Jnananda Industries Pvt. Ltd. Vs Sub Divisional Land Reforms Officer

Court: Calcutta High Court

Date of Decision: May 10, 1977

Acts Referred: Constitution of India, 1950 â€" Article 14, 19, 31, 31(2), 31A
Estates Acquisition Act â€" Section 29, 4, 5(2)
Mineral Concession Rules, 1949 â€" Rule 41
Mines and Minerals (Development and Regulation) Act, 1957 â€" Section 13, 15, 16(1), 18, 2
Mining Lease (Modification of Terms) Rules, 1956 â€" Rule 2
West Bengal Estates Acquisition (Amendment) Act, 1957 â€" Section 2, 5, 5(1), 5(2)
West Bengal Estates Acquisition Act, 1953 â€" Section 2, 29, 3, 4

Citation: 82 CWN 552 : (1978) 1 ILR (Cal) 223

Hon'ble Judges: M.N. Roy, J

Bench: Single Bench

Advocate: P. Barman, Ranajit Ghose and Roma Mukherjee, for the Appellant; C.D. Choudhury, for Respondents Nos. 1 to 4 and P.K. Ghose, for the Respondent

Judgement

M.N. Roy, J.
This rule is directed against notices dated November 6, 1971 and November 30, 1971, (annexes. E and F respectively)

whereby Jnananda Industries Pvt. Ltd. (hereinafter referred to as the Petitioners) was directed to make necessary arrangement! for the payment of

royalty dues on or by November 12, 1971. The said notices were issued by the Sub-divisional Land Reforms Officer, Asansol, the Respondent

No. 1.

2. The Petitioners, a company registered under the Indian Companies Act, has its registered office at Ukhra, in the District of Burdwan. It has been

alleged that Maharajadhiraja of Burdwan was ceased and possessed of certain zamindari estates and properties of which the coal lands, mines and

hereditaments comprising it Guru Gopinath Colliery (hereinafter referred to as the said colliery) of the said Petitioner formed a part. By an

indenture dated October 27, 1915, the said Maharaja granted and demised to one Rai Pulin Behari Singha Bahadur and others, the said coal

lands, mines and hereditaments comprising the said colliery. The said Singha Bahadur, by another indenture of subleases dated July 5; 1920,

demised and granted to Ukhra Estate Zemindary Pvt. Limited, amongst others, the said coal lands and mines comprising the said colliery to the

Petitioners for 999 years, effective from Bdisakh 1, 1327 B.S., Ukhra Estate Zemindary Pvt. Ltd., in their turn by aft indenture of lease dated

March 19, 1950, granted and demised to the Petitioners, the said coal lands and mines comprising the said colliery, for a period of 960 years on

and from March 21, 1947 subject to payment of royalty at the rate of 6 annas per ton of all kinds of coal, with a minimum charge fixed at Rs.

1,680 only per annum.

3. The Petitioners have stated that since March 21, 1947, they have been working in the said colliery and We in peaceful possession thereof. They

have also stated that, thereafter, they acquired the coal mining right of several Bajaipti lands from several Bajaiptdars and has also been working

those lands as parts of the said colliery.

4. It appears that the West Bengal Estates Acquisition Act, 1953, (hereinafter referred to as the said Act), came into force on February 12, 1954

and thereafter a notification was published u/s 4 of the said Act by the State of West Bengal on April 15, 1955, as a result whereof the right, tide

and interest in the properties in question of the said Maharajadhiraja of Burdwan who was the intermediary vested in the State. Thereafter, on

January 16, 1957, the State of West Bengal promulgated an Ordinance by which Section 2(i) of the said Act was amended in the following

manner:

Intermediary means a proprietor, tenure-holder, under-tenure-holder or any other intermediary above a raiyat or a non-agricultural tenant and

includes a service tenure-holder and in relation to mines and minerals, includes a lessee and a sublease.

5. The Petitioners have stated that thus on the basis of the amendment as mentioned hereinbefore, the State Government started demanding

royalties from the working lessees of the mines with effect from April 15, 1955. There is also no dispute that on March 9, 1957, the State

Government enacted the West Bengal Estates Acquisition (Amendment) Act, 1957 (hereinafter referred to as the said Amending Act), which

came into force immediately after the said Ordinance ceased to operate. The Petitioners have alleged the said Ordinance and the Amending Act if

question as unconstitutional and void. There is also no dispute that some of the working lessees challenged the demand of the State Government

and on such challenge, this Hon''ble Court in the case of Katras Jharia Coal Company Ltd. v. State of West Bengal 66 C.W.N. 504 was pleased

to hold that the amendment of Section 2(i) alone could not and did not affect the interest of the mining lessees and sub-lessee and for the purpose

of affecting their right and/or interest a fresh notification, u/s 4 of the Act was necessary.

6. It appears that in the meantime on December 28, 1957, Parliament enacted the Mines and Minerals (Regulation and Development) Act, 1957

(hereinafter referred to as the said 1957 Act), by which the regulation of mining, development or minerals, in particular, the provisions for fixation

and payment of royalties and modification of mining leases and terms and conditions thereof were taken under the control of the Union. The said

Act of 1957 came into force with effect from June 1, 1958. Thereafter, on December 29, 1961, the Joint Secretary to the Government of India

(Respondent No. 3), issued a notification u/s 30A of the said 1957 Act, by which the provisions of Sub-section (1) of Section 9 of the said 1957

Act were sought to be applied to all coal mining leases granted before October 25, 1949, subject to the modification that the lessees should pay

royalties at the rate specified in any agreement between the lessee or lessor or act the rate of 2Ã¯Â¿Â½% of F.O.R. price, whichever was higher, in lieu

of the rate of royalties specified in the second schedule to the Act. The said notice is in annEx. ''AÃ¯Â¿Â½ to the petition. The Petitioners, amongst

others, have alleged the notification in question to be illegal, ultra vires, invalid and void, since the same was issued by the Joint Secretary to the

Government of India and not by the Central Government and as such and also because ''the same was not issued in the name of the President of

India, die same was contended to be violative of Article 77 of the Constitution.

7. Thereafter, on or about January 1, 1966, the said Respondent No. 3 issued another notification u/s 30A of the said 1957 Act, by which it was

declared that ^he provisions of Section 9(1) of the Act should apply to or in relation to mining leases in respect of coal, granted before October

25, 1949. The Petitioners have also submitted the said notification to be unconstitutional, invalid and void for reasons as mentioned hereinbefore. A

copy of the said notification is at annEx. ''BÃ¯Â¿Â½.

8. Thereafter, by the West Bengal Estates Acquisition (Amendment) Act (XXII of 1964), 1964, Section 5 of the said Act was amended by adding

thereto a new sub-section as Sub-section (2) in the following terms:

(2) For removal of doubts it is hereby declared that notwithstanding any thing to the contrary contained in any demand, decree or order of any

Court or Tribunal or any other law, all rights and interests in mines and minerals of all intermediaries, being lessees and sub-lessees, in any notified

area shall be deemed to have vested in the State with effect from the date of vesting mentioned in the notification u/s 4 in respect of such notified

areas. The validity and constitutionality of the said provision has also been challenged by the Petitioners and they have contended such amendment

to be void and beyond the competence of the State Legislature.

9. The Petitioners have also alleged that after the incorporation of the said amendment of 1954, the State Government again started demanding

royalty from them with effect from April 14, 1955. They have further alleged that the validity of the said amendment being questioned by them, the

State Government on or about April 23, 1966, made a proposal to the Joint Working Committee of the Coal Industries asking their members to

enter into an agreement with the State Government by virtue of which the working lessees including the Petitioners were to be treated by the State

Government as direct lessees under them with effect from January 1, 1962 and the Petitioners along with others were required to agree to pay to

the State Government royalty at the rate of 2Ã¯Â¿Â½ % F.O.R. price of coal with effect from January 1, 1962, upto December 31. 1965 and

thereafter, at the rate of 5% F.O.R. price of coal from January 1, 1966, to June 30, 1966. It has been further stated that the Petitioners along with

others were, also asked to agree to pay such royalty in 36 equal instalments. A copy of the letter to the above effect is in annEx. "C" to the

petition. The Petitioners have further alleged that, with the object of avoiding further and future complications, they had, without prejudice to their

rights and contentions, on September 19, 1966, submitted a draft agreement, annex "D", by which they agreed to be treated as direct lessees

under the State of West Bengal from January 1, 1962 and further agreed to pay a sum of Rs. 68,898-96 calculated on the basis as mentioned

hereinbefore. The Petitioners have alleged that after submitting the draft agreement as aforesaid and accounts, in pursuance of the said proposal of

the Government, they, in fact, paid the sum of Rs. 68,698-96 in 36 equal instalments, but it has been alleged that the State Government, in their

turn, did not ultimately complete the agreement and in fact, in several meetings with the representatives of the coal industries, the authorities

concerned informed the members of the Joint Working Committee that the State Government was unwilling to complete the agreement in question.

The Petitioners have alleged that in view of such attitude of the State Government and apprehending further complications and without prejudice to

their rights and contentions, they stopped further payment to the State Government, as their lessor was demanding payment of royalty and

furthermore, as they were advised " that the State Government was not legally entitled, to realise royalty directly from them. It has also been

submitted that the State Government having stepped into the shoes of the said Maharaja of Burdwan was and is not entided to any royalty from the

Petitioners since the said Maharaja was not entitled to any royalty in terms of his agreement dated October 27, 1915) executed in favour; of Rai

Pulin Behari Singha Bahadur.

10. Thereafter, on or about November 6, 1971, toe Petitioners received, a notice dated November 5, 19/1, annEx. "E.Ã¯Â¿Â½ from the Sub-

divisional Land Reforms Officer, Asansol, the Respondent No. 1, informing them that no payment of royalty had been made alter the quarter

ending March 1967 and they were informed that the last date for such payment was December 2, 1968 and it was further demanded mat such

royalty should be paid at once and in default appropriate legal action would be taken. After that, on November 30, 1971, the Petitioner had been

served with another notice by die said Respondent No. 1, annEx. "F", demanding a sum of Rs. 5,81,155-68 stated to be due to the Government

of West Bengal as royalty and order dues. By the said notice, royalty has been demanded at the rate of 5% F.O.R. price from April 15, 1955, to

March 31, 1971.

11. From a reference, to the said demand (annex. "F") it further appears that a sum of Rs. 2,63,638-21 was also demanded on account of interest

@ 12 % per annum upto November 12, 1971. In fact, the Petitioners have contended that such demand was irregular, improper, void and

unauthorised, since there was neither any demand for the same nor any provision therefore in any of the instruments as referred to hereinbefore and

in any event, such a demand of interest, was contrary to the provisions of the Interest Act. In fact, this was the sixth branch of the submissions of

Mr. Barman.

12. Although the Rule was made ready as regards service on February 14, 1974 and the appearances of the Respondents Nos. I and 2 were

complete on August 24, 1974, no return to the Rule has been filed by them. It may also be mentioned that the return to the Rule has not also been

tiled by the Respondent No. 4, i.e. Union of India. Those Respondents, of course, contended the claims of the Petitioners through their respective

learned Advocates. It was contended by them that the Central Act, after receipt of the assent, on December 28, 1957, came into force on June 1,

1958 and Section 2(i) of the said Act, after the Ordinance dated January 16, 1957, came into the Statute Book as Act IV of 1957 and thus the

effect would of that the definition of intermediary, lessees and sub-lessees were included with retrospective effect from that date, i.e. March 9,

1957. It was also submitted that Section 5(2) of the said Act became effective retrospectively from November 21, 1964. On the question of rates,

it was submitted, relying on the determination of Chittatosh Mookerjee J. in the case of Dherno Main Collieries and Industries Ltd. v.

Commissioner, Burdwan Division and Ors. 78 C.W.N. 44 that no determination contrary to the decision as aforesaid if at all, should be made. It

was also submitted that the question of interest would depend on the interpretation of the deed and in view of the necessary provision therein, the

Petitioners were bound to pay the same or such contractual amount as agreed. It was, of course, submitted that if the demand had been made on

account of interest, contrary to the provisions of the deed, then that would, at best, make the demand in excess of the contractual amount bad and

not the whole of it or the deed in question^. The same argument was advanced on the demand of fuel coal which was challenged by the Petitioner

under item 7 of their submissions.

13. Mr. Barman firstly submitted relying on the determinations in the case of Katras Jharia Coal Company Ltd. v. State of West Bengal and Ors.

Supra, that in the admitted absence of a fresh notification in terms of Section 4 of the said Act, the underground rights of the lessees and sub-

lessees could not vest in the State Government and as such the entire action in demanding royalty was improper. He, secondly, submitted that even

an the basis of the incorporation (sic) of the Mines and Minerals Regulation Act, which became operative on June 1, 1958, there could not also be

any vesting of the interest which is involved in this case. He thirdly, submitted that even on the interpretation of Section 29 of the said Mines Act,

the interest as involved in this case could not vest. It was submitted fourthly by Mr. Barman that, when a statutory lease as in the instant lease was

created and was operative, there could not also be any vesting of the interest of the Petitioner. It was submitted fifthly by Mr. Burman that the

royalty as claimed by the impugned order dated November 20, 1971, was irregular, unauthorised and illegal and in any event, it was submitted

sixthly and seventhly that, since there had been no provision for interest and price for fuel coke, the demands as made on those accounts were also

improper and unauthorised. The claim for interest, as made, was also submitted to be bad and unauthorised under the provisions of the Interest

Act. It was submitted then and eightly that the notification u/s 30A of the Mines and Minerals Regulation Act was bad, because the same was not

issued by or under the signature of the President of India but by the Secretary. It was submitted ninthly by I Mr. Barman that because of the

incorporation of the aforesaid provisions of Section 30A, the right to realise royalty at a higher rate as conferred u/s 9(1) upon the State

Government, should be deemed to have been kept in abeyance and tenthly and lastly, it was submitted by him that the acceptance of royalty or the

pay-intents on that account in terms of the agreement in question would mean that the Respondents were estopped from acting contrary to the

agreement in question.

.14. In the Kartas Jharia Coal Company Ltd."s case Supra on which strong reliance was placed by Mr. Barman, it has been held and observed by

this Court that:

The word "estate" or "tenure" has not been defined by the West Bengal Estates Acquisition Act, 1953, but under Sub-section (p) of Section 3,

expressions used in the Act and not otherwise defined, would have, in relation to areas where the Bengal Tenancy Act, 1885, applied, the same

meaning as in that Act and would include underground rights.

The object of the notification u/s 4 was to make known to the persons affected, the fact that their estates or rights have vested in the State. Lessees

and sub-lessees of mines and minerals were not included and there was no intention of giving them any notice. There is nothing in Section 4

whereby it can be deemed that a notification issued in 1955 should be considered as a notice to lessees and sub-lessees, who were there outside

the purview of the Act and have only come in by reason of the amendment in 1957. There is no provision for such a notice to be retrospective. A

notice must in fact be given amount to notice and cannot be notional.

The effect of the amendment of the original definition of the "intermediary" in 1957 together with the deeming clause is that since 1954 the State

Government must be taken to have possessed the right of acquiring the estates or rights therein of all intermediaries, including that of lessees and

sub-lessees of mines and minerals. But in the case of these lessees and sub-lessees who have been included as a result of the amendment, a fresh

notification must be issued in terms of Section 4 in order to vest their estates or rights therein in the State Government. Once that notification is

published there is no difficulty in working out the provisions in the body of the Act with regard to the class or classes of persons included within the

definition of an "intermediary" by the amendment.

The main purpose of the Act is the acquisition of "Zamindary interests", which included underground rights in land in order to abolish all

middlemen. Under the amendment the lessee and sub-lessee have been "expressly defined to be "intermediary" and the provision of the Act would

now be applicable to such interests. The underground rights in mines and minerals or any other ground-right that may have existed in the

"intermediary" would vest in the State Government.

The interest of the lessees and sub-lessees in underground right is a right which is mot merely the right to a money claim. The right to get a money

payment arises out of the right to the property.

Sub-clause (a) of Article 31A of the Constitution is very general, in its terms and would include the acquisition of any estate or of any right therein

also the extinguishment or modification of such rights. The provisions as to lessees and sub-lessees of mines and minerals, which" have been

introduced by the amendment, came within the expression "extinguishment or modification.

Sections 28 and 29 are subject to the proviso that all such terms and conditions shall be consistent with the provisions of any Central Act for the

time being in force relating to the grant of mining lease or modification thereof. With this proviso operation of the Central Act, Rules and

Regulations are kept in full force. If there is any clash between any provision of the Act and the Central Act, Rules and Regulations, the Central

Act, Rules and Regulations will prevail. The provisions of the Act are not avoided on this ground. The Act or chapter IV of the Act is not ultra

vires.

15. As stated hereinbefore, it was submitted that a fresh notification in terms of Section 4 of the said Act was necessary to vest in the State

Government the underground rights of the lessees and sub-lessees. It was argued that since such rights were not vested in terms of the notification

under the said section, which was dated April 15, 1955, rights of lessees were not affected although the definition was amended by the Ordinance

dated February 16, 1957 and the said Act which was" passed on February 12, 1954, was further and suitably amended on March 9, 1957, by

the West Bengal Estates Acquisition (Amendment) Act, 1957 (IV of 1957) which was published in the extraordinary issues of Calcutta Gazette of

March 9, 1957.

16. Section 4 of the said Act contemplated a notification by with all estates and rights of intermediaries under the said Act at the relevant time

could vest in the State with effect from April 15, 1955 and the relevant notification in question was dated August 16, 1954. Chapter VI of the said

Act, which deals with "Acquisition of Interests of Raiyats and under Raiyats" was introduced by Act XXV of 1955 and at the time when the said

chapter was sought to be enforced, there was a fresh notification u/s 4 of the said Act, which was dated April 10, 1956. In view of the above and

also in view of the fact that the Mines and Minerals (Regulation and Development) Act (LXVII of 1957) came into force on December 12, 1957

and in view of the declaration made that the same became operative from June 1, 1958, it was submitted that the interest in the instant case had not

vested.

17. The above argument was further sought to be supplemented with reference to the provisions of the Mines and Minerals (Regulation and

Development) Act, 1957 (hereinafter referred to as the said Mines Act). It was submitted that since the said Mines Act came into effect from

December 28, 1957 and the declaration under the Central Act became operative from June 1, 1958 and the initial notification u/s 30A of the

same, which makes special provisions relating to mining lease for coal granted before October 25, 1949, was dated December 29, 1961 and the

subsequent notification was issued on January 1, 1966, which again was not a proper notification as the same was signed by the Secretary of the

Ministry concerned, so also there could not be any vesting. It was also submitted that under Sections 29 and 30A of the said Mines Act, which are

to the following effect:

Section 29: Existing rules to continue. All rules made or purporting to have been made under the Mines and Minerals (Regulation and

Development) Act, 1948 (LIII of 1948), shall, in so far as they relate to matter for which provision is made in this Act and are not inconsistent

therewith, be deemed to have been made under this Act, as if this Act had been in force on the date on which such rules were made and shall

continue in force unless and until they are superseded by any rules made under this Act.

Section 30A: Notwithstanding anything contained in this Act, the provisions of Sub-section (1) of Section 9 and of Sub-section (1) of Section 16

shall not apply to or in relating to mining leases granted before the 25th day of October, 1949, in respect of coal, but the Central Government, if it

is satisfied that is expedient so to do, may, by notification in the Official Gazette, direct that all or any of the said provisions (including any rules

made under Sections 13 and 18) shall apply to or in relation to such leases subject to such exceptions and notifications, if any, as may be specified

in that or in any subsequent notification.

Since the subsisting leases and old tenures would continue and others would be holding on the same tenure the West Bengal amendment as

referred to hereinbefore, was invalid.

18. In support of his contentions Mr. Burman relied on the case of Baijnath Kadio Vs. State of Bihar and Others, . That was a case under Rule

20(2) of Bihar Mines and Minerals Concession Rules, 1964 and there were four appeals, which were heard analogously as a common question

regarding the validity of proviso (2) to Section 10(2) as added by the Bihar Land Reforms (Amendment) Act, 1964 (IV of 1965), which is to the

following effect:

Section 10: Subsisting leases of mines and minerals--

(1) ... ...

(2) The terms and conditions of the said lease by the State Government shall mutatis mutandis be the same as the terms and conditions of the

subsisting lease referred to in Sub-section (1), but with the additional condition that, if in the opinion of the State Government the holder of the

lease had not, before the date of the commencement of this Act, done any prospecting development work the State Government shall be entitled at

any time before the expiry of one year from the said date to determine the lease by giving three months'' notice in writing:

Provided that nothing in this sub-section shall be deemed to prevent any modifications being made in the terms and conditions of the said lease in

accordance with the provisions of any Central Act for the time being in force regulating the modification of existing leases.

(3) ... ...

and the operation of the aforementioned Rules came up for consideration in the following facts:

One Jyoti Prakash Pandey obtained on March 23, 1955, from Babu Bijan Kumar Pandey and Smt. Anila Devi acting for herself and also as

legatee under the will of one Baidyanath Pandey, registered leases to quarry stone ballast, boulders and chips from and upon Blocks Nos. 32,

45/1, 45/2 and 43/3 in touzi No. 1452, khata No. 1 in mourn Malpahari No. 89 in Pakur Subdivision of Santhal Parganas. The leases were to

commence from November 1, 1954 and to end on October 31, 1984, that is to say, they were for a total period of 30 years. Jyoti Prakash

Pandey was working under the name and style of ''stone India''. He sold his rights, title and interest by a registered sale-deed on September 9,

1963 to the present Appellant. It is admitted that rent under the terms of the original lease was deposited upto September 1965.

On the passing of the Bihar Land Reforms Act, 1950 (XXX of 1950) the ex-landlords ceased to have any interest from the date of vesting and in

their place the State of Bimar became lessor u/s 10(1) of the Land Reforms Act. After the vesting of the estate of the intermediaries, the State of

Bihar as the new lessor recognised the lease for the quarrying of stones for the remaining period and the Deputy Commissioner, Santhal Parganas,

asked for the rent from the date of vesting to April 30, 1965, at the rate of Rs. 200 per year as stated in the original lease. This was by a letter

issued from his office on February 2, 1963. On December 10, 1964, the Appellants received a letter which gives the gist of the facts on which the

present controversy starts and the relevant part may be quoted here:

Government have been pleased to amend Section 10 of Bihar Land Reforms Act, 1950, according to which the terms and conditions in regard to

leases for minor minerals stand statutorily substituted by the corresponding terms and conditions by the Bihar Minor Mineral Concession Rules,

1964. As a result of this, rent and royalty, etc. in respect of minor minerals in the State irrespective of the date on which the lease was granted are

to be paid by all categories of leases according to the rates given in the aforesaid Rules with effect from October 27, 1964.

The Appellants denied their liability to pay. The Government informed them by letter as follows:

This is to inform you that the terms and conditions of your mining leases in so far as they are inconsistent with the Bihar Minor Mineral Concession

Rules, 1964, framed by the State Government u/s 15 of the Mines and Minerals (Regulation and Development) Act, 1957, stand substituted by

the corresponding terms and conditions prescribed by the Bihar Mineral Concession Rules; 1964, from 27.1.1964. Accordingly, dead rent,

royalty and surface rent in addition to the other substitution as per Bihar Mineral Concession Rules, 1964, will be an follows:

Table missing in file No. WB770383

It is this additional demand and the liability to pay which is the subject of controversy here. The Bihar Government contends that the terms of the

original lease have been validly altered by the operation of the second proviso to Section 10(2) of the Bihar Land Reforms Act added first by

Ordinance III of, 1964 and later incorporated again by the Bihar Land Reforms (Amendment) Act, 1964 (IV of 1965) and the addition of Section

10A to the Act by the same enactments. The material part of the second section of Act IV of 1965 is quoted below. Section 10A provided for the

vesting of the interest of leases of mines or minerals which were subject to such leases and need not be read here. The State Government also

relied upon the Bihar Mineral Concession (First Amendment) Rules 1964, by which a second sub-rule was added to Rule 20. The twentieth Rule,

purporting to be framed u/s 15 of the Mines and Minerals (Regulation and Development) Act, 1957 (LXVII of 1957), was amended on

December 19, 1964 and now reads:

Rule 20(1). Dead rent, royalty and surface rent--when a lease is granted or renewed.

(a) Dead rent shall be charged at the rates specified in Schedule I,

(b) royalty shall be charged at the rates specified in Schedule II and

(c) surface rent shall be charged at the rates specified by the Government in the Revenue Department from time to time.

On and from the date of commencement of these rules, the provisions of Sub-rule (1) shall also apply to leases granted or renewed prior to the

date of such commencement and subsisting on such date.

The contention is that the amendment of Section 10 of the Bihar Land Reforms Act is ultra vires the Constitution and that Rule 20(2) does not

legally entitle the recovery of the dead rent, royalty etc. as in the Schedules to the Bihar Minor Mineral Concession Rules, 1964 and it has been

observed that the said Bihar enactment was void since the jurisdiction to legislate on that point was taken out of the competence of the State

Legislature.

19. On the analogy of the aforementioned decision in the Bihar Act, it was argued that the West Bengal amendment was also invalid because the

jurisdiction to legislate on the point and matter was abstracted from the State Legislature. Mr. Barman, in fact, based his submissions on legislative

competence and not on Article 19 of the Constitution of India and submitted that in view of the above, the determination in the case of Dhemo

Main Collieries and Industries Ltd. v. Commissioner Burdwan Division and Ors. Supra is distinguishable.

20. Those apart, relying on the determinations in the case of Bihar Mines Ltd. Vs. Union of India (UOI), , it was argued that the statutory lease in

the instant case would continue as such lease held by the head lessee from the State of West Bengal cannot be interfered with or modified in the

manner as was sought to be done. It was then submitted that when the head lease could not be modified, the same not being an existing mining

lease, the sub-leases could not also be modified and they too would be deemed to be new leases granted by the new lessee from the State

Government, as the rights of the lessor under the original head lease had ceased on the vesting of the estate and he is deemed to have got a new

lease from the State.

21. Mr. Barman then relied on the Full Bench decision of the Patna High Court in the case of Khas Karanpura Collieries Ltd. and Others Vs.

State of Bihar and Others, , wherein the vires, true scope and construction of Section 30A of the said Mines Act came up for consideration. The

Petitioners in that case were holders of mining leases.

Circumstances which have led to the filing of these applications may now be briefly set out. Proprietors of estates, like Raja of Ramgarh and Raja

of Jharia, had granted mining leases in respect of coal of large areas of land situate in the district of Hazaribagh, Dhanbad or Singhbhum to different

parties. In the permanently settled areas of Bengal and Bihar from which States come about 80% or more of die total coal production of the

country, the Zamindars enjoyed an unfettered discretion in regard to granting mining leases for working and extracting different minerals including

coal and thus no uniformity of policy or practice as to terms of the leases was possible. Yet, generally speaking, the mining leases were for a

duration of 999 years, with stipulations as to payment of premiums and a certain royalty either there was no stipulation for any such payment or it

was at very low rates. With very few exceptions the lessees of such mining leases did not work the mines themselves, they invariably granted sub-

leases on more or less similar terms. The one common feature in regard to all these mining leases or sub-leases was that they were all of dates

earlier to the October 25, 1949, on which date, for the first time, as a result of the coming into operation of the Mines and Minerals (Regulation

and Development) Act, 1948 (hereinafter referred to as the 1948 Act) and the Mineral Concession Rules, 1949, made u/s 5 of the said Act, the

granting of mining leases and development of minerals were made subject to statutory regulations and restrictions. The Mineral Concession Rules,

1949, as per provisions of Section 5 of the 1948 Act were made for regulating the grant of mining leases of prohibiting the grant of such leases in

respect of any mineral or in any area and naturally did not apply to leases granted before October 25, 1949--the date on which the 1948 Act as

also those Rules had come into operation. The restrictions or provisions in those Rules regarding, for instance, areas, duration or rate of royalty

payable did not apply to the leases or sub-leases of the Petitioners. Even the Rules made in September 1956 u/s 7 of the 1949 Act known as "The

Mining Leases (Modification of Terms) Rules, 1956" providing for the modification or alteration of the terms and conditions of mining leases

granted prior to the commencement of the said Act so as to bring them in conformity with the terms and conditions of mining leases granted after

the commencement of the Act in accordance with the Mineral Concession Rules 1949, were expressly made inapplicable to mining leases in

respect of coal and certain other minerals specified in Rule 2(c) thereof though similar mining leases in respect of other minerals were covered. The

result was that the mining leases or sub-leases of the Petitioners remained unaffected by the regulatory or the restrictive provisions of the 1948 Act

or of the rules made thereunder. No attempt was made to modify any of the terms or conditions of the leases or sub-leases. This was the position

when the 1957 Act came into operation on June 1, 1958. Section 9(1) of that Act made it obligatory on the holders of mining leases in respect of

all minerals except mineral oils granted before the commencement of the Act, notwithstanding anything contained in the instrument of lease or in any

law in force at such commencement, to pay royalty at 5% F.O.R. price of coal subject to the minimum of 50 paise per ton, which was the rate for

the time being specified in the second schedule to the said Act. Thus, Section 9(1) served to effect a statutory modification in the rates of royalty

payable in respect of mining leases which might have been granted before June 1, 1958 and thus the mining leases or sub-leases of the Petitioners

were automatically and adversely affected. So far as the question of modifying other terms and conditions in respect of mining leases granted

before October 25, 1949, were concerned so as to bring them in conformity with the terms and conditions of new leases to be granted under the

Act in accordance with the rules made under Sections 13 and 18 thereof. Section 16(1) of 1957 Act imposed a statutory duty of effecting the

necessary modifications as soon as may be after the commencement of the Act. The provisions of Sections 9(1) and 16(1) of the 1957 Act thus

amounted to a sudden departure from the policy which was being followed by the Government in regard to mining leases in respect of coal. The

case of the Petitioners is that on account of the proposed sudden increase in the rate of royalty over the rates hitherto payable or being paid, a

steep rise in the cost of production of coal was apprehended. Likewise the almost immediate certainty of other terms and conditions being

modified, thus bringing in all the restrictive and regulatory provisions in regard to duration and area, was also likely to have an unsettling effect of

the working of the coal industry as a whole. In such circumstances, according to the Petitioners, representations were made to the Government of

India to reconsider the whole matter and take some steps for preventing the aforesaid adverse effect on the production of coal, a vital and basic

material for the industrial development of the country. The representations, according to the Petitioners, had their effect and Section 30A of the

1957 Act was brought in by Section 2 of the Amendment Act which inserted Section 30A expressly stated that Section 30A shall be deemed

always to have been inserted. In the result by virtue of Section 30A, the provisions of Sub-section (1) of Section 9 and of Sub-section (1) of

Section 16 were to remain inapplicable to or in relation to mining leases in respect of coal granted before October 25, 1949, until the Central

Government was satisfied that it was expedient to make them applicable to those leases with such* exceptions and modifications, by notification in

the Official Gazette. The provisions of Sections 9(1) and 16(1) having been thus suspended so far as mining leases in respect of coal were

concerned, the Petitioners went on paying royalty, if any, at the contractual rates. Finally, however, the Central Government in exercise of the

powers conferred by Section 30A issued a notification dated December 29, 1961, directing that the provisions of Section 9(1) shall apply with

immediate effect to or in relation to mining leases in respect of coal granted before October 25, 1949, subject to this modification that the lessees

concerned shall pay royalty at the rates specified in any agreement between the lessee and the lessor or at 2Ã¯Â¿Â½% F.O.R. price of coal whichever

was higher in lieu of the 5% F.O.R. price of coal from December 29, 1961, onwards in place of rate of royalty mentioned in the instrument of

lease or sub-lease. In case of sub-lessees though there was no privity of contract or privity of estate with the Respondent No. 1 the State of Bihar

and as such they had no liability to pay any royalty to the State direct, yet in many cases, either on account of arrangement between the lessee and

the sub-lessee or on account of duress or coercion, payments at 2Ã¯Â¿Â½% F.O.R. price of coal was made directly to the State. In any case, after the

introduction of Section 10A by Section 3 of the Bihar Act IV of 1965 into the Bihar Land Reforms Act, 1950, all sub-lessees whose leases were

not subject to further sub-leases came to hold their leases directly under the State Government and the payment of royalty at the rate specified in

the notification of the Central Government dated January 1, 1966, the previous notification dated December 29, 1961, was superseded and the

provisions of Section 9(1) of the 1957 Act without any modification became applicable with immediate effect to and in relation to mining leases in

respect of coal granted before October 25, 1949. It is the common case of the parties that from January 1, 1966, onwards the Petitioners have

been paying at the rate of 5% F.O.R. price of coal as specified in the second schedule to the 1957 Act. The Respondent No. 2, District Mining

Officer, has, notwithstanding the fact that royalty at the uniform rate of 2Ã¯Â¿Â½% F.O.R. price of coal in respect of coal removed from the leased

area during the period December 29, 1961 to December 31, 1965, has already been paid by the Petitioners, as per notification dated December

29, 1961, issued by the Central Government in exercise of their powers u/s 30A of the 1957 Act, demanded further payment of different sums of

money from different Petitioners by way of royalty calculated at the rate of 5% F.O.R. price of coal, in respect of the period from November 3,

1951, till December 31, 1965, in some cases and from December 29, 1961, to December 31, 1965, in other cases. This demand, according to

the Petitioners, was wholly illegal and when their protests and representations to the Respondents against the illegal demand have proved futile and

indeed, the Respondents had in the case of some of the Petitioners initiated certificate proceedings for realisation of the aforesaid illegal demand

and have been holding out threats of adopting coercive measures in other cases for realisation of the sums of money demanded by way of royalty,

the present applications were filed for the reliefs already specified above.

The case of the Petitioners is that the Respondents are not entitled to demand or realise royalty at 5% F.O.R. price of coal for any period prior to

January 1, 1966, because for the period between November 3, 1951, the date on which the estates of the head lessors are alleged to have vested

in the State of Bihar under the Bihar Land Reforms Act, 1950 and June 1, 1958, the date on which the 1957 Act was brought into operation, Rule

41 of the Mineral Concession Rules, 1949, requiring royalty to be paid at the rate specified in the first schedule to those Rules applied to leases

granted under those Rules after the commencement of the 1948 Act and the Mineral Concession Rules themselves and as such, had no application

to the Petitioners'' leases or sub-leases and so far as the claim of demand for the period between June 1, 1958 and December 28, 1961, was

concerned, royalty at the contractual rates alone was payable, because, firstly, the provisions of Section 9(1) of the 1957 Act did not cover and

had no application to statutory leases deemed to have come into existence u/s 10(1) of the Bihar Land Reforms Act, 1950 and alternatively,

because by virtue of Section 30A of the 1957 Act which must be deemed to have come into operation on June 1, 1958, itself, the provisions of

Section 9(1) was not applicable to or in relation to the mining leases in respect of coal granted before October 25, 1949, until the Central

Government by notification had decided otherwise. So far as the claim in respect of the period December 29, 1961, to December 31, 1965, was

concerned, the case of the Petitioners is that royalty at 2Ã¯Â¿Â½% F.O.R. price of coal for the said period has already been paid by the Petitioners as

per notification of the Central Government issued in exercise of their powers u/s 30A of the 1957 Act and the State having itself invited and

accepted those payments in full discharge of the Petitioner''s liability on the score of royalty payable during the said period, was not entitled to

unilaterally revoke the aforesaid discharge or satisfaction and claim further royalty at 2Ã¯Â¿Â½% F.O.R. price of coal over and above what has already

been paid and accepted.

On the pleadings of the parties, the questions that arose for determination were:

(i) in regard to the vires or otherwise of the provisions of Section 30A of the 1957 Act and (ii) in regard to the proper construction, true effect and

scope of Section 10 of the Bihar Land Reforms Act, 1950 and Sections 9 and 30A of the 1957 Act. In respect of the claim for the period prior to

June 1, 1958, the applicability of the Mineral Concession Rules, 1949, by virtue of Section 29 of the 1957 Act or otherwise to or in respect of the

Petitioner''s leases or sub-leases will be another relevant question, which will arise for determination,

and it has been observed that

(i) Section 30A was not violative of Article 14 of the Constitution;

(ii) Claim for royalty for the period prior to the coming into force of the 1957 Act was not justified or legal, on the basis of Section 29 of 1957 Act

read with Rule 41 of the First Schedule to the Mineral Concession Rules, 1949;

(iii) Section 9(1) was comprehensive in terms and included statutory mining leases deemed to have been granted by the State in favour of the

Petitioners u/s 10(1) of the Bihar Land Reforms Act; and

(iv) On a proper construction of Section 30A statutory mining leases deemed to have been granted by the State u/s 10(1) of the Bihar Land

Reforms Act, 1960, were covered by the words in relation to the mining leases granted before October 25, 1949, in respect of coal and even

otherwise those statutory mining leases enjoyed the protection of Section 30A and therefore, the demand for royalty from the Petitioner at the rate

r specified in the Second Schedule to the 1957 Act read with Section 9(1) of the said Act for any period prior December 31, 1965, except as

under the relevant notification issued u/s 30A on December 28, 1961, was illegal and unwarranted.

22. In support of his arguments on the legislative competence, in view of the provisions of Article 31, Mr. Barman relied on the Division Bench

judgment in the case of Chanan Mal Vs. The State of Haryana and Another, and submitted that on the basis of the determination made therein, the

determination in the case of Dhemo Main Collieries and Industries Ltd. v. Commissioner, Burdwan Division and Ors. Supra is also distinguishable.

In that Punjab case, the Petitioners, who were either owners or leases of saltpeter at various places in the State of Haryana, challenged the validity

of the Haryana Minerals (Vesting of Rights) Act, 1973, principally on the ground that the State Legislature lacked the legislative competence to

enact that law. The Act received the assent of the President on December 16, 1973 and was published in the relevant Gazette on December 20,

1973 and came into force on that date. The preamble of the Act shown that the same was enacted to vest the mineral rights in the State

Government and to provide for payment of amounts to the owners of minerals and for other matters connected therewith. In that case it has been

held:

In view of the declaration made u/s 2 of the Mines and Minerals (Regulation and Development) Act (1957), as contemplated by Entry 54 of List 1

of Schedule 7 to the Constitution, read with other provisions of that Act it is clear that the entire field of regulation of Mines and Minerals

Development, which includes the requisition of minerals, is taken over by the Union. Hence the Haryana State Legislature had no competence to

pass the Minerals (Vesting of Rights) Act, 1973.

The pith and substance of the Haryana Act being the acquisition of rights to minerals and development thereof the Act falls within Entry 23 of State

List and not Entry 18 of that List although it incidentally touches land. Hence in view of the Central Act. Entry 18 is of no help to save the Act from

invalidity.

The contention that the Haryana Act came under Article 31A(1)(a) of the Constitution and hence was not open to attack on the basis of Article 31

is not sound because the Act is not relatable to Entry 18 of the State List and Article 31A(1)(a) is also not applicable. Article 31A(1)(a) relates to

agrarian reforms and not to Mines and Minerals or rights thereto. That matter is covered by Article 31A(1)(a). But here again the acquisition can

be for the purpose of searching for or winning any mineral and not mineral development. Hence the Haryana Act cannot be saved under Article

31A(1)(a) or (e) particularly in the face of the Central Act.

The Act cannot however, be successfully challenged on the ground that there was no public purpose for acquisition, for looked at as a whole, the

acquisition of rights to minerals was made for a public purpose. The amount payable to the owners of the minerals u/s 4 of the Haryana Act is not

merely inadequate but illusory and arbitrarily fixed. Section 4 is thus violative of Article 31(2) and hence the entire Act has to be struck down on

that ground also. AIR 1973 S.C. 1961, followed.

23. Apart from arguing on the points of interest and price for fuel coal as recorded hereinbefore and arguing that the interpretation as given to the

Supreme Court judgment in the case of Dhemo Main Collieries and Industries Ltd. v. Commissioner Burdwan Division Supra was incorrect, Mr.

Barman advanced his arguments on promissory estoppel stating that when in terms of the lease at the instance of the State as mentioned

hereinbefore, the Petitioners have made investments and that too on the basis of their promise and assurance and to their prejudice, the rights as

granted cannot be taken away or refused in the manner as was sought to be done or at all and in support of his contentions, he relied on the case

of the Union of India v. Anglo-Afghan Agencies etc. AIR 1968 S.C. 718.

24. In the case of Sub Divisional Land Reforms Officer and Others Vs. Ukhara Forest and Fisheries Ltd., which was a case of vesting of forest

and forest lands, a point arose whether without a fresh notification u/s 4 of the said Act, such lands could vest in the State and on consideration of

the determinations in the cases of Ajit Kumar v. State of West Bengal 61 C.W.N. 610, Katrash Jharia Coal Company v. State of West Bengal

Supra, Ram Krissen Singh Vs. Divisional Forest Officer Bankura Division and Others, and Walamji v. Chandra Bhusan 78 C.W.N. 775 it has

been held that in the absence of a fresh notification u/s 4 after the insertion of Sub-clause (aa) in Section 5(1) of the said Act, the forest lands did

not vest in the State. Such determination was made as it was observed that Section 4 as it stood at the relevant time required a notification, by

which all estates and rights of intermediaries under the said Act could vest. On the basis of such reasons, I hold that Mr. Barman is justified in his

submission that the underground rights of lessees and sub-lessees could not vest in the State in the absence of a fresh notification and as such the

claim of royalty on that basis should also be held to be improper. Thus it must also be held that since rights as aforesaid were not vested in terms of

the required notification under the section, which was dated April 15, 1955, rights of lessees were not affected, although the definition was

amended by the Ordinance dated January 16, 1957 and the said Act which was passed on February 12, 1954, was further and suitably amended

on March 9, 1957, by the West Bengal Estates Acquisition (Amendment) Act, 1957 (IV of 1957), which was published in the Extraordinary

issues of Calcutta Gazette dated March 9, 1957. I further hold that Section 4 contemplated a notification by which all estates and rights of

intermediaries under the Act at the relevant time could vest in the State with effect from April 15, 1955 and the relevant notification being dated

August 26, 1954 and chap. VI of the said Act, which deals with ""'Acquisition of Interest of Raiyats and Under Raiyats"" as introduced by Act XXV

of 1955 and was enforced by a fresh notification u/s 4, which was dated April 10, 1966. The said Mines Act which came into force on December

12, 1957 and that too having been made operative from June 1, 1958, the interest in the instant case could not also vest. In view of the provisions

in Sections 29 and 30A of the said Mines Act and since they maintain the subsisting leases and old tenures to be continued, the West Bengal

amendment was invalid.

25. In the case of Baijnath Kedia v. State of Bihar and Ors. Supra, the Bihar enactment has been held to be void since the jurisdiction to legislate

on that point was taken out the competence of the State Legislature. Applying the tests as enunciated in that case which applies with equal force in

this case, I hold that the West Bengal enactment was void since the jurisdiction to legislate on that point was taken out of the competence of the

State Legislature and as such also the West Bengal amendment was invalid. That apart by reference to the determination in the case of Chran Mal

v. The State of Haryana and Anr. Supra it must be held that in view of the declaration made under the said Act as contemplated by Entry 54 of

List 1 of Schedule 7 of the Constitution read with other provisions of the Estates Acquisition Act it is clear that the entire field of regulation of

Mines and Mineral Development, which includes the acquisition of minerals, has been taken over by the Union and as such also the State

Legislature had no competence in the matter.

26. I further hold that in view of the observations in the case of The Bihar Mines Ltd. v. The Union of India and Ors. Supra, the statutory lease in

the instant case would continue and as such the lease held by the head lessee from the State cannot be interfered with or modified. Thus I hold that

when the head lease cannot be modified, the same being an existing mining lease, the sub-leases could not also be modified and the same should

also be deemed to be a new lease from the State Government, as the rights of the lessor under the original head lease had ceased on the vesting of

the estate and such lessee should be deemed to have got a new lease from the State.

27. The provisions in Sections 29 and 30A of the said Act and the effect thereof, have been considered in the cases of Khas Karnapura Collieries

Ltd. and Ors. v. State of Bihar and Ors. Supra and Dhemo Main Collieries and Industries Ltd. v. Commissioner Burdwan Division and Ors. Supra

and it has been observed in the aforementioned Full Bench determination of the Patna High Court, that the said Section 30A is not violative of

Article 14 of the Constitution of India, the claim for royalty for the period prior to the coming into force of the 1957 Act was not justified or legal

on the basis of Section 29 of the said Mines Act read with Rule 41 of the First Schedule to the Mineral Concession Rules, 1949. Section 9(1) of

the Bihar Act was comprehensive in terms and included, statutory mining leases deemed to have been granted by the State in favour of the

Petitioner therein u/s 10(1) of the Bihar Land Reforms Act and on a proper construction of Section 30A statutory mining leases deemed to have

been granted by the State u/s 10(1) of the Bihar Land Reforms Act, 1950, were covered by the words in relation to the mining leases granted

before October 25, 1949, in respect of coal and even otherwise those statutory mining leases enjoyed the protection of Section 30A and

therefore, the demand for royalty from the Petitioners at the rate specified in the Second Schedule to the 1957 Act read with Section 9(1) of the

Bihar Act for any period prior December 31, 1965, except as under the relevant notification u/s 30A on December 28, 1961, was illegal and

unwarranted.

28. In the case of Dhemo Main Collieries Industries Ltd. v. Commissioner Burdwan Division and Ors. Supra it has been observed that since the

Petitioner was not a proprietor its right to work mines and minerals was derived from leases granted by proprietors and in some cases by sub-

leases granted by lessees. Section 29 of the Estates Acquisition Act, therefore, would be attracted in terms to the case of the Petitioner and on the

elimination of all intermediate grades of leases and sub-leases, direct relationship would be established between the State on the one hand and the

Petitioner on the other which was actually undertaking mining operations. The Petitioner would be liable to pay royalty in respect of the mines

worked by it to the State with effect from the date on which the notification u/s 4 of the Estates Acquisition Act, 1951, came into force. It has also

been observed in that case that u/s 29 of the Estates Acquisition Act, 1951, fresh leases must be deemed to have been granted in favour of the

working lessees with effect from the date of vesting although the terms and conditions of such leases were the same as those of the leases granted

by the intermediaries and subsisting on the date of vesting, the original leases granted prior to October 25, 1949, did not subsist and the expression

in relation to mining leases granted before October 25, 1949, in Section 30A of the said Mines Act, has been widely formulated and mining leases

contemplated by the section would include statutory leases deemed to have been granted with effect from the date of vesting. So the Petitioner in

that case was held to be liable to pay royalty at the contractual rate till December 1, 1962, from which date it would be liable to pay royalty at the

rates specified in the notification published u/s 30A of the said Mines Act. In that case it has further been observed that the West Bengal

Legislature was competent under Entry No. 18 of List II in Schedule VII of the Constitution to enact laws in respect of every kind of rights in lands

both surface and underground, including mineral leases granted by intermediaries and their lessees and List II confers legislative competence, to the

Legislature to regulate mines and mineral development, but such competence would be taken away when Parliament by law makes a declaration in

terms of Entry ho. 54 of List I only to the extent of the declaration. In respect of matters not covered by the declaration, the State Legislature

would continue to enjoy legislative competence. It has also been observed that the West Bengal Estates Acquisition Act, 1951, does not, in pith

and substance, relate to regulation of mines and minerals development within the meaning of Entry No. 23 of List II or Entry No. 54 of List I.

Merely because the said Act may incidentally affect mining rights, the same does not involve any repugnancy between the said Act and any Central

statute for regulating mines and mineral development and the retrospective amendment of the term "intermediary" in Section 2(i) of Amending Act,

1957, made before the said Mines Act, was within the legislative competence of the West Bengal State Legislature. It has also been observed in

that case that Section 5(2) of the Estates Acquisition Act, 1951, as inserted by the Estates Acquisition Amendment Act of 1964, is not repugnant

to any provisions of the Mines and Minerals (Regulation and Development) Act, 1957 and is not ultra vires and the amendment was expressly

given retrospective operation and would be deemed to have been on the statute book from the date of the commencement of the original Act.

Consequently, the interests of all intermediaries, being lessees and sub-lessees of mineral rights, did vest in the State on the date of the notification

u/s 4 of the Estates Acquisition Act, 1951. In view of my findings as above and more particularly following the determinations in the cases as

mentioned before the State Legislature, in the instant case, had no competence to legislate on the point involved.

29. The Supreme Court in the case of Sone Valley Portland Cement Co. Ltd. Vs. The General Mining Syndicate Pvt. Ltd., which was a case

under the Bihar Land Reforms Act, 1950, has observed that a head lessee in respect of mines and minerals under an indenture of lease executed

prior to the date of vesting of mines under the said Bihar Act does not become a tenure holder consequent on "vesting" under the Act. It has also

been observed that such head lessee cannot be said to be a tenure holder as contemplated by Section 2(r) of the said Bihar Act as he had neither

acquired from the lessee by virtue of the lease a right to hold the land mentioned herein for the purpose of collecting rent nor a right to hold the land

for bringing it under cultivation by establishing tenants on it. His right as a head lessee of the mines and minerals also does not cease and he does

not acquire the status of the lessee. In spite of (sic) the said determination also it applies with equal force in the instant case and as such on the

basis of such determination it can be held that the rights of the Petitioner in the instant case have not also vested when the rights of the head lessee

have not vested.

30. Those apart, when there is categorical evidence that on the assurance as received by them the Petitioner had invested large sums of money and

have acted to their detriment and prejudice on such promise, their case would come under the purview of the determination in the case of The

Union of India v. Anglo-Afghan Agencies etc. Supra and as such the action as proposed was irregular.

31. In view of the above, the necessary consequential result is that the State Government in the instant case was not entitled to

claim royalty or interest from the Petitioner.

32. In view of the above findings, the argument of Mr. Barman succeeds and as such so also the application. The Rule is thus made absolute.

There will be no order for costs.

33. The operation of the order is stayed for eight weeks.

34. The order as proposed will not however prejudice the rights of the Respondents to proceed afresh and in accordance with law in the matter of

realisation of royalty.