(1987) 09 PAT CK 0001

In the Patna High Court

Case No : C.W.J.C. No. 489 of 1982 (R)

North Telulmari Colliery Company APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 24-09-1987

Acts Referred:

Coal Mines (Nationalisation) Act, 1973 — Section 18(5), 21(5)
Constitution of India, 1950 — Article 123(1)

Citation : (1988) PLJR 509

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : R.S. Marathia and M.K. Laik, for the Appellant; Debi Prasad and A. Sahay, J.C. to S.C.C.G, for the Respondent

Judgement

S.B. Sinha, J.—As in all these writ applications common questions of law are involved, these writ applications were taken up for hearing together and are being disposed of by this common judgment. In these writ applications a short question with regard to interpretation of section 21(5) of the Coking Coal Mines (Nationalisation) Act, 1972 and section 18(5) of the Coal Mines (Nationalisation) Act, 1973 (hereinafter referred to as "the 1972 Act'' and ''1973 Act'' respectively arises for consideration.

2. The facts involved in these cases are short and not much in dispute. The petitioner in each case was owner of a coking coal mine or coal mine, as the case may be, within the meaning of provisions of aforementioned 1972 Act and 1973 Act. The mines of the petitioners were nationalised under the said Acts and the petitioners were to be paid an amount as mentioned in the schedule appended to the two respective Acts aforementioned.

3. According to the petitioners the interest payable to the owner of a coal mine is exclusively payable to him and no part thereof can be paid to any of the claimants and on that basis the petitioners filed applications before the respective commissioners of payments of the said interest accrued in that regard

but the commissioner of payments refused to release the same on the ground that the matter relating to payment of interest is itself pending consideration before the Supreme Court of India as also this Court.

4. For the purpose of determination of the aforementioned question the legislative background of the two Nationalisation Acts as aforesaid may be noticed.

5. The President of India in exercise of its power conferred upon him under Article 123(1) of the Constitution of India, promulgated an Ordinance known as Coking Coal Mines (Emergency Provisions) Ordinance, 1971 which came into force with effect from 16.10.1971. The afore mentioned Ordinance was later on repealed and replaced by a Parliamentary Act known as Coking Coal Mines (Emergency Provisions) Act, 1971. By reason of the provisions of the aforementioned Act, which was given a retrospective effect and retrospective operation with effect from 17.10.1971 the management of the coking coal mines mentioned therein vested in the Central Government. The Parliament thereafter enacted the Coking Coal Mines (Nationalisation) Act 1972 which although received the assent of the President of India on 17th August, 1972, the same was also given a retrospective effect and retrospective operation with effect from 1.5.1972.

6. By reason of the provisions of the aforementioned Act of 1972 coking coal mines and the coke oven plants mentioned in Schedule I and Schedule II respectively appended to these said acts vested absolutely in the Central Government free from all encumbrances. The owners of the coking coal mines, in lieu of nationalisation thereof, were to be paid an amount mentioned in column 5 of the Schedules appended to the said Act. The object & purport of the said Act would appear from the preamble thereof, which reads as follows:--

An Act to provide for the acquisition and transfer of the right, title and interest of the owners of the coking coal mines specified in the First Schedule, and the right, title and interest of the owners of such coke oven plants as are in or about the said coking coal mines with a view to reorganising and reconstructing such mines and plants for the purpose of protecting, conserving and promoting scientific development of the resources of coking coal needed to meet the growing requirements of the iron and steel industry and for matters connected therewith or incidental thereto.

7. Similarly the President of India in exercise of his power conferred on him under Article 123(1) of the Constitution of India promulgated an Ordinance, known as, Coal Mines (Taking Over of Management) Ordinance, 1973, which came into force with effect from 30th January, 1973. The said Ordinance was also later on repealed and replaced by a parliamentary Act known as Coal Mines (Taking Over of Management) Act, 1973, which was also given a retrospective effect and retroactive operation with effect from the aforementioned date, that is, 30th January, 1973. The parliament thereafter enacted the Coal Mines

(Nationalisation) Act, 1973, which although received the assent of the President of India on the 31st May, 1973, the same was also given retrospective effect and retrospective operation with effect from 1.5.1973. By virtue of and under the provisions of the aforementioned Act, all the Coal Mines in India and, particularly, those which were mentioned in the schedule appended thereto, vested absolutely in the Central Government free from all incumbrances. The object and purport of the said Nationalisation Act, 1973 would appear from the preamble thereof which reads as follows:--

An Act to provide for the acquisition and transfer of the right, title and interest of the owners in respect of the coal mine-specified in the schedule with a view to reorganising and re-constructing such coal mines so as to ensure the rational, co-ordinated and scientific development and utilisation of coal resources consistent with the growing requirements of the country, in order that the ownership and control of such resources are vested in the State and thereby so distributed as best to subserve the common good and for matters connected therewith or incidental thereto.

8. The Scheme of the aforesaid Nationalisation Acts relating to the payment of amounts of various nature unto the owner of the said coal mines is:--

(a) The Central Government in lieu of the nationalisation of the coal mines was to give to the owners the amount mentioned in column No. 5 of the first schedule appended to the said Nationalisation Acts.

(b) The Central Government in lieu of taking over of management of respective Coking Coal Mines or Coal Mines as the case may be was required to pay a certain sum as provided for in section 21 of the 1972 Act. and section 18 of the 1973 Act.

The Central Government further was to provide for compensation to the owner of the mines for making aforementioned two Nationalisation Acts retrospective in effect and retrospective in operation. Therefore, so long the management of the collieries remained vested in the Central Government, that is, under the Coking Coal Mines (Emergency Provision'' Act, from 17.10.1971 till 30.4.1972 and from 1.5.1972 to 17.8.1972 under the 1972 Act and for the period 31st January, 1973 to 30th April, 1973 under the Coal Mines (Taking Over of Management) Act and from 1st May, 1973 to 30th May, 1973 under the 1973 Act at such rates and in such manner as provided for therein.

9. The aforementioned Nationalisation Act of 1972 and Nationalisation Act of 1973 were amended from time to time. As the 1972 Act is in pari materia with the 1973 = Act and the provisions as contained in both the Acts are absolutely identical except for minor variations in respect of certain provisions, it is not necessary to notice the provisions of both the Acts in details.

10. In both these Acts ''appointed day'' has been defined the 1st day of May, 1972 and 1st day of May, 1973 respectively. The Commissioner has been defined

to mean the Commissioner of Payments appointed u/s 20 of the 1972 Act and 17 of the 1973 Act. Specified date has been defined in both the Acts to mean such date as the Central Government may for the purpose of any of the provisions of those Acts, by notification, specify in this behalf and different dates may be specified in respect of different provisions of the respective Acts.

11. By virtue of or under the provisions of both the Acts from the respective ''appointed days'' the right, the title of interest of the owners in relation to Coking Coal Mines or the Coal Mines; as the case may be, specified in the schedule appended thereto shall stand transferred to and vest absolutely in the Central Government free from all incumbrances. By reason of or under the provisions of the said Acts the leases granted in favour of the ex-owners stood determined and in place of the owners the Central Government or the Government Company, as the case may be, shall be deemed to have become lessee of the State Government or such other person as the case may be in relation to such mines as if a mining lease in relation thereto had been granted to the Central Government and the period of such lease shall be the entire period for which the same could have been granted by the State Government or by such other person under the provisions of Mineral Concession Rules. Under the Provisions of 7 of 1972 Act and section 5 of the 1972 Act, the Central Government has been empowered to direct that the right, title and interest of all coking coal mines and the coal mines, as the case may be, was instead of continuing to vest in the Central Government shall vest in the Government Company.

12. The aforementioned 1972 Act and 1973 Act were amended from time to time. In the year 1973 some of the provisions of both the Acts were amended by Coking Coal Mines and Non-Coking Coal Mines (Amendment) Act, 1973. Thereafter both the aforementioned Acts were amended in the year 1976 by a Parliamentary Act known as Coal Mines Nationalisation Laws Amendment Act, 1976. The provisions of the said Act were the Coal Mines Nationalisation Laws Amendment Act, 1973. Under the provision of the aforementioned Amending Act of 1973 section 12A was inserted in the Coking Coal Mines (Nationalisation) Act, 1972 which reads as follows:--

(12A). Workers dues to be paid out of the amount? (1) Out of the amount payable (a) u/s 10 and section 12 to the owner of every coking coal mine or group of coking coal mines;

(b) u/s 11 and Section 12 to the owner of every coke oven plant, there shall be paid to every person employed by such owner, a sum equal to the amount of arrears due, on the appointed day, to such employee.--

(1) in relation to a provident fund, pension fund, gratuity fund or any other fund established for the welfare of such employee; and (ii) as wages.

(2) Every employee to whom the whole or any part of the arrears referred to in sub-section (1) is due shall file the proof of his claim to the Commissioner within

such time, after the commencement of the Coking and Non-coking Coal Mines (Nationalisation) Amendment Act, 1973, as the Commissioner may fix.

(3) The provisions of Section 24 shall as far as may be, apply to the filing, admission or rejection of the proofs referred to in sub-section (2).

(4) The Commissioner shall, after the admission or rejection of the claims made under sub-section (2), determine the total amount of the arrears referred to in subsection (1), and shall, after such determination, deduct, in the first instance, out of the amount paid to him u/s 21, a sum equal to the total amount of such arrears.

(5) All sums deducted by the Commissioner under sub-section (4) shall, in accordance with such rules as may be made under this Act, be credited by the Commissioner to the relevant fund or be paid to the persons to whom such sums are due, and on such credit or payment the liability of the owner of the coking coal mine or group of coking coal mines or coke oven plant, as the case may be, in respect of the amounts of arrears due as aforesaid shall stand discharged.

(6) The deductions made by the Commissioner under sub-section (4) shall have priority over all other debts, whether secured or unsecured.

(7) Save as otherwise provided in the foregoing sub-section, every secured debt due from the owner of a coking coal mine or group of coking coal mines or coke oven plant as the case may be, shall have priority over all other debts and shall be paid in accordance with the rights and interests of the secured creditors.''

It will also be useful to note here the provisions of section 21 of Nationalisation Act of 1973:--

21. Priority of claims in relation to arrears of provident fund, etc.-(1) Every person employed by the owner of a coal mine or group of coal mines may make a claim to the Commissioner to the effect that the sums deducted under sub-section (4) of section 7 of the Coal Mines (Taking over of Management) Act, 1973, are not sufficient to meet fully the amount of arrears due to him, on the appointed day within the meaning of that Act, from the owner of such coal mine or group of coal mines:--

(a) in relation to a provident fund, pension fund, gratuity fund or any other fund established for the welfare of the persons employed by the owner of a coal mine or group of coal mines, or

(b) as wages,

and that a sum equal to the deficiency be recovered from the amount specified in the Schedule against the owner of such coal mine or group of coal mines.

(2) Where a claim is made under subsection (1), the Commissioner shall determine the extent of the deficiency and shall after such determination, deduct in the first instance, out of the amount paid to him u/s 8, a sum equal to the

extent of the deficiency determined by him under this sub-section.

(3) All sums deducted by the Commissioner under sub-section (2) shall, in accordance with such rules as may be made under this Act, be credited by the Commissioner to the relevant fund or be paid to the persons to whom such sums are due, and on such credit or payment, the liability of the owner in respect of all the amounts of arrears due as aforesaid shall stand discharged.

(4) The deductions made by the Commissioner under sub-section (2) shall have priority over all the other debts, whether secured or unsecured.

The aforementioned Acts were further-amended by reason of the provisions of Coal Mines Nationalisation Laws (Amendment) Ordinance, 1986.

13. As noticed hereinbefore that by reason of provision of aforementioned Act the right, title and interest of the owners in relation to the Coking Coal Mine or the Coal Mine or the Coal Mine, as the case may be, vested absolutely in the Central Government free from all incumbrances, as a result whereof all mortgages, charge and other incumbrance were also wiped out. The mortgages or charge holders or decree-holders were however given liberty under the provisions of the said Acts to invoke the jurisdiction of the respective commissioners of payments appointed for that purpose with regard to the amount to which they might be held to be entitled to from the mine-owners which would be evident from section 8 of the Coking Coal Mines (Nationalisation) Act, 1972 which is in pari materia with section 6 of the Coal Mines (Nationalisation) Act, 1973 which reads as follows:--

Properties vested in the Central Government to be freed from mortgages etc,-- (1) All property which vests in the Central Government or in a Government company under this Chapter shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other incumbrances affecting it and any attachment, injunction or decree or order of any court restricting the use of such property in any manner shall be deemed to have been withdrawn.

(2) Every mortgagee of any property which has vested under this Act in the Central Government or a Government company, and every person holding any charge, lien or other interest in or in relation to any such property shall give, within such time and in such manner as may be prescribed, an intimation to the Commissioner of such mortgages, charge, lien or other interest.

(3) For the removal of doubts, it is hereby declared that the mortgagee of any property referred to in sub-section (1) or any other person holding any charge, lien or other interest, in, or in relation to any, such property shall be entitled to claim, in accordance with his rights and interests, payment of the mortgage money or other dues, in whole or in part, out of the amount specified in relation to such property in the Schedule, but no such mortgage, lien or other interest shall be enforceable against any property which has vested in the Central

Government or the Government company.

Under section 8 of the Nationalisation Act, 1973 and section 10 of the Nationalisation Act 1972, the owner of every coal mine or group of coal mines specified in the second column of the Schedule, were given by the Central Government, in cash and in the manner specified in Chapter VI, for the vesting in it, u/s 3, of the right, title and interest of owner in relation to such coal mine or group of coal mines, an amount equal to the amount specified against it in the corresponding entry in the fifth column of the Schedule. In terms of section 9 of the Nationalisation Act, 1973 and section 11 of the Nationalisation Act, 1972, the owner are, however, entitled to get certain amount in consideration of retrospective operation of the provisions of the sad Nationalisation Act. Subsection (2) of section 9 of the Nationalisation Act, 1973 and subsection (2) of section 11 of Nationalisation Act, 1972 further provide for payment of simple interest at the rate of four per cent per annum on the amount specified against such owner in the corresponding entry in the fifth column of the First schedule for the period commencing from the date on which the aforementioned Nationalisation Acts received the assent of the President and ending on the date of payment was made by the Central Government to the commissioner. By reason of provision of section 19 of the Nationalisation Act, 1973, which is equivalent to section 22 of the Nationalisation Act, 1972, the Central Government is to get the accounts of each colliery audited in accordance with the procedures laid down therein. The Central Government has further been saddled with the liability to pay in cash all the amounts as mentioned hereinbefore to the commissioner of payments. The owners of the collieries further became entitled to payment of the entire profit, if any, which might have been earned during the period the management of the collieries in question remained vested in the Central Government or the Government company, as the case may be Section 18(3) of the Nationalisation Act, 1973, caste a duty upon the Commissioner to open a deposit account in scheduled Bank. The said provision of the section 18(3) of the Nationalisation Act, 1973 is equivalent to section 21(3) of the Nationalisation Act, 1972. By reason of provision 18(5) of the Nationalisation Act, 1973, which is equivalent to sub-section(2) of section 21 of the Nationalisation Act of 1972, provision for payment of interest has been made to the ex-colliery owner, which may accrue on the amount standing to the credit of the accounts referred to in 18(3). It has further been provided therein that the same shall enure to the benefit of owner of the coal mines (underlining is mine). By virtue of section 20 of the Nationalisation Act, 1973 equivalent to section 23 of 1972 Act a provision has been made that every person having a claim against the owner of mine shall prefer such claim before the commissioner within thirty days from the specified date. Section 23 of the Nationalisation Act, 1973 which is in pari materia with section 23 of Nationalisation Act of 1972 reads as follows:

Admission or rejection of claims:--(1) The Commissioner shall fix a certain date on or before which every claimant shall file the proof of his claim or be excluded from the benefit of the disbursement made by the Commissioner. (2) Not less then fourteen days'' notice of the date so fixed shall be given by advertisement in one issue of the daily newspaper in the English language and one issue of the daily newspaper in the regional language as the Commissioner may consider suitable, and every such notice shall call upon the claimant to file the proof of his claim with the Commissioner within the time specified in the advertisement.

(3) Every claimant who fails to file the proof of his claim within the time specified by the Commissioner shall be excluded from the disbursements made by the Commissioner.

(4) The Commissioner shall, after such investigation as may, in his opinion, be necessary and after giving the owner of the coal mine an opportunity of refuting the claim and after giving the claimant a reasonable opportunity of being heard, in writing, admit or reject the claim in whole or in part.

(5) The Commissioner shall have the power to regulate his own procedure in all matters arising out of the discharge of his functions including the place or places at which he will hold his sittings and shall, for the purpose of making any investigation under this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:

(a) the summoning and enforcing the attendance of any witness and examining him on oath;

(b) the discovery and production of any documents or other material object producible as evidence;

(c) the reception of evidence on affidavit;

(d) the issuing of any commission for examination of witness.

(6) Any investigation before the Commissioner shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and'' the Commissioner shall be deemed to be a civil court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898.

(7) A claimant who is dissatisfied with the decision of the commissioner may prefer an appeal against the decision to the principal civil court of original jurisdiction within the local limits of whose jurisdiction the coal mine is situated:

Provided that where a person who is a Judge of a High Court is appointed to be the Commissioner, such appeal shall lie to the High Court for the State in which the coal mine is situated, and such appeal shall be heard and disposed of by not less than two Judge of that High Court.

14. For the purpose of disposal of these applications, it is also necessary to consider the provisions of sections 24, 25 and 26 of the Nationalisation Act which reads as follows:--

24. Disbursement of money by the Commissioner to claimants.--Where, after

meeting the claims admitted by him, of secured creditors, and unsecured creditors having priority under sub-section (2) of section 22, the total amount of claims of other unsecured creditors admitted by the Commissioner, does not exceed the total amount of the money credited to the account of a coal mine, every such admitted claim shall be paid in full and the balance, if any, shall be paid to the owner, but where such amount is insufficient to meet in full the total amount of the admitted claims, all such claims shall abate in equal proportions and be paid accordingly.

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25. Amounts advanced by the Central Government how to be recovered--Every amount advanced by the Central Government or the Custodian, as the case may be, for the management of a coal mine during the period in which the management of such coal mine remained vested in the Central Government, shall be recovered from the income derived from the transactions which took place at any time after the commencement of the Coal Mines (Taking over of Management) Act, 1973. but before the appointed d(sic)y notwithstanding that such income was derived after the appointed day:

Provided that where such income is insufficient to meet in full the total amount of the advance made by the Central Government or the Custodian for the management of the coal mine, the Central Government may make a claim to the Commissioner for the deficiency and thereupon the claim in respect of such deficiency shall have priority over the claim of all other unsecured creditors of the coal mine including those referred to in sub-section (2) of section 22.

Explanation.--In this section, "Custodian" means the Custodian appointed under the Coal Mines (Taking Over of Management) Act, 1973.

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26. Disbursement of amounts to the owners of coal mines--(1) If out of the monies paid to him in relation to a coal mine or group of coal mines specified in the second column of the Schedule, there is a balance left after meeting the liabilities of all the secured and unsecured creditors, the Commissioner shall disburse such balance to the owner of such coal mine or group of coal mines.

(2) Before making any payment to the owner of any coal mine or group of coal mines under sub-section (1), the Commissioner shall satisfy himself as to the right to such person to receive the whole or any part of such amount, and in the event of there being a doubt or dispute as to the right of the person to receive the whole or any part of the amount, referred to in sections 8 and 9, the Commissioner shall refer the matter to the court and make the disbursement in accordance with the decision of the Court

(3) For the removal of doubts, it is hereby declared that the entries in the fourth column of the Schedule shall not be deemed to be conclusive as to the right, title and interest, of any person in relation to any coal mine specified in the

corresponding entries in the second column of the Schedule and evidence shall be admissible to establish the right, title and interest of any person in relation to such coal mine.

(4) In relation to a coal mine the operations of which were immediately before the taking over of the management of such coal mine under the Coal Mines (Taking Over of Management) Act. 1973, under the control of a managing contractor, the amount specified in the fifth column of the Schedule against such coal mine shall be apportioned between the owner of the coal mine and such managing contractor in such proportions as may be agreed upon by or between the owner and such managing contractor, and in the event of there being no such agreement, in such proportions as may be determined by the court no a reference made to it by the Commissioner.

(5) Where any machinery, equipment or other property in a coal mine has vested in the Central Government or a Government company under this Act, but such machinery equipment or other property does not belong to the owner of such coal mine, the amount specified in the fifth column of the Schedule against such coal mine shall, on a reference made to it by the Commissioner be apportioned by the court between the owner of such coal mine and the owner of such machinery, equipment or other property having due regard to the value of such machinery, equipment or other property on the appointed day.

Explanation.-- In this section, ''''court", in relation to a coal mine, means the principal civil court of original jurisdiction within the local limits of whose jurisdiction the coal mine is situated.

15. As stated hereinbefore, the question which arises for determination in this writ application is as to whether ''the interest'' as has been provided for in terms of section 18(5) of the Nationalisation Act, 1973, and section 21(5) of the Nationalisation Act of 1972, shall enure only to the benefit of the owner of the mine or the said amount may be made available for disbursement to the claimants also.

For the purpose of the decision on the aforementioned question, it may be fruitful to mention here that different provisions have been made, for giving priority to claims of certain class of claimants and also the amount specified therein out of which the respective claims are to be made.

16. Following are the classes of claim in terms of priority:

(a) claim in respect of provident fund, pension fund etc. [section 21(4)] of 1973 Act.

(b) claim of the secured creditors; [section 22(1)] of 1973 Act.

(c) The claims of the Central Government in terms of section 25 of the Nationalisation Act, 1973; provisions to section 25 of 1973 Act).

(d) the dues of the State Government; (section 22(2) of 1973 Act) and lastly,

(e) unsecured creditors.

17. From the relevant provisions, referred to hereinbefore, it would further appear that an owner of the mine is entitled to receive the following amount from the Central Government by reason of the nationalisation of mines and vesting of management thereof:--

(a) amount mentioned in the fifth column of the first schedule appended to the respective Acts; (section 8 of 1973 Act)

(b) compensation of the rate of 25 paise per tonne or 20 paise per tonne, as the case may be, by way of compensation for taking over of the management during the period in which the taking over of management Act was in force; Section 7 of the Coal Mines (Taking of Management Act)

(c) The amount for giving retrospective effect and retroactive operation of the Nationalisation Acts; (section 9(1) of 1973 Act)

(d) Profit earned from the coal mines, if any, during the period for which the management of collieries remained vested in the Central Government or the Government company as the case may be; [section 19(1) of the 1973 Act].

(e) interest accruing on the money deposited in a Bank in terms of sub-section (3) of section 18 of Nationalisation Act, 1973 which is equivalent to sub-section (3) of section 21 of the Nationalisation Act, 1972. (section 9(3) of 1973 Act).

18. The relevant provisions for disbursing the claim of various types of claimants as provided for under the different provisions of the statutes may now be considered. u/s 7(4) of the Coal Mines (Taking Over of Management) Act, 1973 the amount payable to the owner under the provisions of section 7 of the said Act, the Central Government has been empowered to deduct all sums equal to the arrear due, on the appointed day, to the persons employed by the owner of a coal mine--(a) In relation to provident fund, pension fund, gratuity fund or other fund established for the welfare of the persons employed by the owner of coal mines and (b) As wages; In terms of the provisions of section 21 of the Nationalisation Act of 1973 if the sums so deducted under sub-section (4) of section 7 of the Coal Mines (Taking over of Management) Act, are not sufficient to meet the claims as referred to hereinbefore, the deficiency may be recovered from the amount specified in the schedule against the owner of such coal mine or group of coal mines as the case may be. u/s 21(4) of the aforementioned Act the deductions made by the commissioner under sub-section (2) thereof shall have priority over all other debts whether secured or unsecured.

19. Under sub-section 1 of section 22 of the said Act, a secured debt due from the owner of a mine shall have priority over of other debts and shall be paid in accordance with the rights and interest of the secured creditors. In terms of the provisions of section 25 of the said Act the amount advanced by the Central Government or the custodian as the case may be for the management of a coal mine during the period in which the management of such coal mine remain

vested in the Central Government, is to be recovered from the income derived from the transactions which took place at any time after the commencement of the Coal Mines (Taking Over of Management) Act, 1973 but before the appointed day notwithstanding that such income was derived after the appointed day. Proviso to the aforementioned section 25 enables the Central Government to make a claim in respect the deficiency thereof before the commissioner of payments and such claim shall have priority over the claimants of all other unsecured creditors of the coal mines including those referred to in subsection (2) of section 22.

20. Under the provisions of sub-section(2) of section 22 of the aforementioned Act the priority of claims over other unsecured debts have been provided as the manner as laid down hereinafter:

(A) all sums due to the State Government including royalty and dead rent;

(b) all amounts due in respect of any compensation or liability for compensation under the Workmen''s Compensation Act, 1923, in respect of the death or disablement of any employee of the coal mine unless such mine has, under such contract with insurers as mentioned in section 15 of the said Act, rights capable of being transferred to and vested in, the workmen, and

(c) all sums deducted by the employer from the salary or wages of any workmen or other employee for credit to any provident fund, or any other fund established for the welfare of the employees of the coal mine but not deposited to the credit of the said fund.

21. By virtue of under the provisions of sub-section (3) of section 22 the debts specified in sub-section (2) shall rank equally amongst themselves and be paid in full, unless the assets are insufficient to meet them in which case they shall abate in equal proportions and be paid accordingly. From the tenor of the aforementioned provisions as referred to hereinbefore it is absolutely clear that the Parliament has not only fixed as to which claim shall have priority over the other but has also provided for, as to from which account such claim shall have to be paid at the first instance. From the tenor of the provisions referred to hereinbefore it would further appear that no mention has been made therein with regards to the recovery of any amount of claim out of the interest according to the amounts standing to the credit of deposited account referred in sub section (3) of section 18 of the 1973 Nationalisation Act.

22. In the instant case, the wordings used in section 18(5) of the Nationalisation Act, 1973, appears to be absolutely clear and unambiguous. From the discussions made hereinbefore it would appear that no provision has been made for payment of any amount to the claimants out of the interest which enure to the benefit of the owners of the coal mines only; whereas payment to the claimants can be made from other amounts payable to the owners of the mines by the Central Government in terms of the provisions of the aforementioned Taking Over of Management Acts and the Nationalisation Acts.

23. The intent and object of the legislature in framing section 18(5) of the Nationalisation Act. 1973 appears to be that owner of a coal mine should be able to receive at least some amount which might not have otherwise been received by him. In view of the fact that the amount only payable to the owners is so meagre the possibility that they would not be getting any amount whatsoever after disbursing the claimants cannot be ruled cut, particularly, in view of the fact in view of nationalisation of closed coal mine a sum of Rs. 4000/- is payable under the 1973 Act and Rs. 5000/-under the provisions of 1972 Act.

24. In view of the clear and unambiguous wordings used in section 18(5) of the 1973 Nationalisation Act, it appears, that the amount payable therefore to the owner of a coal mine appears to be exclusively for his benefit. In Barclays Bank Ltd. v. Quistclose Investments, Ltd. reported in 1968 3 All England Law Reporters 621 it has been held that if a money has been provided for using the same for specific purpose the said amount should be used only for that purpose.

25. The Calcutta High Court in Coal Products Private Ltd. and another v. Income Tax Officer, "H" Ward Companies District II, Calcutta and others reported in 1972 (Vol. 85) income Tax Reports 347 while construing the provisions of Coal Mine (Conservation and Safety) Act, 1952 held that a grant payable by the coal board to a coal company in terms of the provision of the said Act must be utilised for that purpose only and can not be subjected to a garnishee order for tax due u/s 226(3) of the Income Tax Act. 1961. The learned Judge in the aforementioned case held as follows:

In my view, this contention of Mr. Ghosh should be accepted. To adopt a literal meaning of the words and to hold that this money which is payable by the Coal Board to the petitioner-company as and by way of assistance could be paid by the Board to the income tax department, construction which the revenue invites me to adopt, would lead to an absurdity. In my view, such payment by the Coal Board to the revenue would result in a breach of the statutory obligations of the board with regard to the utilisation of its fund as, laid down in section 12 of the Coal mines (Conservation and Safety) Act, 1952. Such a construction is not permissible in view of the principle laid down by the Madras High Court and the Supreme Court in the cases cited above.

I also accept the contention of Mr. Ghosh that the petitioner was not entitled to pa; any part of the assistance received from the Coal Board towards the discharge of its income tax liabilities Consequently, the revenue cannot be in a better position with regard to the Coal Board and call upon it to pay part of the amounts which are due or which may become due to the petitioner-company as and by way of assistance, towards payment of the income tax liabilities of the petitioner-company. To adopt any other constitution would, in my view, laid to the Coal Board committing breach of its statutory duties as also the petitioner-company committing a breach of the conditions which are attached to the grant of assistance from the Coal Board.

I feel, however, that it is my duty to point out that the aforementioned decisions have been distinguished on facts by the Supreme Court in Industrial Supplies Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, . However, in my view, while distinguishing the aforementioned decisions on facts; the Supreme Court did not overrule or dissent from the ratio of those decisions.

26. It is a cardinal principle of law that normally literal meaning has got to be given to the provisions of an Act. The question of taking recourse to the various facets of interpretation of statute, would only be necessary where the meaning of the provision, required to be construed is not clear. With that end in view let me examine the wording used in section 18(2) of the Nationalisation Act, 1973 equivalent to section 21(5) of the Nationalisation Act of 1972. The crucial words of the provision of section 18(5) of 1973 Act are ''Benefit'' and ''enure''.

27. In Ballentine''s Law Dictionary (3rd Edition) at page 667 the word ''enure'' has been defined as follows:

To accrue to the benefit of a person; to devolve upon a person.

Similarly, in Black''s Law Dictionary 4th Edition., at page 629 the word ''enure'' has been defined as follows:

ENURE. To operate or take effect. To serve to the use, benefit, or advantage of a person. A release to the tenant for life enures to him in reversion; that is, it has the same effect for him as for the tenant for life. Often written "inure".

In Oran''s Dictionary of law the meaning of the word ''inure''reads as follows:

"Take effect; result, for example, if benefits inure to Mr. Smith'''' they will come to him and take effect for him "Inurement" usually means taking effect by operation of law, rather than by a person''s section".

In Jowitt''s Dictionary of English Law, it is stated, ''enure'' means "to operate or take effect. Thus where it is said that if an attornment is made by a tenant of land to one only of several grantees of reversion it enure to the rest, it is meant that the attornment take effect as if it had been made to all.

From the aforementioned meaning as referred to hereinbefore it is clear that the word ''enure'' means devolving of a benefit upon a person exclusively for whose advantage the provision has been made either by operation of law or an instrument.

28. The word ''benefit'' has been defined in Webster''s Universal Dictionary, Unabridged international Edition at page 135 as follows:

"BENEFIT. To confer a benefit upon, do something for one''s advantage; to cause improvement in health."

According to Oxford''s Advanced Learner''s Dictionary of Current English page 76 word benefit'' inter alia means Advantage; Profit, Help.

The word ''benefit'' has also been interpreted as ''an advantage'' in a decision of the Madras High Court in the case of Board of Directors of the South Arcot Electricity Distribution Co. Ltd. Vs. K. Mohamed Khan and Others, .

29. From a plain reading of the provision of section 18(5) of the 1973 Act, to me, it appears that the Parliament by using the words ''enure'' and ''benefit'' therein intended to confer the said advantage exclusively for the use of the owner of the mines.

30. Further the provision of section 18(5) of 1973 Act and section 21(5) of the 1972 Act appears to be a ''beneficent legislation'' so far as the owner of the colliery is concerned.

It is now well settled that a liberal construction should be given to a beneficent legislation Reference, in this connection, may be made to the decision reported in the case of Jivabhai Purshottam Vs. Chhagan Karson and Others, .

31. Even if it be assumed that the two interpretations of the aforementioned provision are possible (although, in my opinion, it is not); still then for such purpose and interpretation which advances the purpose for which the provision has been enacted will have to be preferred than an interpretation which does not advance such purpose.

32 The provisions of disbursement as provided for in section 24 and section 26 of the Nationalisation Act, 1973 may now be considered. It would be absolutely clear that disbursements of amount to all types of claimants must be done from the total amount of money credited to the account of a Coking Coal Mine or Coal Mine, as the case may be. The words ''money credited to the account of a coal mine'', in my opinion, must be held to refer to the money credited to an account in terms of section 18(3) of the 1973 Act wherein a provision has been made to credit on the such deposits to the account of the owner of a coal mine which is received by the commissioner of payments in terms of sub sections (1) and (2) of section 18 thereof. The total amount of the money credited to the account of a coal mine, in view of the provision of the Act must mean only such amount became payable to the owner of a coal mine by the Central Government under different provisions of the Nationalisation Act and/or Taking Over of Management Act. In terms of the provisions of the said Act only such account can be deposited in the account of a owner of a coal mine which is received in cash by the Commissioner of payments from the Central Government and which amounts are payable in terms of the provisions of either the Nationalisation Act or the Taking Over of Management Act and on the such amounts, in my view, are available to the Commissioner of payments for the purpose of disbursements to the claimants.

33. The interest accruing to the owner after the said amount was deposited by the commissioner pursuant to the amount paid in cash to him by Central Government, does not become amount credited to account of a coal mine in as much as u/s 18 separate records are to be maintained by the commissioner in

respect of each coal mine in relation whereof payments have been made to him under the said Act Further, in my opinion, in the context of the provisions of the said Act interest accruing on the amount standing of the credited to the deposit account referred in sub-section (3) does not become the amount credited to such an account. If any other meaning is assigned to the same, in my opinion, there will be a violation to the provisions of the other construction is made (sic) the same, in my opinion, would negate the well-known principle of harmonious construction of statutes.

34. In Heckett Engineering Co. Vs. Their Workmen, held that it is a well settled rule of construction that the language of a provision or a rule should not be construed in a manner which would do violence to the phraseology. In Seuttrs v Briggs reported in 1922 Appeal Cases 1 at page 8 Srikenhead L.C. observed as follows:--

Where, as here, the legal issues are not open to serious doubt our duty is to express a decision and leave the remedy (if one be resolved upon) to others.

In Halsbury''s Laws of England Fourth Edition Volume 44 at para 840 the learned author states "It is the province of the legislature to enact statutes, and of the courts to construe the statutes which the legislature has enacted."

In Craise on Statute Law 7th Edition at page 65 the learned author precisely states what should be the construction where meaning is plain by the following words:--

If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. The words themselves alone do in such a case best declare the intention of the lawgiver.

In the Union of India v. Sankalchand Himatlal Sheth and another reported in Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another, , it has been held that where the statute''s meaning is clear and explicit, words cannot be interpolated. In State of Kerala Vs. Mathai Verghese and Others, , it has been held. "In interpreting the provisions, the exercise undertaken by the Court is to make explicit the intention of the legislature which enacted the legislation. It is not for the court to reframe the legislation for the very good reason that the powers to legislate have not been conferred on the Court. A Court can make a purposeful interpretation so as to evaluate the intention of the legislature and not a purposeless one in order to defeat the intention of the legislature wholly or in part". Reference in this connection may also be made to The Commissioner of Sales Tax, U.P. Vs. Madan Lal Das and Sons, Bareilly, , Mangilal Vs. Suganchand Rathi, and K. Hutchi Gowder Vs. Richobdas Fathaimull and Company, .

35. Recently the Supreme Court also in Raja Satyendra Narayan Singh and Another Vs. State of Bihar and Others, held that rules and section should be harmoniously construed. It has further been held in the aforementioned decision

that basic principles of constructions of every statute are to find out what is clearly stated and not to speculate upon latent imponderables. Reference, in this connection, may also be made to the case of M/s Heckett Engineering Co. v. Their Workmen (1977 BBCJ 291). Further it may be seen from the discussions made hereinbefore that upon a harmonious construction of section 18, section 24 & section 26 of the said Act, the only amount which is available to the commissioner for disbursement on the claims of the claimants, the amount actually deposited in a scheduled Bank pursuant to the payment made available by the Central Government in cash to him and not any other sum which is credited in the accounts of the owner pursuant to the interest granted by the Bank thereafter.

36. If it is to be held that the interest payable to an owner of a mine is also available for disbursement to the claimants, in such an event, in my opinion, true and effective meaning to the words ''enure'' and ''benefit'' cannot be given. In Balasinor Nagrik Cooperative Bank Ltd. Vs. Babubhai Shankerlal Pandya and Others, , it has been held "It is an elementary rule that construction of a section is to be made of all parts together. It is rot permissible to omit any part of it. For, the principle that the statute must be read as a whole is equally applicable to different parts of the same section".

37. Further'' if it is to be held that the entire interest accruing benefit to the owner payable in terms of section 18(5) of Nationalisation Act, 1972 is held to be available for disbursements amongst the claimants the sum made in a given case may result in an absurd situation. For the purpose of disbursement of the claim of the claimants, the amount available, therefore, has to be determined on a particular date, that is, either the date on which the claim is admitted or subsequently when the claim of the all claimants are disposed of. However, it will be impossible for the commissioner of payments to make payment of the claimants, irrespective of their nature of their claim, that is, where the sum is secured or unsecured one, on a particular date and, in that view of the matter, it is not possible to take into consideration the interest accrued on the amount credited to the owner of a colliery in terms of sub-section (3) of section 18; as interest on that amount shall continue to run even thereafter, that is, till the date of finalisation of claim and actual payment thereof and even thereafter, where the amount available at the hands of the commissioner of payments is sufficient to meet the debts of all the claimants no problem would arise in that regard; however, the problem arises only when the amount at the hands of the commissioner is insufficient to meet all the liabilities. In such an event, as noticed hereinbefore, the amount admitted in respect the claims has to be disbursed in terms of cue priority, that is, firstly to the provident fund or the workmen and so on. In such an event amount available at the hands of the commissioner has to be disbursed having regard to the priorities of the claim. For determining as to which class of creditor would receive the entire amount and the claim of which class of creditor would receive the entire amount and the claims of which class of creditor would abate proportionately, different dates for

disbursements of such separate class of creditors have to be fixed. In this view of the matter, it is not possible for the commissioner of payment to calculate the interest accrued to the amount credited to the owner of a coal mine till particular date so as to make the said amount also available for disbursements.

38. In this connection it may be useful to refer to the case of Seuttrs v Briggs reported in 1922 Appeal Cases 1 once again. At page 26 of the report Lord Sumnar in his speech observed as follows:--

This cannot be; to put it decorously, the Act must be interpreted so as to avoid circuity of action; to put it bluntly, such an interpretation would simply make the section silly.

39. It will be absurd to think that a claimant who has been disbursed with the amount in terms of section 24 of the Act, will again be asked to take some further amount out of interest, that is, accrued in the account of the owner from the date of such disbursement till the further date on which a further calculation of interest may be made.

40. Judging thus the case from all angles of view, in my opinion, the ''interest'', referred to in section 18(5) of the Nationalisation Act of 1973 and section 21(5) of the Nationalisation Act of 1972, is payable only to the owner of the mine and no third person shall have a claim over it. In the result, all these writ applications are allowed but in tie circumstances of this case there shall be no order as to costs.

