A

BISWANATH PRASAD

v.

UNION OF INDIA & OTHERS

August 14, 1964

(P. B. GAJENDRAGADKAR, C.J., M. HIDAYATULLAH, J. C. SHAH,
B RAGHUBAR DAYAL AND S. M. SIKRI JJ.)

Mines and Minerals (Regulation and Development) Act, 1948 (*Act* 53 *of* 1948), *s.* 5—*Acquisition—Notification—Mala fide—If delay evidence of—Opening of mines—Rule* 39 *if valid and authorised by s.* 17—*'Grant' in s.* 5 *if connotes transfer of property—Constitutional validity of r.* 39—*If could be challenged by person not having sufficient interest—Coal Mines (Conservation and Safety), Act,* 1952 (*Act* 12 *of* 1952),
C *s.* 17—*Coal Mines (Conservation and Safety) Rules,* 1954, *r.* 39—*Mineral Concession Rules,* 1948, *rr.* 37, 48—*Constitution of India, Arts.* 14, 19.

By notifications under s. 4(1) of the Coal Bearing Areas (Acquisition and Development) Act (20 of 1957), the Central Government gave notice of its intention to prospect for coal in the colliery of the petitioner. The petitioner did not file any objection to the proposed acquisition under s. 8
D of the Act (20 of 1957). In reply to the intimation by the Government that the area in question appears to have been notified, the petitioner asserted that he was not bound in law by the aforesaid notifications. According to him, he started working the colliery immediately after purchasing it in 1956. This was denied by the respondents and on this issue the High Court found against the petitioner. Under s. 4(4) of the Act (20 of 1957) the Union Government was prohibited from acquiring "that portion of land in which coal mining operations are actually being carried on in conformity
E with the provisions of any enactment, rule, or order for the time being in force". The respondents relying on the provision, however, said further that even if it be assumed that the petitioner worked the mines, this was not done in accordance with law. On this point also the High Court held against the petitioner. Against this the petitioner argued that r. 39 of the Coal Mines (Conservation and Safety) Rules, 1954, under which the Coal Board refused permission to open the colliery was *ultra vires* as the Union Government could not make this rule under s. 17 of the
F Act (12 of 1952) and it was this illegal refusal to open the mines that resulted in the colliery not being worked at the time of the notifications. The petitioner further contended that even if r. 39 was valid permission was refused *mala fide*, with the ulterior object of avoiding the prohibition laid down in s. 4(4) of the Act (20 of 1957). The respondents objected that the petitioner had acquired the lease in contravention of the law and therefore had no right to allege that r. 39 of the Coal Mines (Conser-
G vation and Safety) Rules was violative of Art. 19 of the Constitution. To defeat this objection the petitioner raised the point that rr. 37 and 48 of the Mines & Minerals (Regulation and Development) Rules were *ultra vires* the Mines & Minerals (Regulation and Development) Act, 1948.

HELD : (i) The notifications were not vitiated on account of any *mala fides*. That there was delay in disposing of the petitioner's representations is evident but delay, by itself, is hardly evidence of *mala fide*,
H specially as the Coal Board had long ago declined to revise its earlier decision not to give permission to reopen the mines. [54C-E]

(ii) Rule 39 was not invalid and it was authorised by s. 17 of the Act (12 of 1952) [55C-D].

Rule 39 is designed, *inter alia*, to secure conservation of coal. If a mine has to be opened or reopened the Coal Board has to consider whether it is necessary to do so and it must take into consideration the requirements of the country for the particular grade at that time. [55B-C] A

(iii) The word 'grant' in the context of s. 5 of the Act (53 of 1948), *inter alia*, connotes transfer of property and mining leases are property. The Parliament, while using the word 'grant' in s. 13(1) of the Act 67 of 1957 in s. 13(2)(1) specially provided for rules being made regarding the manner in which and the conditions subject to which a prospecting licence or a mining lease might be transferred. If these rules were *intra vires*, the result was that the petitioner acquired the colliery in transgression of these rules. Consequently he had not sufficient interest in the property to raise question about the constitutional validity of r. 39 of the Coal Mines (Conservation and Safety) Rules, 1954. [56E-G] B

Mason, Herring and Brooks v. Harris [1921] 1 K.B. 653 distinguished. C

(iv) Under the circumstances, there has not been any discrimination in violation of Art. 14 of the Constitution. Demand for Grade III B Coal can easily be different after the lapse of five years, and the Coal Board was entitled to decide the lease of the other colliery on the facts existing in 1959 and 1963. [57C-D]

ORIGINAL JURISDICTION.—Writ Petition No. 14 of 1964. D

Petition under Art. 32 of the Constitution of India for the enforcement of Fundamental Rights.

WITH

Civil Appeal No. 143 of 1964.

Appeal by special leave from the judgment and order dated May 23, 1963, of the Patna High Court in M.J.C. No. 1069 of 1962. E

C. B. Agarwala and *K. K. Sinha*, for the petitioner (in W. P. No. 14/1964) and appellant (in C.A. No. 143/1964).

S. V. Gupte, Additional Solicitor-General and B. R. G. K. Achar, for the respondents (in W.P. No. 14/1964 and C. A. No. 143/1964). F

The Judgment of the Court was delivered by

Sikri J. There are two matters before us for disposal. One is an appeal by special leave against the judgment of the Patna High Court, dismissing an application filed by Biswanath Prasad under Art. 226 of the Constitution. The other is a petition filed under Art. 32 of the Constitution. In the petition under Art. 32, some points have been raised which were not debated before the High Court and some documents which were not produced before the High Court have been filed in this Court. In the circumstances it seems convenient to proceed to dispose of the petition first, but we will, where appropriate, indicate the finding and reasoning of the High Court on a particular point. To decide the points raised G H

A by Mr. C. B. Agarwala, the learned counsel for the petitioner, it is necessary to state the facts somewhat in detail, for, *inter alia*, he submits that the action of the Union Government in acquiring the petitioner's mines was *mala fide*.

The petitioner, by deed of sale dated November 29, 1956, B purchased a colliery, called Dhobidih Colliery, for Rs. 20,000 from the Bengal Coal Co. Ltd., Calcutta. He held a certificate of approval granted to him under r. 6 of Mineral Concession Rules, 1949. According to him, he started working the colliery immediately. This is denied by the respondents. This is one of the issues debated before the High Court, which found it against the C petitioner. This point is of crucial importance for the Union Government is prohibited by sub-s. (4) of s. 4 of the Coal Bearing Areas (Acquisition and Development) Act (20 of 1957) from acquiring "that portion of land in which coal mining operations are actually being carried on in conformity with the provisions of any enactment, rule, or order for the time being in force." The D respondents relying on this provision however, say further that even if it be assumed that the petitioner worked the mines, this was not done in accordance with law. On this point also the High Court held against the petitioner.

After acquiring the colliery, the petitioner, according to him, E started working the mine in earnest. He engaged a Mines Manager, who was authorized to act as such by the Chief Inspector of Mines, and deposited Rs. 2,000 with the Assistant Electrical Engineer, Giridih, to secure an electric connection. He exploited the Hill Seam and had even two shifts in the Mine. He duly submitted returns. He even paid Sales Tax and excise on coal raised, which F in the annual return for the year ending December 31, 1958, he claimed, amounted to 4200 tons, including colliery consumption and coal used for making coke. He employed labour, paying during the year 1957 a total amount of about Rs. 41,000 for 1,103 man day's work. In this connection we were referred to an affidavit filed before the Calcutta High Court on behalf of the G Coal Board wherein it is stated the petitioner had "commenced mining operations in contravention of r. 39(1) of the Coal Mines (Conservation and Safety) Rules, 1954, and further, coal was being despatched in contravention of r. 39(4) of the aforesaid Rules on the basis of an old grade given by the Coal Commissioner prior to the closure of the colliery in the year 1948. The said grade H was, however, withdrawn in February 1958."

From these facts it emerges that the petitioner did put up a show of raising coal but all these operations do not add up to

carrying on coal mining operations within the meaning of sub-s. (4) of s. 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957. At any rate, argues the respondent's counsel, the coal was raised contrary to law, and at the time of the acquisition by the Government no coal mining operations were being carried on. To this the petitioner's counsel replies that r. 39 of the Coal Mines (Conservation and Safety Rules) 1954, under which the Coal Board refused permission to open the colliery was *ultra vires* as the Union Government could not make this rule under s. 17 of the Coal Mines (Conservation and Safety) Act, 1952 (12 of 1952), and it was this illegal refusal to reopen the mines that resulted in the colliery not being worked at the time of the Notification. The learned counsel for the petitioner further says that even if r. 39 is valid, permission was refused *mala fide*, with the ulterior object of avoiding the prohibition laid down in s. 4(4) of the Coal Bearing Areas (Acquisition and Development Act) 1957. Now, what are the facts which are relevant to this part of the case? The Bengal Coal Company, from whom the petitioner had acquired the colliery, stopped working the colliery in 1948. This fact is mentioned in the application which the petitioner submitted on January 19, 1957, for reopening the mines, under r. 39 of the Coal Mines (Conservation and Safety) Rules 1954. It is further stated in the application that the reasons for closure by previous owner are not known but it appears that due to non-availability of power and transport the raisings were very poor and eventually closed. It follows from the statements in the application that when the petitioner acquired the colliery it had been closed for more than eight years. The explanation subsequently given by the petitioner that this application was made through clerical mistake cannot be believed. On October 10, 1957, after some correspondence, the petitioner was informed that the Coal Board had not granted permission to reopen the colliery "as production of more coal of the quality expected from the seams proposed to be worked by you is not now required for the Giridih area." In spite of this refusal, the petitioner carried on correspondence with the Regional Inspector of Mines, Dhanbad Inspection Region, regarding the working plan of the colliery. This correspondence cannot advance the petitioner's case in any manner. On February 24, 1958, the Coal Board withdrew the Grade IIIB fixed for the colliery with immediate effect. The petitioner was further requested not to despatch any coal from the colliery henceforth. From the above recital it is quite clear that if it is assumed that the petitioner worked the mines, he did it contrary to r. 39 and, therefore, the rule if valid, the prohibition

A B C D E F G H

A in s. 4(4) of the Coal Bearing Areas (Acquisition and Development) Act does not come into operation.

After this, the petitioner started representing to the Coal Board for cancelling its orders. By its letter dated March 24, 1958, the Coal Board firmly reiterated its stand and warned the petitioner B that he had raised and dispatched coal in contravention of Coal Mines Conservation and Safety Rules, 1954. On January 30, 1959, the Government of India refused to interfere with the decision of the Coal Board. On July 20, 1959, the Board declined to revise its decision. But the petitioner was not disheartened. He started representing again and for some reason, not apparent on C the record, the Coal Board started showing a receptive mind. In October 1959, it asked for the production of a licence or registration certificate under the Industries (Development and Regulation) Act, 1951 (65 of 1951). Some letters were exchanged on this topic. Then the petitioner approached the Union Government, D who asked for more information. In the reply, the petitioner stated that 'on receipt of several letters from the concerned department the working of the colliery was stopped from August 1, 1958'. Later, more information was asked for and supplied to the Union Government. Ultimately, the petitioner was informed that it was not necessary for him to have a licence under Act 65 E of 1951. From now on the petitioner was time and again told by the Coal Board that the matter was under consideration, while the petitioner continued to press his case. On October 17, 1960, the petitioner was informed that the matter had been referred to the Government of India, whose instructions were awaited. From now on the scene shifts to the Ministry of Steel, Mines and Fuel, which F kept on acknowledging letters addressed by the petitioner. Enquiries were made in April 1961 whether the colliery was unworked. On July 1, 1961, the Central Government issued a Notification, No. S.O. 1581, under sub-s. (1) of s. 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957, giving notice of its intention to prospect for coal in the colliery of the petitioner. G Another Notification No. S.O. 484, under s. 4(1) of the Act of 1957, was issued on February 6, 1962, in respect of another area of 25.15 acres. The petitioner did not file any objections to the proposed acquisition under s. 8 of the Act. It was only on November 23, 1961, that the petitioner was informed by the Government that the area in question appears to have been notified under H sub-s. (1) of s. 4 of the Act 20 of 1957. In reply to this intimation, the petitioner asserted that he was not bound in law by the aforesaid notification.

In para 32 of the petition, the petitioner alleged *mala fides* thus: "that, thus it is absolutely clear, the whole intent and purpose of the orders of the respondent No. 2 (*i.e.* the Coal Board) and the notification issued by respondent No. 1 (*i.e.* the Union Government) and the subsequent lingering of the matter on one plea or another were quite *mala fide.*" In para 21 it is stated that the respondents and their authorities colluded and conspired against the petitioner with ulterior motive and collateral reasons and paid no heed to the petitioner's representations."

These allegations are quite vague and are not sufficient to allege a case of conspiracy between the Coal Board and the Union Government to deprive the petitioner of his colliery. Apart from this, the above recital of the facts does not lend any support to any conspiracy existing between the Coal Board and the Union Government. That there was delay in disposing of the petitioner's representations is evident but delay, by itself, is hardly evidence of *mala fide*, specially as the Coal Board had as long ago as July 1959 declined to revise its earlier decision not to give permission to reopen the mines. There was a proceeding under s. 147, Criminal Procedure Code, between the petitioner and the Superintendent of Giridih Collieries, worked by Respondent No. 3, the National Coal Development Corporation (Pvt.) Ltd., and this litigation is also called in aid for showing *mala fides*. We are unable to see how the fact, assuming it to be true, that the said Superintendent was on inimical terms with the petitioner, shows *mala fide* on the part of the Union Government. Consequently, we hold that the Notifications Nos. S.O. 1581 and S.O. 484 are not vitiated on account of any *mala fides*.

This takes us to the question whether r. 39 of the Coal Mines Conservation and Safety Rules, 1954, is *ultra vires*. The said rule 39 and s. 17 of the Coal Mines (Conservation and Safety) Act, 1952, are in the following terms :—

"Rule 39—Opening and reopening of Coal Mines.

(1) No coal mine or seam shall be opened and no coal mine or seam the working whereof has been discontinued for a period exceeding six months shall be reopened and no operation shall be commenced without the prior permission in writing of the Board and except in accordance with such directions as the Board may give."

"S. 17(1)—The Central Government may, by notification in the Official Gazette and subject to the condition

A of previous publication, make rules to carry out the purposes of this Act."

Section 17(2) gives various specific matters on which rules can be made but none of these covers r. 39. But in spite of this we are of the opinion that the impugned rule is valid. The object of
B the Act is to provide for the conservation of coal and make further provision for safety in coal mines. Section 7 empowers the Central Government to exercise such powers and take or cause to be taken all such measures as it may deem necessary or proper or as may be prescribed. We consider that r. 39 is designed, *inter alia*, to secure conservation of coal. If a mine has to be opened or re-
C opened the Coal Board has to consider whether it is necessary to do so. It must take into consideration the requirements of the country for the particular grade at that time. If a particular grade of coal is not required, it would conserve it for future use, if it is not allowed to be raised. In the result, we hold that r. 39 is not invalid and it is authorized by s. 17 of the Act (12 of 1952).

D The next point that arises out of the pleadings is whether rr. 37 and 48 of the Mineral Concession Rules, 1949, are *ultra vires* the Mines and Minerals (Regulation and Development) Act, 1948. This point is raised by the petitioner in his counter-affidavit to defeat the objection of the respondents that the petitioner had acquired the lease of the colliery in contravention of the law and,
E therefore, has not any right to allege that r. 39 of the Coal Mines Conservation and Safety Rules, 1954 is violative of Art. 19 of the Constitution. The Mineral Concession Rules, 1949, were made in exercise of the powers conferred by s. 5 of the Mines and Minerals (Regulation and Development) Act, 1948. Section
F 5(1), before it was amended by Act 67 of 1957, reads thus :

"5. *Power to make rules as respects mining leases*:

(1) The Central Government may, by notification in the official gazette make rules for regulating the grant of mining leases or for prohibiting the grant of such
G leases in respect of any mineral or in any area."

Rules 37 and 48 are in the following terms :

"37. *Transfer of lease*—The lessee may, with the previous sanction of the State Government and subject to the conditions specified in the first proviso to rule 35 and in rule 38, transfer his lease or any right, title
H or interest therein, to a person holding a certificate of approval on payment of a fee of Rs. 100 to the State Government.

Provided that no mining lease or any right, title or interest therein in respect of any mineral specified in Schedule IV shall be so transferred except with the previous approval of the Central Government." A

"48. *Transfer of assignment*—No prospecting licence or mining lease to which the provisions of this Chapter shall apply or any right, title or interest in such license or lease shall be transferred except to a person holding a certificate of approval from the State Government having jurisdiction over the land in respect of which such concession is granted. B

Provided that no prospecting license or mining lease or any right, title or interest in such license or lease in respect of any mineral specified in Schedule IV shall be transferred except with the previous approval of the Central Government." C

These rules prohibit the transfer of a lease of a coal mine except with the previous approval of the Central Government. It is argued on behalf of the petitioner that these rules do not regulate the grant of a mining lease for the word 'grant' does not include transfer or assignment of a lease. It is true that in a particular context, as existed in the case of *Mason, Herring and Brooks* v. *Harris*(1), the word 'grant' may not include an assignment. But we are not satisfied that the word 'grant' in the context of s. 5 has this narrow meaning. The word 'grant', *inter alia*, connotes transfer of property and mining leases are property. Further, mining leases are usually of long duration and it could not have been the intention not to regulate assignments of such leases. We are fortified in this conclusion by the fact that Parliament, while using the word 'grant' in s. 13(1) of Act 67 of 1957, in s. 13(2)(1) specifically provides for rules being made regarding the manner in which and the conditions subject to which a prospecting licence or a mining lease may be transferred. If these rules are *intra vires*, the result is that the petitioner acquired the colliery in transgression of these rules. Consequently, he has not sufficient interest in the property to raise questions about the constitutional validity of r. 39 of the Coal Mines Conservation and Safety Rules, 1954. D E F G

One point urged on behalf of the petitioner now remains, and that is the plea of discrimination. The plea is put in the following terms, in para 31 of his petition: H

(1) [1921] 1 K.B. 653.

A "That although the respondent No. 2 refused permission to the petitioner to open the colliery and withdrew the grade on the plea that no more of the quality was required from the Giridih area, it granted permission on June 6, 1959, for reopening of Kabari Bad Colliery in the same area of Karhabaree for raising Grade IIIB
B coal which was lying unworked for the last about 10 years although the colliery lies in the midst of collieries being worked by respondent No. 3 due to which the latter had to allow them to use its (N.C.D.C.'s) own road in the area."

C The respondent's case is that while permission to reopen the mines was refused to the petitioner in October, 1957, it was on June 6, 1959, that the Kabari Bad Colliery was given permission. And more important is the allegation that the grade was fixed for this colliery as IIIB on March 30, 1963, *i.e.* five years after this grade was withdrawn from the petitioner. Demand for Grade IIIB coal
D can easily be different after the lapse of five years, and the Coal Board was entitled to decide the case of Kabari Bad Colliery on the facts existing in 1959 and 1963. Under the circumstances, we are not satisfied that there has been any discrimination in violation of Art. 14 of the Constitution.

E In view of our findings above, we dismiss the petition, but in the circumstances of the case, we order that the parties will bear their own costs.

No other point arises in the appeal and we dismiss the appeal with no order as to costs.

Appeal dismissed.