
(1983) 03 KL CK 0015
In the High Court Of Kerala
Case No : O.P. No. 1817 of 1981

Mrs. Elizabeth Samuel Aaron

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 23-03-1983

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 114
Industries (Development and Regulation) Act, 1951 — Section 2, 20
Kerala Relief Undertakings (Special Provisions) Act, 1961 — Section 3(1), 3(2)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 2

Citation : AIR 1983 Ker 225

Hon'ble Judges : V. Sivaraman Nair, J;V. Khalid, J

Bench : Division Bench

Advocate : M.I. Joseph, for the Appellant; P.K. Kurian, M. Rajasekharan Nair and M.M. Cherian, for the Respondent

Final Decision : Dismissed

Judgement

Sivaraman Nair, J.—This Original Petition is filed by the first petitioner Mrs. Elizabeth Samuel Aaron, who is alleged to be one of the major shareholders of the Super Clays and Minerals Mining Company Private Ltd (hereinafter referred to as the Company), which is a company registered under the Indian Companies Act. She challenges Exts. P8 to P11, orders passed by the Government of Kerala under the Kerala Relief Undertakings (Special Provisions) Act, 1961 (Act 6 of 1962) (hereinafter referred to as the Relief Undertakings Act). She also challenges the constitutional validity of Section 3(1) of the Kerala Relief Undertakings Act. She has also sought to represent the Company which is mentioned as the second petitioner; but this claim seems hardly sustainable in view of the averments contained in the counter-affidavit of the second respondent that the Board of Directors of the Company does not support this move.

2. The facts relating to the controversy are the following : The Super Clays and

Minerals Mining Company (P.) Ltd., was registered with a share capital of Rupees 5,00,000/- divided into 5000 equity shares of Rs. 100/- each, the main object of the company is to mine crude china clay, purify and supply the same to various industries for manufacture of fire bricks, refractors, furnace lining bricks, chinaware, pottery etc. Sri Samuel Aaron, who was the husband of the first petitioner, was the first Managing Director of the Company. Sri Samuel Aaron was the sole proprietor of M/s. Hindustan China Clay Works; and the Company purchased from Sri Samuel Aaron the Hindustan China Clay Works on 2-1-1973- Sri Samuel Aaron died on 25-9-1975. At the time of his death, the first petitioner had 285 shares and Sri Samuel Aaron had 180 shares. Sri Samuel Aaron in his Will bequeathed all his assets and liabilities in the Company to the first petitioner and appointed her as the executrix. The first petitioner had to her credit 565 shares worth Rupees 56,500/- out of the paid-up share capital of Rs. 90,200/-. She is said to be the major shareholder in the Company.

3. The Company commenced business in 1973 and could make a profit of Rs. 27,208/- in the first year of operation. During the two succeeding years, the Company lost Rs. 3,20,167/- and Rs. 5,49,934/- respectively, and could not conduct its operations any longer. The employees, over 600 in number, had to be laid off; and their compensation also could not be paid. At the time of lay off, the Company was indebted to the State Bank of India, Cannanore, to the tune of Rs. 6,00,000/- with interest and also to the Kerala Financial Corporation to the extent of Rs. 2,87,484.52. In addition to these, there was another amount of Rs. 5,58,157/- as contingent liability, including salary, wages, compensation etc. due to the staff. The Company had excess liability over its assets amounting to over Rs. 14 lakhs as on 31-12-1975. It was at that time, at the third Annual General Meeting of the Company held on 22-11-1975, that it was resolved to request the Kerala State Government to take over the Company and restart production. The request was made only to prevent the continued unemployment and to avoid complete deterioration of the assets. A copy of the resolution is produced as Ext. R1 along with the counter-affidavit filed by the second respondent, the Kerala State Industrial Enterprises Ltd. It is alleged by the petitioners, that on a consideration of Ext. R1 resolution, the Government issued a notification Ext. P1 u/s 3 (1) of the Kerala Relief Undertaking Act, for the purpose of preventing unemployment and as unemployment relief. It is further alleged that this notification was followed by Ext. P2 notification issued in exercise of the powers under Rules 3 and 6 of the Relief Undertakings Rules to the effect that the second respondent shall be the agency to manage the Company as a relief undertaking. Similar orders for subsequent periods were issued by the Government: and the latest of these notifications are Exts. P8 to P11. At the meeting of the Board of Directors held on 3-4-1976 more than a month after the issue of Ext. P1 notification. Ext. R2 resolution was passed, handing over the Company to the Government, and the Government was requested to resume work early. The three Directors of the Board of Directors of the Company submitted their resignations so as to enable the second respondent to

reconstitute the Board of Directors of the Company. Exhibits P3 and P4 (same as Exts. R3 and R4) are the letters sent by two of the Directors of the Company, M/s. K. W. Arangaden and K.M. Soman. The letter sent by the first petitioner Mrs. Samuel Aaron resigning from the office of the Managing Director for the same purpose has been produced by the second respondent as Ext. R-5. It was expressly mentioned that the resignation was being made With a view to assist the second respondent, to give financial assistance, to re-constitute the Board and nominate a Managing Director. In the meeting of the Board held three months after Ex1. P-1. Ext. R-6 resolution was passed, deciding to accept the resignations of the Directors Sri Soman and Sri Arangadan. A new Board including Mrs. Aaron was nominated and the Chairman and Managing Director of the second respondent-Company Sri S. Peer Mohammed was elected and appointed as the Managing Director of the Company. Various arrangements were made in relation to the management of the Company by resolutions, and to all these resolutions, the first petitioner was a signatory. The petitioner was also actively associating herself with the affairs of the Company, which was taken over on request and was being administered on the basis of Exhibit R-6 resolution, to which also she was a willing party. Exts. R 7, R-8, R-9 and R-10 are copies of the resolutions of the Board of Directors of the Company in its meetings held on 21st Sept., 1976. (Ext. R-7), 26-10-1977 (Ext. R-8). 20th July, 1979. (Ext R-9) and 29th Feb. 1980. Some of these resolutions relate to the terms of the take over of the Company by the Government and the petitioner's request to release her personal properties from obligations. It appears from them that action in this regard is in progress. It seems that the Government is dragging its feet in finalising the take over in view of the extension of the aggregate period of the declaration u/s 3 of the Relief Undertakings Act from 5 years to 10 years. The term of the declaration was being periodically extended. Ext. P-8 extended it for one year from 2-3-1981 and Ext. P-11 for one more year from 2-3-1982.

4. The petitioner submits that though the Company, after the second respondent was entrusted with its management, lost an amount of Rs. 75,093.80, if has been making profits thereafter, the net profit per year bring Rs. 12,541.97 (1977). Rs. 57,173.32 (1078) and Rs. 66,133.01 (1979). It is submitted that since the Company is out of the woods now, there is no need to continue it as a relief undertaking: and it can be or rather should be returned to normal working and management by a Board of Directors duly elected by the members of the Company.

5. Counsel for the petitioner raised various contentions in support of this plea for return of the Company to its normal management including lack of legislative competence in the State Legislature to enact the Relief Undertakings Act, particularly Section 3 (1) thereof.

6. It is necessary to refer to Entry 52 List I of the VIIth Schedule of the Constitution of India, the Industries (Development and Regulation) Act, 65 of 1951, the provisions of the Relief Undertakings Act and the Rules made

thereunder for a proper understanding of these submissions.

"Entry 52 : Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest."

We were also referred to Sections 2 and 20 of the Industries (Development and Regulation) Act, 1951, (65 of 1951). The relevant provisions of that enactment are the following : --

"Section 2 : It is hereby declared that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule."

Section 20, to which specific reference was made, is in the following terms :

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

The next provision to which reference was made was the First Schedule itself, which begins with the following recitals :

"Any industry engaged in the manufacture or production of any of the articles mentioned under each of the following headings or sub-headings, namely."

Reference is thereafter made to Entry 34 "ceramics", in the Schedule which is in the following terms:

"34. Ceramics :

- (1) Fire bricks.
- (2) Refractories,
- (3) Furnace lining bricks-acidic, basic and neutral.
- (4) Chinaware and pottery.
- (5) Sanitary ware.
- (6) Insulators. "
- (7) Tiles."

Section 3 of the Relief Undertakings Act provides for declaration of an industrial undertaking as relief undertaking and is in the-following terms:

"(1) If at any time, it appears to the Government necessary to do so, the Government may, by notification in the Gazette, declare that an industrial undertaking specified in the notification, whether started, acquired or otherwise taken over by the Government, and carried on or proposed to be carried on by themselves or under their authority or to which any loan, guarantee or other

financial assistance has been provided by the Government, shall, with effect from the date specified for the purpose in the notification, be conducted to serve as a measure of preventing unemployment or of unemployment relief and the undertaking shall accordingly be deemed to be a relief undertaking for purposes of this Act.

(2) A notification under Sub-section (1) shall have effect for such period not exceeding two years as may be specified in the notification; but it shall be renewable by like notifications from time to time for further periods not exceeding twelve months at a time, so however that all the periods in the aggregate do not exceed five years." It is admitted that the aggregate period of five years provided for in Sub-section (2) has been extended to a period of ten years by subsequent amendment.

7. Section 4 deals with the power to prescribe industrial relations and other facilities temporarily for relief undertakings and provides:

"Notwithstanding any law, usage, custom, contract, instrument, decree, order award, submission, settlement, standing order or other provision whatsoever, the Government may, by notification in the Gazette, direct that--

(a) in relation to any relief undertaking and in respect of the period for which the relief undertaking continues as such under Sub-section (2) of Section 3--

(i) all the provisions of the laws specified in the Schedule to this Act, which involve any financial commitment or expenditure shall not apply (and such relief undertaking shall be exempt therefrom), or all or any of such provisions shall, if so directed by the Government, be applied with such modifications (which do not however affect the policy of the said laws) as may be specified in the notification;

(ii) all or any of the agreements, settlements, or awards made under any of the laws specified in the Schedule to this Act, which may be applicable to the undertaking immediately before it was acquired Or taken over by the Government or before any loan, guarantee, or other financial assistance was provided to it by or with the approval of the Government of or being run as a relief undertaking, shall be suspended in operation, or shall, if so directed by the Government, be applied with such notifications as may be specified in the notification;

(b) during the period in which the relief undertaking continues as such under Sub-section (2) of Section 3 any liability or obligation of the undertaking accrued or incurred before the undertaking was declared a relief undertaking and any remedy for the enforcement thereof, shall be suspended and all proceedings relative thereto pending before any Court, Tribunal, Officer or authority shall be stayed;

(c) the right, privilege, obligation or liability referred to in Clause (b) shall, on the notification ceasing to have force, revive and be enforceable and proceedings referred to therein shall be continued:

Provided that in computing the period of limitation for the enforcement of such right, privilege, obligation or liability, the period during which it was suspended under Clause (b) shall be excluded notwithstanding anything contained in any law for the time being in force."

Section 7 confers power to make rules, and Sub-section (2) (b) provides the manner in which the relief undertaking should be run on behalf of the Government. Rules have been framed under the Act and Rule 3 provides :

"Government shall have the power to determine the pattern and agency of management in respect of industries declared as relief undertakings from time to time under the Act."

8. The contentions advanced by counsel for the petitioner are:

(a) in so far as the company is an undertaking engaged in ceramics industry, which is an industry included in the First Schedule as Item 34 of the Industries (Development and Regulation) Act, Section 2 of which contains the declaration in terms of Entry 52 of List 1 of the Seventh Schedule to the Constitution of India, the State had no power to legislate on and the State Government had no power or control over the ceramics industry, and hence the Relief Undertakings Act shall not apply to the company.

(b) in any case, in view of Section 20 of the Industries (Development and Regulation) Act, 1951, the State Government has no power to take over the management or control of an industrial undertaking engaged in an industry included in the Schedule.

(c) A notification u/s 3 (1) of the Relief Undertakings Act can be issued only in respect of specified type of industrial undertakings answering any of the requirements of that section and that too subject to manifestation of advertence to the statutory preconditions, namely Government's satisfaction that it is necessary to conduct the undertaking as a relief undertaking or as unemployment relief. It is submitted that those requirements are obligatory, not only at the time of issue of the first notification, but also at the time of every extension; and absence of such requirements vitiates Exhibits P-8 and P-11 notifications. They are, therefore, said to be unwarranted and amount to arbitrary action.

(d) The power of the Government to issue or renew the notification u/s 3 of the Relief Undertakings Act being quasi-judicial, an opportunity should have been given to the petitioner before extending the notification affecting the petitioner's right of management of the company of which she holds the majority of shares.

9. The question of legislative competence and the validity of the enactment were considered by a Division Bench of this Court in a decision reported in 1981ker LR 2443. It was held therein following a decision of the Calcutta High Court reported in Pushraj Puranmull and Another Vs. N. Roy and Others, that it was competent for the State Legislature to enact the Relief Undertakings Act, under Entry 23 of

the concurrent list in the seventh Schedule. In view of this decision, it was submitted by Mr. Joseph, counsel for the petitioner, that he does not seem to be entitled to raise the question of legislative competence over again. It was submitted that the enactment can be related to the power available to the State under Entry 23 of the concurrent list relating to employment and unemployment. He therefore did not pursue his point relating to legislative competence and naturally confined his submissions to a very limited area.

10. Counsel for the petitioner submitted that by reason of the interdict contained in Section 20 of the Act 65 of 1951, it was not competent for the State Government to issue any notification taking over the management or control of any industrial undertaking included in the First Schedule under any law for the time being in force, which authorises any such Government or local authority so to do. In support of his proposition, he referred to the following decisions reported in *Harakchand Ratanchand Bantia and Others Vs. Union of India (UOI) and Others*, , *Gwalior Rayons v. State of Kerala* 1978 Ker LT 552 : AIR 1979 Ker 561 and *Ishwari Khetan Sugar Mills (P) Ltd. and Others Vs. State of Uttar Pradesh and Others*, He also referred us to the decision reported in *Bajinath Kadio Vs. State of Bihar and Others*, .

11. This argument is sought to be met by the Additional Advocate General appearing for the State and Shri K. A. Nayar appearing for the second respondent as follows: The company, with which we are concerned, is not an industrial undertaking engaged in ceramics industry. It is only an undertaking engaged in mining crude clay, that the relevant legislative entry is not 52 but 54 of List I, and the statute which applies is not the Industries (Development and Regulation) Act, 1951, but the Mines and Minerals (Regulation and Development) Act, 1957 (67 of 1957). It was submitted that a provision similar to Section 20 of the Industries (Development and Regulation) Act is not available in the Mines and Minerals (Regulation and Development) Act, 67 of 1957, and therefore, there is no prohibition in the State Government issuing the notification relating to the taking over the management and control of a mining unit. It was then submitted that even assuming it applies, what is prohibited u/s 20 of Act 65 of 1951 is the taking over the management or control of any industrial undertaking and not a declaration that an undertaking is a relief undertaking. The Relief Undertakings Act is an enactment referable to entry 23 of the concurrent list, (List III) of the Seventh Schedule, viz., employment and unemployment and the notification u/s 3 not being one taking over the management or control of any industrial undertaking, nor the enactment itself one in relation to such take over or control. Section 20 of Act 65 of 1951 is not attracted to the facts of this case. Lastly it was submitted that the petitioner, who in her capacity as Managing Director of the Company had requested the Government to take over the Company as is evident from the petition itself, and, who even after Ext. P-1 and for the entire period during which the second respondent was in management of the Company, was participating in all the proceedings of the Board of Directors of the Company, is not entitled to challenge Ext. P-1 or its continuance by the various notifications

including Exts. P-8 to P-11.

12. The question for consideration therefore naturally is as to whether the contention that the Company is engaged in ceramics industry is correct or not. In case if the petitioner is correct, it follows that Section 20 imposes as a complete prohibition against taking over the management or control of the industry. In that case, it is further submitted that it is not necessary to consider the question of legislative competence of the State Legislature, or the effect of the Parliamentary declaration contained in Section 3 of Act 65 of 1951.

13. We have referred earlier to the pleading in this case. The petitioner herself submits that the Company is one engaged in mining the main object is to mine crude china clay and purify and supply the same to various industries. Obviously therefore, the main object of the Company is mining operations, and not industrial operations in ceramics. It is not the petitioner's case that it is manufacturing any of the items mentioned under Entry 34 -- Ceramics -- in the First Schedule of Act 65 of 1951. The petitioner's counsel, however, submits that purified china clay is a raw material for the manufacture of some of those products and therefore production of the raw material should be treated as part of the ceramics industry.

14. On merits, it was submitted that in addition to an accumulated loss amounting to Rs. 8,62,514/-, there was a liability to the extent of Rs. 5,58,157/- as on 31-12-1975 for the Company, which had only Rs. 90,200/- as paid up share capital. It was submitted that the company had an excess liability of Rs 14,00,000/- and had it not been for the timely action taken by the Government, the Company would have gone out of business long years ago and over 600 employees would have been thrown on the streets. Though the Company had been consistently making profits since the second respondent was entrusted with the management, the profits thus far made are not sufficient to wipe out the accumulated losses and excess liability, with the result that the moment the moratorium u/s 4 of the Relief Undertakings Act is lifted, the Company will have to stop functioning due to insurmountable financial problems. The state of affairs will again result in unemployment of over 600 of the Company's employees, with no positive gain to anybody, much less to the petitioner.

15. Counsel refers to the First Schedule where it is stated "any industry engaged in the manufacture or production of any of the articles mentioned under each of the following headings or sub-headings" and submits that production of raw materials necessary for a scheduled industry also is part of the industry. This appears to be far-fetched, and therefore, cannot be accepted. It is not as if the production of raw materials is also within the comprehension of the term "industry" under the Industries (Development and Regulation) Act. A similar contention was unsuccessfully urged before the Supreme Court in the decision reported in Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others, in respect of sugar industry and its raw material, sugarcane. It was observed by the Supreme Court (para 34) :

"These provisions were evidently intended to control the scheduled industries and if the sugar industry was one of the scheduled industries the control thereof involved the development and regulation of the sugar industry and the registration and the licensing as also investigation into the affairs of the undertakings which were engaged in the production or manufacture of sugar. It did not involve the regulation of the supply and purchase of sugarcane which, though it formed an integral part of the process of manufacture of sugar, was merely the raw material for the industry and as such not within the purview of the Act."

* * * *

"Raw materials for the manufacture or production of the article or class of articles in the scheduled industry would certainly not be within this sphere and they would not be able to control the prices or regulate the distribution thereof within the meaning of Section 16. These articles or class of articles relatable to the scheduled industry, therefore, were finished products and not raw materials for the manufacture or production of the articles or class of articles in the scheduled industry. They were finished products of a cognate character which would be manufactured or produced in the very process of manufacture or production in the course of carrying on that scheduled industry.

The raw materials would certainly not be included within this category and sugarcane which is the raw material for the manufacture or production of sugar could therefore, not be included in the category of the articles or class of articles relatable to the sugar industry. Section 18-G, therefore, did not cover the field of sugarcane and the Central Government was not empowered by the introduction of Section 18-G by Act 26 of 1953 to legislate in regard to sugarcane.

The field of sugarcane was not covered by Act 65 of 1951 as amended by Act 26 of 1953 and the legislative powers of the Provincial Legislatures in regard to sugarcane were not affected by it in any manner whatever. If the two fields were different and the Central legislation did not intend at all to cover that field, the field was clear for the operation of State legislation and there was no repugnancy at all between Act 65 of 1951 and the impugned Act."

We think that the contention of the petitioner, that the company must be deemed to be an undertaking engaged in ceramics industry, because it produces purified clay should, therefore, be rejected.

16. If that be the position, the prohibition contained in Section 20 of the Industries (Development and Regulation) Act does not apply; and there is no interdict against the State even taking over the control or management of the company in question. The decision cited by counsel for the petitioner in support of his proposition that Section 20 of Act 65 of 1951 precludes taking over control or management of scheduled industries do not, therefore, apply in the facts of the present case. All the cases related to validity of State enactments falling squarely within the sphere of Parliamentary declaration under Entry 52 or 54 of

List 1 of the Seventh Schedule, whereas the State and Central Legislations are in relation to different, but of course inter-related, spheres in the present case.

17. The counsel for the petitioners, faced with this situation, raised an ingenious argument and sought support from a decision of the Supreme Court reported in State of Tamil Nadu Vs. Hind Stone and Others, . He submitted that by virtue of Entry 54 of List I of the Seventh Schedule to the Constitution "regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest" and the declaration contained in Section 2 of the Mines and Minerals (Regulation and Development) Act, there is a complete denudation of any legislative competence in the State in relation to mines and minerals; and as such, the Relief Undertakings Act, in so far as it relates to mines, is totally incompetent. Section 2 of the Mines and Minerals (Regulation and Development) Act is as follows:

"Declaration as to expediency of Union control : It is hereby declared that it is expedient in the public interest that the Union shall take under its control, the regulation of mines and the development of minerals to the extent hereinafter provided."

17-A. It was submitted that the State Government's power of taking over control or management of mints or mineral development is completely covered by the Mines and Minerals (Regulation and Development) Act. 1957- in view of the declaration. Sustenance for this proposition is drawn from the following observation contained in the judgment of Chinnappa Reddy J., reported in State of Tamil Nadu Vs. Hind Stone and Others, at p. 713):

"It is now common ground between the parties that as a result of the declaration made by Parliament, by Section 1 of the Act, the State Legislatures are denuded of the whole of their legislative power with respect to regulation of mines and mineral development and that the entire legislative field has been taken over by Parliament."

The apparent effect of this statement evaporates on a closer examination of the facts and the context in which it happened to be made. The Supreme Court had to consider the validity of some of the provisions of the Tamil Nadu Minor Mineral Concession Rules, 1959 issued u/s 15 of Act 67 of 1957. The rules which were extracted in the decision dealt with conferment of monopoly of leases of black granite, which is a minor mineral as defined in Section 3 (c) of Act 67 of 1957 and also provided for issue and removal of leases for quarrying black granite belonging to the Government. The Court held that in so far as Section 14 of Act 67 of 1957 makes the provisions of Sections 4 to 13 inapplicable to minor minerals and Section 15 of that Act conferred power in the State Government to frame rules in respect of such minor minerals, the rules were valid. The Supreme Court upheld the validity of Rule 8-C of the Tamil Nadu Minor Minerals Concession Rules with reference to the declaration contained in Section 2 of Act

67 of 1957 that "Parliament's policy is clearly discernible from the provisions of the Act. It is the conservation and the prudent and discriminating exploitation of minerals, with a view to secure maximum benefit to the community". Reference was also made to Section 17 which authorises the Central Government to undertake mining or prospecting operations in areas not covered by licenses. If therefore in respect of minor minerals, a subordinate legislative instrument creating State monopoly has been upheld as valid, it passes one's comprehension how that decision can support the position that State Government has no legislative competence to provide for declaration of a mining unit as a relief undertaking to be conducted by the State Government or through authorised agency on its behalf.

17-B. Even otherwise, the scope of the observations of Chinnappa Reddy, J., can be fully comprehended only if we refer to the few sentences preceding the portion culled out by the petitioner's counsel in support of his proposition. They are :

"Thus, while regulation of mines and mineral development is ordinarily a subject for State legislation. Parliament may, by law, declare the extent to which control of such regulation and development by the Union is expedient in the Public interest, and, to that extent, it becomes a subject for Parliamentary legislation. Parliament has accordingly enacted the Mines and Minerals (Regulation and Development) Act, 1957. By Section 2 of the Act, it is declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals."

It is, thus, clear that the denudation of power in the State to legislate by reason of Entry 54 of List I read with the declaration contained in Section 2 of Act 67 of 1957 does not comprehend the entire sphere of legislation in respect of mines and minerals. Such deprivation of competence is only to the extent of the Parliamentary declaration, that too only in respect of regulation of mines and minerals development and not otherwise. Again the deprivation is limited consciously by Section 2 of Act 67 of 1957 and contains a further severe limitation, that it is confined "to the extent hereinafter provided". In respect of "minor minerals", which includes clay also, the regulation is entrusted with the State Government. There is therefore no conflicting competence between the Union and the State in respect of minor minerals. There are no other provisions in the Mines and Minerals (Regulation and Development) Act, which provides that the State Government shall have nothing to do with the mines and minerals at all; nor does it have the effect of negating the power of the State to legislate in exercise of its powers under Entry 23 of List III. viz., "social security and social insurance; employment and unemployment" in respect of mines and minerals. If this be the position, there is no substance in the contention of the petitioner that by virtue of the Mines and Minerals (Regulation and Development) Act, there is no competence at all in the State to legislate in respect of mines and minerals or to take any action to take over and conduct a mining unit as a measure of

unemployment relief or as a relief undertaking. The observations contained in the decisions reported in *The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others*, ;, *State of Orissa Vs. M.A. Tulloch and Co.*, and *Baijnath Kadio Vs. State of Bihar and Others*, , which are referred to in the decision of Chinnappa Reddy, J., also do not have any different effect. The questions which arose in those cases were as to whether, after the Parliamentary declaration to take over a subject of legislation for control by the Union, the State retained any power in respect of the identical matter, but referable to some entry in List II. The Court had only to consider whether in respect of matters within the comprehension of the Parliamentary declaration contemplated in Entry 54 of List I of the Seventh Schedule, the State could still legislate, and it was positively held that to the extent of that declaration, there is complete denudation of power in the State to legislate. Those observations cannot be understood to have laid down that there is a complete and unlimited deprivation of legislative competence of the State the moment a declaration is made under Entry 54 of List I, irrespective of the scope and amplitude of the declaration. On the other hand, the observations of the Supreme Court in all the decisions make it absolutely clear that the deprivation is only in respect of the field covered by the Parliamentary declaration as permitted by the Constitutional provision; and the State's power to legislate would be in tact in respect of areas which are not covered by the declaration, though within the comprehension of the same topic of legislation.

18. The scope and effect of a declaration by the Parliament that it is necessary to take over a particular topic of legislation was considered by the Supreme Court in the decision reported in *Western Coalfields Limited Vs. Special Area Development Authority, Korba and Another*, with reference to the provisions of Entry 54 List I of the Seventh Schedule, the provisions of Mines and Minerals (Regulation and Development) Act, and the Madhya Pradesh Municipal enactment relating to property tax. It was held that the declaration by the Parliament contained in Section 2 of the Mines and Minerals (Regulation and Development) Act, which was envisaged by Entry 54 of List I, was to regulate and control the development of mining industry and not for any other purpose; and in relation to any other matter, excepting regulation of mines and mineral development to the extent provided, the State legislature is competent to legislate subject to its powers under the relevant entries in the State List or the Concurrent List. Almost the same question was considered by the Supreme Court in the decision reported in *Ishwari Khetan Sugar Mills (P) Ltd. and Others Vs. State of Uttar Pradesh and Others*, wherein it was held that the power to acquire a particular industry, which was the subject matter of the State legislation, was totally different from the power to regulate and develop the industry as enjoined by Entry 52 of List I of the Seventh Schedule read with the declaration of the Parliament contained in Section 2 of the Industries (Development and Regulation) Act, 65 of 1951. The State enactment was justified in a separate but concurring judgment by Pathak and Kaushal, JJ., who held that the enactment was justifiable even under Entry

42 of the Concurrent List. In *State of Haryana and Another Vs. Chanan Mal and Others*, , the Supreme Court had to consider the enactment of the State of Haryana relating to saltpetre works. The contention raised was that the entirety of the mining industry and minerals having been taken over by the Parliament by virtue of the declaration contained in Section 2 of the Mines and Minerals (Regulation and Development) Act as enjoined by Entry 54, there was no legislative power in the State in respect of this matter. This contention was repelled by stating that the State enactment and the Central enactment operated in different fields. It was held that the intention of the declaration which was envisaged by Entry 54 List I of the Seventh Schedule was only regulation and development of mines and minerals and not expropriation of private rights in lands where mineral deposit are situate. It was also held that the erosion of the power of the State in relation to fields which are covered by declarations envisaged by legislative entries in List I are only to the extent to which such erosion is necessary and justified by the width and amplitude of the legislative entry, meaning thereby that there is no denudation otherwise of the powers of the State Legislature in relation to the subject matter of the legislative entry. In view of these decisions, we are not persuaded to hold that once a declaration is made u/s 2 of the Mines and Minerals (Regulation and Development) Act, referable to Entry 54 of List I, the State Legislature is deprived of all its powers to legislate in respect of any matter affecting mines and minerals.

19. The next submission made by the counsel for the petitioner was that for the issue of a notification extending the period of the declaration u/s 3 (1) of the Relief Undertakings Act, the requirements of that section must be fully satisfied; and it must also appear from the notification that such conditions were so satisfied. He submits, rightly, that for the Government to declare an industrial undertaking to be a relief undertaking, it should appear to the Government necessary that the undertaking shall, with effect from the date specified in the notification, be conducted to serve as a measure of preventing unemployment or unemployment relief. It is further submitted that such satisfaction of necessity shall be only in relation to an undertaking which was either started, acquired or otherwise taken over by the Government and carried on or proposed to be carried on by themselves or under their authority, or to which any loan, guarantee or other financial assistance has been provided by the Government. Mr. Joseph submits that none of these conditions were satisfied at the time when Ext. P-1 was issued; and none of them are shown to have been available at the time when Exts. P-8 and P-9 for the period 1981, 1982 and Exhibits P-10 and P-11 for the period 1982, 1983 were issued by Government. It is therefore submitted that Exts. P-8 to P-11 notifications are illegal, unwarranted and instances of arbitrary action unrelated to the power and conditions envisaged by Section 3 (1) of the Relief Undertakings Act.

20. Before we go into this argument in detail, it is necessary to refer to the notifications in question. Ext. P-8 states, after referring to the previous notifications, that where is the Government of Kerala are satisfied that it is

necessary that Messrs. Super Clays and Minerals Mining Company (Private) Limited, Cannanore, should continue to be run as a Relief Undertaking for a further period of one year from the 2nd Mar., 1981, now therefore, in exercise of the powers conferred by Sub-section (2) of Section 3 of the Kerala Relief Undertakings (Special Provisions) Act, 1961 (6 of 1962) the Government of Kerala hereby declare that Messrs. Super Clays and Mineral Mining Company (Private) Limited, Cannanore, shall for a further period of one year from the 2nd Mar., 1981, be conducted to serve as a measure of preventing unemployment and for unemployment relief; and that the said undertaking shall accordingly be deemed to be relief undertaking for the purpose of the Act". Ext. P11 notification issued on 28th Feb., 1982 is also in the same terms. Exts. P9 and P10 are consequential orders issued under Rule 3 of the Relief Undertaking Rules. We have therefore to consider the contentions urged by the petitioner with reference to Exts. P8 and P11.

21. It cannot be disputed that Exts. P8 and P11 notifications contain a technically correct recital of the requirements of Section 3 (1) of the Relief Undertakings Act relating to the satisfaction of the Government that it was necessary to conduct the industrial undertaking specified in the notification as a measure of preventing unemployment or unemployment relief. What is omitted from the statutory formula is the recital relating to the industrial undertaking being one started, acquired or otherwise taken over by the Government and carried on or proposed to be carried on by themselves or under their authority, or to which any loan, guarantee or other financial assistance has been provided by the Government.

22. Counsel for the petitioner submitted that the notification, or order which can be passed only on the "authority being satisfied" or "if appears to the authority" or "on a consideration of certain state of affairs" etc., the order or notification should show not only that the authority was satisfied or that it appeared to the authority or that the authority considered the matter, but also to how it was so done; and if both these aspects are not manifest on the face of the notification or order, the same is liable to be set aside. He also submitted that the sufficiency of the materials on the basis of which the concerned authority came to the satisfaction is open to scrutiny by this Court in proceedings under Article 226 of the Constitution. He relied on the decisions reported in *Naina Sah and Another Vs. Ramrup Sah and Others*, in support of this proposition. We are afraid we cannot go the whole hog with him nor do any of the decisions support the extreme proposition. To a limited extent, the order or notification may be open to scrutiny in proceedings under Article 226 of the Constitution, only to the extent of ascertaining as to whether there was no satisfaction at all or whether there were no materials at all in support thereof. Sufficiency of the materials is not open to scrutiny in these proceedings. If there is a technically correct recital in an order or notification, a presumption attaches thereto u/s 114 of the Evidence Act. That is of course only a rebuttable presumption; unless rebutted, the presumption holds and the order stands. It is of course true that the satisfaction which is the precondition enabling exercise of a power confided to the authority

is a jurisdictional precondition for the exercise of the power. It cannot be disputed that such satisfaction, though subjective, is the necessary precondition to the exercise of the power, and may be capable of objective ascertainment, and has to be arrived at on the basis of objective data. It cannot also be disputed that a person who suffers as a consequence of the exercise of the power pursuant to the statutory formula is entitled to challenge the exercise of the power by showing that there was no occasion for the exercise of the power. It is also open to such a person to show that the authority concerned had no real satisfaction, nor were there the necessary materials factually in existence. It is also open to such a person to show that the satisfaction alleged to have been come to by the authority concerned is not related to materials on record at all, or that such a conclusion or satisfaction could not have been come to by any reasonably minded person.

23. But it cannot now be contended that even if there is a technically correct recital of the statutory formula in an order, it is liable to be set aside for the only reason that one person has chosen to challenge that in a proceeding under Article 226 of the Constitution before a Court of law. It is not as if the challenge invalidates the order. It is, on the other hand, necessary and obligatory that he who challenges the exercise of the power of a statutory authority should show that the actual exercise of power is vitiated in a manner which shall be acceptable to a Court of law. The petitioner in this case has not succeeded even in producing any materials to rebut the presumption which attaches to Exts. P8 to P11 orders. They admittedly contain a correct recital of the statutory requirements.

24. On the other hand, the counter-affidavit filed by the second respondent has supplied ample materials relating to what transpired and is transpiring even at present relating to the undertaking in question and justifies the action taken by the Government. It is not disputed that at the time Ext. P1 was issued, the company owed to the State Bank of India an amount of Rs. 6,00,000/-with interest and the Kerala Financial Corporation an amount of over Rs. 2,87,000/-with interest, in addition to its obligations to the workmen and staff in the matter of arrears of wages, salary etc., and the total of such liability amounted to over Rupees 5,00,000/-. At the time of the declaration under Ext. P1, on which date the first petitioner was the Managing Director, there was an excess liability of Rs. 14,00,000/- over the assets of the company. On the request of the company itself, the Government was actually considering the question of taking over the company. As is evident from Ext. R1 resolution, the Government had been requested to take over the company and carry on its business as a Government company. Such a proposal for taking over the company and it being carried on by the Government or an agency nominated by the Government was under active consideration at all relevant times as is evident from Exhibits R7 to R10 produced along with the counter-affidavit filed by the second respondent. It is conceded by the second respondent that the company had made profits during 1980, 1981 and 1982; but it is submitted that those profits are far less than the total liability

incurred by the company over the preceding years; if the company ceases to be a relief undertaking by the refusal to extend the term of the declaration u/s 3 of the Act, what is likely to happen is that the liabilities of the company, which will revive as is provided u/s 4 (2) (c) of the Relief Undertakings Act, will be so oppressive that the company will not be able to carry on business thereafter. This will again result in a compulsory close down occasioning industrial unrest requiring action by Government u/s 3 (1) of the Act. No reply affidavit has been filed refuting the detailed and specific averments made by the second respondent relating to the sorry state of affairs to which the company had been reduced by the maladministration of the previous Board of Directors. These undisputed facts sufficiently justified Ext. P1 notification, since there were adequate materials indicating that the company was an undertaking taken over by the Government and proposed to be carried on by them Under their authority and it was necessary to conduct the same as a measure of preventing unemployment or of unemployment relief. We have therefore no hesitation in rejecting the petitioner's contention on this ground as well.

25. The next point urged by Mr. Joseph was that the power of the Government to issue the declaration u/s 3 (1) of the Relief Undertakings Act and to extend the period of the declaration u/s 3 (2) thereof are both quasi-judicial in character; and that being so, the petitioner should have been given an opportunity to oppose the proposal to extend the period of the declaration by the notifications u/s 3 (2) of the Act. We are not impressed with this argument. We will assume, without deciding, that the power to make the declaration or issue a notification under Sub-sections (1) and (2) respectively are quasi-judicial in character. We will also assume that even if they be not quasi-judicial but purely administrative still the principles of natural justice will be attracted. Even then, we cannot accept the contention of the petitioner that she should have been notified about the proposal of the Government to make a declaration u/s 3 (1) or to extend the period of the declaration u/s 3 (2) in the facts and circumstances of this case. We have already adverted to the undisputed fact that the Government was invited to take over the company and conduct it as a Government company. We have also adverted to the circumstances under which the company was constrained to make the submission before the Government and the circumstances under which the Government was persuaded to act and issue Ext. P1 notification. If therefore, on a request made by the Board of Directors, of which the first petitioner was the Managing Director, the Government exercised its powers under Section 3 either initially or in renewal of the declaration under the Relief Undertakings Act, the petitioner is not entitled to question the exercise of that power as violative of the principles of natural justice. She need not be notified about the proposed action, which was invited by her. Even otherwise, her conduct disentitled her to obtain any discretionary or equitable relief from this Court.

26. The petitioner in this case had unsuccessfully attempted to raise the identical point in an earlier Original Petition, O.P. No. 2468 of 1980, challenging Ext. P1 notification, and could not obtain any positive relief in that regard. In that

Original Petition, even though various grounds were raised challenging the exercise of the power under Sections 3 (1) and 3 (2), what was ultimately pressed was the one relating to the entitlement of the shareholders to obtain their share in the profits when the relief undertaking, which was so declared by the Government, made profits during the course of the declaration u/s 3. All the other reliefs sought were abandoned by the petitioner. Dr. Kochu Thommen, J., observed therein : "in disposing of the Original Petition, I make it clear that it is open to the petitioner to approach the right forum at the right time for the right remedy in the event of her being aggrieved". In,, view of the unsuccessful attempt to challenge the validity of Ext. P1 and the notifications, the petitioners cannot be heard to urge the same contentions over again in this Original Petition, since this is neither the right forum, nor the time; nor is the remedy the right ones.

The Original Petition therefore fails and is hereby dismissed; but in the circumstances, we make no order as to costs.

Immediately after the judgment was pronounced, the petitioners' counsel made an oral application under Article 134-A of the Constitution to grant a certificate to enable the petitioners to file an appeal before the Supreme Court. This appeal does not involve any substantial question of law, which, in our opinion, need to be decided by the Supreme Court. Certificate refused.