(1966) 02 PAT CK 0006

Patna High Court

Case No: Government Appeal No. 11 of 1963

State of Bihar		APPELLANT
	Vs	
B.L. Agarwalla and Another		RESPONDENT

Date of Decision: Feb. 16, 1966

Acts Referred:

- Constitution of India, 1950 - Article 141
- Criminal Procedure Code, 1898 (CrPC) - Section 417, 423(1)
- Evidence Act, 1872 - Section 115
- Mines Act, 1923 - Section 10, 59(3)

Citation: AIR 1966 Patna 410

Hon'ble Judges: Tarkeshwar Nath, J; S.P. Singh, J

Bench: Division Bench

Advocate: Brajeshwar Prasad Sinha and K.K. Sharan, for the Appellant; Randeva Choudhary, S.C. Banerjee and S.K. Mazumdar for Respondent No. 1 and Kameshwari Nandan Singh, for the Respondent

Final Decision: Allowed

Judgement

Tarkeshwar Nath, J.
This appeal by the State of Bihar is directed against the judgment of the Magistrate 1st Class, Dhanbad, acquitting the respondents on the ground that the Coal Mines Regulations, 1957, were invalid and inoperative.

2. This case had a chequered career. The Central Bhowra Colliery is owned by Messrs. Central Bhowra Coal Co (Private) Ltd of which respondent No 1, namely, B.L. Agarwalla (mentioned as Banwari Lal Agarwalla in the petition of complaint) is the Managing Director. Respondent No. 2 was the First Class Certificated Manager at the relevant time. The said colliery was situated in Mahalla Mohalbani Police station. Jorapukur. This colliery was on two plots and one plot was commonly known as 88 bighas plot whereas the other was known was 100 bighas plot. Sowardih Colliery

was to the adjoining east of the 100 bighas plot but the working of this colliery was discontinued in 1928 and it was subsequently filled with water. On 20-2-1958 a serious accident occurred at about 6 a.m. in the Central Bhowra Colliery and 23 miners appealed to have been trapped underground due to inundation. Respondent No. 1 gave a notice (Ex. 30) of this accident to the Chief Inspector of Mines at Dhanbad and mentioned therein the names of the 23 persons who were found to be missing. The case of the prosecution was that the Managing Director and the Manager acted in contravention of the provisions of Regulations 107 and 127 of the Coal Mines Regulations, 1957 the working of the Central Bhowra Colliery was extended upto 21 metres in the property of Sowardih Colliery and this was done at the instance of both the Manager as well as the Managing Director. As a result of this working the water from Sowardth Colliery entered on 20-2-1958 into 3rd East Level of the No. 7 Incline in 100 bighas plot of Central Bhowra Colliery and flooded the area. At that time, 23 miners and loaders, a mining sirdar, a pump khalasi and a bailing mazdoor were undei ground of whom the last three ran out for safety but the 23 miners and loaders were drowned. The prosecution further alleged that the management ought to have stopped working in No. 7 Incline within 7-5 metres short of the common boundary with Sowardih Colliery.

After this accident, the Central Government appointed a Court of Inquiry u/s 24 of the Mines Act (No. XXXV of 1952) to hold an inquiry into the causes of this accident. The Court found the two respondents responsible for the accident and the report was published in the Gazette of India on 19-7-1958. Subsequently, the Regional Inspector of Mines, Dhanbad Inspection Region No. 2, filed a petition of complaint before the Sub-Divisional Magistrate, Dhanbad, on 13-10-1958 against Messrs. Central Bhowra Coal Co. (Private) Ltd., owners of Central Bhowra Colliery, represented by respondent No. 1, the Managing Director, and also against respondent No. 2 (the ex-Manager of the said Colliery), stating the facts relating to this accident and the offences committed by the respondents which were punishable u/s 74 of the Mines Act. The Sub-Divisional Magistrate took cognizance of the case on 14-10-1958 and summoned the two respondents for appearance on 17-11-1958.

3. The respondent No. 1 riled an application (Miscellaneous Judicial Case No. 805 of 1958) in the High Court under Articles 226 and 227 of the Constitution of India challenging the validity of the Coal Mines Regulations, 1957, but it was rejected summarily on 21-11-1958. Being aggrieved by this order, respondent No. 1 filed an application in the Supreme Court for special leave to appeal and leave to appeal was granted to him on 8-12-3958. Accordingly he filed an appeal (Criminal Appeal No. 131 of 1959) in the Supreme Court. The Supreme Court directed the learned Magistrate to record the evidence but not pass any final order so long the appeal was pending in the Supreme Court. The appeal was ultimately decided on 10-2-1961 and the judgment in Banwarilal Agarwalla Vs. The State of Bihar and Others, . Their Lordships remanded the case to the Magistrate for deciding the question whether

there was consultation with Mining Boards constituted u/s 10 of the Mines Act, 1923. before the regulations were framed and, if so, whether such consultation amounted to sufficient compliance with Section 59. Their Lordships gave a further direction that if the conclusion of the Magistrate would be that there was no compliance with the provisions of Section 59 the regulations must be held to be invalid and the accused would be entitled to an acquittal; if, on the other hand, he would hold that there was sufficient compliance with the provisions of Section 59, then he should dispose of the case after coming to a conclusion on the evidence as regards the allegations made against the appellant in the petition of complaint. The appeal was disposed of in these terms.

4. In pursuance of the order of the Supreme Court, the learned Magistrate proceeded to decide the two questions referred to him and he was of the opinion that the Coal Mines Regulations, 1957, were fit to be declared invalid on the ground that the comments of the members and not the comments of the Board were called for and two of the three Mining Boards, namely, the West Bengal Mining Board and the Madhya Pradesh Mining Board, did not satisfy the provisions of Section 10 of the Mines Act, 1923, and were, therefore, invalid. He was thus of the view that no proper reference was made to the two Mining Boards and there was not sufficient compliance with Section 59 of the Mines Act, 1952 Having expressed so, he formulated a question as to which Court was competent to declare those regulations invalid and relying upon Section 432 of the Code of Criminal Procedure he referred the matter by his order, dated 23-1-1962 to the High Court for decision. This was registered in the High Court as Criminal Reference No. 1 of 1962 and was admitted on 19-2 1962. Respondent No. 1 filed a separate revisional application in the High Court and this was registered as Criminal Miscellaneous No. 106 of 1962.

While these two cases were pending in the High Court, the question about the validity of the Coal Mines Regulations, 1957, came up for consideration at the instance of Kali Pada Chowdhury and others in an application under Article 32 of the Constitution of India and the decision in Kalipada Chowdhury Vs. Union of India (UOI), . The present respondent B.L. Agarwalla was an intervener in the case of Kali Pada Chowdhury before the Supreme Court. The petitioners Kali Pada Chowdhury and others were being prosecuted for the alleged contravention of the provisions of Regulation 127 (3) of the Coal Mines Regulations, 1957, framed under the Mines Act, 1952. They had made a prayer for quashing the said criminal proceeding and one of the grounds was that the said regulation was invalid, ultra vires and inoperative. They alleged that at the relevant time, when those regulations were made in 1957 no Mining Boards had been established u/s 12 of the Mines Act, 1952 and although three Boards had been established u/s 10 of the Indian Mines Act of 1923, yet as a result of the subsequent amendments made in the provisions of Section 10 the composition of two of the said Boards had become invalid with the result that two of them could not be treated as Boards validly constituted. These invalid Boards were the Madhya Pradesh Mining Board and the West Bengal Mining Board. Their further

contention was that the third Board, namely Bihar Mining Board, no doubt existed but the reference as made to the individual members of this Board and that was not a sufficient compliance with the provisions of Section 59(3). That case of Kali Pada Chowdhury and others was decided by the Supreme Court on 8-5-1962 and it was held that the Coal Mining Regulations of 1957 were duly framed and published u/s 59(5) and as such they had the same effect as if enacted in the Act. Their Lordships further held that Section 12(1) of the Mines Act, 1952, was directory and not mandatory. After this decision of the Supreme Court, the two cases (Criminal Reference No. 1 of 1962 and Criminal Miscellaneous No. 106 of 1962) were taken up for hearing in the High Court and the High Court by its order, dated 2-11-1962 discharged the reference and permitted the application in revision to be withdrawn with the observation that the provisions of Section 432 of the Code of Criminal Procedure presented no difficulty and the Magistrate had to follow the directions of the Supreme Court given in the case of Banwarilal Agarwalla Vs. The State of Bihar and Others, . Their Lordships further directed the learned Magistrate to consider the subsequent decision, dated 3-5-1962 of the Supreme Court in the case of Kalipada Chowdhury Vs. Union of India (UOI), .

5. The case against the respondents was again taken up by the learned Magistrate at Dhanbad and he took the view that the subsequent decision of the Supreme Court in the case of Kali Pada Chowdhury, mentioned above, did not alter the position and there was no sufficient compliance with the provisions of Section 59(3) of the Mines Act, 1952, inasmuch as there was no proper reference to the West Bengal and Madhya Pradesh Mining Roards as the constitutions of those Boards themselves were invalid and the reference to the Rihar Mining Hoard as well was invalid as the comments of members as distinguished from the report of the Hoard were called for. After giving these findings, he held that the Coal Mines Regulations, 1957, were invalid and accordingly he acquitted the respondents by his judgment, dated 26-11-1962, without going into the merits of the case. Hence the State of Bihar has preferred this appeal in this Court.

6. Learned counsel for the State urged that according to the decision of the Supreme Court in Kalipada Chowdhury Vs. Union of India (UOI), , the Coal Mines Regulations, 1957, were valid and operative and this decision was binding on all the Courts. He further pointed out that the West Bengal Mining Board and the Madhya Pradesh Mining Board not having been validly constituted reference to them was not at all necessary and the other reference to the Bihar Mining Board was perfectly valid in the circumstances of the present case. He accordingly urged that the learned Magistrate took an erroneous view of the law and was entirely wrong in acquitting the respondents.

7. Learned counsel Mr. Choudhary for respondent No. 1 refuted the contentions made on behalf of the appellant and submitted that the judgment of the Supreme Court in Banwarilal Agarwalla Vs. The State of Bihar and Others, , was complete in

itself and the Supreme Court gave positive and definite directions to be followed by the Magistrate He elaborated his point in this manner. This decision of the Supreme Court was inter partes and governed both the State and the respondents (accused). It was a final decision for all purposes but subject to certain inquiries which were to be made by the Magistrate. The Supreme Court had directed the Magistrate to acquit the accused in the event of the regulations found to be invalid on account of the non-compliance with the provisions of Section 59, but if there was a sufficient compliance with those provisions then the case against the accused had to proceed. These directions of the Supreme Court were followed by the Magistrate and he had come to the conclusion that there was not sufficient compliance with the provisions of Section 59 and the regulations were invalid. The subsequent decision of the Supreme Court in Kalipada Chowdhury Vs. Union of India (UOI), did not alter the position in any manner and the view taken by the Magistrate was perfectly correct. Learned counsel further urged that the State had admitted before the Supreme Court in the case of Banwarilal Agarwalla Vs. The State of Bihar and Others, (referred to above) the validity of the West Bengal and the Madhya Pradesh Mining Boards and on that admission their Lordships directed the Magistrate to find out as to whether there was a reference to those Boards at the time of framing those regulations. In face of that admission, it was not open to the State now to contend that those Boards were not validly constituted. The principles of estoppel were applicable and the State could not be permitted to make out a contradictory case so as to affect the rights of the accused which were finally determined by the judgment of the Supreme Court in the case of Banwarilal Agarwalla Vs. The State of Bihar and Others, . Learned counsel for respondent No. 2 adopted the argument made by learned counsel for respondent No. 1.

8. In support of these contentions (mentioned above) Mr. Choudhary referred to Dwijendra Narain Roy Vs. Joges Chandra De and Others, . The defendant there had first taken the plea that the document in question was altered after the execution but later on he took up the plea that it was altered before the execution. It was held that the defendant could not take up that inconsistent position on the principle that a party litigant could not be permitted to assume inconsistent positions in court, to blow hot and cold and to approbate and reprobate to the detriment of his opponent. He next referred to Hoysted v. Commissioner of Taxation (1926) 134 LT 354 where Lord Shaw observed at page 358 as follows:

"..... .it is settled, first, that the admission of a fact fundamental to the decision arrived at cannot be withdrawn and a fresh litigation started, with a view of obtaining another judgment upon a different assumption of fact; secondly, the same principle applies not only to an erroneous admission of a fundamental fact, but to an erroneous assumption as to the legal quality of that fact."

Another observation at page 359 reads thus:

"It is seen from this citation of authority that if in any court of competent jurisdiction a decision is reached, a party is estopped from questioning it in a new legal proceeding. But the principle also extends to any point, whether of assumption or admission, which was in substance the ratio of and fundamental to the decision."

He relied on Sambasivam v. Public Prosecutor, Federation of Malaya 54 CWN 695 and the relevant passage at page 705 reads thus:

"The effect of a verdict of acquittal pronounced by a competent court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication. The maxim ''Res judicata pro veritate accipitur'' is no less applicable to criminal than to civil proceedings. Here, the Appellant having been acquitted at the first trial on the charge of having ammunition in his possession, the prosecution was bound to accept the correctness of that verdict and was precluded from taking any step to challenge it at the second trial. And the Appellant was no less entitled to rely on his acquittal in so far as it might be relevant in his defence."

He referred to Tarini Charan Bhattacharjee and Others Vs. Kedar Nath Haldar, , but that was a case where one of the questions referred to the Full Bench was as to whether an erroneous decision on a pure question of law operated as res judicata in a subsequent suit where the same question was raised and the provisions of Section 11 of the CPC were considered in that decision. He drew our attention to Ram Kirpal Shukul and Mt. Rup Kuari (1883) 11 IA 37 , but in that case the Court had to consider the effect of a previous order assed in course of execution proceedings and was held that the binding force of such an order depended not upon (res judicata as provided in) Section 13, Act X of 1877, but upon general principles of law.

In Poulton v. Adjustable Cover and Boiler Block Co. (1908) 2 Ch. 430, relied upon by learned ''counsel a patentee brought an action for infringement of the patent. The defendants took up the defence that the patent was invalid on the ground of user prior to the grant of the patent, but that defence failed and the plaintiff obtained judgment for an injunction, and an order for an inquiry as to damages. Pending the inquiry, the defendants, having discovered further instances of prior user filed a petition for the revocation of the patent and obtained an order for its revocation. It was held that, for the purposes of the inquiry as to damages, the defendants were estopped by the judgment in the action from alleging that the patent was invalid and therefore the plaintiff was entitled to substantial damages notwithstanding the revocation of the patent In other words, the defendants were estopped by the previous judgment which had directed an inquiry as to damages.

Learned counsel next relied on The King v. Wilkes 77 CLR 511. An information against H. J. Wilkes and his wife disclosed three offences committed by them: the first was man-slaughter of Bessie Boulton, second was their conspiracy with Bessie

Boulton and one D. R. Prior to procure the unlawful miscarriage of Ressie Boulton and the third one was the conspiracy to defeat the course of public justice. The Jury found both the accused not guilty in respect of the first two charges but guilty in respect of the third charge. On appeal, the Court of Criminal Appeal quashed the conviction on the ground of inconsistency between those verdicts. The Crown applied for special leave to appeal to the High Court. The leave to appeal was refused and that was the majority view. Dixon J. observed as follows at page 518:

"Whilst there is not a great deal of authority upon the subject, it appears to me that there is nothing wong in the view that there is an issue estoppel, if it appears by record of itself or as explained by proper evidence, that the same point was determined in favour of a prisoner in a previous criminal trial which is brought in issue on a second criminal trial of the same prisoner, (at page 519) Issue estoppel is concerned with the judicial establishment of a proposition of law or fact between parties. It depends upon well-known doctrines which control the relitigation of issues which are settled by prior litigation. However, it is not necessary for us to determine any such question upon the present application. It is a question, as I have said, about which in criminal matters there is little authority."

9. Mr. Choudhary referred to the case of Surendra Kumar Vs. State of Bihar and Others, . It was alleged in that case that Bira Singh had violated an order u/s 144, Criminal Procedure Code, on 25-4-1960 by forming himself along with two thousand other persons into an unlawful assembly and had shouted slogans and pelted stones at police officers. A complaint was filed against him on 12-5-1960 u/s 188, Indian Penal Code. The defence of Bira Singh was that he was not present at the scene of the occurrence at all and that he was falsely implicated by the police. The Magistrate rejected the defence and accepting the prosecution case that Bira Singh was present as the head of the mob convicted him of the offence charged and sentenced him by his order dated July 8, 1960, to rigorous imprisonment for 6 months. It appears that in respect of the same incident on 25-4-1960 and the offences committed a first information report was lodged on the same date at about 7 P. M against Bira Singh leading to the registration of a ease against him under Sections 114/149/332/342 and 307 of the Indian Penal Code and Section 7 of the Criminal Law Amendment Act. The charge-sheet relating to these offences was submitted against Bira Singh on 18-7-1960. The Sessions Judge convicted Bira Singh in respect of these offences and sentenced him to various terms of imprisonment. Bira Singh had, however, appealed to the Sessions Judge against his conviction by the Magistrate in respect of the charge u/s 188, Indian Penal Code, and the Sessions Judge allowed his appeal holding that the prosecution failed to establish that Bira Singh was present at the place and at the time where the occurrence took place and that he disobeyed the order u/s 144, Criminal Procedure Code. In view of those findings, the Sessions Judge set aside the conviction and sentence of Bira Singh u/s 188 and acquitted him on 30-7-1960. This acquittal was confirmed by the Judicial Commissioner.

Being aggrieved by the other convictions and sentences recorded by the Sessions Judge, Bira Singh had filed an appeal before the Judicial Commissioner, Manipur, and it was urged on his behalf that the finding of fact recorded by the learned Sessions Judge in the trial for an offence u/s 188, Indian Penal Code, that he was not present at the scene of the occurrence on April 25, 1960, between the hours of 3 and 5 p. m. was final and conclusive and binding upon the prosecution and that no evidence could be led to establish a contrary state of affairs in the present proceedings. The learned Judicial Commissioner accepted this contention and held that the principle of res judicata applicable to criminal proceedings was not confined to cases falling within the bar of Section 403, Criminal Procedure Code, but was of wider application. The correctness of this view came up for consideration before the Supreme Court. Their Lordships referred to the decisions in 1950 AC 458: 54 CWN 695 : 77 CLR 511 and other cases and observed as follows:

"As we have pointed out earlier, issue estoppel does not prevent the trial of any offence as does autrefois acquit but only precludes evidence being led to prove a fact in issue as regards which evidence has already been led and a specific finding recorded at an earlier criminal trial before a court of competent jurisdiction."

The passage at page 93 reads thus:

''It is, therefore, clear that Section 403 of the Criminal Procedure Code does not preclude the applicability of this rule of issue estoppel. The rule being one which is in accord with sound principle and supported by high authority and there being a decision of this Court which has accepted it as a proper one to be adopted, we do not see any reason for discarding it."

Their Lordships accepted the view expressed in Pritam Singh v. State of Punjab AIR 1956 SC 418 and affirmed the decision of the Judicial Commissioner. In that case, the Sessions Judge came to a definite conclusion, while considering the charge u/s 188 against Bira Singh that the prosecution had failed to prove the presence of Bira Singh among the agitators on 25-4-1960. The position thus is that Bira Singh''s presence not having been proved in the incident which occurred on 25-4-1960 he could not possibly have committed the other offences which led to his second trial and the finding of fact recorded by the learned Sessions Judge in the first trial was conclusive and binding on the prosecution. That being the situation, it was not open to the prosecution to lead evidence to establish a contrary state of affairs in the next trial.

10. The principle of collusiveness of judgments as to the points decided is well settled and cannot be doubted. No man is to be vexed twice over for the same cause and but for this rule there would be no end to litigation and no security for any person. This rule not only prevents a new decision but also a new investigation and inquiry in order to avoid harassment to the same persons again and again. It is also clear that a litigant cannot be permitted to assume inconsistent positions in court to

the detriment of his opponent. If a party takes up a particular position at one stage of a litigation it cannot turn round and resile from that position. In other words, pleadings contrary to the earlier ones are prohibited. But before applying the principle of estoppel against a person, his declaration, act or omission must be clear, unambiguous and of an unequivocal character. Estoppel can arise only from a clear and positive statement.

11. Before applying these principles, it is essential to find out as to what were the allegations of the parties before the Supreme Court in the case of Banwarilal Agarwalla Vs. The State of Bihar and Others, the admissions, if any, of one or the other party and the points decided by their Lordships. Banwarilal Agarwalla had moved the Supreme Court for quashing the criminal proceedings pending against him before the Magistrate at Dhanbad on two grounds, but it is not necessary to mention the first ground as it is not relevant for the present purposes. The second ground was that the Coal Mines Regulations, 1957, were invalid, inasmuch as the provisions of Section 59(3) of the Mines Act, 1952, were contravened. In support of the second ground it was urged that the provisions of Sections 12 and 59 of the Mines Act, 1952, were mandatory. Section 12 gave a power to the Central Government to constitute a Mining Board. It was not disputed before their Lordships that when the regulations were framed, no Board as required u/s 12 had been constituted and so there was no reference to any Board as required u/s 59. The question then arose as to whether the omission to malce such a reference made the rules invalid. On an examination of all the relevant circumstances, viz. the language used, the scheme of the legislation, the benefit to the public on insisting on strict compliance as well as the risks to public interest on insistence on such compliance, their Lordships came to the conclusion that the legislative intent was to insist on the provisions of consultation with the Mining Board (according to Section 59(3)) as a pre-requisite for the validity of the regulations (see paragraph 13 of Banwarilal Agarwalla Vs. The State of Bihar and Others, . Ultimately, their Lordships were of the opinion that the provisions of Section 59(3) of the Mines Act, 1952, were mandatory. The question as to whether the provisions of Section 12 were mandatory or not was not decided in that case. Another question which their Lordships considered was as to whether the provisions of Section 59(3) were complied with before framing the Coal Mines Regulations, 1957. No consultation with any Mining Board constituted u/s 12 of the Mining Act of 1952 could take place as no Board had been constituted under that section.
Learned counsel for respondent No. 1 relied on the following passage occuring in paragraph 20 of that decision:

"It has been stated before us however on behalf of the respondents that the Mining Boards constituted u/s 10 of the Mines Act, 1923, were continuing to operate at the time these regulations were framed and that there was full consultation with these Mining Boards before these regulations were hamed."

Thereafter, their Lordships observed that if in fact there was such consultation, the further question would arise whether consultation with the Mining Boards constituted under the provisions of the Mining Act, 1923, would be sufficient compliance with the provisions of Section 59(3) of the present Act. For lack of sufficient materials the question as to whether the Mining Boards constituted u/s 10 were functioning or not on the date when those regulations were made and whether those Boards were consulted before the framing of the regulations could not be decided in the Supreme Court and, therefore, the Magistrate was directed to decide the question whether there was consultation with the Mining Boards constituted u/s 10 of the Mines Act, 1923. before the regulations were framed and. if so, whether such consultation amounted to sufficient compliance with Section 59. Learned counsel submitted that the State of Bihar was one of the respondents in that appeal before the Supreme Court and the statement on behalf of the respondents that the Mining Boards constituted u/s 10 of the Mines Act, 1923 were continuing to operate at the relevant time meant that those Mining Boards were validly constituted. In Other words, the respondents had admitted before their Lordships that the Mining Boards constituted u/s 10 were valid and on that admission their Lordships gave a direction to the Magistrate to determine the compliance or otherwise with the provisions of Section 59.

I do not, however, find any admission in the passage quoted above (from paragraph 20) about the validity of those Mining Boards. The respondents no doubt stated that Mining Boards were constituted u/s 10 of the Mines Act, 1923, but it cannot be held that they admitted the validity of the constitution of those Boards. Simply because Mining Boards were constituted u/s 10, it does not mean that the constitution was valid. Moreover, even if those Boards were continuing to operate at the time of framing the Coal Mines Regulations it would not necessarily mean that the constitution of the Boards themselves was valid and in accordance with law. Section 10 of the Indian Mines Act, 1923, pro-vided that the Local Government may constitute for the province, or for any part of the province, or for any group or class of mines in the province, a Mining Board consisting of persons and officers coming within the categories of Clauses (a) to (d) of Sub-section (i) of that section. The Local Govt. might have constituted a Mining Board, but the respondents did not admit that the said constitution was in accordance with the terms of Clauses (a) to (d) of Sub-section (i) of Section 10 and the validity or invalidity of the constitution of the Mining Board was nether raised nor decided by the Supreme Court in that case.

For illustration, one can take the case of a Municipal Board or a District Board. These Boards consist of elected members and nominated members. The Board may come into existence but the formation of the Boards themselves are liable to be challenged in an action by an aggrieved person and then the Court gets the jurisdiction to decide the validity or otherwise of the formation of such Boards. It cannot be inferred merely from the formation of the Board and the functioning thereof that the formation and constitution were valid and in accordance with law. I

am, therefore, of the view that there was no admission by the respondents before the Supreme Court about the validity of the Mining Boards and the principle of estoppel will not apply agaimt them.

12. In the other case Kalipada Chowdhury Vs. Union of India (UOI), the contention was that Regulation No. 127 (3) whose alleged contravention gave rise to the criminal proceedings against the petitioners (of that case) was invalid, ultra vires and inoperative, inasmuch as at the relevant time when the Regulations were made in 1957, no Mining Boards had been established u/s 12 of the Mines Act, 1952 The West Bengal Mining Board and the Madhya Pradesh Mining Board were established u/s 10 of the Indian Mines Act of 1923. The Bihar Mining Board was constituted on 22-2-1948 u/s 10 of the same Act as it then stood. Section 10 was amended by the Indian Mines (Amendment) Act V of 1935 and as a result of the amendment the composition of the West Bengal Mining Board and the Madhya Pradesh Mining Board became invalid with the consequence that they could not be treated as Boards validly constituted. The petitioners alleged in that case that it was obligatory for the Union of India to consult all the three Boards before framing the Coal Mines Regulations and since two out of the three Boards were not properly constituted, the fact that reference was made to the individual members of the said two invalid Boards did not satisfy the requirements of Section 59(3) of the Mines Act 1952. Their case further was that although reference was made to the Bihar Mining Board yet the Board did not make a report to the Union of India as a Board and only the individual members communicated their opinions to the Union of India. Therefore, on the whole, Section 59(3) had Hot beeb complied with and on that score me whole body of Regulations issued in 1937 became invalid and inoperative. On these grounds, the criminal proceedings pending against the petitioners were sought to be quashed.

The respondents conceded in the Supreme Court that two out of the three existing Boards were invalid but their contention was that it was only the validly existing Board that had to be consulted and the Bihar Mining Board, which was the validly existing Board at the relevant time had been duly consulted. Their case further was that the fact that the individual members of the Bihar Mining Board communicated their opinions to the Union of India did not introduce any infirmity in the Regulations which were subsequently published in the Gazette and which, u/s 59(5) had, in consequence the effect as if enacted in the Act. The contention on behalf of the petitioners was that Section 59(3) imposed an obligation on the Central Government to consult the Boards therein specified and according to Section 12 the Central Govt. had to constitute Mining Boards but as two of the Boards had not been validly constituted, Section 12 had not been complied with and the provisions of Section 59(3) had been contravened. It was suggested on their behalf that the mandatory character of the provisions contained in Sections 12 and 59(3) was adjudicated by the earlier decision of the Supreme Court in Banwarilal Agarwalla Vs. The State of Bihar and Others, . In view of this contention, their Lordships examined

the effect of the decision in the case of Banwarilal Agarwalla and pointed out that the Court did not consider in that case whether Section 12 was mandatory and there was no reference at all either to the question of construing Section 12 or to its effect. The Court had held in that case that Section 59(3) was mandatory and after coming to that conclusion the Court had remanded that case to the learned Magistrate for trying the issue as to whether the Boards constituted under the earlier Act validly functioned and whether they had been duly consulted. Their Loidships pointed out that the pleadings of the respondents in the earlier case of Banwari Lal Agarwalla was that the requisite Boards were in existence and had been consulted and as such the controversy between the parties in that case was narrowed down to the question as to whether Section 59(3) required that the Central Government must consult existing Boards or not. After examining the provisions of Sections 12 and 59, their Lordships observed that Section 12(1) was directory and not mandatory and Section 59(3) or Section 59(4) after the amendment in 1959 was mandatory in the sense that before the draft Regulation was published it was obligatory for the Central Government to consult the Board which was constituted u/s 12 but if no Board was constituted there could be, and need be, no consultation. It was common ground between the parties that the West Bengal Mining Board and the Madhya Pradesh Mining Board which were constituted u/s 10 of the Act of 1923 had become invalid after the amendment of Section 10 by the Amending Act V of 1935. The respondents conceded that these two Boards could not be said to be validly constituted for the purposes of Section 12 even by the application of Section 24 of the General Clauses Act.

The position thus was that at the time when the Regulations were framed in 1957, there was only one Board which was properly constituted and that was the Bihar Mining Board. It was not disputed before their Lordships that the draft Regulations were sent by the Central Government to the Bihar Mining Board through the State Government and it appeared that after the Board received the said draft, it was circulated by the Chairman of the Board to all the members of the Board and those members communicated their opinions individually. A contention was raised that the communication by the individual members of the Board of their opinions to the Central Government could not be said to amount to the consultation with the Board and as such the requirement of Section 59(3) was not complied with. This argument was repelled and the observation was as follows:--

"All that Section 59(3) requires is that a reasonable opportunity should be given to the Board to make its report as to the expediency or the suitability of the proposed regulations. How the Board chooses to make its report is not a matter which the Central Government can control. The Central Government has discharged its obligation as soon as it is shown that a copy of the draft regulations was sent to the Board, and if the Board thereafter, instead of making a collective report chose to send individual opinions, that cannot be said to constitute the contravention of Section 59(3). Indeed, Section 59(3) does not impose an obligation on the Board to

make any report at all it is true that since u/s 14 the Board is empowered to make a report, it is unlikely that any Board, when consulted, would refuse to make a report. But nevertheless the position still remains that if the Board refused to make a report, that will not introduce any infirmity in the regulation which the Central Government may ultimately frame and publish u/s 59(5). We must accordingly hold that the regulations framed in 1957 have been duly framed and published u/s 59(5) and as such, they shall have effect as if enacted in the Act."

In short, it was held that the provisions of Section 12(1) were directory and not mandatory, whereas those of Section 59(3) were mandatory and if there was no validly constituted Board there need not be any consultation with it. Section 59(3) required that a reasonable opportunity should be given to the Mining Board to make its report but how the Board would choose to make its report was not a matter to be governed by Central Government. Banwarilal Agarwalla (respondent No. 1) was an intervener in this case before the Supreme Court. The validity of the very same Coal Mines Regulations, 1957, was considered by their Lordships and it was held that those regulations were duly framed and valid. Learned counsel for respondent No. 1 extended that the intervener (Banwarilal Agarwalla) did not make any concession in the case before the Supreme Court about the validity or otherwise of the West Bengal Mining Board and the Madhya Pradesh Mining Board and the reference to the Bihar Mining Board and as such the said decision having been arrived at on the facts and circumstances of that case would not be binding on the respondent in the present case. The position, however, is that the law laid down by the Supreme Court is binding on all the courts under Article 141 of the Constitution of India. If a Mining Board is not validly constituted then there could be and need be no consultation with it at the time of framing the Coal Mines Begulations, 1957. This was definitely laid down by the Supreme Court. Similarly, their Lordships indicated as to how the provisions of Section 59(3) of the said Act were to be understood and their Lordships made it clear that the Central Govt. must be deemed to have discharged its obligation as soon as it sent a copy of the draft regulations to a Mining Board. In the light of this decision, it has to be seen as to what the learned Magistrate at Dhanbad found in the present case.

13. The learned Magistrate came to the following conclusions after recording the evidence on the point of consultation with the Mining Boards.

(1) Two (West Bengal and the Madhya Pradesh Mining Boards) out of the three Mining Boards constituted by the Government did not satisfy the provisions of Section 10 of the Mines Act, 1923, and were, therefore, invalid and hence there was no proper reference to any of these Boards.

(2) A third Board, namely, the Bihar Board, was found to be validly constituted and functioning.

(3) There was consultation in respect of the Bihar Board but there was lack of proper direction, while making the reference, inasmuch as the comments of the members as distinguished from the report of the Board were called for and this introduced an element of infirmity in the consultation making the same bad to the extent that there was lack of proper direction.

The learned Magistrate referred to these conclusions in his order dated 26-11-1962 which is the subject-matter of appeal and came to the ultimate conclusion that on account of these infirmities the provisions of Section 59(3) had not been complied with and the Coal Mines Regulations, 1957, were invalid. The position thus is that even after remand by the Supreme Court the learned Magistrate held on the evidence adduced by the parties that the constitutions of the West Bengal and the Madhya Pradesh Mining Boards were invalid. This beine so, it was not at all necessary for the Central Government to send the Coal Mines Regulations to those Boards for sending their reports as to the expediency or the suitability of the proposed regulations. The formation of the Boards themselves being Invalid, neither the Boards nor their members could function validly and consultation with them was not at all called for. A question arose in course of the argument in this appeal as to whether it was open to the learned Magistrate to consider and find out as to whether the West Bengal and the M. P. Mining Boards were validly constituted and the trend of the argument was that the learned Magistrate could incidentally go into this question.

Section 59(3) of the Mines Act, 1952, provides that "before the draft of any regulation is published under this section it shall be referred to every Mining Board....." The Mining Board has to be constituted u/s 12. The learned Magistrate was asked to find out whether there was reference to the Mining Boards and compliance with the provisions of Section 59(3). Before deciding this issue, the learned Magistrate had to find out whether there was a Mining Board as envisaged in Section 12 and if there was no Mining Board according to Section 12 whether the Mining Boards constituted under the previous Act of 1923 were validly constituted. The Magistrate went into this question and (?) without deciding the validity or otherwise of the constitution of the Mining Boards it was not possible to ascertain the compliance or non-compliance with the provisions of Section 59(3). In this view of the matter, the learned Magistrate was perfectly justified in going into this question and coming to the conclusion that the West Bengal and the Madhya Pradesh Mining Boards were not validly constituted. I have already indicated that these Boards being invalid, reference to them was not at all necessary, but on this score there was no non-compliance with the provisions of Section 59(3) of the said Act. The learned Magistrate was not right in holding that the provisions of Section 59(3) were not complied with on account of there being no proper reference to the West Bengal and the Madhya Pradesh Mining Boards.

14. Next question for consideration is as to whether there was a proper reference to the Bihar Mining Board. The learned Magistrate found an infirmity in the reference itself to the Bihar Mining Board and his view was that for lack of proper direction to the Bihar Mining Board the reference was bad. His reason for coming to this conclusion was that the comments of the members of the Board were called for and not the report of the Board. Learned counsel for the appellant challenged the reasoning and the finding of the learned Magistrate in this respect and submitted that the various letters sent by the Central Government to the State Government and by the latter to the Chairman of the Bihar Mining Board indicated sufficiently that reference was made to the Board itself and the provisions of Section 59(3) were fully compiled with. The documents brought on the record in connection with the reference of the draft regulations to the Mining Boards were marked by the Magistrate as Exhibits R series for convenience and differentiation from the documents marked exhibits in the main trial. On 18-11-1955, the Deputy Secretary to the Government of India, Ministry of Labour, sent to the Secretary to the Government of Bihar, Labour Department, Patna, and the other Secretaries of the Governments of Madhya Pradesh and West Bengal letters regarding the draft regulations u/s 57 of the Mines Act 1952, and the office copy of this letter has been marked exhibit R/25. He wrote, inter alia, as follows in this letter:--

"The draft code consists of 16 chapters and 199 regulations. It is requested that in accordance with Sub-section (3) of Section 59 of the Mines Act, 1952 the draft Regulations may kindly be referred to the Mining Board (s) in the state and comments of the Boards along with those of the State Governments may kindly be forwarded to the Chief Inspector of Mines In India, Dhanbad direct under intimation to this Ministry as soon as possible and in any case not later than the 15th January, 1956."

On the receipt of this letter, the Secretary to the Government of Bihar, Labour Department, sent a letter dated 26-11-1955 (Ext. R/38) to the Commissioner. Chotanagpore Division, Ranchi as follows:--

"I am directed to forward herewith a copy (with eight spare copies) of the draft Coal Mines Regulations containing 16 chapters and 199 regulations revised in light of experiences gained In the administration of the existing Indian Coal Mines Regulations, 1926 and recommendations made from time to time by the Courts of inquiry into recent disasters and other major accidents in mines. It is requested that in accordance with Sub-section (3) of Section 59 of the Mines Act, 1952 the draft regulations may kindly be referred to the Mining Boards and comments of the members of the boards with those of your own may be forwarded to this Department as quickly as possible but not later than the 30th December, 1955."

On the receipt of this letter of the Secretary, the Personal Assistant to the Commissioner sent letters to the other 6 members of the Bihar Mining Board requesting them to send their comments* on the draft regulations by 20-12-1955. A

copy of this letter dated 5-12-1955 has been marked Exhibit R/99. The notification No. M216 (3)-I (Ext R/7) dated 22-2-1948 indicates that the Central Government, in exercise of the powers conferred by Sub-section (1) of Section 10 of the Indian Mines Act, 1923 had already constituted a Mining Board for coal mines for the province of Bihar and directed that the said Board shall consist of the Commissioner of the Chotanagpore Division. Ex-officio Chairman (nominated by the Central Government) and six other persons named therein. It appears that on 21-1-1956 the Deputy Secretary to the Government of India sent another letter (Ext. R/26) to the Secretary to the Government of Bihar Labour Department, Patna, and also to the Secretaries to the Govt. of Madhya Pradesh and West Bengal Labour Departments in connection with the draft regulations u/s 57 of the Mines Act, 1952, and he requested them for sending the comments of the State Government along with those of the Mining Boards. He forwarded along with that letter 10 spare copies of the draft schedules I and II to the draft regulations and requested that the comments, if any, should also be communicated to the Chief Inspector of Mines direct under intimation to the Labour Ministry on 28-1-1956, the Secretary to the Government of Bihar sent a letter (Ext. R/39) to the Commissioner, Chotanagpore Division, Ranchi, forwarding eight spare copies of the draft schedules I and II to the draft regulations and requested the commissioner that these may be referred to the Mining Board and the comments of the members of the Board together with Ms own should be famished to the Labour Department as quickly as possible, He further indicated in this letter that the comments on the main regulations should not, however, be withheld pending examination of these schedules.

On the receipt of this letter, the Personal Assistant to the Commissioner sent letters to the other 6 members of the Bihar Mining Board asking them to give their comments on the draft regulations, as asked for by the Government as quickly as possible. An office copy of this letter dated 10-2-1956 has been marked exhibit R/106. Another letter (Ext. R/28) bearing the stamp dated 25-5-1956 was sent by the Under Secretary to the Government of India in the Ministry of Labour to the Secretary to Government of Bihar, Labour Department, Patna, and also to the other Secretaries to the Government of West Bengal and that of Madhya Pradesh and it reads thus:--

I am directed to forward herewith a statement containing certain amendments to the Draft Coal Mines Regulations and draft schedule III to the Regulations and to request that these may kindly be referred to the mining Board in the state, in accordance with Sub-Section 3 of Section 59 of the Mines Act, 1952.....

I am, therefore, to request that the comments of the Board along with those of the State Government may kindly be forwarded to the Chief Inspector of Mines in India, Dhanbad direct under intimation to this Ministry as soon as possible and in any case not late than 20th May, 1958 "

On 11-5-1956 the Secretary to the Government of Bihar sent a letter (Ext. R/43) to the Commissioner of the Chotanagpore Division forwarding 10 spare copies of a statement containing certain amendments to the Draft Coal Mines Regulations and requested him that the comments of the members of the Mining Board on the proposed draft amendments should be furnished before 20-54956. On 23-5-1958 the Personal Assistant to the Commissioner sent letters to the other members of the Bihar Mining Board for giving their comments on the proposed draft amendments and the office copy of this letter has been marked exhibil R/111. The Commissioner of the Chotanagpore Division was the ex-officio Chairman or the Bihar Mining Board and on the receipt of the letters of the Secretary to the Government of Bihar, Labour Department, the Personal Assistant of the Commissioner (the Chairman) requested the other members of the Board to send their comments, if any. These letters indicate clearly that the Central Government had sent the draft regulations and the schedules from time to time to the State Government and asked for the comments of the Bihar Mining Board and it will not be correct to say that the comments of the members were asked for. Section 59(3) requires that the draft of any regulation should be referred to every Mining Board and that requirement has been fulfilled in the present case. The Magistrate had mentioned in his order dated 23-1-1962, while referring the case to the High Court that the draft regulations, draft schedules I and II and draft schedule III (and proposed amendments) were referred to by the Ministry of Labour, Government of India, to the Mining Boards of Bihar, Madhya Pradesh and West Bengal in three batches (vide Exts. R/25, R/26 and R/28 respectively). Similarly, he mentioned that those regulations and schedules were referred by the respective State Governments to the Mining Boards (vide Exhibits R/38, R/39 and R/43 respectively). He further mentioned that those documents were sent to the members of the Bihar Mining Board (vide exhibits R/99, R/106 and R/111). But ultimately he came to the conclusion that there was want of proper direction, inasmuch as comments of the members and not the comments of the Board were called for. I do not find any pup-port for accepting this conclusion and the learned Magistrate was not right in holding that no proper reference was made to the Bihar Mining Board and there was not a sufficient compliance with Section 59 of the Mines Act, 1952. On a consideration of these documents, I do not find any infirmity in the reference to the Bihar Mining Board and it must be held that the provisions of Section 59(3) of the Mines Act, 1952, have been fully complied with. Mr. Choudhary submitted that the rule regarding reference had to be strictly observed and referred to the following passage at page 364 from the Eleventh Edition of Maxwell''s book on Interpretation of Statutes.

"Where powers, rights or immunities are granted with a direction that certain regulations, formalities or conditions shall be complied with, it seems neither unjust nor inconvenient to exact a rigorous observance of them as essential to the acquisition of the right or authority conferred, and it is therefore probable that such was the intention of the legislature."

The correspondence, in the present case referred to above leaves no room for doubt that reference was made to the Mining Board as provided in Section 59(3) and as such the Coal Mines Regulations, 1957. must be held to be valid.

15. Mr. Choudhary further urged that this Court should not interfere in this appeal against the order of acquittal and drew our attention to a decision of this Court in Wazir Kunjra Vs. Emperor, . It was observed in that case that an appeal against acquittal was a special weapon in its armoury which the local Government judiciously reserves for exceptional occasions, and which was only used after most anxious consideration and in cases which were themselves of great public importance or in which a principle was involved. Subsequent to this decision, there have been many cases in which the powers of the appellate Court, while dealing with an appeal against acquittal have been discussed. I can usefully refer to Radhakishan Vs. State of U.P., . Their Lordships observed in that case, that an appeal from an acquittal need not be treated differently from an appeal from conviction and if the High Court found that the acquittal was not justified by the evidence on record it could set aside the acquittal without coming to the conclusion that there were compelling reasons for doing so. The powers of the High Court in dealing with an appeal against acquittal were as wide as those which it had in dealing with an appeal against conviction (vide M.G. Agarwal Vs. State of Maharashtra,). The High Court, while dealing with an appeal against acquittal has to decide, on the facts and circumstances of each case as to whether any interference is needed In the present case, the view taken by the learned Magistrate was erroneous in law and there was no infirmity in the reference to the Bihar Mining Board.
16. Learned counsel for the parties stated before us that the evidence on the merits of the case had been adduced only partially and not in full. The position thus is that other evidence has to be yet taken on the merits of the case.

17. In the result, the appeal is allowed and the order of acquittal passed by the Magistrate on 26-11-1962 is set aside. The learned Magistrate is directed to proceed with the case against the respondents on merits, take such other evidence as the parties may adduce and then decide the case in accordance with law.

S.P. Singh, J.

18. I agree.