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DEJAPADA DAS AND ANR.

v.

UNION OF INDIA AND ORS.

April 11, 1980

B [V. R. KRISHNA IYER, O. CHINNAPPA REDDY AND A. P. SEN, JJ.]

Coal Mines (Nationalisation Amendment) Act, 1976 (Act No. LXVII of 1976), Sections 3(3) and 4, scope of—Whether Section 3(3) offends Article 14 of the Constitution, inasmuch as in regard to Coal Mines, where mining is prohibited by that provision, the workmen are left in the cold, while in regard to nationalised coal mines the workmen are taken care of and benefits assured

C *—Private managements whether "deemed custodians" under Section 5 of the Coal Mines Nationalisations Act, 1973.*

Dismissing the Writ Petitions, the Court,

HELD : 1. The provision contained in Section 3(3) of Act LXVII of 1976 is peremptory and the prohibition is mandatory because there is punish-

D ment provided for contravention of that provision. Breach of Section 3(3) is made punishable with imprisonment. The 1976 Act totally prohibits working of any coal mines by any agency other than those which have been set out in Section 3(3). Surely, there is no authority for the managements under whom the present petitioners are alleged to be workmen to operate coal mines in the face of the prohibition of the 1976 Act. Even for granting leases and their renewal by the State itself, the frown and force of the law stand four square

E between the mines and extraction of coal by any but the agencies specified in section 3(3) of the 1976 Act. [589F-G, 591A, B & C]

2. Investigation of the State or intimation by the private managements are obligatory under the appropriate legislation and in the absence of any intimation the presumption is that there are no such coal mines as are set up before the Court. What apparently has been done, if at all, is to do what has been

F described as 'scratching' that is surface mining of coal bearing areas, destructive of the natural resources of the nation without any thought for the morrow and without any reference to the planned, phased programme of exploitation of coal for the benefit of the country in the public sector. The mines, if any, are illicitly being operated, there being no sanction of the law. It is precisely to prevent this mischief of slaugter mining that s.3(3) was introduced and s.4 was enacted to make the activity punishable. The proscription is comprehen-

G sive and the penalty makes it imperative. When it is accepted that it is not permissible to operate these mines save by those specified in the 1976 statute, it necessarily follows that workmen, genuine or other, cannot claim any fundamental right to work these mines. [591D-G]

3. The prohibition of mining as under s. 3(3) of the 1976 Act, is in the pub-

H lic interest and indeed, the scheme shows that wherever public interest requires exploitation of coal mines it has been permitted in the public sector and even in the private sector so far as certain specified industries, such as iron and steel industries, are concerned. The ban is part of a national policy, conceived for conservation of a vital national resource and the wisdom of the regulation of

fuel sources and their planned user is beyond argument. Therefore, the language of s. 3(3) is express, explicit and admits of no exception. An aware Court will not relax when the language is peremptory, the legislation is charged with a critical purpose and even the commiserative cause of workmen—not wolves in sheep's clothing,—cannot override the larger cause of the nation. No nation, no workmen. [591G-H, 592A]

4. It is audacious for the dubious managements under whom the petitioners are supposed to be innocent workmen to represent to the Court that they are "deemed custodians" working on behalf of the Central Government. [592D-E]

Under section 5, notifications are a *sine qua non* for custodianship, actual or deemed and absent such notification taking over management no private agency can self-style itself as "deemed custodian". Therefore, the managements other than those specified in section 3(3) of the 1976 Act, can not claim to extract coal from any coal mines. If this be so, no one can claim as a workman, although in public interest, although it is imperative that such operation should stop. [593E-F]

5. There is no violation of Article 14 of the Constitution *vis-a-vis* the workmen concerned assuming them to be real workmen. After the dismissal of the management's writ petitions, the argument that the Act impugned is *ultra vires vis a vis* workmen is a daring legal workmanship. If a larger Bench of this Court has already upheld the *vires* of a statute the discovery of a new argument cannot invalidate that decision. That proposition will make the binding effect of precedents, read in the light of Art. 141 a vanishing cream once a novel thought strikes a legal brain. [593F-H]

The question of discrimination between two classes of workmen hardly arises because one set of mines has been closed down validly. If the closure is valid, no one employed there has a right to force it open on the score of discrimination. Denial of lay-off or other benefits belong to a different jurisdiction. If any workmen are really aggrieved that their interests are not protected and that their future is in jeopardy, it is certainly open to them to make representation to the Central Government for consideration of their lot, and certainly a welfare State will give due consideration for such representation if it is satisfied that the grievance is genuine. [594A-B]

6. Section 3(3) of the 1976 Act being mandatory and having been held constitutional by this Court, it is no longer permissible for any court in India to appoint a receiver or otherwise permit extraction of coal or coking coal. [594D-E]

ORIGINAL JURISDICTION : Writ Petition Nos. 1311, 1269-70, 1113, 1109, 1479-1480, 924-925, 1478, 1250-1251, 1219, 926-927, 1072-1076, 1565, 1652-1654, 1434-1435, 1648, 1306-1310, 1312-1314, 1590-1591, 1588-1589 of 1979 and 400, 192, 448 and 462 of 1980.

(Under Article 32 of the Constitution)

A. K. Sen and *S. K. Sinha* for the Petitioners in WP Nos. 1306-1314/79, 1434, 1113, 1109, 1250-1251, 1219, 1072-1076, 1565, 1652-1654, 1435/79 and 192/80.

A *K. N. Choubey* and *A. K. Srivastava* for the Petitioners in WP Nos. 1269-1270, 1590-1591, 1588-1589, 924-925, 926-927/79.

M. P. Jha for the Petitioners in W.P. 1648/79.

A. K. Ganguli, for the Petitioner in W.P. Nos. 1479-1480/79.

B *Arun Madan* for the Petitioners in W.P. No. 400/80.

S. N. Jha for the Petitioners in W.P. No. 488/80.

K. N. Choubey and *Mukul Mudgal* for the Petitioners in W.P. 462/80.

C *Lal Narain Sinha* Att. Genl., *M. K. Banerjee* Addl. Sol. Genl., and *Miss A. Subhashini* for the Respondent Union of India, Central Coal Fields, Easter Coal Field in WP. Nos. 1307, 1310, 1312, 1314 and Respondent 3 in W.P. Nos. 1308, 1588, 1589, 1434, 1072-1076/79.

Lal Narain Sinha Att. Genl. and *U. P. Singh* for the Respondents, State of Bihar and Its officials in W.P. Nos. 1588-89, 1434, 1109, 924-925, 1250-1251, 926-927, 1219, 1250-1251, 1072, 1290-91, D 1648, 1479-80, 1073-1074, 1565/79 and 400, 192, 488 and 462/80.

Lal Narain Sinha Att. Genl. and *Rathin Dass* for the Respondents (West of Bengal) in W.P. Nos. 1306-1314, 1073-1074/79.

E *P. K. Chatterjee* for the State of West Bengal in W.P. 1072/79.

A. K. Srivastava for the Caveator/Respondent No. 4 in W.P. Nos. 1652-1654 of 1979.

The Judgment of the Court was delivered by

F KRISHNA IYER, J. 'Survival after death' is the expression that aptly describes these writ petitions relating to coal mining by private agencies long after a prohibitory legislation and an order by this Court repelling the challenges to the vires of that Act. Parliament by the Coal Mines (Nationalisation) Amendment Act, 1976 (Act No. LXVII of 1976) (For short, the 1976 Act) totally prohibited all G mining of coal save by instrumentalities set out in s. 3, sub-s. (3) which we may excerpt here :

> (3) On and from the commencement of Section 3 of the Coal Mines (Nationalisation) Amendment Act, 1976.—
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> (a) no person, other than—
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> H (i) the Central Government or a Government company or a corporation owned, managed or controlled by the Central Government, or

(ii) a person to whom a sub-lease, referred to in the proviso to cl. (c), has been granted by any such Government, company or corporation, or

(iii) a company engaged in the production of iron and steel shall carry on coal mining operation, in India, in any form;

(b) excepting the mining leases granted before such commencement in favour of the Government, company or corporation, referred to in clause (a), and any sub-lease granted by any such Government, company or corporation, all other mining leases and sub-leases in force immediately before such commencement, shall, in so far as they relate to the winning or mining of coal, stand terminated;

(c) no lease for winning or mining coal shall be granted in favour of any person other than the Government, company or corporation, referred to in clause (a).

Provided that the Government, company or corporation to whom a lease for winning or mining coal has been granted may grant a sub-lease to any person in any area on such terms and conditions as may be specified in the instrument granting the sub-lease, if the Government, company or corporation is satisfied that—

(i) the reserves of coal in the area are in isolated small pockets or are not sufficient for scientific and economical development in a co-ordinated and integrated manner, and

(ii) the coal produced by the sub-lease will not be required to be transported by rail.

It is obvious that the provision is peremptory and the prohibition is mandatory because there is punishment provided for contravention of that provision. Section 4(1) of the 1976 Act makes a breach of s. 3(3) punishable with imprisonment.

This broad spectrum ban in law arrested the extraction of coal and was naturally assailed as *ultra vires* by the managements themselves in writ petitions under Art. 32. A bench of seven judges of this court heard erudite and elaborate arguments, at the end of which the writ petitions were dismissed. But it is not unusual for many litigants 'even though vanquished, to argue still'. Here, however, the challenge and challenger are of different colour. For, the petitioners before us

A claim to be workmen who are thrown out of employment on account of the 1976 Act and lament in this Court that they are discriminated against and on that score the law is violative of Art. 14 of the Constitution. The plea put forward is that in regard to nationalised coal mines the workmen are taken care of and their benefits assured, while in regard to coal mines where mining is prohibited by s. 3(3) of the B 1976 Act the workmen are left in the cold. This is stated to be discrimination between workmen and workmen, thus contravening the mandate of equality before the law. Maybe, the writ missiles of the managements proved damp squibs but the workers undaunted by that rebuff, want to try a new weapon of *ultra vires*. The coal will go to C the employers and the wages to the workers.

The Union of India resists this relief and contends that the writ petitioners are mere reincarnations of the old managements which have fought and lost and are masquerading as workmen so as to facilitate a second challenge. The State asserts that clandestine coal D mining mafia having been stopped, these racketeers are playing the *maricha* game through bogus workers in tears. Without going into the merits of this avernment we may state that every other conceivable objection to the validity of the 1976 Act and other sister enactments had been urged in vain before the seven judges' bench. Now the alleged workmen are complaining of discriminatory denial of benefits E to one class of workers. The Union of India counters this plea as factually a ruse for clandestine mining operations by management and legally a second battle after the legal Waterloo, hoping against hope that there is nothing to lose in a gamble. Even if a spell of stay were got the gain will outweigh possible losses in litigation. Indeed, the State's contention is that considerable losses to Government and F traumatic consequences on the nation are being daily inflicted by such clandestine operations. The whole mischief contemplated by the 1976 Act is being continued under the guise of invalidity of the legislation and, alternatively, by going to court and getting receivers appointed so that a legal colour is imparted to lawless depradations.

G It is true that nationalisation of coal, as a policy, has been evolved over the seventies. In the beginning, the management of coal mines was taken over and at a later stage ownership itself vested in the Union of India by virtue of ownership of all coal mines is the simple and incontrovertible fact emerging from the bunch of legislation we have been taken through. We are not going into the catena of enact- H ments and their sequence covering this question, because they are being discussed in greater detail and fuller depth in the comprehensive judgment where reasons have yet to be given but the result, by way

of brief order, has already been announced. Suffice it to say that the 1976 Act totally prohibits working of any coal mines by any agency other than those which have been set out in s. 3(3). Surely, there is no authority for the managements under whom the present petitioners are alleged to be workmen to operate coal mines in the face of the prohibition in the 1976 Act. There is a point of dispute raised by the Union of India that the managements which have come up before this Court do not have even leases under the Mines and Minerals (Regulation and Development) Act, 1957. This is controverted by the other side but we may side-step that issue because it is not essential for the decision of this case. For one thing, no such lease is before us. For another, what is relied on in some cases is *hukumnamas* which cannot do duty for leases. Even granting leases and their renewal by the State itself as is asserted in a few cases, the grown and force of the law stand four square between the mines and extraction of coal by any but the agencies specified in s.3(3) of the 1976 Act.

It is common ground that there is no specification of the coal mines in question in the schedule to the nationalisation legislation of 1973, nor is there any specific notification relating thereto. Investigation by the State or intimation by the private managements are obligatory under the appropriate legislation and in the absence of any intimation—none has been produced before us—we have to presume that these are no such coal mines as are set up before us. What apparently has been done, if at all, is to do what has been described as 'scratching that is surface mining of coal bearing areas, destructive of the natural resources of the nation without any thought for the morrow and without any reference to the planned, phased programme of exploitation of coal for the benefit of the country in the public sector. We are satisfied that on the materials placed before us in all these cases, the mines, if any, are illicitly being operated, there being no sanction of the law. It is precisely to prevent this mischief of slaughter mining that s. 3(3) was introduced and s. 4 was enacted to make the activity punishable. The proscription is comprehensive and the penalty makes it imperative. Once we accept the position that it is not permissible to operate these mines save by those specified in the 1976 statute, it necessarily follows that workmen, genuine or other, cannot claim any fundamental right to work these mines. The prohibition of mining coal except as under s. 3(3) of the 1976 Act, is in the public interest and indeed, the scheme shows that wherever public interest requires exploitation of coal mines it has been permitted in the public sector and even in the private sector so far as certain specified industries, such as iron and steel industries, are concerned. The ban is part of a

national policy, conceived for conservation of a vital national resource and the wisdom of the regulation of fuel sources and their planned user is beyond argument. Therefore, the language of s. 3(3) is express, explicit and admits of no exception. An aware court will not relax when the language is peremptory, the legislation is charged with a critical purpose and even the commiserative cause of workmen—not wolves in sheep's clothing. as is asserted,—cannot override the larger cause of the nation. No nation no workmen;

Assuming for a moment that the private managements are, as Dr. Chitale and Shri A. K. Sen urged, deemed custodians within the scheme of the legislative take-over, they are necessarily to operate on behalf and under the direction of the Central Government. Here is the Central Government protesting, as stridently as it can, against the mining operations by the alleged mine-owners. Both the State and Central Governments are making common cause and demand that no deemed custodian need work any mine on their behalf. How can a surrogate custodian exceed the command of the principal to stop mining? The whole case of the Union of India is that a clandestine cluster a sort of coal mafia which may even have got sham registers of workmen—is defying Government and extracting coal on the sly. It is audacious for the dubious managements, under whom the petitioners are supposed to be innocent workmen, to represent to the court that they are 'deemed custodians', working on behalf of the Central Government.

Nor are we prepared to accept the naive case that the petitioners' employers can be regarded as deemed custodians under s. 5. We may read s. 5 of the Coal Mines Nationalisation Act, 1973.

> 5. *Power of Central Government to direct vesting of rights in a Government company* :—
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> (1) Notwithstanding anything contained in Sections 3 and 4, the Central Government may, if it is satisfied that a Government company is willing to comply, or has complied, with such terms and conditions as that Government may think fit to impose, direct, by an order in writing, the right, title and interest of an owner in relation to a coal mine referred to in Section 3, shall; instead of continuing vest in the Central Government, vest in the Government company either on the date of publication of the direction or on such earlier or later date (not being a date earlier than the appointed day), as may be specified in the direction.

(2) Where the right, title and interest of an owner in relating to a coal mines vest in a Government company under sub-section (1), the Government company shall on and from the date of such vesting, be deemed to have become the lessee in relation to such coal mine as if a mining lease in relation to the coal mine had been granted to the Government company and the period of such lease shall be the entire period for which such lease could have been granted under the Mineral Concession Rules; and all the rights and liabilities of the Central Government in relation to such coal mine shall, on and from the date of such vesting, be deemed to have become the rights and liabilities, respectively, of the Government company.

(3) The provisions of sub-section (2) of section 4 shall apply to a lease which vests in a Government company as they apply to a lease vested in the Central Government and references therein to the "Central Government" shall be construed as references to the Government company.

The notification required under s. 5 authorising the mine to be worked, is admittedly absent. No such notification exists or has been hinted at or is existing. In the absence of the relevant notification contemplated by s. 5, it is impossible to postulate 'deemed custodianship'. There are scheduled mines or notified mines, under the scheme of statutory management in the Management Take-over Act. Notifications are a *sine qua non* for custodian-ship, actual or deemed and absent such notification taking over management no private agency can self-style itself as deemed custodian. It follows that on any view of the matter the managements other than those specified under s. 3(3) of the 1976 Act can claim to extract coal from any coal mines. If this conclusion is sound, as we have demonstrated it is, the inference is irresistible that no one can claim to extract coal as a workman, although in public interest, it is imperative that such operation should stop. We hold that there is no violation of Art. 14 of the Constitution, *vis-a-vis* the workmen concerned assuming them to be real workmen. We have grave doubts about the varacity of this piece of workmanship that the petitioners and others of their ilk are actual, not imaginary. Anyway, after the dismissal of the managements' writ petitions, the argument that the Act impugned is *ultra vires vis a vis* workmen is a daring legal workmanship. If a larger bench of this Court has already upheld the *vires* of a statute the discovery of a new argument cannot invalidate that decision. That proposition will make the binding effect of precedents, read in the light of Art. 141, a vanishing cream once a novel thought strikes a legal brain.

A The question of discrimination between two classes of workmen hardly arises because one set of mines has been closed down validly. If the closure is valid, no one employed there has a right to force it open on the score of discrimination. Denial of lay-off or other benefits belong to a different jurisdiction. If any workmen are really aggrieved that their interests are not protected and that their future is in jeopardy, B it is certainly open to them to make representation to the Central Government for consideration of their lot, and certainly a welfare State will give due consideration for such representation if it is satisfied that the grievance is genuine. We dismiss the Writ Petition with costs.

It has been mentioned on more than one occasion in this court C that interlocutory orders have been passed, that Receivers have been appointed by civil courts, including High Courts, and that working of mines is licitly going on. In the face of the all-pervasive statutory prohibition which is peremptory in language and punishable in consequence, it is surprising that any Receiver could at all dare to work mines. While we disapprove of that conduct we make it perfectly D plain that there will be no more sanction for any receiver or other officer of court to extract coal or coking coal from any mine in India. Section 3(3) of the 1976 Act being mandatory and having been held constitutional by this Court, it is no longer permissible for any court in India to appoint a receiver or otherwise permit extraction of coal E or coking coal. We vacate all interim orders forthwith.

It may be fair to the learned Attorney General, whose hunch we share to state that this wealth of "workers" writ petitions is a kind of litigative puppetry, the illicit mine exploiters being the puppeteers and those who figure as worker petitioners being the puppets.

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S.R. *Petitions dismissed.*