

(1984) 03 BOM CK 0067

In the Bombay High Court

Case No : Writ Petition No 2220 of 1979

Trade Centre Developers and Builders Pvt. Ltd. and Another	APPELLANT
Vs	
Union of India and Another	RESPONDENT

Date of Decision : 13-03-1984

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 31C
ESSO (Acquisition of Undertakings in India) Act, 1974 — Section 5(2), 7(3)

Citation : AIR 1985 Bom 4

Hon'ble Judges : Kamat, J; Dharamadhikari, J

Bench : Division Bench

Advocate : M. V. Paranjape, instructed by Matubhai Jamietram and Madan, for the Appellant; R.V. Desai, K.C. Sidhwa, Raja S. Bhosale and R.F. Nariman, Mulla and instructed by . Mulla, C.B.C. and V.D. Govilkar, for Attorney General, for the Respondent

Judgement

Dharmadhikari, J.—The present petitioner No.1 i.e. Trade Centre Developers and Builders Pvt. Ltd. became the owners of the land in dispute pursuant to the consent decree passed by this court on 7th of May 1981 in suit No. 895 of 1981 between the original petitioner Diana Dara Sukia and the petitioner No.1. Petitioner No.2 Jagdish Prasad is the Director of the petitioner No.1 company. It is an admitted position that by an agreement of lease dated 3rd of December 1958 the original petitioner agreed to lease the land in dispute to Messrs Standard Vacuum Oil Company for a period of 20 years with effect from 1st October 1958. The said period was to expire on 1st October 1978. The annual rent of the said land was Rs.2,200/- plus taxes. Other terms and conditions of lease were also incorporated in the agreement. It is also an admitted position that from 19th March 1962 rights and interests of the Standard Vacuum Oil Company were taken over by the Esso Standard Eastern Incorporated and therefore latter became the tenants of the said land. Under the Esso (Acquisition of Undertakings in India) Act, 1974 (hereinafter referred to as the said Act), the right, title and interest of the Esso Standard Eastern Incorporated stood acquired

and transferred to the Union of India. Thereafter under S. 7 of the said Act the respondent No. 1 directed vesting of the said Undertaking in the Government Company i.e. Hindustan Petroleum, vide Notification dated 14th March 1974. Thus for all practical purposes the Hindustan Petroleum the respondent No. 2 became the lessees of the original petitioner. Thereafter vide letter 1st June 1978 the respondent No. 2 the Hindustan Petroleum Corporation Ltd. informed the original petitioner, that they desire to renew the lease for a further period of 20 years from 1st October 1978 on the same terms and conditions. It appears that even before the receipt of this letter the original petitioner vide her letter of 2nd June 1978 informed the respondent No.2 that she desires to develop her property and has no desire to continue the lease any further. Therefore she called upon the respondent No.2 to deliver vacant possession of the said property by the end of the said period of lease. After receipt of this letter the respondent No. 2 informed her that the averments made in her notice that she wants to develop her property are false and since they have already exercised their rights under Ss. 5(2) and 7(3) of the Act, they were entitled to get the said lease renewed on the same terms and conditions. Thereafter on 1st August 1979 the original petitioner served a notice on the respondents and ultimately filed the present writ petition. Since during the pendency of this writ petition present petitioners became the owners of the property, the petition was amended and the name of the original petitioner came to be deleted. In the present petition mainly the provisions of Ss. 5(2) and 7(3) of the Act are challenged by the petitioners on several grounds.

2. Shri Paranjape the learned Counsel appearing for the petitioners contended, that S. 5 of the Act read with S. 3 vests the Central Government with the right, title and interest in relation to the Undertaking of Esso as defined in S. 4 of the Act. S. 5(2) does not confer any statutory right on the Central Government to renew the lease. The object of Section 5(2) read with Section 7(3) is limited to the renewal of the contractual rights, if the initial agreement so provided. The said provisions are transitory in nature and were inserted in the enactment with the sole object of enabling the organisation burdened with the new rights and responsibilities to have breathing time to adjust its own affairs. S. 7(3) has also limited application. The said section has been inserted to provide breathing time to the new organisation to organise and adjust its affairs. The protection conferred by the said sections is meant for interim period only. They only confer a limited right of renewal of lease for the residuary or unexpired period with reference to the appointed date. The provisions envisage extension of the residuary period for same length of time. Thus initially Shri Paranjape wanted us to read down these provisions and to hold that Ss. 5(2) and 7(3) merely authorise renewal of lease for the unexpired period only. He also contended that the said right could be exercised after following the well established principles of natural justice.

3. It was then contended by Shri Paranjape that unless the said provisions are so construed they would be violative of the petitioners' fundamental rights

guaranteed under Articles 14, 19(1)(f) and (g) of the Constitution of India. According to the learned counsel, the said provisions would discriminate between lessors whose properties are sought to be retained under the Act, and the lessors whose properties are requisitioned under the Requisition Act. It creates hostile discrimination between the lessors whose lands are identically situated but who have entered into leases for different durations. It will discriminate between the properties taken on lease after the appointed day and the leases renewed under the said provisions. The said provisions also confer arbitrary and uncontrolled discretion upon the authorities concerned and therefore suffer from vice of arbitrariness. He also contended that the said provisions will also be hit by article 31(2) as it existed on the date when the Act came into force. According to him in any event the said provision will not be reasonable and fair and will therefore be violative of Article 300A of the Constitution, as interpreted by the Division Bench of this Court in *Basantibai Fakirchand Khetan and Others Vs. State of Maharashtra and Another*, . It was then contended by Shri Paranjape that neither the said provisions nor the enactment as a whole enjoy the protection of Article 31C of the Constitution. According to him the provisions of the Act, do not indicate any general legislative policy to implement the provisions of Article 39(b) and/or (c) of the Constitution. In any case the protection of Article 31C of the Constitution will not be available to Section 5(2) and/or 7(3) of the Act which are subsidiary and incidental and are not essentially or integrally connected with the directive principles as incorporated in Article 39(b) and/or (c).

4. On the other hand it is contended by the Respondents that the impugned provisions, that is Ss. 5(2) and 7(3) of the Act are immune from the attack on the ground that they infringe the fundamental rights of the petitioners as contained in Articles 14, 19(1)(f) and (g), in view of the provisions of Article 31C. The said Act with its preamble and long title would indicate that it was enacted to nationalise petroleum industry, which was the step taken in furtherance of the directive principles of the State policy as contained in Article 39(b) and (c) of the Constitution. The provisions of Ss. 5(2) and 7(3) being part of the same scheme of nationalisation are also immune from the said challenge. It is not correct to say that the said provisions are subsidiary and incidental and therefore wholly unconnected with the scheme of the Act. Therefore according to the respondents the enactment as a whole including Ss. 5(2) and 7(3) are wholly immune from challenges vide Article 31C of the Constitution. Therefore it is not open to the petitioners to challenge the said provisions on the ground that they infringe their fundamental rights contained in Article 14 or 19(1)(f) or (g) of the Constitution. In support of these contentions the respondents have placed strong reliance upon the decision of the Andhra Pradesh High Court in *Mustafa Hussain Vs. Union of India (UOI) and Another*, , *Manohar Singh and Another Vs. Caltex Oil Refining (India) Ltd., Bombay and Others*, , *Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another*, , *State of Tamil Nadu and Others Vs. L. Abu Kavur Bai and Others*, , *Madhusudan Singh and Others Vs. Union of India (UOI) and Others*, *Madhusudan Singh v. Union of India*. It was then contended by

respondents that assuming that the protection under Article 31C is not available, then also the said provisions are not violative of petitioners' fundamental rights under Articles 14 and 19(1)(f) and (g) of the Constitution. Ss. 5(2) or 7(3) of the Act do not produce any discriminatory results. The provision relating to renewal of lease cannot be equated with requisition of the property. The classification made is a reasonable one and has a close nexus with the object sought to be achieved i.e. distribution of material resources so as to best subserve the common good. It merely imposes reasonable restriction to subserve the public interest. It is also not correct to say that there is any discrimination between the leases created prior to the coming into force of the Act and the leases created after the coming into force of the Act, as the said leases stand on different footing. The said provisions are also not violative of Article 300A of the Constitution as the said Article had no application to the present case. In the present case the rights were created long back. Option given to the respondent-company to renew the lease was exercised on 1st June 1978. The period of lease was also to expire in October 1978 and Article 300A of the Constitution was introduced by the 44th Amendment to the Constitution with effect from 20th June 1979. The said clause has no retrospective effect and therefore present enactment or action taken thereunder cannot be challenged by taking recourse to Article 300A of the Constitution. In support of these contentions the respondents have placed strong reliance upon the Division Bench decision of this court in *Manoel Francisco Agremiro Da Conceicao Fernandes and etc. Vs. Collector of Daman and Others*, i.e. *Manoel Francisco Agremiro Da Conceicao v. Collector of Daman*. It was also contended by the respondents that while relying upon the Article 300A of the Constitution petitioners cannot take recourse to Article 19(1)(f) meaning thereby the petitioners cannot be allowed to blow hot and cold in the same breath. In support of this contention the respondents have placed reliance upon the decision of the Supreme Court in *Dhirubha Devisingh Gohil Vs. The State of Bombay*, According to the respondents the law laid down by this court in *Basantibai Fakirchand Khetan and Others Vs. State of Maharashtra and Another*, has no application to the facts and circumstances of this case and the said decision is wholly distinguishable. It was also contended by the respondents that the principles of natural justice have no application to Ss. 5(2) and 7(3) of the Act. If these provisions are read in the context of Ss. 6(2), 9(2) and 13(2) of the Act, it is quite clear that the legislature by necessary implication has excluded the principles of natural justice so far as the provisions of Ss. 5(2) and 7(3) are concerned. The principles of natural justice have no application as a unilateral statutory right has been conferred upon the Central Government or Government Company to exercise the option of renewal of lease on same terms and conditions. When the lease is to be renewed on the same terms and conditions, then the question of hearing the other side and/or following the principles of natural justice would not arise. Even otherwise in the present case the original petitioner had put forward her case before the respondent No.2 vide her notice dated 2nd June 1978 which was duly considered by the Company and after considering the say of the original petitioner the

Company decided to exercise its right of renewal. Therefore so far as the present case is concerned it cannot be said that the company had not followed the principles of natural justice. This is more so, when the original petitioner is now out of picture and the present petitioners became owners of the property after the lease was renewed. It was also contended that the present writ petition is misconceived as there is an adequate alternate remedy available to the petitioners of filing a suit before the Small Cause Court since the matter squarely falls u/s 28 of the Bombay Rent Act. It was then contended that even if the right under S. 7(3) was not exercised the respondent-Company was wholly protected by the Bombay Rent Act and, therefore, the petitioners are not entitled to any reliefs, much less as claimed for.

5-6. From the rival contentions raised before us it is more than clear that if the present legislation and the impugned provisions are protected by Article 31C of the Constitution, then the petitioners; are not entitled to challenge the said provisions on the ground that they are violative of petitioners' fundamental rights under Articles 14, 19(1)(f) and (g) of the Constitution. Therefore it will have to be seen as to whether the present legislation was enacted by the legislature to give effect to the policy laid down in Article 39(b) and (c) of the Constitution. The long title and the preamble of the Act read as under:

"An Act to provide for the acquisition and transfer of the right, title and interest of Esso Eastern Inc. in relation to its undertakings in India with a view to ensuring co-ordinated distribution and utilisation of petroleum products distributed and for matters connected therewith or incidental thereto.

Whereas Esso Eastern Inc. a foreign Company, is carrying on, in India, the business of distributing and marketing petroleum products manufactured by Esso Standard Refining Company of India Ltd. and Lube India Limited, and has, for that purpose, established places of business at Bombay and other places in India;

And whereas it is expedient in the public interest that the undertakings, in India, of Esso Eastern Inc. should be acquired in order to ensure that the ownership and control of the petroleum products distributed and marketed in India by the said company are vested in the State and thereby so distributed as best to subserve the common good".

From the bare reading of the preamble and long title it is clear that this enactment was enacted to nationalise private enterprises by transferring the ownership and control of the company and its petroleum products, so as to subserve the common good. This being the position it can safely be said that the said enactment was enacted in furtherance of the policy laid down in Article 39(b) and (c) of the Constitution. It is no doubt true that it was contended by Shri Paranjape that neither the long title nor the preamble indicates that it was a step taken towards the nationalisation of the petroleum products as a whole qua all the Companies in India. However, in our view it cannot be forgotten that even the first step taken towards the said goal will be a step taken in pursuance or in

furtherance of the policy of nationalisation. It is not the law that for availing of the protective umbrella of Article 31C at one and the same time, an enactment should be enacted to nationalise all the Companies or departments all over the country. In this context a reference could usefully be made to the observations of the Supreme Court of India in *Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another*,

"21. The learned Counsel submitted that Article 39(b) would be attracted if the industry as a whole was nationalised and not if only a part of the industry was nationalised. According to him, all the coke oven plants wherever they existed had to be nationalised and no privately owned coke oven plants could be allowed to be set up in the future, if Art. 39(b) was to be applied. We are unable to see any force in this submission. The distribution between public, private, and joint sectors and the extent and range of any scheme of nationalisation are essentially matters of State policy which are inherently inappropriate subjects for judicial review. Scales of justice are just and designed to weigh competing social and economic factors. In such matters legislative wisdom must prevail and judicial review must abstain".

It cannot also be forgotten that by the time this writ petition came to be filed all other companies were also nationalised and the process of nationalisation of petroleum products was duly completed.

7. As already observed from long title and preamble of the present enactment it is quite obvious to us that the present enactment was a step taken in pursuance of the policy of nationalisation of petroleum products for distribution and marketing of petroleum products so as to subserve the common good. Therefore we have no hesitation in coming to the conclusion that the present enactment has been enacted in pursuance of the policy incorporated in Article 39(b) and (c) of the Constitution. We are fortified in this view by the decision of the Andhra Pradesh High Court in *Mustafa Hussain Vs. Union of India (UOI) and Another*, and the decision of the Madhya Pradesh High Court in *Manohar Singh and Another Vs. Caltex Oil Refining (India) Ltd., Bombay and Others*, . We respectfully agree with the view taken by the Andhra Pradesh and Madhya Pradesh High Courts.

8. The view taken by the Andhra Pradesh and Madhya Pradesh High Courts also gets substantial support in the decisions of the Supreme Court of India in *Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another*, as well as the subsequent two decisions of the Supreme Court *State of Tamil Nadu and Others Vs. L. Abu Kavur Bai and Others*, , *Madhusudan Singh and Others Vs. Union of India (UOI) and Others*, , *Madhusudan Singh v. Union of India*. Therefore it will have to be held that the present enactment was enacted for giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39, and therefore is protected by Article 31C of the Constitution.

9. However, it was contended by Shri Paranjape that even if it is assumed that

the present enactment was enacted for giving effect to the policy of the State towards securing the principles specified in Article 39(b), still it cannot be said that the provisions of Ss. 5(2) and 7(3) were also enacted for the said purpose. According to Shri Paranjape the said sections are not integrally connected with the said policy nor they were necessary for achieving the object of the enactment. According to the learned counsel the said provisions are wholly unconnected with the object of the legislation and, therefore are not protected by the protective umbrella of Article 31C. It is not possible for us to accept this contention for more than one reason. It is by now well settled that a provision of the Act cannot be read in isolation. The enactment will have to be read as a whole and harmoniously since every section of the enactment throws light upon the another and all sections read together make out a complete scheme. The present enactment was enacted for acquisition and transfer of the right, title and interest of Esso Eastern Inc. in India for ensuring co-ordinated distribution and utilisation of petroleum products, so as to subserve the common good. The enactment was not enacted only for acquisition of ownership or right, title and interest of the Esso Eastern Incorporated. The enactment further contemplates acquisition of these rights for the purpose of distribution of petroleum products so as to subserve the common good. This is the part and parcel of the scheme of the enactment. Therefore if the distribution of the petroleum products to subserve the common good is one of the main purposes of the enactment, then the provisions made to subserve the said purpose are also part and parcel of the said scheme. To say the least the said provisions are integrally connected with the scheme of nationalisation. In this context reference could usefully be made to the observations of Andhra Pradesh High Court in para 12 of *Mustafa Hussain Vs. Union of India (UOI) and Another*,

"Now it remains to be seen whether these provisions are so unrelated to the object of the Act or the dominant object of these provisions is to achieve an unauthorised purpose. The statement of objects and reasons of the Caltex Acquisition Act shows that in implementation of the policy for progressively securing that the ownership and control of the production of the nation's petroleum resources are vested in the State and thereby so distributed as best to subserve the common good the Government entered into negotiations with Caltex for acquiring hundred per cent of the shares of Caltex Oil Refining (India) Limited free of encumbrances and the undertakings in India of Caltex (India) Limited. An Ordinance was promulgated by the President on 30th December 1976 and the same was replaced by the present Act. The Ordinance also provided for the continuance of the contracts entered into by the Caltex for any sale or supply in India. From this it can be seen that the supply of these products is an integral part of the State policy. A perusal of the preamble as well as the other provisions in other two enactments would also show that the object behind the State policy was to have the ownership and control over these undertakings dealing in petroleum products which are very essential and to see that the public are supplied with the same. By merely acquiring these undertakings the object

cannot be achieved. It is a matter of common knowledge that these undertakings had entered into leases with numerous individuals in respect of the plots on which the supply pumps etc. were installed. Such pumps are very essential for distribution and supply of the products. All such leases and rights of tenancy were in existence on the appointed day. Unless such leases are continued for reasonable time, the very object of acquisition of these undertakings will get defeated. If on the appointed day or soon after many of the leases were about to expire then the State which has acquired these undertakings will be in a difficult position unless the Corporations created by the State are empowered to continue the leases or rights of tenancy for some more time. It is with this object that S. 5(2) and S. 7(3) of the respective Acquisition Acts are incorporated. Therefore we have no doubt whatsoever in holding that these provisions are basically and essentially necessary for giving effect to the object of the State policy. It can by no stretch of imagination be said that the dominant object of these impugned provisions is only to achieve an unauthorised purpose".

10. This being the position in our opinion Ss. 5(2) and 7(3) were wholly necessary for achieving the object of the Act i.e. distribution of the petroleum products to subserve the common good.

11. Shri Bhosale the learned Counsel appearing for the respondents company has also drawn our attention towards the latest decision of the Supreme Court in *Madhusudan Singh and Others Vs. Union of India (UOI) and Others*, wherein the nexus theory in the context of Article 31C is duly explained by the Supreme Court. In this context reference could usefully be made to the following observations of the Supreme Court in paras 16 and 17 :

"16. So far as the decision in the case of *Sri Kalimata v. Union of India*, (1981) 2 SCR 950 is concerned, in view of the crystallisation of the law in *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, , *Waman Rao and Others Vs. Union of India (UOI) and Others*, and *Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another*, cases which have been followed and amplified in the recent decision of this court in *State of Tamil Nadu and Others Vs. L. Abu Kavur Bai and Others*, , the matter is no longer *res integra* and even if there was an inadvertent error in the observations of this Court in *Sri Kalimata v. Union of India*, (1981) 2 SCR 950 , the same has become redundant as the impugned provisions can be supported as squarely falling within the four corners of Art. 39(b) of the Constitution as the intention of the Acts is to secure and promote the objectives contained in Art. 39(b). In this connection, we might extract a few observations from *L. Abu Kavur Bai*, (supra):

"In view of Art. 31C, which gives protective umbrella against Art. 31(3) also the court cannot strike down the Act merely because the compensation for taking over the transport services or its units is not provided for. The reason for this is that Art. 31C was not merely a pragmatic approach to socialism but imbibed a theoretical aspect by which all means of production, key industries, mines, minerals, public supplies, utilities and services may be taken gradually under

public ownership, management and control.

17. It was further argued by the petitioners that there was no clear nexus between the Act and the objectives contained in Art. 39(b). We are, however, unable to agree with this argument because the question of nexus has been clearly expounded by this Court both in the *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, and *Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another*, cases as also in the case of *State of Tamil Nadu and Others Vs. L. Abu Kavur Bai and Others*, where a Constitution Bench of this Court speaking through one of us (Fazal Ali, J.) made the following observations:

"Another important facet of Art. 31C which has been emphasised by this Court is that there should be a close nexus between the statute passed by the legislature and the twin objects mentioned in clauses (b) and (c) of Art. 39. In approaching this problem and considering the question of nexus a narrow approach ought not to be made because it is well settled that the courts should interpret a constitutional provision in order to suppress the mischief and advance the object of the Act. The doctrine of nexus cannot be extended to such an extreme limit that the very purpose of Art. 39(b) and (c) is defeated..... If the nexus is present in the law then the protection of Art. 31C becomes complete and irrevocable".

As already observed as provisions of Ss. 5(2) and 7(3) are intrinsically connected with the purpose and object sought to be achieved by the enactment, the said provisions are also protected by Art. 31C of the Constitution.

12. Once it is held that the provisions of enactment including the provisions of Ss. 5(2) and 7(3) of the Act are protected by Article 31C it is really not necessary to deal with the challenge based on Article 14 or 19 of the Constitution. Even otherwise in our opinion it cannot be said that the provisions of Ss. 5(2) and 7(3) are in any way discriminatory or they confer any unguided or unbridled power upon the authorities concerned. It is by now well settled that the criteria or guidelines may be furnished by express provisions in the Statute concerned or by the aims and objects of the statute and the policy and scheme of the Statute as disclosed by various provisions thereof. The long title and preamble to the Statute might indicate the purpose and policy of the statute. The discretionary power conferred by a statute, though wide is not necessarily discriminatory. Mere possibility of abuse of a discretionary power will not invalidate the statute. If discretion is conferred on high officials, then in the absence of evidence of mala fides, it can be considered as safeguard against the arbitrary exercise of discretion. By Ss. 5(2) and 7(3) a power is conferred upon the authorities concerned to renew the lease which had expired on the same terms and conditions as held by the Esso Company immediately before the appointed day. It is conceded before us that the power conferred by S. 5(2) or 7(3) could be exercised once and not in perpetuity. Thus these provisions do not give scope for any perpetual lease. The authorities can exercise this option only once and that too on the same terms and conditions to which the lease was subjected on the

appointed day. The words and the expression used i.e. "if so desire" clearly indicate that the power could be exercised obviously at the discretion of the Central Government or the Governmental companies, if renewal of the lease is necessary for achieving the purpose of the enactment. Thus enough guidelines are laid down by the substantive provisions of the Act read with the preamble. We do not think that any arbitrary or unbridled power has been conferred upon the Central Government or the Governmental Companies to exercise the discretion.

13. It is also not possible for us to accept the construction of Shri Paranjape qua these provisions. Ss. 5(2) and 7(3) of the Act apply to the lease whose term has expired or is likely to expire. The said lease could be renewed on the same terms and conditions on which the lease or tenancy was held by the Esso Company immediately before the appointed day. To interpret the said provision that it applies only to the residuary period will be the negation of the provision itself. If these provisions were enacted so as to give breathing time to the Central Government or Governmental Companies to organise their affairs, then obviously the intention of the legislature was to get the said lease renewed on the same terms and conditions which must include the tenure of the lease also.

14. It was also contended by Shri Paranjape that the provisions of Ss. 5(2) and 7(3) would discriminate between the lessor whose properties are sought to be acquired by the Legislature under the said provisions and the lessor whose properties are requisitioned under the Requisition Act. The properties requisitioned under the Requisition Act would be paid compensation at the market rate and the lease renewed under the provisions of the present Act would be on the basis of compensation which may have no bearing on market conditions on the date of the renewal. The said provisions will also discriminate between lessors whose lands are identically situated but who have entered into leases for different durations and at different points of time. The compensation payable to such lessors would be different notwithstanding the fact they are similar in all material respects. The said provisions will discriminate between the properties hereafter taken on lease by the Central Government or by the Company or Corporation and the properties whose leases are renewed under the said provisions. The said provisions are also arbitrary as they deprive the petitioners of their properties without following the principles of natural justice. It is not possible for us to accept any of these contentions. It is by now well settled that what Article 14 forbids is hostile discrimination and not reasonable classification. Equality before law does not mean that same set of law should apply to all persons under every circumstance ignoring differences and disparities between men and things. It is for the State to make a reasonable classification which must fulfil two conditions : (1) The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, (2) the differentia must have a reasonable and rational nexus with the object sought to be achieved by the Statute. The classification may be founded on different basis. What is necessary

is that there must be nexus between the basis of classification and the object of the Act under consideration. It is not possible for us to equate the renewal of the lease on the same terms and conditions with that of requisition of the property. To meet the peculiar situation created by the acquisition, control and ownership of the petroleum products with a view to distribute the same to subserve the common good the provisions of renewal of lease have been made and that too on the same terms and conditions. Right of renewal conferred by the Statute is to be exercised once. Therefore it cannot be said that there is either requisition or acquisition of the property of the lessor. These two things must stand on different footing. Similar is the position qua the lease subsisting on the appointed day and the lease created after the appointed day. In our view they do not belong to the same class. Even otherwise the said classification has reasonable nexus with the object of the Act, that is, to carry on the work of distribution of petroleum products to subserve the common good. Further as has been pointed out by the Supreme Court in some of the judgements. Directive Principles of the State policy will have to be read into fundamental rights as a matter of interpretation. Thus the classification made is reasonable and the restrictions are imposed in the interest of the general public. In this view of the matter it is not possible for us to accept this contention of Shri Paranjape.

15. It is also not possible for us to hold that the said provisions i.e. Sections 5(2) and 7(3) of the Act are arbitrary as the lease cannot be renewed without following the principles of natural justice. It is by now well settled that principles of natural justice cannot be imprisoned in the straight jacket formula. It is equally well settled that the application of the said principles can be excluded even by necessary implication. As already observed, by Sections 5(2) and 7(3) of the Act a unilateral right has been conferred upon the Central Government and/or Governmental Companies to renew the lease on the same terms and conditions. The terms and conditions of lease are also statutorily declared i.e. they should be the same. Therefore practically by the unilateral choice of the Central Government or Governmental Companies the lease stands renewed. There is no scope for further negotiations or alterations or modifications. In these circumstances we do not find any scope to import the principles of natural justice in these provisions. Wherever the Legislature wanted that it is necessary to make a provision for hearing the otherside, a provision in that behalf has been made. Such a provision is made in sections 6(2), 9(2) and 13(2) of the Act. Section 13 of the Act deals with the contracts which are to continue unless terminated by the Central Government. By sub-section (2) of section 13 a power is conferred upon the Central Government to terminate the contract or make such alteration or modification as it may deem fit. This alteration and modification is bound to have some adverse or prejudicial effect on the right of the lessor and, therefore, a provision is made that such modification or alteration will not be made unless a hearing is given to the parties to the contract. In the case of renewal of lease on the same terms and conditions neither the alteration nor modification in the terms of the contract is contemplated and, therefore, in our opinion there is no

scope for importing the principles of natural justice in the said provisions, though, to some extent it must depend on the facts and circumstances of the each case. In the present case, as already observed by a notice dated 2nd June 1978 the original petitioner had put forth her say before the respondent company which was duly considered by the company. After considering the plea, a reply was given to the original petitioner. Therefore in the present case it cannot be said that the original petitioner had no opportunity to put forward her case or her say, was not taken into consideration before final decision in the matter of renewal of the lease was taken by the company. So far as the present petitioners are concerned they came in to picture after the lease was renewed. Hence having regard to the facts and circumstances of the present case, it cannot be said that the principles of natural justice were not complied with.

16. It is not the case of the petitioners that the power of renewal of lease was exercised by the company in colourable exercise of the power, or is in any way mala fide. On the land belonging to the petitioners a petrol pump was installed. The installation of the petrol pump is necessary for the distribution of the petroleum products. Therefore obviously the lands of the petitioners were required for the distribution of petroleum products so as to subserve the common good. This being the position even on facts it cannot be said that the power has been exercised arbitrarily and the land was not required for bona fide purpose.

17. It was then contended by Shri Paranjape that in any event the said provisions will not be reasonable and fair and therefore will be violative of Article 300A of the Constitution. As already observed in support of this contention he has placed strong reliance upon the decision of this court in *Basantibai Fakirchand Khetan and Others Vs. State of Maharashtra and Another*, On the other hand the respondents have placed strong reliance upon the decision of another Division Bench of this court *Manoel Francisco Agremiro Da Conceicao Fernandes and etc. Vs. Collector of Daman and Others, Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others, Hoechst Pharmaceuticals Ltd. v. State of Bihar*, the Division Bench held that the constitutional validity of the Act is to be decided on the basis of the Constitution as it was on the date when the Act was passed subject to any retrospective amendment in the Constitution. According to the Respondents in the present case admittedly the law was enacted in the year 1974 and was brought into force on 13th March 1974. A right u/s 7(3) was exercised in June 1978 and the lease then existing was to expire in October 1978 i.e. much before the Article 300A of the Constitution was enacted. Therefore according to the Respondents the Present case is covered by the law laid down by this court in *Manoel Francisco Agremiro Da Conceicao Fernandes and etc. Vs. Collector of Daman and Others*, and the law laid down by the Division Bench in *Basantibai Fakirchand Khetan and Others Vs. State of Maharashtra and Another*, is distinguishable on facts.

18. However it was contended by Shri Paranjape that the law will have to be tested on the date when the writ petition is filed since wrong is continuing one.

This is the view of the Division Bench of this court in *Basantibai Fakirchand Khetan and Others Vs. State of Maharashtra and Another*, According to Shri Paranjape there is apparent conflict between these two decisions. In our view it is not necessary to decide the controversy raised before us in this behalf. Taking any view of the matter it cannot be said that the provisions of Ss. 5(2) and 7(3) are in any way violative of the Article 300A of the Constitution. Even if it is assumed that the legislation providing for deprivation of property must satisfy the requirements of law, that is it must be just, fair and reasonable, then also in our view all these tests are wholly satisfied in the present case. Sections 5(2) and 7(3) of the Act have been enacted to achieve the object of the Act. In the absence of such provisions the very purpose and object of the legislation will be frustrated. The renewal is sought on the same terms and conditions. The option conferred by the said provisions could be exercised once. The terms and conditions of existing lease were already decided between the parties by negotiation and agreement. The renewal of the lease on the same terms and conditions is not only reasonable but also just and fair. We do not find that there is anything unfair or unreasonable or unjust in the said provisions. The petitioners are not deprived of their property for all time. As conceded by Shri Paranjape, the provisions are made so as to give breathing time to the company to organise its affairs. If this is so then admittedly the said provisions are reasonable, fair and just. Thus all these requirements are satisfied in the present case and therefore, it is not possible for us to accept the contention of Shri Paranjape that any of these provisions are violative of Article 300A of Constitution.

19. In the view which we have taken therefore it is not necessary to consider the contention raised by Shri Bhosale base on the provisions of Bombay Rent Act.

20. In the result, therefore, rule is discharged. However in the circumstances of the case there will be no order as to costs.

21. Since we have decided the controversy raised before us on the basis of the law laid down by the Supreme Court, leave orally asked for to appeal to Supreme Court, is refused.

22. Rule discharged.