
(1958) 03 PAT CK 0001

In the Patna High Court

Case No : Misc. Judicial Case No's. 475 to 480 of 1956 and 180 and 181 of 1957

Lala Karam Chand Thapar and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-03-1958

Acts Referred:

Coal Mines Regulations, 1926 — Regulation 48
Constitution of India, 1950 — Article 19, 19(1)
General Clauses Act, 1897 — Section 24
Mines Act, 1923 — Section 16, 16(1), 29, 31(4)
Mines Act, 1952 — Section 2(1), 76, 88

Citation : AIR 1958 Patna 378 : (1958) 6 BLJR 424

Hon'ble Judges : V. Ramaswami, C.J.; R.K. Choudhary, J

Bench : Division Bench

Advocate : P.R. Das, Romadeb Choudhary, Sushil Kumar Mazumdar and S.C. Banerji, for the Appellant; A.G., Government Advocate, Brajeshwar Prasad Sinha, Basudeva Prasad and Keshari Kishore Saran, for the Respondent

Judgement

V. Ramaswami, C.J.—In these applications, under Article 226 of the Constitution, a common question of law arises for determination, namely, whether the Indian Coal Mines Regulations of 1928, framed under, Section 29 of the Indian Mines Act (Act IV of 1923). survive after repeal of that Act u/s 88 of the Mines Act (Act XXXV of 1952).

2. In the Purulia Sadar Sub-division of Manbhum district there is a colliery known as Amlabad Colliery. The colliery was started in the year 1917 by the Eastern Coal Company Limited, under the managing agency of Mackinnon Mackenzie and Company. In January 1955 the ownership of the colliery passed into the hands of Bhowra--Kankanee Collieries Limited, which is a public limited company incorporated under the Indian Companies Act. On the 5th of February 1955, there was a serious accident in the Amlabad Colliery, as a result of which 52 persons were killed and one person was injured. Thereafter the Government of India appointed Mr. Justice Jamuar, a Judge of the Patna High Court, to hold an

inquiry u/s 24 of the Mines Act of 1952 (Act XXXV of 1952), by a notification No. S. R. 338, dated the 9th February, 1955. By the same notification two persons were appointed to act as assessors in holding the inquiry, namely, Sri A. P. Sinha M- P. arid Sri L. M. L. Shome, Chief Mining Etiigneer and Secretary oE the Coal Board. Later on Sri A. P. Sinha, M. P. submitted his resignation, and the Government of India appointed in his place Sri S N. Das, M. P., by a notification dated the 1st of March, 1955. After the completion of the inquiry, the Court of inquiry submitted a report dated the 26th of September, 1955, and in pursuance of Section 27 of the Mines Act, 1952, the Central Government published the report by notification no. S. R. O. 3688, dated the 7th December 1955, The finding of the Court of inquiry was that the accident was due to the negligence of the supervisory staff. On the 3rd of March, 1956, the Central Government acted under Regulation 48 ot the Indian Coal Mines Regulations of 1926 and directed that an inquiry should be made into the conduct of the Agent, Sri Jagat Ram Sharma, and the conduct of the Manager, Sri Kumud Ranjan Dutt. Later on opposite party no. 1 in Miscellaneous Judicial Case No. 180 of 1957, the Commissioner of Chota Nagpur Division, informed the Manager and the Agent that he was anpointed by the Central Government to hold an inquiry into their conduct under Regulation 48 of the Indian Coal Mines Regulations, 1926. In Miscellaneous Judicial Cases Nos. 180 and 181 of 1957 the Manager and the Agent, Sri Kumud Rajan Dutt and Sri Jagat Ram Sharma, respectively, have applied for grant of a writ under Article 226 of the Constitution, commanding opposite party No. 1, Commissioner of Chota Nagpur Division, not to hold the inquiry under Regulation 48 of the Coal Mines Regulations, 1926.

3. On the 23rd of May, 1956, a complaint was filed by the Regional Inspector of Mines at the instance of the Chief Inspector of Mines against Lala Karam Chand Thapar, Director of Bhowra-Kankanee Collieries Limited, Sri V. Mehta Director of Karam Chand Thapar & Brothers (Private) Limited, the Manager, Sri Kumud Ranjan Dutt, and the Agent, Sri Jagat Ram Sharma, for violation of Regulations 121, 122 (1), 122 (2), 70 (1) 70 (2), 70 (3) and other Regulations ot the Indian Coal Mines Regulations, 1926. On the same date the sub-divisional Magistrate of Purulia took cognizance of the case and summoned Lala Karam Chand Thaper, Sri Jagat Ram Sharma, Sri Kumud Ranjan Dutt and others, and the criminal case was numbered as C-163 of 1956.

4. On the 23rd of May, 1956, another complaint was filed by the Regional Inspector of Mines at the instance of the Chief Inspector of Mines against Seth H. P. Poddar, Director of Bhowra Kankanee Collieries Limited, the Manager, Sri Kumud Ranjan Dutt, the Agent, Sri Jagat Ram Sharma, and Sri V. Mehta, Director of Karani Chand Thapar & Brothers (Private) Limited, the Managing Agents and others. This criminal case was numbered as C-164 of 1950. Miscellaneous Judicial Cases Nos. 475, 476, 477, 478, 479 and 480 are directed against these criminal prosecutions and the petitioners in these cases pray that a writ under Article 226 of the Constitution should be granted for quashing the criminal proceedings pending against the petitioners in case Nos. C-163 and

C-164 of 1956 pending before the Sub-divisional Magistrate of Dhanbad.

5. The main question presented for determination in these cases is whether the Indian Coal Mines Regulations of 1926 (hereinafter to be called the Regulations), framed u/s 29 of the Indian Mines Act, 1923 (Act IV of 1923) hereinafter to be called the old Act, survive after repeal of that Act u/s 88 of the Mines Act of 1952 (hereinafter to be called the new Act). The argument of Mr. P. R. Das on behalf of the petitioners is that the Regulations were framed u/s 29 of the Old Act and were notified in the Official Gazette and u/s 31 (4) the Regulations have effect as if they were enacted in the Old Act. Section 29 of the old Act is in the following terms :--

"29. The Central Government may, by notification in the Official Gazette, make regulations consistent with this Act for all or any of the following purposes, namely :--

(a) for prescribing the qualifications to be required by a person for appointment as Chief Inspector or Inspector.

(b) for prescribing and regulating the duties and powers of the Chief Inspector and of Inspectors in regard to the inspection of mines under this Act;

(c) for prescribing the duties of owners, agents and managers of mines and of persons acting under them;

(d) for prescribing the qualifications of managers of mines and of persons acting under them;

(e) for regulating the manner of ascertaining, by examination or otherwise, the qualifications of managers of mines and persons acting under them, and the granting and renewal of certificates of competency;

(f) for fixing the fees, if any, to be paid in respect of such examinations and of the grant and renewal of such certificates;

(g) for determining the circumstances in which and the conditions subject to which it shall be lawful for more mines than one to be under a single manager, or for any mine or mines to be under a manager not having the prescribed qualifications ;

(h) for providing for the making of inquiries into charges of misconduct or incompetency on the part of managers of mines and persons acting under them and for the suspension and cancellation of certificates of competency ;

(i) for regulating, subject to the provisions of the Indian Explosives Act, 1884, and of any rules made thereunder, the storage and use of explosives ;

(j) for prohibiting, restricting or regulating the employment in mines or in any class of mines of women either below ground or on particular kinds of labour which are attended by danger to the life, safety or health of such women ;

(k) for providing for the safety of the persons-employed in a mine, their means of entrance there-into and exit therefrom, the number of shafts or outlets to be furnished, and the fencing of shafts, pits, outlets, pathways and subsidences ;

(kk) for prohibiting the employment in a mine either as manager or in any other specified capacity of any persons except persons paid by the owner of the mine and directly answerable to the owner or manager of the mine ;

(1) for providing for the safety of the roads and working places in mines, including the sitting and maintenance of pillars and the maintenance of sufficient barriers between mine and mine :

Section 31 of the old Act states :

"31. (1) The power to make regulations and rules conferred by Sections 29, 30 and 30A is subject to the condition of the regulations and rules being made after previous publication

(2) The date to be specified in accordance with Clause (3) of Section 23 of the General Clauses Act, 1897, as that after which a draft of regulations or rules proposed to be made will be taken under consideration, shall not be less than three months from the date on which the draft of the proposed regulations or rules is published for general information.

(3) Before the draft of any regulation is published under this section it shall be referred to every mining board constituted in British India, which is, in the opinion of the Governor-General in Council, concerned with subject dealt with by the regulation and the regulation shall not be so published until each such Board has had a reasonable opportunity of reporting as to the expediency of making the same and as to the suitability of its provisions.

(3A) No rule shall be made unless the draft thereof has been referred to every Mining Board constituted in the province for which it is proposed to make the rule, and unless each such Board has had a reasonable opportunity of reporting as to the expediency of making the same and as to the suitability of its provisions.

(4) Regulations and rules shall be published in the Official Gazette, and, on such publication, shall have effect as if enacted in this Act."

The new Act received the assent of the President on the 15th March 1952, and Section 88 of the new Act repeals the old Act without any saving clause. Mr. P. R. Das put forward the contention that the effect of the repeal of the old Act by Section 88 of the new Act is that the Regulations were also repealed along with the old Act as a result of Section 31 (4) of the old Act, which states that the Regulations on being published "shall have effect as if enacted in this Act." The opposite view-point was presented by the learned Government Advocate on behalf of the respondents. It was submitted that the Regulations survive the

repeal of the Old Act and reference was made in this connection to Section 24 of the General Clauses Act which is in following terms :

"24. Continuation of orders, etc., issued under enactments repealed and re-enacted.

Where any Central Act or Regulation, is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, form or bye-law, made or issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, form or bye-law, made or issued under the provisions so re-enacted and when any Central Act or Regulation, which, by a notification u/s 5 or 5A of the Scheduled Districts Act 1874, (XIV of 1874), or any like law, has been extended to any local area, as, by a subsequent notification, been withdrawn from and re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section."

To this Mr. P. R. Das replied that the effect of Section 31 (4) of the old Act is that the Regulations are to be treated by a process of legal fiction as a part of the old Act, and, therefore, the repeal of the old Act must involve as a necessary consequence a repeal of the Regulations. I shall hereinafter refer to the clause contained in Section 31 (4) of the Old Act as the "As if" clause. The argument of learned Counsel for the petitioners is that the legal effect of the "As if" clause is that the Regulations are to be treated for all purposes as a part of the old Act and, therefore, the repeal of the old Act by Section 88 of the new Act involves also repeal of the Regulations. In support of his argument Mr. P. U. Das referred to the judgment of the House of Lords in *Institute of Patent Agents v. Joseph Lockwood* 1894 A. C. 047 (A), where the interpretation of the "As if" clause was seriously considered. Learned Counsel for the petitioners referred in particular to the speech of Lord Chancellor Herschell in that case, who clearly states that the effect of the "As If" clause was to make "the subordinate legislation as completely exempt from judicial review as the statute itself." Counsel on behalf of the petitioners also referred to the following passage from the judgment of Lord Asquith in *East End Dwellings Co. Ltd. v. Finsbury Borough Council*, 1952 A. C. 109 at p. 132 (B).

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that

state of affairs."

Mr. P. R. Das also relied upon the decision of the Supreme Court in the *The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others*, as regards the interpretation of a similar clause in Section 15 (1) of the Bombay Building (Control on Erection) Act, 1948, and also a judgment of this Court in *Commissioner of Income Tax Vs. Maharaja Pratap Singh Bahadur*, .

6. In my opinion, the argument of Mr. P. R. Das is attractive but unsound and must be rejected. It is true that Section 31 (4) of the old Act creates a legal fiction and provides that the Regulations "shall be published in the official Gazette, and, on such publication, shall have effect as if enacted in this Act", But the legal fiction created by Section 31 (4) of the old Act cannot be given a universal application, but must be confined to its proper field. What are the limits up to which the statutory fiction can be extended ? It is manifest that the question turns upon the construction of the particular statute. If statute enacts that something shall be deemed to have been done, which in fact and truth was not done, you are entitled as a matter of construction to discover and ascertain for what purposes and between what persons the statutory fiction is to be applied. In other words, you must construe the statute and discover what is the object of the statute and what is the range within which the statutory fiction is to be applied. You must ascertain the purpose of the legal fiction, and that purpose sets the limit up to which you may extend the legal fiction. I think that the correct proposition is that the legal fiction may be extended only so far as it is necessary to effectuate the purposes of the statute and no further. This view is supported by a passage in the judgment of Lord Justice James, *In re Coal Economising Gas Co.* 1875 1 Ch. D. 182 at pp. 188-189 (E) and by the decision of the same learned Judge in *Ex parte Walton, In re Levy* 1881 17 Ch. D. 746 at p. 758 (F). The same principle has been expressed by Lord Blackburn in *Arthur Hill v. The East and West India Dock Co.* (1884) 9 A. C. 448 at p. 458 (G) as follows:

"That being so, the question which is really raised is, how are the words to be construed in the Act as it stands ? I think that it is a question of very considerable difficulty; but, in delivering my judgment, I am myself relieved from that difficulty, because the late Lord Justice James in (1881) 17 Ch. D. 746 at p. 756(F), expressed in better words than I could select (they have been read by the noble and learned Earl now on the woolsack) exactly what I conceive to be the ratio decidendi. I think the words here "shall be deemed to have been surrendered" (and a "similar observation of course applies to the other expression of the same kind shall be deemed to be determined") mean, shall be surrendered so far as is necessary to effectuate the purposes of the Act and no further; and I think that to give them the sense which the learned counsel for the appellant contend for would be to go far beyond the purposes of the Act, and to work a cruel hardship upon persons in the position of the present lessors the East and West India Dock Company, and on all persons who have a solvent

security for their rent (in this case for a period of twenty-one years), in consequence of there having been an assignment of the lease, as is pointed out by James L. J. in the case to which I have referred. If the assignee had died insolvent, leaving no assets, and consequently no one would have taken out administration, there would have been no doubt that the East and West India Dock Company could have had recourse against Mr. Hill to make him pay the rent so long as the lease continued. If the appellant's construction is a sound one, any Act which was passed for the purpose of relieving a trustee from the liability (whether he has or has not incurred it does not appear to me to be very material, but at all events he is entitled now to get rid of it) and for the purpose of relieving a bankrupt from the liability which he is under, would be enacted for no purpose at all that I can see if it is to relieve Mr. Hill from the liability which he has incurred, to the serious and great loss of the East and West India Dock Company who thus lose their security for no purpose or object whatever."

7. Keeping in view this principle it is necessary to examine what is the object of the statutory fiction created by Section 31 (4) of the old Act. A similar clause was the subject-matter of serious consideration by the House of Lords in 1894 A. C. 347 (A) to which reference was made by Mr. P. R. Das in the course of his argument. It was held by Lord Herschell in the course of his speech that the effect of the "As if" clause was to make "the subordinate legislation as completely exempt from judicial review as the statute itself." At page 359 of the report the Lord Chancellor has stated as follows :

"My Lords, I have asked in vain for any explanation of the meaning of those words or any suggestion as to the effect to be given to them if notwithstanding that provision, the rules are open to review and consideration by the Courts. The effect of an enactment is that it binds all subjects who are affected by it. They are bound to conform themselves to the provisions of the law so made. The effect of a statutory rule if validly made is precisely the same that every person must conform himself to its provisions, and, if in each case a penalty be imposed, any person who does not comply with the provisions whether of the enactment or the rule becomes equally subject to the penalty. But there is this difference between a rule and an enactment, that whereas apart from such provision as we are considering, you may canvass a rule and determine whether or not it was within the power of those who made it, you cannot canvass in that way the provisions of an Act of Parliament. Therefore, there is that difference between the rule and the statute. There is no difference if the rule is one within the statutory authority, but that very substantial difference, if it is open to consideration whether it be so or not. I own I feel very great difficulty in giving to this provision, that they shall be of the same effect as if they were contained in this Act," any other meaning than this, that you shall for all purposes of construction or obligation or otherwise treat them exactly as if they were in the Act".

8. In a subsequent case which came to the House of Lords in *Minister of Health v. The King* 1931 A. C. 494 (H), Lord Dunedin characterised the decision of the

Lord Chancellor in 1894 A. C. 347 (A), as touching the high water mark of untouch-ability or inviolability of a confirmed order and proceeded to modify to some extent the rigidity of that doctrine. At page 503 of the report Lord Dunedin states :

"What that comes to is this : The confirmation makes the scheme speak as if it was contained in an Act of Parliament" but the Act of Parliament in which it is contained is the Act which provides for the framing of the scheme, not a subsequent Act. If therefore, the scheme, as made, conflicts with the Act, it will have to give way to the Act. The mere confirmation will not save it. It would be otherwise if the scheme had been, per se, embodied in a subsequent Act, for then the maxim to be applied would have been "Posteriora derogant prioribus." But as it is, if one can find that the scheme is inconsistent with the provisions of the Act which authorises the scheme the scheme will be bad, and that only can be gone into by way of proceedings in certiorari".

The argument of Mr. P. R Das on behalf of the petitioners is that the doctrine laid down by the Lord Chancellor in 1894 A. C. 347 (A), has not been qualified in any way by the judgment of the House of Lords in 1931 A. C. 494 (H), I do not think that Mr. P. R. Das is right on this point. Lord Herschell's doctrine in Lockwood's case (A), has been criticised by constitutional lawyers and Sir C. K. Allen has stated in his book "Law and Orders" that Lord Herschell was mistaken both in his history and his interpretation of clause. At page 295 of his book, Sir C. K. Allen has stated as follows:

"Until comparatively recently, nobody had traced the origin of this controverted expression. In the principal case 1894 A. C. 347 (A), Lord Herschell, L. C., assumed that it was of recent origin. Sir William Graham Harrison has shown that it is, on the contrary, very ancient ; in one form or another it is as old as the Statute of the Staple of 1388 and it repeatedly occurs in enactments throughout the nineteenth century. What was its object ? Sir William, after exhaustive examination of the evidence, feels no doubt about the answer : "These words are merely a survival, a common form which may originally have served a useful purpose, but which, in view of the decision of the Courts, has long ceased to serve any purpose at all. There can be little doubt what Parliament was after when it gave the Crown power to settle the staple by Ordinances or to legislate by Proclamation the Ordinances or Proclamations were to be as effective as a statute would have been; the language used was perfectly unambiguous and perfectly apt to secure this object, was no doubt intended to emphasise the point that the authority for both Ordinances and Proclamations was derived from Parliament. Any suggestion that in either case Parliament was intending to provide that the validity of the Ordinances or Proclamations should not be canvassed in the Courts seems by its mere absurdity to answer itself".

9. It is not strictly necessary for me to express any opinion on the correctness of the doctrine laid down by Lord flerschell in 1894 A. C. 347 (A), or to decide whether the doctrine of Lord Herschell has been modified by Lord Dunedin in the

subsequent case, namely 1931 A. C. 494 (H). I shall proceed upon the footing for the purpose of this case that the judgment of Lord Herschell in Lockwood's case (A), with regard to the interpretation of the "As if" clause is correct. Even according to the judgment of Lord Herschell in Lockwood's case, (A), the object of the "As if" clause was to make subordinate legislation as completely exempt from judicial review as the statute itself. If that is the object of the "As if" clause contained in Section 31 (4) of the Old Act, it follows that the legal fiction must be extended only so far as it is necessary to effectuate that object and no further. It cannot be supposed that the object of the Legislature in enacting the "As if" clause was to make the Regulations subject to repeal at the same time as the Act would be repealed. I do not think that the question of repeal could have been in contemplation of the Legislature when enacting the permanent Act and it would be completely purposeless for the Legislature to say at the time of enacting the Permanent Act that the Regulations would also be repealed at the time of the subsequent repeal of the Act. It cannot be supposed that the Legislature had any such intention when it enacted the "As If" clause; on the contrary, the object of the "As If" clause was to protect the Regulations from judicial scrutiny and from challenging in any court of law that the Regulations are ultra vires. That is the object of the "As If" clause as was pointed out by Lord Herschell in 1894 A. C. 347 (A) and, therefore, the legal fiction created by Section 31 (4) of the old Act can be extended only to effectuate that purpose and cannot be extended any further. Mr. P. B. Das on behalf of the petitioners is, therefore, unable to make good his submission on this point. I reject his argument with regard to the legal effect of Section 31 (4) of the old Act.

10. I hold, therefore, that Section 24 of the General Clauses Act applies to these cases and the Regulations made under the old Act survive the repeal of the old Act by Section 88 of the new Act. In spite of the "As If" clause contained in Section 31 (4) of the old Act, the Regulations are still Regulations and they have not ceased to exist as Regulations, though they "shall have effect as if enacted under this Act." The language of Section 24 of the General Clauses Act clearly shows that it is intended to apply to all rules and Regulations, whether they are rules and Regulations simpliciter or whether they are rules and Regulations which "shall have effect as if enacted under this Act." It is manifest that the Regulations are in factual existence as Regulations, though for many purposes they are treated as if they are enacted in the statute. To put it differently, the Regulations have not lost their identity as Regulations and, therefore, Section 24 of the General Clauses Act would apply and it, therefore, follows that the Regulations would survive after repeal of the old Act by Section 88 of the new Act. I, therefore, reject the argument of Mr. P. R. Das on this point also.

11. So far I have dealt with the general argument addressed on behalf of the petitioners in all the eight applications. In Miscellaneous Judicial Cases Nos. 180 and 181 of 1957 an additional argument is addressed on behalf of the petitioners that Regulation 48 is unconstitutional as there is violation of the guarantee in Article 19(1)(g) of the Constitution. It is necessary at this stage to reproduce

Reg. 48 in full :

"48. Where it appears to the Central Government that any person holding a manager's certificate or a surveyor's certificate has been guilty of misconduct or incompetency in the discharge of his duties, or has been convicted of any offence made punishable by the Act with fine which may extend to Rs. 500 or more, or with Imprisonment, the Central Government may cause an inquiry into the conduct of such person to be made; and with respect to such enquiry the following provision shall have effect, namely :

(a) The enquiry shall be public, and shall be held at such place as the Central Government may appoint, and by such person or uneven number of persons as it may direct (hereinafter in this Regulation referred to as the Court), either alone or with the assistance of any assessor or assessors appointed by the Central Government, such assessors shall be practical mining engineers or persons with a knowledge of the practical working of mines. The functions of the assessors, shall be purely advisory and they shall not be regarded as members of the Court.

(b) The Central Government shall, before the commencement of the inquiry, furnish the person whose conduct is under inquiry with a statement of the case on which, the inquiry is instituted.

(c) The Central Government may appoint any person to undertake the management of the case.

(d) The person whose conduct is under inquiry may attend the inquiry, and may either conduct his case personally or be represented by any other person approved by the Court.

(e) If a majority of the persons constituting the Court thinks fit, the person whose conduct is under inquiry may be required to deliver up his certificate at any time before or during the inquiry, and such person shall be bound to comply with such requisition, unless he shows sufficient cause to the contrary.

(f) The Court shall, on the conclusion of the inquiry, send to the Central Government a report containing a full statement of the case together with its opinion thereon and such account of or extracts from the evidence as it may think fit, and if it considers that the certificate in question should be cancelled or suspended it shall add a recommendation to that effect. In the event of disagreement between the members composing any Court, the dissentient or dissentients from the opinion of the majority may forward a separate report to the Central Government with a statement of their recommendations.

(g) After considering the report or reports and the recommendations (if any) submitted under cl. (f) the Central Government may cancel or suspend the certificate, and, if it does so, the fact of such cancellation or suspension shall, if the certificate is produced be endorsed upon it and, if it is not produced or if at any time a duplicate has been granted under Reg. 44, be notified in the Gazette of India."

12. It was argued on behalf of the petitioners in Miscellaneous Judicial Cases Nos, 180 and 181 of 1957 that there is excessive delegation of power to the Central Government by virtue of Reg. 48 and an arbitrary power has been given to the Central Government to suspend or cancel a certificate. It was also argued that Reg. 48 did not make it incumbent upon the Central Government to accept report of the Court of inquiry and that it is open to the Central Government to act in an arbitrary fashion. The contention was, therefore, put forward that Reg. 48 is an unreasonable restriction on the freedom of profession guaranteed under Article 19(1)(g) of the Constitution. I am unable to accept this argument as correct. Standards have been laid down and principles have been fixed by the Legislature for the guidance of the rule-making authority. Section 29 enables the Central Government to make regulations consistent with the Act for "prescribing the duties of owners, agents and managers of mines and of persons acting under them." Section 29 (e) empowers the Central Government to make regulations for

"regulating the manner of ascertaining, by examination or otherwise, the qualifications of managers of mines and persons acting under them, and the granting and renewal of certificates of competency."

Section 29 (h) similarly empowers the Central Government to make regulations for

"providing for the making of inquiries into charges of misconduct or incompetency on the part of managers of mines and persons acting under them and for the suspension and cancellation of certificates of competency."

Regulation 48 provides that the Central Government may cause an inquiry to be made with respect to the conduct of any person holding a manager's certificate or a surveyor's certificate. Regulation 48 states that the inquiry shall be public and shall be at such a place as the Government may appoint, and by such person or uneven number of persons as it may direct (to be hereinafter referred to as the Court), either alone or with the assistance of any assessor or assessors. The Regulation further states that the assessors shall be practical mining engineers or persons with knowledge of the practical working of mines. The Regulation requires that the Central Government shall, before the commencement of the inquiry, furnish the person whose conduct is under inquiry with a statement of the case. The Regulation also states that the person whose conduct is under inquiry may attend the inquiry, and may either conduct his case personally or be represented by any other person approved by the Court. The Regulation also provided that the Court shall, on the conclusion of the inquiry, send to the Central Government a report containing a full statement of the case together with its opinion thereon and such account of or extracts from the evidence as it may think fit, and if it considers that the certificate in question should be cancelled or suspended it shall add a recommendation to that effect. Regulation 48 further provides that after considering the report and the recommendations of the Court of Inquiry the Central Government may cancel or suspend the certificate. It is clear from the Regulation that the Central Government is

required to apply its mind to the report of the Court of Inquiry and the recommendation made by that Court before taking action. With regard the argument addressed on behalf of the petitioners that the Regulation confers an unfettered or unguided power upon the Central Government in the matter of cancellation or suspension of a certificate, I reject the constitutional objection raised on behalf of the petitioners and hold that the provisions of Regulation 48 are constitutionally valid and there is no violation of the guarantee under Article 19(1)(g) of the Constitution.

13. In Miscellaneous Judicial Case No. 181 of 1957, in which the petitioner is Sri Jagat Ram Sharma, the argument was addressed that Regulation 48 does not apply to an inquiry into the case of an Agent who may be holding a Manager's certificate. It was pointed out on behalf of the petitioner that an Agent is distinct from a Manager and there is no provision in the Acts or Regulations requiring an Agent to hold a Manager's certificate and, therefore, Regulation 48 has no application to the case of an Agent. I think the argument is well founded. Section 3 (a) of old Act defines an Agent as

"any person appointed or acting as the representative of the owner in respect of the management of the mine or of any part thereof, and as such superior to a manager under this Act."

Section 16 of the old Act separately treats owners, agents and managers with regard to their duties and responsibilities. Section 16 (1) states as follows :

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

14. Section 29 (c) empowers the Central Government to make regulations for "prescribing the duties of owners, agents and managers of mines and of persons acting under them."

15. Section 29 (h) is important in this connection. Section 20 (h) empowers the Central Government to make regulations for

"Providing for the making of inquiries into charges of misconduct or incompetency on the part of managers of mines and persons acting under them and for the suspension and cancellation of certificates of competency."

The material portion of Regulation 48 is as follows:

"48. Where it appears to the Central Government that any person holding a manager's certificate or a surveyor's certificate has been guilty of misconduct or incompetency in the discharge of his duties, or has been convicted of any offence made punishable by the Act with fine which may extend to Rs. 500 or more, or with imprisonment, the Central Government may cause an inquiry into the conduct of such person to be made, and with respect to such enquiry the

following provisions shall have effect, namely :

* * * * *

If the language of Regulation 48 is examined in the context of Section 29 (h) of the Old Act and other relevant statutory provisions contained in Section 16 (1) and Section 29 (c) of the Old Act, it is manifest that Regulation 48 cannot apply to the case of an Agent and the Central Government has no power to order an inquiry under Regulation 45 into the conduct of an Agent who may happen to hold a Manager's certificate. For these reasons I hold that Miscellaneous Judicial Case No. 181 of 1957 preferred by the Agent, Sri Tagat Ram Sharma, should be allowed and a writ in the nature of mandamus should be issued commanding Opposite Party No. 1 in that case, namely, the Commissioner of Chota Nagpur Division, not to proceed with the inquiry under Regulation 48 so far as the Agent, Sri Jagat Ram Sharma, is concerned. I would accordingly allow Miscellaneous Judicial Case No. 181 of 1957 with costs. Hearing fee Rs. 250.

16. With regard to Miscellaneous Judicial Case No. 180 of 1957, I hold, for the reasons already given, that there is no case made out for grant of a writ, and the application must be dismissed with costs. Hearing fee Rs. 250.

17. I proceed next to deal with Miscellaneous Judicial Cases Nos. 479 and 480 of 1956, in which the petitioners are Sri H. D. Varma and Sri V. Mehta, who are the Directors of Karam Chand Thapar and Brothers (Private) Limited, Managing Agents of the Amlabad Colliery. On behalf of the petitioners in these two cases it was contended that the Managing Agents are not "owners" within the meaning of Section 2 (1) of the new Act. Section 2 (1) of the new Act defines "owners" to mean

"any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof and in the case of a mine the business whereof is being carried on by a liquidator or receiver, such liquidator or receiver; but does not include a person who merely receives a royalty, rent or fine from the mine, or is merely the proprietor of the mine, subject to any lease, grant or a licence for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mine; but any contractor for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from any liability".

It is the admitted position that the Managing Agents are not proprietors or lessees of the mine, but it was argued on behalf of the respondents that the Managing Agents should be treated as occupiers of the mine within the meaning of Section 2 (1) of the new Act. I do not think that this argument is right. It is the admitted position that the owner of the colliery is a public limited company called Bhowra Kankanee Collieries Limited and it has also a separate Agent and Manager appointed for the Amlabad Colliery under provisions of the Mines Act. In these circumstances I do not consider that the Managing Agents namely, Karam Chand Thapar and Brothers (Private) Limited, should be treated as occupiers and

so come within the definition of owners" within the meaning of Section 2 (1) of the Act. This view is supported by the view of the Calcutta High Court in *N.N. Bose Vs. Manager, Kedar Nath Jute Manufacturing Co. Ltd.*, in which certain premises were owned and possessed by a Company and it was held by a Division Bench of the Calcutta High Court that the Managing Director of the Managing Agents cannot be said to be the owner or to be in occupation of the premises. I therefore, hold that the petitioners in these two cases, namely Sri H. D. Varmat and Sri V. Mehta, cannot be held to be owners within the meaning of Section 2 (1) of the Act. It is equally clear that they cannot be prosecuted as Agents within the meaning of S- 2 (c) of the new Act, which states that an "agent", when used in relation to a mine, means

"any person, whether appointed as such or not, who acts as the representative of the owner in respect of the management of the mine or of any part thereof, and as such superior to a Manager under this Act".

The reason is that the schedules of Form II at page 53 of the Regulations makes a provision for four distinct classes of person; (1) Owner, (2) Managing Agents, (3) Agent (as defined in Section 3 (a) of the Indian Mines Act), (4) Manager. The form thus contemplates four distinct categories of persons, but Ss. 75, 76 and 77 of the new Act only refer to three categories, namely, (1) Owner, (2) Agent, and (3) Manager. The class "Managing Agents" appears to have been deliberately omitted from Ss. 75, 76 and 77 and it is, therefore, not possible to fasten the liability under these sections upon the Managing Agents with regard to an offence committed under the Act. For these reasons I hold that the criminal proceedings pending against Sri H. D. Varma and Sri V. Mehta in Cases Nos. C-163 and C 164 of 1956 should be quashed so far as Sri H. D. Varma and Sri V. Mehta are concerned. I would accordingly allow Miscellaneous Judicial Cases Nos. 479 and 480 of 1956 and issue a writ in the nature of prohibition under Article 226 of the Constitution, restraining the respondents from proceeding against the two petitioners, Sri H. D. Varma and Sri V. Mehta, in Criminal Cases Nos. C-153 and C-164 of 1956. These applications are accordingly allowed with costs. Hearing fee Rs. 250 in each case.

18. Miscellaneous Judicial Cases Nos. 477 and 478 of 1956 are preferred by the Manager, Sri Kumud Ranjan Dutt, and the Agent, Sri Jagat Ram Sharma, Against their criminal prosecution in Criminal Cases Nos. 163 and 164 of 1956 pending before the Sub-divisional Magistrate of Dhanbad. Apart from the general argument with regard to the survival of the Regulations after repeal of the old Act no special argument has been addressed in these two applications. I have already rejected the general argument and, for the reasons I have given, I hold that there is no merit in these two applications and I would reject Miscellaneous Judicial Cases Nos. 477 and 478 of 1956 with costs. Hearing fee Rs. 250 in each case.

19. I next turn to Miscellaneous Judicial Cases Nos. 475 and 476 of 1956, preferred on behalf of Lala Karam Chand Thapar and Seth H. P. Poddar, who are

Directors of Bhowra Kankanee Collieries Limited. It was argued on behalf of the petitioners that u/s 76 of the new Act only one of the Directors may be prosecuted and not all the Directors. Section 76 of the new Act is in the following terms :--

"76. "Determination of owner in certain cases" : Where the owner of a mine is a firm or other association of individuals, any one of the partners or members thereof or where the owner of a mine is a public company, any one of the directors thereof, or where the owner of a mine is a private company any one of the share-holders thereof, may be prosecuted and punished under this Act for any offence for which the owner of a mine is punishable;

Provided that where a firm, association or company has given notice in writing to the Chief Inspector that it has nominated,--

(a) in the case of a firm, any of its partners,

(b) in the case of an association, any of its members,

(c) in the case of a public company, any of its directors or

(d) in the case of a private company, any of its shareholders who is resident in each case in any place to which this Act extends to assume responsibilities of the owner of the mine for the purposes of this Act, such partner, member, director or shareholder, as the case may be, shall, so long as he continues to so reside, be deemed to be the owner of the mine for the purposes of this Act, unless notice in writing cancelling his nomination or stating that he has ceased to be a partner, member, director or shareholder, as the case may be, is received by the Chief Inspector."

It is the admitted position in this case that the proviso to Section 76 has no application, because the Company has not nominated any of its Directors to assume the responsibilities of the owner of the mine for the purposes of the Act. The question, therefore, is whether under the main clause of Section 76 a prosecution may be instituted against more than one Director of a Public Company who are the owners of the Colliery in question. The argument on behalf of the petitioners is that under the terms of Section 76 only one of the Directors may be prosecuted and not all the Directors. On the contrary, the contention of the respondents is that all the Directors are liable to be prosecuted u/s 76 if the Company has not nominated any one of its Directors for taking the responsibilities of the owner for the purposes of the Act. I do not think that the contention of the respondents is right. Section 3 (1) defines the "owners" of a mine as "any person who is the immediate proprietor or lessee or occupier of the mine . . .". Section 18 (1) enacts that :

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

Section 18 (2) states as follows :

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

Provided that the owner or agent shall not be deemed if he proves : (a) that he was not in the habit of taking, and did not in respect of the matter, in question take, any part in the management of the mine ; and

(b) that he had made all the financial and other provisions necessary enable the manager to carry out his duties and

(c) that the offence was committed without his knowledge, consent or connivance."

Section 75 deals with prosecution of owner, agent or manager and is in the following terms :

"75. Prosecution of owner, agent or manager : No prosecution shall be instituted against any owner, agent or manager for any offence under this Act except at the instance of the Chief Inspector or of the District Magistrate or of an Inspector authorised in this behalf by general or special order in writing by the Chief Inspector ;

Provided that in respect of an offence-committed in the course of the technical direction and management of a mine, the District Magistrate shall not institute any prosecution against an owner, agent or manager without the previous approval of the Chief Inspector."

20. Section 76 thereafter provides, that if the owner of the mine is a public company, "any one of the directors" thereof may be prosecuted and punished under the Act for any offence for which the owner of the mine is punishable. The phrase used in Section 76 is "any one of the directors" and not "everyone of the Directors." The proposition is well settled that under the Company Law the assets of the Company belong to the Company and not to the shareholders or Directors, and the latter have no legal or equitable interest in the assets owned by the Company Section 76 therefore, imposed an artificial criminal liability upon the Directors of a public Company when it states that any of the Directors may be treated by a process of legal fiction as the owner of the mine for the purpose of being prosecuted under the Act. I do not see why Section 76 should be widely construed so as to rope in all the Directors of the Company, as contended for on behalf of the respondents. If Parliament had intended that all the Directors should be prosecuted, we should expect different language to have been used in Section 76 of the Mines Act. Such intention is expressed by Parliament, for example, in Section 15 (2) of the Atomic Energy Act, 1948 (Act 29 of 1948), and Section 15 of the Official Secrets Act (Act 19 of 1923), where the

expressions "every director" and "every person who is a director" are used. Section 15 (2) of Act 29 of 1948 states :

"15 (2) Where any offence under this Act has been committed a body corporate, every person who, at the time of the commission of the offence was a director, general manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, shall be deemed to be guilty of that offence, unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances."

21. Section 15 of the Official Secrets Act, 1923 (Act 19 of 1923) reads as follows :

"15. Where the person guilty of an offence under this Act is a company or corporation, every director and officer of the company or corporation with whose knowledge and consent the offence was committed shall be guilty of the like offence."

A similar formula has been (used in Section 8 (5) of the English Official Secrets Act 1920, which states :

"Where the person guilty of an offence is a company or corporation, every director and officer of the company or corporation shall be guilty of the like offence unless he proves that the act or omission constituting the offence took place without his knowledge or consent."

This formula appears in Section 14 of the Drugs (Control) Act 1950 (Act 26 of 1950), which states :

"14. Where a person committing an offence punishable under this Act is a company or an association or a body of persons, whether incorporated or not, every director, manager, secretary, agent or other officer or person concerned with the management thereof, shall, unless he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent its commission, be deemed to be guilty of such offence."

22. It is manifest that the language of Section 76 of the Mines Act is different and my conclusion is that prosecution can be initiated u/s 76 only against one of the Directors of the mining Company and not against the whole body of the Directors. I accept the argument of the petitioners on this point and hold that the prosecution of more than one Director in criminal cases Nos. C-163 and C-164 , is illegal. I think that a direction under Article 226 of the Constitution should be issued requiring respondents Nos. 2 and 3 to choose one of the Directors of the Company for being prosecuted against and to remove the name of the other Directors from the category of accused persons in Criminal cases Nos. C-163 and C-164 pending before the Subdivisional Magistrate of Dhanbad. I would accordingly allow Miscellaneous Judicial Cases Nos. 475 and 476 of 1956 to this

extent. There will be no order as to costs in these two cases.

Choudhary, J.

23. I agree.