, the petitioners' case, as already mentioned is that so long as the provisions of Section 9(1) were inapplicable to their leases by virtue of Section 30A of the 1957 Act, the petitioners were liable to pay and have paid already on contractual rates only, but their liability was to pay royalty at 21/2% F.O.R. price of coal from the 29th December, 1961 till the 31st December, 1965 by virtue of the notification Issued by the Central Government in exercise of their powers u/s 30A of the 1957 Act. and, as the petitioners have already paid royalty calculated at that rate, no further payment was due. There can be no doubt that the aforesaid unreported decision of this court in C.W.J.C. No. 653 of 1966 (Pat.) supports in toto the case of the respondent-State of Bihar and the main question

for determination in this case is, whether the view which appears to have commended itself to their Lordships in that case can be said to be correct. In that case a mining lease in respect of coal had been granted by the proprietor of Chitra estate on the 21st November, 1941 for a period of 30 years and at a fixed royalty of Rs. 4,500/- per year. The estate of the lessor proprietor vested in the State of Bihar under the Bihar Land Reforms Act on the 9th May, 1955, and the lessee came to hold the lease under the State with effect from the said date of vesting by virtue of Section 10 (1) of the said Act and was paying royalty to the State according to the terms and conditions of the lease and had continued to do so until the 29th of December, 1961 whereafter by virtue of the notification issued u/s 30A of the 1957 Act, the royalty payable must be taken to have been fixed at 21/2% F.O.R. price of coal only. On behalf of the State, however, royalty was demanded at the rate of 61/4% for the years 1955 to 1958, and at the rate of 5% for the years 1958 to 1965, and on the petitioner's failure to make the payment as demanded certificate proceedings had been taken out against the lessee. In those circumstances, the lessee moved this court under Articles 226 and 227 of the Constitution for an appropriate writ with an order quashing the proceeding and direct the respondent forbear from realising royalty in excess of what was payable. The case of the State of Bihar in that case, as in the present cases, was that royalty at the rate of at least 5%, if not more, was payable ever since the vesting of the estate of the lessor proprietor on the 9th May, 1955. Their Lordships accepted the claim of the State and held that the lessee was liable to pay royalty for the period from the 9th May 1955 to the date on which the 1957 Act was brought into force at the rate of 5% F.O.R. price of coal subject to a minimum of 8 paise per ton by virtue of Section 29 of the 1957 Act read with Rule 41 of the 1949 Rules, and the Schedule I to those Rules. They also held that he was also liable to pay at the same rate from the date the 1957 Act had come into force by virtue of Section 9(1) of the said Act read with the second schedule thereto because neither Section 30A nor the notification issued thereunder was applicable to the lease of the petitioner in so far as the effect of the vesting of the estate of lessor in the State of Bihar under the Bihar Land Reforms Act, 1950. was that the petitioner's lease had become a new lease on account of Section 10 of that Act and it could no longer be said to be a lease granted before the 25th day of October 1949 which alone was the subject-matter of Section 30A of the 1957 Act. For the proposition that the petitioner's lease had become a new lease, reliance was placed in that case as has been done in these cases on the decision of the Supreme Court in Bihar Mines Ltd. Vs. Union of India (UOI), . It is apparent that the present cases are covered by the aforesaid decision of a Bench of this court, and unless the same is held to have been wrongly decided, the royalty claimed from the petitioners cannot be interfered with.

14. The claim for royalty in regard to the period prior to the 1st June, 1958-- the date on which the 1957 Act had come into force, as mentioned already, rests, on the submissions made on behalf of the State of Bihar. on Section 29 of the 1957

Act read with Rule 41 of the Mineral Concession Rules, 1949, and Schedule I to those Rules. In my opinion, neither Section 29 of the 1957 Act nor Rule 41 of the Mineral Concession Rules, 1949 made u/s 5 of the 1948 Act, whether taken singly or together, are of any assistance to the respondent and the claim for royalty as made for the period prior to the 1st June, 1958, was wholly unfounded. In the case of Chhatu Ram Horil Ram Ltd. Vs. State of Bihar and Another, it was held by the Supreme Court that Rule 40 of the Mineral Concession Rules, 1949 which dealt with the period for which a mining lease could be granted or could be renewed, had no application to the statutory leases arising by virtue of Section 10 of the Bihar Land Reforms Act, 1950, because in the words of Shah, J., who delivered the judgment of the Court, "Manifestly, the rule applies to grants made by the Government". According to the case of the State of Bihar itself, the petitioners were holders of statutory leases which had arisen u/s 10 of the Bihar Land Reforms Act, 1950. If Rule 40 had no application to such leases, it is difficult to understand how Rule 41 will have any application. Both Rule 40 as well as Rule 41, the former dealing with the period of the mining leases to be granted by the Government and the latter dealing with the terms and conditions including rates for royalty which had to be incorporated in the lease to be granted under the 1949 Rules are part of Chapter IV of those Rules which are comprised of Rules to be followed in connection with grant of mining leases in respect of land in which minerals belonged to the Government. In short. Rule 41 of the 1949 Rules, by its very terms and the context in which it occurs, is applicable only to contractual grants as envisaged under those Rules which were made u/s 5 of the 1948 Act for regulating the grant of mining leases or for prohibiting the grant of such leases in respect of any mineral or In any area. Thus Rule 41 can have no application to leases or sub-leases of the petitioners. Nor Section 29 of the 1957 Act is of any avail. That section reads as under:--

"All rules made or purporting to have been made under the Mines and Minerals (Regulation and Development) Act, 1948 (53 of 1948), shall, in so far as they relate to matters for which provision is made in this Act and are not inconsistent therewith, be deemed to have been made under this Act as if this Act had been in force unless and until they are superseded by any rules made under this Act."

The 1948 Act having been replaced by the 1958 Act. Section 29 was inserted in the latter Act to save only such rules made under the 1948 Act as related to matters for which provision had been made in the 1957 Act, and, were not inconsistent therewith, as if they had been made under the 1957 Act itself and for that purpose alone the 1957 Act was to be deemed to be in force on the date on which the rules so continued had been made. That was, however, contained in Rule 41 (1) (i) of the Mineral Concession Rules, 1949 came to be incorporated as Sub-section (2) of Section 9 in the 1957 Act, and thus it is obvious that thereafter, no question of continuing Rule 41 (1) (i) could arise by virtue of Section 29 or otherwise. And it being impossible to contend that Sub-section (2) of Section 9 of the 1957 Act or for the matter of that the whole of Section 9, can be pushed back to any date anterior to the date on which the 1957 Act had come

into force, because that would be inconsistent with the language of Section 29 quoted above, it must be held that the claim for royalty as made by the respondent for the period prior to the 1st June, 1958 was wholly unfounded and unsupportable in law. No authority or principle was brought to bur notice which warrants the pushing back of Section 9 or any other Section of the 1957 Act by virtue of Section 29 except for the limited purpose clearly indicated in Section 29 itself and referred to earlier. For these reasons, including the pronouncement of the Supreme Court in Chhatu Ram Horil Ram Ltd. Vs. State of Bihar and Another, it must be held that the view taken by Ram Ratan Singh and Anwar Ahmad, JJ., in Nagendra Nath Mandal's case, C.W.J.C. No. 653 of 1966 (Pat.) that in the case of statutory leases such as of the petitioners, claim for royalty for the period prior to the coming into force of the 1957 Act, at any rate other than contractual or at rates prescribed in the First Schedule of the Mineral Concession Rules, 1949 was justified or legal on the basis of Section 29 of the 1957 Act read with Rule 41 and the First Schedule of the 1949 Rules, with utmost respect to their Lordships must be held to be wholly erroneous and that decision to that extent is set aside. This part of the claim of the respondent, therefore, fails.

15. In regard to the claim for royalty for the period 1-6-1958 to 31-12-1965 the controversy centres round the construction sought to be placed mainly on Sections 9 and 30A of the 1957 Act but in order to appreciate the respective contentions, a reference may be made to the decision of the Supreme Court in Bihar Mines Ltd. Vs. Union of India (UOI), and a short resume of the legislative background of the 1957 Act, and, in particular of Sections 9 and 30A may be given.

16. The scheme of the 1948 Act was a very simple one. It was enacted for regulation of mines and for development of minerals. Section 4(1) of the Act provided that no mining leases would be granted after the commencement of the Act otherwise than in accordance with the rules made under that Act. Section 5 empowered the Central Government to make rules contemplated by Section 4(1) for regulating the grant of mining leases in respect of any mineral or In any area. It being, however, necessary to modify the terms and conditions of mining leases which had been granted prior to the commencement of the Act so as to bring them in conformity with the rules made under Sections 5 and 6. Section 7 empowered the Central Government to make such rule for that purpose. The Mineral Concession Rules, 1949, were made" u/s 5, and, both the Act as also the Rules were brought into force on the 25th October, 1949. Mining Leases (Modification of Terms) Rules, 1956, were made on the 4th of September, 1956 u/ s 7. When these Rules were made, the definition Clause (2) defined the Act as "the 1948 Act"; "existing mining lease" meant a mining lease granted "prior to the commencement of the Act", and in clause fg) thereof "royalty" was defined to include dead rent. On coming into force of the 1957 Act from the 1st of June 1958 by virtue of Section 29 of that Act, the 1950 Rules made u/s 7 of the 1948 Act were taken as made u/s 16 of the 1957 Act and suitable amendments were made in the 1956 Rules, such as, Act came to mean the "1957 Act", and the

words "prior to the commencement of the Act" in Clause (c) of Rule 2 was replaced by the words "Before the 25th day of October 1949" and Clause (g) defining "royalty" as deleted. This was obviously because what was Section 7 in the 1948 Act was split into two sections in the 1957 Act, viz., Sections 9 and 16. Modification as to the date of royalty in leases granted before the commencement of the 1957 Act was directly made by Section 9(1) and so far as other terms and conditions were concerned. Section 16 provided for Rules to be made for effecting modifications in leases granted before October 25, 1949. In the 1956 modification Rules whether as originally made on the 4th September, 1956 or after it had undergone consequential amendments by reason of the 1957 Act having replaced the 1948 Act, it will be noticed that from the definition and scope of "existing mining lease" mining leases granted before the 25th October, 1949 in respect of coal and some other minerals were expressly excluded with the result that no modification in regard to their terms and conditions could be effected. This position suddenly changed at least in regard to the term for royalty on coming into force of 1957 Act. i.e., with effect from 1-6-1958 because Section 9 (1) effected an automatic modification in that regard in respect of mining leases in respect of any mineral which might have been granted prior to the commencement of the said Act. The 1957 Act had received the assent of the President on the 28th December, 1957, but before it was brought into operation on the 1st June, 1958. Section 30A with retrospective effect was inserted in the 1957 Act by an Amending Act being Act 15 of 1958 and it purported to put a temporary ban on the operation of Sections 9(1) and 16(1) to and in relation to mining leases granted before the 25th October, 1949 in respect of coal. Thus the sudden impact of the operation of these two sections on mining leases in respect of coal which had been granted before the 25th October, 1949, i.e., before the introduction of regulatory measures by the 1948 Act, was averted. The parties appeared to have acted on the footing that operation of Sections 9(1) and 16(1) was under a temporary ban, and, royalty was being realised at contractual rates from all such lease-holders whose leases in respect of coal had come into existence before October 1949 and were subsisting. It was only after the 29th December, 1961 when the Central Government issued a notification u/s 30A fixing 21/2% F.O.R. price of coal or contractual rate whichever was higher than payment of royalty started at 21/2% F.O.R. price of coal. This position continued till the 31st December, 1965 whereafter by notification dated the 1st January 1966, the Central Government removed the ban on the operation in full and royalty thereafter has been paid at 5% F.O.R. price of coal in accordance with Section 9 read with the Second Schedule of the Act.

17. While the above position was obtaining, came the decision of the Supreme Court in the case of Bihar Mines Ltd. AIR 1 SC 887 holding that by virtue of Section 10 of the Bihar Land Reforms Act, 1950, all leases of mines and minerals subsisting immediately before the date of vesting of the estate or tenure wherein they were comprised, came to an end and new statutory leases u/s 10 replaced

it and thus those new statutory leases were not leases granted before the 25th October, 1949. Raghubar Dayal, J., who spoke for the majority examined the provisions of the Bihar Land Reforms Act in detail and came to the conclusion that as a result of the vesting of the estate or tenure in the State of Bihar under the provisions of the said Act, the interest of the proprietor or tenure-holder including his rights in mines and minerals inclusive of rights of a lessee of mines and minerals came to an end and vested absolutely in the State free of all encumbrances. His Lordship negated the contention that what was deemed to have been leased by the State Government u/s 10 (1) of the Bihar Land Reforms Act was for the purposes of the Reforms Act only and not for the purposes of the 1948 Act or the 1957 Act and held that the effect of the estate being deemed to be leased by the State Government was that the erstwhile lessee of the intermediary became actually lessee of the State Government for all purposes from the date of the vesting of the estate in the State and that he could not be deemed to be a lessee of the intermediary whose title was lost under the original lease. Though we are not directly concerned with Section 10 of the Reforms Act in those cases, it is quite clear that the decision of the Supreme Court in the case of Bihar Mines Limited is the sheet-anchor on which the entire structure of the arguments on behalf of the State of Bihar has been built up in regard to the interpretation or construction of Section 30A of the 1957 Act. The facts of that case, briefly, were:-- that on August 11, 1928 Raja of Palganj, in Bihar, had executed a lease with respect to a certain area of his estate in favour of one Chakravarti of Asansol for a period of 49 years. The lease was in respect of soapstone, Keoline, etc., Chakravarti in his turn had executed a sub-lease in favour of one Solanki on the 18th May, 1933. Thereafter Solanki had granted a sub-lease in respect of the same area in favour of Messrs. Hirji Premji and Brothers on May 13, 1934. The appellant, namely, the Bihar Mines Limited had taken an assignment from Hirji Premji on October 18, 1954 for a period of 19 years 7 months expiring on May 17, 1974. The estate of Raja of Palganj had vested in the State of Bihar by virtue of notifications issued under Sections 3 (1) and 3(A) of the Reforms Act and, accordingly, Chakravarti's mining rights in the area comprised in the lease had become subject to the provisions of Section 10 of the Bihar Land Reforms Act. Thereafter the Controller of Mines took action for the modification of the head-lease dated the August 11, 1928, and the sub-leases executed in favour of Solanki and Hirji Premji in 1933 and 1934 respectively. The appellant who had taken the assignment of the rights, title and interest of Hirji Premji had appeared before the Controller and had raised objection to the proposed modification. The Controller, however, by an order dated July 1, 1961 effected modification in regard to the period of the head-lease and the subleases directing that they would terminate on July 1, 1961. i.e.. on the date of the order itself. The appellant's revision application before the Central Government having failed, he appealed to the Supreme Court under Article 136 of the Constitution. The main argument for the appellant was that the head-lease dated the 11th August 1928, could not be modified under the 1956 Modification Rules as it did not come within the expression "existing mining lease" as defined in

Clause (c) of Rule 2 of those Rules. "Existing mining lease" as has been indicated already, had been defined in Clause (c) of Rule 2 as a mining lease granted before the 25th October 1949 and subsisting at the commencement of the 1956 Rules, Ostensibly the head-lease having been granted in 1928. came within the definition of "existing mining leases". But the appellant's contention as that In view of Section 10 of the Reforms Act, the head-lease as such had come to an end and a new statutory lease u/s 10 had replaced it and that, therefore, the new statutory lease could not be said to have been granted before October 25, 1949. This argument was accepted by their Lordships and it was held that the Controller had no iurisdiction to modify the head-lease in question, and when the head-lease could not be modified as it was not an "existing mining lease", the sub-leases also could not be modified. Now there can be no doubt that this decision is an authority for the proposition that in a case governed by Section 10 of the Bihar Land Reforms Act, the old contractual mining leases which might have been granted before the 25th October, 1949, came to an end and in their place new statutory leases deemed to have been granted by the State with effect from the date of vesting had come into existence and that because such statutory leases could not be said to have been granted before the 25th October. 1949, they were not liable to be modified under the Modification Rules, 1956 made u/s 16 of the 1957 Act. It was mainly on account of the aforesaid pronouncement of the Supreme Court on the question of the nature of the interest dealt with by Section 10 of the Bihar Land Reforms Act, 1950 as applied and followed by a Bench of this Court in Nagendra Nath Mandal's case, C.W.J.C. No. 653 of 1966 (Pat.) that demand notices were issued to the petitioner for payment of royalty as specified in Section 9(1) read with the Second Schedule of the 1957 Act During the arguments the learned Advocate-General for the State of Bihar took us through a number of decisions of the Supreme Court as also of this Court mainly with a view to establish that the decision of the Supreme Court in the aforesaid case of Bihar Mines Limited was really an example of the direct application of the principles which had already been settled by the Supreme Court in regard to the inter-pretation of Section 10 of the Bihar Land Reforms Act and the legal effect and corollary of the fiction implied in that Section. In view of the clear pronouncement by the Supreme Court in the case referred to above, I think it will serve no useful purpose to refer to those cases and discuss them. It must be taken as firmly established that by reason of Section 10 of the Bihar Land Reforms Act, no pre-October, 1949 mining lease which had been granted by the different intermediaries in the permanently settled areas in Bihar existed in 1956; they had all been replaced by new statutory leases deemed to have been granted by the State of Bihar to the lessees themselves by reason of the legal fiction introduced by Section 9 (1) of the Bihar Land Reforms Act It may, however, be pointed out that in the case of Bihar Mines Limited the head-lease or the sub-leases which were sought to be modified were not leases in respect of coal and neither Section 30A nor Section 9 of the 1957 Act were in any manner under consideration.

18. In the background of the above resume of the legislative history of the 1957 Act or of Sections 9 and 30A thereof, and in the context of that fell for decision and was decided in the case of Bihar Mines Limited, the respective contentions of the parties, in regard to the construction to be placed on Sections 9 and 30A, may now be examined.

19. In regard to Section 9(1) while the petitioner's case is that the statutory leases deemed to have come into existence u/s 10 of the old Act, were outside the purview of the expression "mining leases granted before the commencement of this Act" and as such no royalty as determined therein was payable by the petitioners as holders of statutory leases. The case of the State of Bihar is that all mining leases, whether contractual or statutory, came within the comprehensive terms of Section 9(1), and the demand for royalty as per its terms was lawful and justified. Two grounds have been urged on behalf of the petitioners in support of their contention that the statutory leases, as had come into existence u/s 10, were not covered by Section 9(1). They are:-- (i) the statutory leases having received a special treatment and having acquired a special character under the provisions of the Bihar Land Reforms Act could not, as a matter of interpretation, fall within the mischief of the general provisions of Section 9 or 9(1), and (ii) the statutory leases which had come into existence by reason of the legal fiction as incorporated u/s 10 (1) of the Bihar Land Reforms Act, could not be described as leases which had been granted; in other words, no grant could be implied in the coming into existence of the statutory leases u/s 10, and as such they could not be described as mining leases granted before the commencement of the 1957 Act. In my opinion, there is no substance whatsoever in any of the above contentions and they must be rejected.

In support of the first ground, Sri Bal-bhadar Prasad Singh learned counsel appearing for the petitioners in C.W.J.C. Nos. 1244 of 1968 and 1722 of 1969 referred to several cases, and contended that the maxim "generalia specialibus non derogant" was applicable so as to exclude the special class of leases which had come into existence under a special law, namely, Section 10 (1) of the Bihar Land Reforms Act from the ambit of the general provisions of Section 9 of the 1957 Act. The short answer to this contention is that the aforesaid maxim has no application when the Acts in question do not cover the same territory. In the instant case, the Bihar Land Reforms Act is a law relating to transference to the State all interests of proprietors and tenure-holders in land and matters connected therewith, whereas the 1957 Act is a law regarding regulation and development of mines and minerals. Thus here there is no competition between the two laws, as they operate in different fields. Nor it will be correct to hold that the aforesaid two pieces of legislations are statutes in pari materia i.e. statutes dealing with the same subject-matter forming part of the same system. As explained in an American case cited in Craies Statute Law, page 133 (6th Edition), *pari materia* is a phrase applicable to public statute or general laws made at different times and in reference to the same subject. In the case of *State of Punjab Vs. Okara Grain Buyers Syndicate Ltd. and Others*, it has been

pointed out that when the two pieces of legislations are of differing scopes, it cannot be said that they are in pari materia. It is obvious that the two pieces of legislation, referred to by the learned counsel, are of differing scopes, and, as such they cannot be said to be in pari materia. In the circumstances, I do not think that it is necessary to refer to and discuss the cases which were cited at the Bar on this point. This contention, therefore, must fail. The second ground is equally without substance. I have already held above while discussing the question of vires of Section 30A that Section 9 was in comprehensive terms and in view of the scheme and object of the Act, it was designed to be applicable to all leases in respect of all minerals, whether granted before the commencement of the Act or after. In my opinion, the grant can be either contractual or statutory. Indeed, the use of the words "or in any law in force at such commencement" in the non obstante clause of Section 9(1) is clearly suggestive of the fact that Section 9(1) includes in its ambit statutory leases as well. In fact, in the majority decision in the case of Bihar Mines Limited, referred to above, the statutory leases deemed to have come into existence u/s 10 of the Bihar Land Reforms Act were described as new leases granted after October 25, 1949. In my opinion, the legal fiction embodied in Section 10 of the Land Reforms Act must be given full effect and it must be presumed that when Section, 10 (1) says that the lease which was subsisting immediately before the date of vesting of the estate or tenure and was comprised therein, will be deemed to have been leased by the State Government to the holder of the said subsisting lease, it must be presumed that the State had granted a fresh lease with effect from the date of vesting. The words "leased by the State Government" in view of the legal fiction in Section 10 (1) must be read as granted by the State Government. Further it appears that the expression, "mining lease granted before the commencement of this Act" occurring in Section 9 also occurs in the proviso of Section 4(1) of the Act. Indeed, the present statutory leases are able to carry on mining operations only by reason of the aforesaid proviso, and, if the contention of the petitioners is accepted that the statutory leases were not covered by the expression "mining lease granted before the commencement of this Act", then they would stand forbidden by Section 4(1) to undertake or carry on any mining operation. It must, therefore, follow that the expression "mining lease granted before the commencement of this Act" covers the statutory leases which were by legal fiction granted by the State. It is accordingly, held that the construction sought to be placed on Section 9 by the petitioners is unwarranted and cannot be accepted.

20. The argument on behalf of the State of Bihar in regard to the true meaning and scope of Section 30A is that it no doubt imposes a temporary ban on the operation of Section 9(1), but it does so only in respect of mining leases granted before the 25th October 1949 in respect of coal and not in respect of the new statutory leases of the petitioners which must be deemed to have come into existence with effect from the date of the vesting under the Bihar Land Reforms Act. In my opinion, this argument takes an unduly restricted view of the ambit

and scope of Section 30A and overlooks not only the object and purpose for which Section 30A was inserted with retrospective effect, but also overlooks certain vital words used in that section and fails to give them their true meaning.

21. There can be no controversy after the decision of the Supreme Court In the Bihar Mines Limited case that in the cases covered by Section 10 (1) of the Bihar Land Reforms Act. all mining leases in respect of coal or other minerals which had been granted before the 25th October, 1949, and were subsisting immediately before the date of vesting of the estate or tenure in which they were comprised came to an end and in their place new statutory leases deemed to have been granted by the State in favour of the same lessees, came into existence. But that by no means implies that the new statutory leases had no relation to the mining leases which they replaced. Before proceeding further, Section 10 (1) of the Bihar Land Reforms Act, 1950 and Section 30A of the 1957 Act may be usefully set out;--

"10. Subsisting leases of mines and minerals-

(1) Notwithstanding anything contained in this Act, where immediately before the date of vesting of the estate or tenure there is a subsisting lease of mines or minerals comprised in the estate or tenure or any part thereof, the whole or that part of the estate or tenure comprised in such lease shall, with . effect from the date of vesting, be deemed to have been leased by the State Government to the holder of the said subsisting lease for the remainder of the term of that lease, and such holder shall be entitled to retain possession of the leasehold property."

"30A. Special provisions relating to mining leases for coal granted before 25th October, 1949.-

Notwithstanding anything contained In this Act, the provisions of Sub-section (1) of Section 9 and of Sub-section (1) of Section 16 shall not apply to or in relation to mining leases granted before the 25th day of October, 1949, in respect of coal, but the Central Government, if it is satisfied that it is expedient so to do, may, by notification in the official Gazette, direct that all or any of the said provisions (including any rules made under Sections 13 and 18) shall apply to or in relation to such leases subject to such exceptions and modifications, if any, as may be specified in that or in any subsequent notification"

It is apparent that Section 30A is in two parts, the first part bars the applicability of Sections 9(1) and 16(1) to or in relation to mining leases granted before the 25th of October, 1949, and the second part empowers the Central Government to lift that bar either wholly or to a limited extent. Under the first part of the Section, it is clear that the applicability of Section 9(1) is barred not only to but also in relation to mining leases granted before the 25th of October, 1949. There is no reason why the new statutory leases which had come into existence under the legal fiction incorporated in Section 10 (1) of the Bihar Land Reforms Act cannot be described as mining leases in relation to those mining leases whom it had replaced. In my opinion, therefore, the words "in relation to" in Section 30A

are words of great significance and it will be erroneous to ignore them as redundant. Section 10 (1) of the Bihar Land Reforms Act undoubtedly brought into existence new statutory leases in place of the leases which were subsisting immediately before the date of vesting of the estate or tenure, but the new statutory leases had to be for the remainder of the term of the subsisting lease and further had to be in favour of the very person who was holding the subsisting lease. Further, as laid down in Section 10 (2), the terms and conditions of the new statutory lease with the consequential changes or alterations had to be the same as the terms and conditions of the aforesaid subsisting lease. It is manifest, therefore, that on the very scheme of things envisaged u/s 10 of the Bihar Land Reforms Act, a relationship between the old contractual lease which had ceased to exist and the new statutory leases which had come into being was inherent and those statutory leases such as of the petitioners are, in my opinion, covered by the expression "in relation to mining leases granted before the 25th day of October, 1949". To put any other construction would lead to a very anomalous position. Leaving aside Section 16(1) from the present discussion because with that section we are not directly concerned in these cases, it is quite clear that so long as the Central Government does not by notification direct the application of the provisions of Section 9(1), either with or without modification, to mining leases granted before the 25th October, 1949 in respect of coal, the rate of royalty payable in respect of those mining leases will be as in the contract. If Section 30A was intended to achieve that result and give that protection to the holders of mining leases in respect of coal because of special position of coal, it would be startling if similar protection was not extended to the holders of statutory mining leases in respect of coal particularly when by reason of Section 10 (2) of the Bihar Land Reforms Act, the terms and conditions including the rate of royalty payable was the same in the statutory leases as was in the subsisting leases which they replaced. If the holders of mining leases in respect of coal whose leases had been granted before the 25th October, 1949, needed protection from the operation of Section 9 (1), I can see no reason why holders of statutory mining leases in respect of coal and having identical terms and conditions as in the contractual leases granted before the 25th Oct., 1949 should have been discriminated against and left without protection. I am, therefore, of the opinion that the legislature has advisedly used the expression "in relation to" as words qualifying the expression "mining lease granted before October 25, 1949". Upon this view of the matter, it must be held that Section 30A in terms provides that the provisions of Section 9(1) shall not apply to two categories of leases-- (i) mining leases granted before the 25th October, 1949 and (ii) mining leases in relation to leases granted before the 25th October, 1949. I am of the opinion that the statutory leases granted fall under the second category, and, therefore, the ban imposed u/s 30A was available to them as well.

22. It was, however, urged by the learned Advocate-General that the expression "in relation to" as used in Section 30A was an appropriate expression with

reference to Section 16 of the Act, because that Section contemplated making of Rules and taking of proceedings for modifying mining leases granted before the 25th October, 1949 so as to bring them into conformity with the provisions of the Act or with the rules made under Sections 13 and 18. In my opinion, there is no substance in this contention. Even if the expression "in relation to" as used in Section 30A were to be taken out as if it was not in the Section, yet upon the remaining words there would have been no difficulty in effecting a ban on the operation of Section 16(1) from being applied to mining leases granted before the 25th October, 1949. The words "in relation, to" are thus not referable to the provisions of Section 16(1). They are, in my opinion, words which enlarge the scope of Section 30A so as to include not only the mining leases which had been granted before the 25th October, 1949, but also mining leases in relation to them. The decision in *A. G. Saskatchewan v. A. G. of Canada* (1949) PC 1903 to which reference was made by the Advocate-General on this point is not at all helpful to him. In that case, the vires of the Farm Security Act, 1944 was in question. It was being contended that the impeached provision was ultra vires of the provincial legislature, in that its pith and substance was agriculture in the province. Reacting that contention it was held that the Farm Security Act, 1944 was not a legislation in relation to agriculture because it had nothing to do with agriculture. Surely it cannot be urged that the statutory leases which had come into existence u/s 10 (1) had nothing to do with the subsisting leases which had been replaced by them.

23. Referring to Sections 16 and 30A together, it was next urged that the matter was really in the nature of a proviso suspending temporarily the operation of the former and thus it could not operate on a field wider than the limits of the field on which Section 16 operated and, accordingly, if the field occupied by Section 16 was also measured by the expression "mining lease granted before the 25th day of October 1949", the field of Section 30A (Proviso) must also be confined to the area measured by the said expression. Putting the same matter in other words, it was contended that what was outside Section 16 cannot be within Section 30A. The implication of this argument was that as Section 16 in terms is confined - to mining lease granted before the 25th October, 1949, and on the decision of the Supreme Court, statutory leases were not mining leases granted before the 25th October, 1949, the latter class of leases being outside Section 16 could not be within Section 30A. This argument, in my opinion, overlooks the fact that Section 9(1) covers a wider field than Section 16 (1) and so long as the statutory leases can be said to be within Section 9(1), there is no difficulty in construing them as within Section 30A. The field of Section 16 may be confined to the mining leases granted before the 25th October, 1949, but as has been held already, the field covered by Section 9 (1) is comprehensive and includes all leases granted before the commencement of the Act whether granted before the 25th October, 1949 or between that date and the 1st June, 1958,-- the date on which the 1957 Act commenced. Accordingly, there is no difficulty in holding that the statutory leases were included u/s 30A by reason of the use of the words "in

relation to" in that Section so that when the operation of Section 9(1) was barred for the time being the bar was applicable to statutory leases as well.

24. On the decision of the Supreme Court in the case of Bihar Mines Limited, it is clear that the contractual leases in respect of minerals which had been granted by the out-going proprietors or the tenure-holders and which were subsisting immediately before the date of vesting had come to an end in view of Section 10 of the Reforms Act. If, therefore, Section 30A refers to those leases only as has been submitted on behalf of the State of Bihar and does not refer to or includes the statutory leases which had replaced those contractual leases, it must follow that the Section was referring to dead leases only. But in respect of dead leases no question of payment of royalty can arise and thus no question of protecting them for the time being from the operation of Section 9(1) was necessary or called for. In my opinion, courts should not place such a construction on a particular legislative enactment which renders it wholly redundant. In the circumstances, it will be reasonable to interpret the expression "mining leases granted before the 25th October, 1949" as meaning and implying mining leases "originally" granted before the 25th October, 1949. That interpretation would alone give effect and meaning to the first part of Section 30A even if the words "in relation to" were assumed as referable to Section 16 only. There is yet another point of view from which this question can be approached. Even if the contractual leases granted before the 25th October, 1949 had ceased to exist by virtue of Section 10 (1) of the Bihar Land Reforms Act and again assuming that the words "in relation to" as used in Section 30A were, as contended for by the Advocate-General, referable only to the provisions of Section 16(1), I fail to see why it was not open to the legislature to identify the beneficiary of the protection with reference to a particular date. If the legislature intended to protect holders of mining leases in respect of coal in the circumstances as were existing in the year 1956-57. in my opinion, it was open to it to identify the person or persons whom it wanted to protect with reference to a historical fact, namely, the fact that though they were holders of statutory lease in 1956, they could be still identified with reference to a particular date before which they had come into existence for the first time.

25. On the above discussion, it is clear that the words "in relation to" are ambiguous and are reasonably capable of more than one meaning. In such circumstances, as held by the Supreme Court in the case of The Commissioner of Income Tax, Madhya Pradesh and Bhopal Vs. Sodra Devi, . the rule in Hydon's case becomes applicable, and then the only sound rule of construction is to construe the provision in such a way as would suppress the mischief and advance the remedy. In the instant cases on the statement of objects and reasons appended to the Bill which was later enacted as the Mines and Minerals (Regulation and Development) Amendment Act. 1958 which inserted Section 30A into the 1957 Act with retrospective effect, it is clear that in view of the importance of the coal as a basic fuel and in view of its position in the country's economy, it has always been treated differently from other minerals. Reference

has already been made above to the 1956 Modification Rules made u/s 7 of the 1943 Act and later adopted u/s 16 of the 1957 Act. Even in those Modification Rules though other minerals were covered, coal was excluded with the result that the terms and conditions of mining leases in respect of coal remained unaffected. Section 90) of the 1957 Act automatically extended the rate of royalty prescribed in the Second Schedule to mining leases which had been granted before the 25th October, 1949, or which came to be granted u/s 10 (1) of the Bihar Land Reforms Act before the commencement of the 1957 Act, The following may be quoted from the statement of objects and reasons:--

".. ... It is considered that these changes will have numerous undesirable consequences The areas covered by these mining leases are principally in West Bengal and Bihar and they account for as much as 80 per cent, of the total coal production in the country. The royalties paid on this coal vary over a wide range but are generally much below the rate per ton prescribed in the Second Schedule. A sudden and uniform increase of these royalties is likely to have an unsettling effect on the industry and may retard the programme of coal production under the Second Five Year Plan... .."

The object of introducing Section 30A clearly thus was to prevent temporarily the application of Sections 9(1) and 16(1) to or in relation to mining leases granted before the 25th October, 1949, and, only such construction should be placed on the provisions of Section 30A which does not defeat the above object.

26. It follows from what has been discussed above that on a proper construction of Section 30A it must be held that the statutory mining leases in respect of coal which had come into existence u/s 10 (1) of the Bihar Land Reforms Act were also covered by its provisions and thus to them as well the applicability of Section 9(1) of the 1957 Act was barred until the Central Government had notified otherwise making the provisions of Section 9(1) applicable with or without modification. On this ground as well, it must be held that Nagendra Nath Mandal's case was wrongly decided and cannot be treated as good law.

27. The conclusions reached above may be summarised as under:--

- (i) Section 30A was not violative of Article 14 of the Constitution,
- (ii) Claim for royalty for the period prior to the coming into force of the 1957 Act was not justified or legal on the basis of Section 29 of the 1957 Act read with Rule 41 of the First Schedule to the Mineral Concession Rules, 1949;
- (iii) Section 9(1) was comprehensive in terms and included statutory mining leases deemed to have been granted by the State in favour of the petitioners u/s 10 (1) of the Bihar Land Reforms Act and
- (iv) On a proper construction of Section 30A, statutory mining leases deemed to have been granted by the State u/s 10 of the Bihar Land Reforms Act, 1950. were covered by the words "in relation to the mining leases granted before the 25th day of October, 1949 in respect of coal" and even otherwise those statutory

mining leases enjoyed the protection of Section 30A. and, therefore, the demand for royalty from the petitioners at the rate specified in the Second Schedule to the 1957 Act read with Section 9(1) of the said Act for any period prior to the 31st of December, 1965, except as under the relevant notification issued u/s 30A on the 28th December, 1961, was illegal and unwarranted. The view taken to the contrary in Nagen-dra Nath Mandal's case (C.W.J.C. No. 653 of 1966) disposed of on the 22nd December, 1967) was erroneous in law and must be set aside.

28. In view of the findings reached above, the question whether the State after having accepted the royalty as was payable from the petitioners could unilaterally revoke satisfaction need not be gone into. It may, however, be observed that if the demands made by the State as to royalty was warranted under law, the mere fact that the State had accepted royalty as had been paid could not have prevented the State from making fresh demand because there was no estoppel against the States.

29. The case of the petitioners that they have paid royalties as was payable under the law for the period from the date of vesting of the respective estates of the head-lessors till the 28th November, 1961 as per terms of the contract and from the 29th December, 1961 to the 30th December, 1965 as per terms of the notification issued on the 28th December, 1961 u/s 30A of the 1957 Act, was not challenged before us. On the findings reached above, therefore, it must be held that the demands made by the State for further payment of royalty from the petitioners for any period from the date of vesting of the estates under the Bihar Land Reforms Act until the 30th December, 1965. was unlawful and unwarranted.

30. In the result these applications succeed and are allowed with costs in terms of the prayers made in each one of them respectively. The demands for royalty made through letters or notices in each case, as may be, are hereby quashed, and the respondents are directed to forbear from taking any steps to realise the same. Hearing fees Rs. 5000/- payable to the petitioners equally.

31. Now as to C.W.J.C. No. 1146 of 1968. In this case the mineral involved is not coal but is copper and the petitioner has challenged the notice dated the 15th October, 1968, demanding a sum of Rs. 1,74,00,000/- and odd by way of royalty for the period 1951 to 1963. On the face of it, this demand is wholly illegal because on the admitted facts, there was no personal liability on the petitioner to pay any royalty for the period in question as up to 1964 he was a sublessee. It was pointed out on behalf of the petitioner that in a case between the parties (Jagdish Chandra Vs. Muhammad Bukhtiyar Shah and Others, this principle was accepted. Realising this position, learned Advocate-General for the State of Bihar stated that the demand notice dated the 15th October, 1968 will be withdrawn. That statement, however, does not prevent this Court from holding that the demand as made through the notice in question was wholly illegal and must, therefore, be quashed. This application, accordingly, succeeds, and, the demand notice dated the 15th October, 1968 is quashed. The respondents are directed to forbear from taking any steps to realise the said demand. In this application

there will however be no order as to costs.

G.N. Prasad, J.

32. I agree with my learned brother, A. B. N. Sinha, J. and have nothing to add.

K.B.N. Singh, J.

33. I agree.

Wasiuddin, J.

34. I agree.

Misra, C.J.

35. I agree with my learned brother A. B. N. Sinha, J. that these applications must be allowed. I hold different views on one or two matters which I should record. My learned brother has held that the contention of Mr. Choudhary that Article 31(A) of the Constitution stands as a bar to the challenge made by the State of Bihar to the validity of Section 30A of the 1957 Act is not acceptable. To me, however, it appears that the contention has substance. Article 31(A) in so far as it is relevant provides thus:

"Notwithstanding anything contained in Article 13, no law providing for-

* * * (e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement lease or licence.

* * * Shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31."

Article 19 in Clause (f) speaks of the right to acquire, hold and dispose of property, and any law which has the effect of curtailing this right by imposing any financial liability not consonant with this Article may be struck down as invalid. Article 31(A), however, has interposed an exception and where the extinguishment or modification of right relates to a mining lease, this cannot be challenged in view of this Constitutional Provision.

36. It has been urged by Mr. Choudhary that u/s 9 (1) of the 1957 Act the Government acquired the right to realise royalty at the rate mentioned in the second Schedule which would be five per cent, on the raisings of coal as well. This right has been conferred upon the State under this section. Section 30A, however, suspends the right and enjoins the payment of royalty at the contracted rate until the Central Government by a notification to that effect lays down the particular rate to be applicable in such cases. This is a clear case of modification of the right of the Government u/s 9(1) and I see no reason why Article 31(A) should not cover such a case. After all. the policy of the Parliament in inserting

this Article is to safeguard from challenge such disputes in regard to mining operations which may have to be governed by special legislation based on the Government's comprehensive superior knowledge of mines and minerals. If any right arising under an agreement, license or lease for the purpose of searching for or winning any mineral or mineral oil is modified or extinguished, this Article comes into play. It has been so held by the Supreme Court in *Gujarat Pottery Works Vs. B.P. Sood, Controller of Mining Leases for India and Others*, . It is urged on behalf of the respondent that the regulation in question relates only to the right of the licensee or lessee but not to the right of the State conferred under a statute. But I find it difficult to accept the distinction. In terms this Article does not refer to the right of the lessee etc., only but it is broad and general and includes the lessor as well. The Government now stands in the shoes of the lessor as in Bihar and West Bengal, under the Land Reforms Act or similar provision and acts as such in place of the original lessor. There is no authority cited before us to the contrary.

37. As to the *Bihar Mines Ltd. Vs. Union of India (UOI)*, it is obvious that it only decides the narrow point that the duration of the lease comprised in the estate which vests in the State of Bihar can u/s 10 of the Act not be modified as provided in Section 10 (1) of Bihar Land Reforms Act, which runs thus:--

"Notwithstanding anything contained in this Act, where immediately before the date of vesting of the estate or tenure there is a subsisting lease of mines or minerals comprised in the estate or tenure or any part thereof, the whole or that part of the estate or tenure comprised in such lease shall, with effect from the date of vesting, be deemed to have been leased by the State Government to the holder of the said subsisting lease for the remainder of the term of that lease, and such holder shall be entitled to retain possession of the lease hold property."

It is not a new lease in the sense that the contracting parties can agree to have any terms or conditions, but duration of old leases is not to be shortened and it was so held. Other terms and conditions were not taken into account which, according to Sub-section (2), must be the same but subject to any Central Act as is the 1957 Act of which Section 9(1) is relevant in the present context. Application of Section 30A to Section 9 (1) of 1957 Act is not affected by this decision.