(1960) 11 CAL CK 0013

Calcutta High Court

Case No: Matter No. 235 of 1960

The Calcutta Gas Co. (Proprietary) Ltd.		APPELLANT
	Vs	
The State of West Bengal and Others		RESPONDENT

Date of Decision: Nov. 15, 1960

Acts Referred:

- Constitution of India, 1950 - Article 13, 14, 19, 226, 246

Citation: 65 CWN 545

Hon'ble Judges: Ray, J

Bench: Single Bench

Advocate: P.R. Das with S. Banerjee and B. Chakravarty, for the Appellant;A.C. Gupta and S. Bose for the State, for the Respondent

Final Decision: Dismissed

Judgement

Ray, J.

This application challenges the validity of the Oriental Gas Company Act being West Bengal Act XV of 1960. The Oriental Gas Co. Ltd. was originally constituted by a Deed of settlement dated April 25. 1853 by the name of the Oriental Gas Co. On April 27, 1853 the company obtained a certificate of complete registration in accordance with the provisions of the Statute 7 and 8 Vict. Chap. 110. The said company was subsequently registered in England with limited liability under the provisions of the English Joint Stock Companies Act 1862. In 1857, an Act being Act V of 1857 was passed by the Legislative Council of India. It was an act to confer certain powers on the Oriental Gas Company Ltd. The preamble of Act V of 1857 contains the recitals that the said Company has erected gas works on land granted for that purpose by Government in the vicinity of the town of Calcutta and is engaged in the preparation of apparatus and materials for the manufacture and supply of gas for lighting the said town; it is expedient that powers and facilities should be given to the said

company to enable them to carry out their undertaking of lighting with gas the said town of Calcutta which powers and facilities may hereinafter be extended to the operation of the said company in other towns and places. With this preamble the Act conferred powers on the said company, inter alia, to lay pipes in Calcutta and other places and to excavate the streets for the purpose.

2. The Articles of Association of the Oriental Gas Company Ltd. were altered by a special resolution passed on September 18, 1947. As a result of the said amendments the business of the said company was thereafter to be transacted in India, all general meetings of the company and all meetings of directors were to be held in India, all dividends were to be paid in and from India and no part of the profits of the said company were to be transmitted to the United Kingdom except as to payment of dividends to members whose address in the register was in the United Kingdom. In 1946 Messrs Soorajmull Nagarmull purchased 98 per cent, of the shares of the Oriental Gas Company Ltd. Messrs Soorajmull Nagarmull floated a limited liability company named the Calcutta Gas Co. (Proprietary) Ltd. and it was registered in India and has its registered office at Calcutta.

3. In the petition the Oriental Gas Company Ltd. has been described as the main company and the Calcutta Gas Company (Proprietary) Ltd. has been described as the managing company. I shall hereinafter for the sake of brevity adopt the said description. By an agreement made on July 24, 1948 between the main Company and the managing company the latter was appointed the Manager of the main Company in India and the general management of the affairs of the main Company in India was entrusted to the managing Company for a period of 20 years from July 5, 1948. Under the agreement the managing Company is to receive by way of remuneration for their services (a) office allowance of Rs. 3,000/- per mensem, (b) commission of 10 per cent, on the net yearly profit of the Company, subject to a minimum of Rs. 60,000/- per year in the case of absence of or inadequacy of profits, and (c) commission of Re. 1/-per ton of all coal purchased and negotiated by the Managers. Under clause 5 of the said agreement the Managers shall have the general management in India of the Company''s business transactions and of the books, papers, effects, property, affairs and concerns with full power to engage and dismiss assistants and all other officers and staff and all workmen and for that purpose the Company to purchase and obtain all necessary plants, machinery, stores, goods and materials of any kind whatsoever and to sell such plant, machinery, stores, materials, and / or any of the bye-products manufactured or acquired by the company. The Oriental Gas Company Act of 1960 hereinafter referred to as the State Act of 1960 is impeached on two principal grounds. First, it is contended that the said Act is ultra vires the legislative competence of the State of West Bengal. Secondly, it is contended that the said Act is unconstitutional and confiscatory and violates the provisions contained in Articles 14, 19 and 31 of the Constitution of India.

4. Mr. P. R. Das, Counsel for the petitioner,, challenged the vires of the said Act of 1960. on these grounds. First, that the Oriental Gas Company Ltd. is a fuel industry engaged in the manufacture and production of gas, and the West Bengal Legislature has no legislative competence in regard to the said industry since it has been declared by Parliament by the Industries Development and Regulation Act of 1951, being Act 65 of 1951, hereinafter referred to as the Parliament Act of 1951. that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule, and the fuel industry is one of the industries specified in the First Schedule to the said Parliament Act of 1951. Secondly, it was contended that inasmuch as by entry 52 List I of the Seventh Schedule to the Constitution of India, Parliament has legislative competence in regard to industries, the control of which is declared to be expedient in the public interest to be with the Union, the State of West Bengal under Entry 24 of List 2 has legislative competence with regard to industries, subject to Entry 52 in List I. Therefore, Mr. Das contended that inasmuch as there is already a legislation by Parliament in respect of matters in Entry 52 of List I. Parliament has occupied the field and, therefore, the State Legislature has no competence to deal with any matter which is either within Entry 52 or which is the occupied field of Parliament. Thirdly, it is contended that since Parliament has entered and occupied the field of legislation under Entry 52 in List I in respect of Fuel industries engaged in the manufacture and production of fuel gases. Entry 25 in List 2 of the 7th Schedule to the Constitution of India which is Gas and Gas Works, is cut out from the legislative competence of West Bengal by virtue of Article 246 of the Constitution which declares that Parliament has exclusive powers to make laws in respect of any matter enumerated in List 1 of the 7th Schedule. Finally, Mr. Das contended that the pith and substance and the true nature and character of the impugned legislation is that it is a legislation seeking to acquire the management and control of an industry which is a scheduled industry in the Parliament Act of 1951 and, therefore, the enactment is unconstitutional.

5. On behalf of the respondents Mr. Advocate-General and following him Dr. A. C. Gupta contended first that entry 25 Gas and Gas Works in the State List was carved out as a separate exception to entry 24 in State List and Entry 52 in the Union List regarding Industries. In other words, the contention was that where the general enactment of general words were followed by particular enactment or words the latter would over-rule the former and the result would be that entry 25 in State List under the heading Gas and Gas Works was in express language an exception to Entry regarding Industries. Secondly, it was contended that the impugned legislation was in pith and substance and true character and purpose a legislation for requisition of property and was a valid legislation under Entry 42 in the concurrent List. Thirdly, it was contended that the entry Gas and Gas Works was a composite one and it could not he truncated into either an Entry relating to Gas or to Gas Works but was to be treated as a composite entry of Gas and Gas Works.

Fourthly it was contended that the impugned legislation was in pith and substance a legislation under entry Gas and Gas Works. Finally it was contended that the pith and substance of the impugned legislation was that it was not a legislation in relation to any industry within the meaning and field of the Parliament Act of 1951.

6. The Parliament Act of 1951 is an Act to provide for the development and regulation of certain Industries. Section 2 of the State Act of 1951 declares that it is expedient in the public interest that the Union should take under its control the Industries specified in the first schedule. The first schedule underwent some change. It is not necessary to go into the amendments. The schedule as it stands now reads as follows: "Any industry engaged in the manufacture or production of any of the articles mentioned under each of the following headings or sub-headings namely (1) fuel (2) coal etc. (3) Mineral Oil etc. (4) Fuel Gas (Coal Gas) natural gas and the like". Mr. P. R. Das contended that Parliament in the 1951 Act by section 2 thereof read with the first schedule clothed the Union Government with statutory control of Industries mentioned in the first schedule to the Act, and therefore fuel Industry engaged in the manufacture or production of gas was a controlled Industry and the West Bengal Legislature has no power to pass any legislation in regard to such Industries. Mr. Das further contended that apart from section 2 there was in the Act neither any section vesting control of the Industries in the Union nor did the Act contemplate any order vesting control of the Industries by Union. Mr. Das referred to section 10 of the Act of 1951 which enabled the Government by Notification in the Official Gazette to fix a time within which the owner of an Industrial undertaking would be required to obtain the registration of the undertaking in the prescribed manner. If there was no control by the Union it was contended that it could not require registration of Industrial undertaking. Mr. Das referred to sections 15 and 16 of the Union Act of 1951 which conferred powers on the Central Government to cause investigation to he made into scheduled Industrial undertakings as also powers to issue directions to Industrial undertakings and contended that unless the Union was vested with control it could not cause investigation into or issue directions to the Industries.

7. The Parliament Act of 1951 consists of four Chapters. Chap. 2 deals with the Central Advisory Council and Development Council. Chap. 3 deals with Regulation of scheduled Industries. Chap. 3(A) deals with direct management or control of Industrial undertaking by Central Government in certain cases. Chap. 3(B) deals with control, supply, distribution etc. of certain articles. An "existing Industrial undertaking" has been defined in the Parliament Act of 1951 to mean in the case of an Industrial undertaking appertaining to any of the Industries in the first schedule as originally enacted, an Industrial undertaking which was in existence on the commencement of this Act for the establishment of which effective steps had been taken before such commencement. The same definition applies to industrial undertakings pertaining to any of the Industries added to the First Schedule by an amendment thereof. "Industrial undertaking" has been defined in the Act to mean

"Any undertaking appertaining to a scheduled industry carried on in one or more factories by any person or authority including Government". "Owner" has been defined in the Act lo mean in relation to an Industrial undertaking the person who or the authority which had the ultimate control over the affairs of the undertaking and where the said affairs are entrusted to a Manager, Managing Director or Managing Agent, such Manager. Managing Director or Managing Agent shall be deemed to be the owner of the undertaking. With the aid of these definitions Mr. Das contended that Oriental Gas Company Ltd. was an Industrial undertaking and the petitioners were deemed to be the owner of the undertaking.

8. Sections 5 and 6 of the Act of 1951 deal with establishment and Constitution of Central Advisory Council and Development Council and their functions. Mr. Das contended that between sections 2 and 5 of the 1951 Act there is no section which empowers the Union by notified order to take over control of the scheduled Industries and if Government had not yet under the Act taken over control of the scheduled Industries there could be no Central Advisory or Development Council, for no question of advising would arise unless the Central Government had assumed control. On that basis Mr. Das contended that sections 5 and 6 of the Act of 1951 were understandable only if it were held that statutory control had already passed to the Government u/s 2 of the Act of 1951. Mr. Das further contended that if the interpretation of section 2 were that it merely gave a discretion to the Union to take control of a scheduled Industry if and when it liked, there would be some provision somewhere in the Act which would enable the Union by some Notification to assume control before it had power to establish an Advisory and Development Council in regard to the same or before it had power to investigate or to issue directions, under sections 15 and 16 of the Union Act of 1951 in regard to the scheduled Industries.

9. Mr. Das contended that section 18A of the Union Act of 1951 conferred power on the Central Government to take over management and made a distinction between control and management. His contention was that control had already been taken over by section 2 of the Act and management was one of the functions of control. The other functions of control, Mr. Das illustrated with reference to sections 15 and 16, were regulation of production or taking steps to stimulate the development of the industry or control of price.

10. Mr. Advocate-General contended that section 18A of the Parliament Act of 1951 showed that if the Central Government wanted to take over a management it could be done only by notified order in the Official Gazette and unless and until there was such a notified order the Central Government did not or could not take over the management of the undertaking. There is no definition of control in the Act of 1951 and Mr. Advocate-General contended that the Central Government had not taken control of Oriental Gas Company Ltd. Mr. Advocate General further contended that the power to investigate was under the Parliament Act of 1951 and similarly the

power to issue directions was u/s 16 of the Act of 1951. If directions given by Central Government u/s 16 had not been complied with, the Central Government might by notified order take over the management. Similarly, if an investigation u/s 15 of the Act showed that an Industrial undertaking was being managed in a manner detrimental to the scheduled Industry or to public interest the Central Government might take over the management by notified order. Mr. Advocate-General referred to Section 30 of the Act of 1951 which conferred power on the Central Government to make rules, inter alia, for the procedure to be followed in making any investigation under the Act. In my opinion the contentions of Mr. Advocate-General are correct. The Central Government has under the Act power to investigate as also power to issue directions. Such powers of investigation and or issue of directions are not taking over control or management of an Industrial undertaking. The Central Government in my opinion does not take over the management or control of an Industrial undertaking without a notified order. Mr. Advocate-General further contended that if by section 2 of the Act of 1951 control of the scheduled Industries had vested in the Central Government all Industries engaged in the manufacture or production of Iron and Steel metal and Iron and Steel Pipes had already vested under the control of the Union. Such an interpretation, he contended, would be illogical and absurd. The powers under sections 15 and 16 of the Act are in my opinion meant to regulate and develop industries. Direct management or control of industrial undertaking is an entirely different matter and is dealt with under Chapter 3A. It was contended on behalf of the petitioner that Oriental Gas Company Ltd. was registered in September 21, 1952 under the Act of 1951 and the registration Number was R/3/8 and therefore by registration it became a controlled industry. In my opinion registration is totally different to taking over management. Mr. Advocate-General contended that the language of section 2 of the Act of 1951 was that it is expedient that the Union should take under its control the industries and not that the Union was by that section clothed with control of the Industries. If and when the Central Government was of opinion u/s 18A of the Act of 1951 that an industrial undertaking had failed to comply with the directions or that it was being managed in a manner detrimental to the public interest the Central Government might by notified order take over the management or control and exercise such functions as might be specified in the order. The other powers contemplated in Chap. 2 or in Chap. 3 are powers under the Act, not for taking over the management and control of the undertaking. I therefore hold that in the absence of a notified order u/s 18A of the Parliament Act of 1951 the Central Government does not take over the management of an industrial undertaking and no control of a particular undertaking is acquired in the absence of a notified order.

11. Mr. Das next contended that the field of legislation was already occupied by Parliament Act of 1951 and so far as the State legislature was concerned it was a forbidden field. He also contended that it was impossible to reconcile the impugned legislation with the Parliament Act of 1951. The impugned legislation was for the

purpose of taking over management and control of Oriental Gas Company Ltd. a fuel industry engaged in the production of gas and the same purpose according to Mr. Das could have been achieved under Parliament Act of 1951. Mr. Das contended that there is general power with regard to Industries under Entry 24 in the State List but this power is subject to Entry 52 in List 1. Therefore, Mr. Das contended that particular Industries dealt with by Parliament Act of 1951 are cut out from the field of State legislation. Mr. Das invoked the doctrine of generalia speciali bus non derogant in support of his contention that general language would yield to particular expressions. The particular Industries in the schedule to the Parliament Act of 1951 were according to Mr. Das a forbidden field of the State legislature. Mr. Das relied on Article 246 of the Constitution to show that Parliament has exclusive powers to legislate in regard to matters enumerated in List 1 and the power of the State legislature to legislate in matters under List 2 is subject to the exclusive powers of Parliament in matters within List 1 inasmuch as Entry 52 in List 1 deals with particular classes of Industries. Entry 24 in List 2, he contended, must give way to Entry 52 in List 1. Mr. Das went on to read Article 246 in the following manner: "Notwithstanding anything in Entry 24 List 2 (Industries), Entry 25 List 2 Gas and Gas Works or any other Entry or Entries in List 2 or 3 Parliament has exclusive powers to make laws with respect to Entry 52 in List 1 namely Industries the control of which by the Union is declared by Parliament to be expedient in public interest". Mr. Das laid emphasis on the opening words of clause 1 of Art. 246(1) of the Constitution: "Notwithstanding anything in clauses 2 and 3" and the opening words of clause 3 of Art. 246 "subject to clauses 1 and 2" and contended that the words indicated that the power of the State legislature was subject to the exclusive power of Parliament with respect to matters enumerated in List 1 and the power of the State legislature with respect to matters in List 2 was subject to the power of Parliament. Thus Mr. Das contended that since by Parliament Act of 1951 Parliament had exclusive powers to make laws with respect to Entry 52 of List 1 and since the fuel industry was included in the 1951 Act the power of the State legislature to make any legislation with regard to fuel industry engaged in the manufacture or production of gas was subject to the exclusive power of Parliament. Mr. Das relied on the decision reported in 1940 F.C. R.I.P. 188 Madras Agriculturist Relief Act case (1) and in particular on the observations appearing at p. 218 and at p. 236 of the report. It was held by the Federal Court on the construction of section 100 of the Constitution Act of 1935, which corresponds to Art. 246 of the Constitution of India, that in its fullest scope section 100 would mean that if it happens that there is any subject in List 2 and it also falls in List 1 or List 3 then it must be taken as cut out from List 2.

12. It is therefore necessary to see if the impugned legislation is within the subject matter of List 2 or List 1. That involves going into the pith and substance or the true character and purpose of the impeached legislation. In Gallagher v. Lynn (2) 1937 A.C. 863 Lord Atkin said: "It is well established that you are to look at the true nature and character of the legislation, the pith and substance of the legislation. If, on the

view of the statute as a whole, you find that the substance of the legislation is within the express powers, then it is not invalidated if incidentally it affects matters which are outside the authorised field. The legislation must not under the guise of dealing with one matter in fact encroach upon the forbidden field. Nor are you to look only at the object of the legislature. An Act may have a perfectly lawful object, e.g., to promote the health of the inhabitants, but may seek to achieve that object by invalid methods e.g., a direct prohibition of any trade with a foreign country. In other words, you may certainly consider the clauses of an Act to see whether they are passed powers in respect of the forbidden subject." In examining the pith and substance of the legislation the question will arise as to whether a legislation deals with a subject in one list or deals with or touches a subject in another list. Gwyer, C.J. said in the Central Provinces and Berar Act case (3) 1939 F.CR. 18 at p. 49 that "it is a fundamental assumption that the legislative powers of the Centre and Provinces could not have been intended to be in conflict with one another, and therefore we must read them together and interpret or modify the language in which one is expressed by the language of the other." The following principles have been held to govern the interpretation of legislative lists. First, a constitution is not to be construed in a narrow and pedantic sense and the rules which apply to the interpretation of other statute apply equally to the interpretation of Constitutional enactment (3) 1939 F.C.R. 18 at p. 06. Secondly, none of the items in each list is to be read in a narrow or restricted sense. Thirdly, where there is a seeming conflict between an entry in List 2 and an entry in List 1 an attempt should be made to see whether the two entries cannot be reconciled so as to avoid a conflict of jurisdiction. The State of Bombay and Another Vs. F.N. Balsara, . Gwyer, C.J. in the Madras Agriculturist Relief Act case (1) 1940 F.C.R. 188 at p. 201 said: "It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also on a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the Legislature enacting them may appear to have legislated in a forbidden sphere."

13. In the case of Governor-General in Council v. Province of Madras (5) L.R. 72 LA. 91 a question arose as to whether Madras General Sales Tax Act which imposed an annual tax on every dealer in respect of his turn over was in its general scope and in its detailed provision in pith and substance an Act imposing a tax on the sale of goods and was intra vires the provincial legislature under Entry 48 of the provincial legislative list or whether it was a legislation within entry No. 45 of the Federal List. Entry 45 was duties of excise on tobacco and other goods manufactured or produced in India. Entry 48 was taxes on the sale of goods and on advertisements. Lord Simonds said that it was right first to consider whether a fair reconciliation could not be effected by giving to the language of the Federal Legislative List a meaning which, if less wide than it might in another context bear, was yet one that

could properly be given to it and equally giving to the language of the provincial legislative list a meaning which it could properly bear. In that particular case the Act was examined and its real nature was found to be a tax on the sale of goods. The term duty of excise cover a tax on first, and perhaps, on other sales. A duty of excise would primarily be a duty levied on a manufacturer or producer. It is a tax on goods, not on sales or proceeds of sales. It was thus held that the Madras Act was not a duty of excise in the cloak of a tax on sales. It was also held that the State could impose a tax on sale of goods when manufactured. In the case of Profulla Kumar Mukherjee v. Bank of Commerce (6) reported in L.R. 74 LA. 23 a question arose as to whether Bengal Money Lenders Act was a subject matter within the legislative competence of the Provincial Legislature under entry 27 of List 2 or whether it was a legislation on promissory notes and banking being the subject matter reserved for the Federal Legislature under Entries 28 and 38 of List 1. It was contended that item 28 of List 1 should be reconciled with item 27 of List 2 and so read item 27 would be a particular exception from the general provision of item 28 of List 1. Secondly, that the impugned Act was in pith and substance an Act with respect to money lending and money lenders and was not void because it incidentally trenched on matters outside the authorised field. Lord Porter said that it was not possible to make so clean a cut between the powers of various legislatures and they were bound to overlap from time to time. If subjects overlap, the question had to be asked what in pith and substance is effect of the enactment of which complaint was made. Lord Porter said "The extent of the invasion by the provinces into subjects enumerated in the Federal List has to be considered. No doubt it is an important matter, not, as their Lordships think, because the validity of an Act can be determined by discriminating between degrees of invasion, but for the purpose of determining what is the pith and substance of the impugned Act. Its provisions may advance so far into Federal territory as to show that its true nature is not concerned with provincial matters, but the question is not, has it trespassed more or less, but is the trespass, whatever it be, such as to show that the pith and substance of the impugned Act is not money-lending but promissory notes or banking? Once that question is determined the Act falls on one or the other side of the line and can be seen as valid or invalid according to its true content." As to conflict between the legislative lists it was said: "Does the priority of the Federal legislature prevent the provincial legislature from dealing with any matter which may incidentally affect any item in its list, or in each case has one to consider what the substance of an Act is and,, whatever its ancillary effect, attribute it to the appropriate list according to its true character. In their Lordships'' view the latter is the true view." It, therefore, appears that the extent of invasion by the provincial legislature into subject enumerated in the Federal list is material for the purpose of determining what is the pith and substance of the impugned Act. If the pith and substance of the impugned Act is within the appropriate legislative list then it will be attributed to the appropriate list according to its true character inspite of ancillary effect on any other list.

14. The application of the pith and substance doctrine is illustrated in the decisions of The State of Bombay Vs. Narothamdas Jethabai and Another, (Bombay City Civil Court Act case), The The State of Bombay and Another Vs. F.N. Balsara, , (Bombay Prohibition Act case) and The State of Rajasthan Vs. G. Chawla and Dr. Pohumal, , (The Ajmere Sound Amplifiers Control Act Case) and Satya Prasanna Das Gupta v. Province of West Bengal (9) ILR (1949) 2 Cal. 94 at p. 131). In the Bombay City Civil Court Act case the question arose as to whether the Bombay City Civil Court Act was valid. It was contended that the Provincial legislature had no power to make laws with respect to jurisdiction of Courts in regard to suits on promissory notes which was a matter covered by item 53 of list 1 and that Bombay City Civil Court Act was therefore ultra vires. It was held by the Supreme Court that inasmuch as the impugned Act was in pith and substance a law in respect to a matter covered by list 2, the fact that it incidentally affected suits relating to promissory notes on subject falling within items 28 and 53 of list 1 would not affect its validity. In the Bombay Prohibition Act case the question arose as to whether the legislation was valid under the said list being entry 31 of list 2 or whether the legislation transgressed entry 19 of list 1. Entry 31 of list 2 read as intoxicating and narcotic drugs, entry 19 of list 1 read as import and export across the customs frontier, as defined by the Dominion Government. It was held that the validity of an Act was not affected, for it incidentally trenched on matters outside the authorised field and therefore it was necessary to enquire in each case what was the pith and substance of the Act impugned. If the Act when so viewed substantially fell within the powers expressly conferred upon the legislature which enacted it, then it could not be held to be invalid merely because it encroached on matters which had been assigned to another legislation. With these observations it was held that if the true nature and character of the legislation or its pith and substance was not import and export of intoxiciating liquor but sale and possession then it would be difficult to declare the Act to be invalid. It was contended in that case that prohibition of purchase, use, possession, transport and sale of liquor would affect its import. That contention was repelled by holding that even assuming that such a result might follow, the encroachment, if any, was only incidental and could not affect competence of the provincial legislature to enact the law in question. In the Ajmere Sound and Amplifiers case the contention was that the Ajmere Act was valid under entry 1 of the State list and the other contention was that the legislation came within entry 31 of the Union list. The Union list entry dealt with telephone, wireless, broadcasting and other like forms of communication. Entry 1 of the State list deals with public order and entry 6 in the State list deals with public health, sanitation, etc. The State of Rajasthan relied on entry 1 or in combination with entry No. 6 of the State list. The contention of the State was upheld with the observations "Legislators in our country possess plenary powers of legislation. This is so even after the division of the legislative powers, subject to this that the supremacy of the legislatures is confined to the topics mentioned as entries in the list conferring respective powers on them. These entries, it has been ruled on many a occasion, though meant to be mutually

exclusive, are sometimes not really so. They occasionally overlap and are to be regarded as enumerate simplex of broad categories. Where in an organic instrument such enumerated powers of legislation exist and there is a conflict between them it is necessary to examine the impugned legislation in its pith and substance, and only if that pith and substance falls substantially within the entry or entries conferring legislative power, is the legislation valid, a slight transgression upon a rival list notwithstanding." It was further held that the power to legislate on a topic of legislation carries with it the powers to legislate on an ancillary matter which can be said to be reasonably included in the power given. Reference was made in that case to the observation of Latham, C.J. in New South Wales v. The Commonwealth (10) 1948 (76) C.L.R. 186 "that a power to make laws with respect to a subject matter is a power to make laws which in reality and substance are laws upon the subject matter. It is not enough that a law should refer to the subject matter or apply to the subject matter, for example income tax laws apply to Clergymen and Hotel keepers but no one would describe an income law as being for that reason a law with respect to Clergymen or Hotel keepers." In the Supreme Court case the Ajmere Act (8) was held to be valid on the ground that the power of legislation in relation to public health included the power to regulate the use of amplifiers. It was admitted that amplifiers were instruments of broadcasting and even of communication and in that view of the matter fell within entry 31 of the Union list. The manufacture or the license of amplifiers or the control of or ownership was held to be one matter but the control and the use of such apparatus to the detriment or tranquility of others was quite another. On a view of the Ajmere Act as a whole it was held that the substance of the legislation was within the powers conferred by entry 6 and it did not purport to encroach upon the field of the Union list entry though it incidentally touched upon a matter provided there.

15. In the present case the impugned legislation is entitled as an Act to provide for taking over for a limited period of the management and control and the subsequent acquisition of the Oriental Gas Company Ltd. It is stated in the preamble that whereas it is expedient to provide for increasing the production of gas and improving the quality thereof for supply to Industrial undertakings, hospitals and other welfare institutions, to local authorities, for street lighting and to the public in general for domestic consumption and for that purpose to provide for the taking over for a limited period of the management and control of the subsequent acquisition of the undertaking of the Oriental Gas Company Ltd. and for certain other matters incidental and ancillary thereto the Act has been enacted. In the Act the undertaking of the company has been defined to mean the properties of the company moveable or immovable, other than cash balances and reserve fund, including workshop, plants, machineries, posts, pipe lines, appliances, apparatus, accessories, furniture, equipments and stores and lands appertaining thereto actually in use immediately before the commencement of the Act or intended to be used in connection with the production of gas or supply thereof in Calcutta and its

environs. u/s 3 the State Government may by notification in the Official Gazette take over for the period of 5 years the management and control of the undertaking of the company for the purposes and in accordance with the provisions of the Act. Such notification has been made in the Official Gazette.

16. u/s 4 the undertaking of the company, with effect from the appointed day shall stand transferred to the State Government for the purpose of management and control. The company and its agents including managing agents, if any, and servants shall cease to exercise the management or control in relation to the undertaking of the company. All contracts, excluding any contract or contracts in respect of agency or managing agency, subsisting immediately before the appointed day and effecting the undertaking of the company shall cease to have effect or to be enforceable against the company and shall be of as full force and effect against or in favour of the State of West Bengal. u/s 5 on the transfer of the undertaking of the company to the State Government for the purpose of management and control, every person in whose possession custody or control the undertaking of the company or any part may be, shall forthwith deliver possession of the undertaking of the company to the State Government. u/s 6 the undertaking of the company shall be run by the State Government and shall be used and utilised by the State Government for the purpose of production of gas and supply thereof to industrial undertaking, hospitals and other welfare institutions, to local authorities, for street lighting and for other purposes, if any, and to the public in general for domestic consumption and for this purpose the State Government shall have all the powers of the company under Act V of 1857. The State Government may for effectively carrying out the purpose of this Act add, at its own cost, to the undertaking of the company such new works, workships, plants, machineries, posts, pipes, pipe line, apparatus, accessories, furniture, equipment, stores, lands, buildings, erections or fixtures as it may consider necessary. Section 7 states that the State Government may if it so thinks fit at any time within the period of five years acquire the undertaking of the company by notification in the official gazette. If the undertaking be not acquired the State Government shall on the expiry of the period of five years by order transfer the management and control of the undertaking to the company. Section 8 deals with compensation and section 9 with the manner of payment of compensation.

17. Mr. Advocate-General contended that the impugned legislation was in Pith and substance or in true nature and character a legislation for requisition of property and as such fell into entry 42 of concurrent list 3. Mr. P. R. Das contended first that the legislature nowhere used the word "requisition" and the legislature did not think it was legislating with reference to requisition and secondly that the Government was requisitioning the property for needs of itself and its nominees. Mr. Das also contended that there was never any allegation of mismanagement or inefficiency against the company and thus the Act was a colourable legislation. Mr. Advocate-General relied on the statements of objects and reasons of the impugned

legislation. Mr. Das objected to the same being placed. In the case of The State of West Bengal Vs. Subodh Gopal Bose and Others, there is an observation at p. 627 that in a particular case the statement of objects and reasons appended to the bill which eventually became the Act had not been placed before the High Court. Mr. Advocate-General relied on that observation to show that the statement of objects and reasons could be and should be placed before the Court. In the case of M.K. Ranganathan and Another Vs. Government of Madras and Others, of the report it is stated that statement of objects and reasons is not admissible as an aid to the construction of a statute, but it can be referred to for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of the evil which he sought to remedy. Thus Mr. Advocate-General rightly contended that the statement of objects and reasons was admissible for the purpose of construction 1 statute but for ascertaining conditions prevailing at the time of the legislation. the statement of objects and reasons shows that consequent upon the of numerous complaints from various industrial concerns, hospitals, municipal bodies and the public in general about the unsatisfactory condition of supply of gas in Calcutta the State Government set up a Committee in 58 to enquire into the affairs of Oriental Gas Company Ltd. Secondly it says that the committee with the help of Technical Experts enquired into the matter of Oriental Gas Company Ltd. and found that the present gas works including the distribution system was in a bad state of disrepair and recommended that the gas works and the distribution system should be taken ever immediately under the management of the State Government. Thirdly the Committee certified that this vitally essential service should be permanently under the administrative control of the State Government and for that purpose it should acquire the undertaking of said company. The statements of objects and reasons concludes by stating that the Bill is accordingly designed to provide for taking over the management or the undertaking of Oriental Gas Company Ltd. for a period of five years on payment of suitable compensation by the State with provision for subsequent acquisition of the undertaking at the option of the State Government if and when found necessary. There are so many reasons for the legislation. The Gas works and the distribution system are found to be in a bad state and therefore the legislation is taking over and requisitioning the Oriental Gas Company for the public purpose.

18. Mr. Advocate-General further contended first that the petitioner had no right of access to any copy of the speech delivered by Dr. B. C. Roy the Chief Minister and secondly if the petitioner relied on any extract of the speech the entire speech should be read. Mr. Advocate-General relied on the decision reported in 22 IA 107 (13) at p. 118 and 1935 A.C. 445 (14) at p. 458 for the proposition that reference could be made to speeches to show the surrounding circumstances of the legislation and not as an aid to the construction of the statute. The Court was informed by Mr. Banerjee that it was possible for any member of the public to get a

copy of the speech. I do not know whether there is any such procedure. In fact none was shown to me. The speeches were not placed before me save and except that Mr. Advocate-General stated that the speeches would show that there was an enquiry and report on the affairs of Oriental Gas Company Ltd. The statement of objects and reasons shows that. It is therefore not necessary to go into the speeches to substantiate that point.

19. It is true that the impugned legislation does not use the word "requisition" but it does use the word "take over". In the legislative entries the words used in entry 42 list 3 are "acquisition and requisition of property." In the case of The State of Bombay Vs. Bhanji Munji and Another, , it was held relying on the The State of Bihar Vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others, that it is unnecessary to state in express terms in the statute itself the precise purpose for which the property is being taken provided from the whole tenor and intendment of the Act it could be gathered that the property was being acquired either for purposes of the State or for purposes of the public and that the intention was to benefit the company at large. In the present case the tenor and intendment of the Act is in my opinion that it is for the purpose of requisition. The purpose of requisition can be gathered from the Act namely that they are for the purpose of supply of gas to industrial undertakings, hospitals, welfare institutions, local authorities and to the public in general. The definition of the undertaking of the company in the impugned legislation shows that undertaking inclusive of land is being requisitioned by the State Act of 1960.

20. Mr. Das contended that the impugned legislation was colourable legislation inasmuch as in pith and substance the legislation was with regard to an industry engaged in the production of gas and sections 3 and 4 of the impugned legislation could be construed to mean that the legislation was with regard to an industry within the meaning of the Parliament Act of 1951 and was thus a colourable legislation. Mr. Advocate-General relied on the case of K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa, for the proposition that the doctrine of colour; legislation resolves into the question of competency of a particular impugned legislature to enact a particular law and if the legislature is competent to pass a particular law., the motives which impelled it to act are really irrelevant. Similarly if the legislature lacks competency the question of motive does not arise at all. Therefore, whether the state is constitutional or not is always a question of The terms "colourable legislation" has been applied to disguised, covert and indirect method of transgression of powers. In effect "colourable legislation" is that although apparently a legislature in passing a statute purported to act within the limits of its powers, yet in substance and in reality it transgressed these powers, the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise. As far as the "impugned legislation is concerned there is no disguise or pretence as to what the legislation is. In true character and purpose the legislation is to take over the management of the undertaking for various public

purposes. The true nature and character of the impugned legislation is requisition of property and the legislation is not under any disguise.

21. Mr. P. R. Das contended that in graph 10 of the petition it was stated that the main company is the owner of an industrial undertaking for the manufacture, supply, distribution and sale of fuel gas and by virtue of Parliament Act of 1951 the Managing Company is deemed to be the owner of the undertaking. In paragraph 14(a) of the petition it is further stated that the industry in which the main company or the Managing Company were and are engaged was and is the manufacture and production of fuel gas mentioned in the first schedule to the. Parliament Act of 1951 and in the circumstances it was and is a scheduled Industry as defined in 1951 Act.

22. Mr. Das contended that these allegations were not denied in the affidavit in opposition. These allegations are not specifically denied in the affidavit in opposition. I am unable to accept contention of Mr. Das that there is any admission in the affidavit. The affidavit has to be read in its entirely and when so done it would appear that the respondents are challenging the contentions of the petitioners.

23. The next question is whether the impugned legislation can be supported under entry 25 in State List 2. Mr. Advocate-General and Dr. Gupta both contended that the entry Gas and Gas Works was carved out as an exception to Industries inasmuch as entry 25 in State List 2 came immediately after Entry 24 in State List 2 dealing with Industries. In other words, the question is whether Oriental Gas Company is an industrial undertaking engaged in the manufacture or production of gas.

24. Dr. Gupta relied on Act V of 1957 for the purpose of showing that the company was formed for the purpose of introducing Gas works into India and the company erected Gas Works on land granted for that purpose and that Oriental Gas Company was engaged in the preparation of apparatus and materials for the manufacture and supply of gas. Dr. Gupta contended that the framers of the Constitution thought of the entry as Gas and Gas Works and the same entry occurred in the Constitution Act of 1935 and that no different sense should be attached to Gas and Gas Works in the Constitution. He also referred to Gas Works Clauses Act of 1847-10 and 11 Victoria Chap. 15 to show that one of the principal objects of Gas Works is supply of gas. Dr. Gupta referred to the English Act only for the limited purpose of showing the meaning which had been given to Gas Works and of which meaning the legislators and the framers of the Constitution had been well aware. The preamble of the Act of 1857 shows that the company erected Gas Works on land granted for the purpose of introducing Gas Works into India. Mr. Das contended that if Oriental Gas Company was engaged in the production of gas it would be an industry within the meaning of Act 65 of 1951. To that Dr. Gupta''s answer is that even if Oriental Gas Company produced any gas such production was for the sole purpose of supply of gas to the town. Mr. Das''s contention was that the production of gas and the supply thereof was so inextricably bound up that the one could not be dissociated from the other and therefore Oriental Gas Company which was engaged in the

production of gas would become an industry for the production of gas within the meaning of the Union Act, 65 of 1951. Mr. Das further contended that production of gas means the industry itself and since the impugned legislation provides for utilisation of the undertaking for both the purposes of production and supply of gas and for running the industry, supply of gas could not be separated from production. If the undertaking produces gas, it is an industry within the Act of 1951. Dr. Gupta furnished the answer by invoking the doctrine de minimis non crust lex. In ascertaining the true nature or true character and purpose one has to find out the real significance of the business or undertaking. The question here is whether Oriental Gas Company Act of 1960 is a legislation with regard to an industry of fuel gas or whether the impeached legislation is with respect to gas and gas works. Dr. Gupta referred to the decision of the Judicial Committee in the case of Corporation of Calcutta v. Moti Chand Chowdhury, (18) reported in Law reports 66 Indian Appeals 42 in support of his contention that where a business or undertaking would assume a hybrid character it had to be ascertained as to what its true character was. In the Privy Council case the question was what would be the character of a building if a building as to one half were ordinarily let and as to another half were not ordinarily let. There were two principles of valuation namely, of a building ordinarily let and of a building not ordinarily let. How was the building to be valued?

25. The test, it was held, was to be applied to the building as a whole and one or other methods of valuation was to be applied to the building as a whole. There may be cases where the portion ordinarily let or portion not ordinarily let is so negligible in proportion to the whole of the building that the building might on the principle of de minimis be reasonably held as a matter of fact to be not ordinarily let or ordinarily let as the case may be. Judged by this test Dr. Gupta contended that production of gas here was so small that by the doctrine of de minimis it was to be held that production was negligible in proportion to the whole business of supply of gas. The entry Gas and Gas works is to be considered as a composite entry. The recitals in the Act of 1857 that the Gas Company erected Gas Works and secondly that the Gas company was given land for the purpose of supply of gas to the town would show that the object of the company was not production of gas but erection of gas works for supply of gas. The real and principal object is that it is not a company for production of gas but for supply of gas.

26. The meaning of an entry in the legislative list is to be ascertained with reference to the context in which it has been used. The language of the entries should be given the widest scope of which their meaning is fairly capable. Overlapping should be avoided. Entries are to be reconciled that there is no conflict. Therefore, the entry ''Gas and Gas Works'' should not have any meaning which conflicts with the entry ''Industries''. The two entries should be harmonised to avoid any construction which will render any entry nugatory or ineffective. The entries in the legislative list are not powers of legislation but are fields of legislation. As Chief Justice Spens said in the case (19) reported in 1946 F.C.R. 67 that additional words and phrases in the

legislative entries are added for the purpose of removing doubts as to the wide scope of the meaning of the opening term and phrase. The subsequent words and phrases do not limit but rather illustrate the scope and objects of the legislation envisaged as comprised in the opening term or phrase. It is here that the meaning attributed to Gas and Gas Works by Dr. Gupta becomes very important. Gas and Gas Works is a composite entry and it is incapable of severability. The legislation should be tested as to whether it is in relation to gas and gas works in entirety. If judged by that test it falls within the entry of gas and gas works and if that be the true nature and character of the legislation then the question will arise as to whether any trenching on the aspect of production will affect the vires of the legislation.

27. Mr. Advocate-General laid considerable emphasis on the meaning of Gas and Gas Works as having been completely carved out from entry 52 list 1 and entry 24 list 2 in respect of Industries.

28. It now remains to be seen as to whether this legislation in ''pith and substance'' is an entry under Gas and Gas Works or is within the mischief of entry 52. It is well settled that the constitutionality of an enactment is presumed. Mr. Advocate-General contended on the authority of Pretty v. Solly (20) (1859), 26 Beav 606 that the rule is that whenever there is a particular enactment and a general enactment in the same Statute, and the latter, taken in its most comprehensive sense, would overrule the former particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the Statute to which it may pro apply. Mr. Advocate-General relied on Craies "Statute Law" 5th Edn. p. Maxwell on the ''Interpretation of Statutes, 10th Edn., p. 160 in support of the proposition that Gas and Gas Works were first to be treated as an exception to industry and secondly, the entry was to be given effect to by reconciling the entry with entry 24 in list 2 and entry 52 in list 1 and thirdly, attempt should be made to modify or mould the meaning of the entries. In the decision reported in (3) 1939 F.C.R. 18 it has been held that it is only when a reconciliation proves impossible then and then only the non-obstante clause operate and the Federal power prevail ; for the non-obstante clause ought to be regarded as a last resource. The underlying principle is that a general power ought not to be so construed as to make a nullity of a particular power conferred by the same Act when by reading the former in a more restricted sense effect can be given to the latter in its ordinary and natural meaning. Thus Mr. Advocate- General contended that if the entry Gas and Gas Works were read as Mr. P. R. Das contended that by reason of operation of Art. 246 the State of West Bengal Legislature had no longer any jurisdiction or competence to deal with Gas and Gas Works, the entry would be a dead letter in the Constitution. I am bound to give meaning and effect to the entry and it will be against all canons of construction to hold that by reason of the 1951 Act the entry Gas and Gas Works is either effaced or is-non-existent as far as the legislative competence and field of the West Bengal Legislature is concerned. I am unable to hold as Mr. Das contended that the entry Gas and Gas Works is to be read as being within the entry 52. The

entry Gas and Gas Works stands by itself independent of the entry of ''industry''. The entry Gas and Gas Works as I have already indicated is a composite entry. To hold that a legislation in respect of Gas and Gas Works would be a legislation in respect of ''industries'' within the meaning of Act 65 of 1951 would be to hold that one of the heads of legislation, one of the fields of legislation is wiped out from the Constitution. I am unable to accept such reasoning or construction.

29. The aspect doctrine of legislation was enunciated by their Lordships of the Judicial Committee in the case of Hodge v. The Question (21) (1883) 9 App. Cases 117 where Sir Barnes Peacock said that subjects which in one aspect and for one purpose fell within sec. 92 of the British North America Act might in another aspect and for another purpose fall within sec. 91 of the Act. In the case of Citizens Insurance Co. v. Parsons (22) (1881) 7 App. Cases 96 it was said that a legislation affecting "marriage and divorce" which was contained in the enumeration of subjects in sec. 91 of the British North America Act would be embraced with the subject of "solemnisation of marriage in the province" which was enumerated as one of the classes of subject under S. 92 of the Act. Inspite of the general language of section 91 of that Act it could not be doubted that the province had exclusive authority to legislate on the subject. Sir Montague Smith said: "It is the duty of the Courts, however difficult it may be, to ascertain in what degree and to what extent authority to deal with matters falling within these classes of subjects exists in each legislature and to define in the particular case before them the limits of their respective powers. It could not have been the intention that a conflict should exist ; and in order to prevent such a result, the two sections must be read together and the language of one interpreted, and, where necessary, modified by that of the other. In this way it may, in most cases, be found possible to arrive at a reasonable and practical construction of the language of the sections so as to reconcile the respective powers they contain and give effect to all of them. In performing this difficult duty, it will be a wise course for those on whom it is thrown, to decide each case which arises as best they can, without entering more largely upon the interpretation of the statute than is necessary for the decision of the particular question in hand."

30. It is the true nature and character of the legislation and not its ultimate economic results that matters. It is well settled that there can be a domain in which provincial and dominion legislation may overlap in which case neither legislation will be ultra-vires if the field is clear but if the field is not clear and the two legislations meet, the dominion legislation must prevail. See Fish Canneries (23) case 1930 A.C. 111. There must be a real conflict between the two Acts, that is, the two Acts that is, the two enactments must come into collision or come into a conflict over a field of jurisdiction common to both so that while dealing with similar transactions on subject matters they yield a different result. The doctrine of paramountcy or exclusive power does not operate merely because Parliament has legislated on the same subject matter. In the Citizens Insurance Co. Case (22) (1881) App. Case 96 it

was held that the authority to legislate for the regulation of trade and commerce did not comprehend power to regulate by legislation the contracts of a particular business or trade such as the business of fire insurance in a province and therefore there was no conflict or competition between the Federal "Trade and Commerce" power, and the Provincial "Property and Civil Rights" power. Therefore, the doctrine of occupied field applies only when there is a clash between Dominion and Provincial legislation within an area common to both. There is no conflict if both the legislations may coexist and be enforred without clash. In the present case the taking over of Oriental Gas Co. is within the field of requisition under Entry 42 in List III. It is within the field of legislation under Entry ''Gas and Gas Works'' because it is requisition of Oriental Gas Co. which is an undertaking of gas works for the supply of gas. The Parliament Act of 1951 and the State Act of 1960 do not come into any conflict. The 1951 Act is for development and regulation of industries and the State Act of 1960 is for taking over the management and control of the Oriental Gas Company, a gas works for supply of gas to various undertakings, hospitals, local authorities and the public. The field of legislation here under the entry gas and gas works is clear. In my opinion the impugned legislation is under entry 25 (List II) and is not a legislation relating to any industry, have already indicated that as far as the field of legislation is concerned, impugned legislation is valid and competent, within entry 42 of List 3. I am also of opinion, that entry 25 in List 2- Gas and Gas Works-is a field of legislation which confers sufficient authority and power on the State legislature to make laws affecting Gas and Gas Works. Even if it be assumed that the impugned legislation be one which incidentally trenches on any production aspect, it will be sufficiently justified and valid by reason of the pith and substance doctrine that the legislation is in true character and purpose with regard to gas and gas works and the trenching, if any, is merely ancillary to effective legislation in gas and gas works.

31. Mr. P. R. Das contended that management and control of Oriental Gas Co. could be obtained by the Union Act of 1951 or that the effect of the State Act of 1960 was acquisition of management and control of the Company by a colourtable legislation. Lord Simonds observed in (24) 1949 A.C. 110 that consequential effects are not the same thing as legislative subject matter. The test in the present case is: is production incidental or does it lie at the heart of the matter? The answer is, in my opinion, that the present impugned legislation is requisition of gas and gas works for public purpose and the control and management of the company is taken in that behalf. Dr. A. C. Gupta contended that the true significance of the Oriental Gas Co. was that it was a gas work for supply of gas. Production of gas as was necessary for the main purpose of supply was obvious but that could not impart to the company the character of industry engaged in the manufacture or production of gas. Dr. Gupta further contended that an industry would be considered by the greatness in the volume of manufacture or of importance of manufacture. Secondly, he contended that industry must be for the purpose of producing those articles. He

illustrated that if a timber saw mill generated or produced electricity for the purpose of timber saw mill, a question would arise as to whether the timber saw mill manufactured or produced electricity or was the production of electricity ancillary or incidental to the timber saw mill business. I agree with Dr. Gupta''s answer that it could not be said of the timber saw mill that it was engaged in the manufacture or production of electricity but the production, of whatever quantity it was, was only necessary to the obvious and dominant purpose of saw mill. Judged by that test and also by the doctrine of de minimis which I have already discussed, I am of opinion that Oriental Gas Co. is an undertaking the true significance of which is supply of gas and not production of gas.

32. Mr. Advocate-General contended that the doctrine off repugnancy did not arise in the present case and secondly that if it did arise, it was answered by Article 254 of the Constitution. The true meaning of the doctrine of repugnancy was given in the decision of Ch. Tika Ramji & ors. v. State of Uttar Pradesh & ors., (25) 1956 S.C.R. 391 at p. 423 of the Report-

Repugnancy falls to be considered when the law made by Parliament and the law made by the State legislature occupy the same field because, if both these pieces of legislation deal with separate and distinct matters. though of cognate and allied character, repugnancy does not arise.

33. In the present case if there was any repugnancy, under Art. 254 of the Constitution the enactment having received the assent of the President is a valid legislation. Secondly, Mr. Advocate-General contended that repugnancy must exist in fact and not depend merely on possibilities. In the present case repugnancy, if any, would arise only if the Union Government acquired control. Control or management of an industry was not acquired in the absence of notified order u/s 18A of the Union Act of 1951. Mr. Das relied on observations appearing at pages 411 and 428 in 1956 (25) S.C.R. to contend that it was held in that case that industries specified in the schedule to the Parliament Act of 1951 were controlled industries. The industries specified in the schedule are described such in the sense that the provisions of the Act can be applied. But an industrial undertaking is taken over by a notified order. In the present case it is indisputable that there is no notified order u/s 18A of the Union Act of 1951. Possibility of an order u/s 18A being issued by the Central Government is not sufficient to raise any plea of repugnancy, for it was held in (25) Tika Ramji''s case the existence of an order would be essential pre-requisite before any repugnancy could arise."

34. In Tika Ramji''s (25) case the meaning of industry was given at p. 420 of the Report (1956 S.C.R. 391) as meaning the process of manufacture or production. It was held that raw materials which were an integral part of the industrial process and distribution of the products of the industry mentioned in schedule to the Union Act of 1951 were outside the field of legislation of the Parliament Act of 1951 and it was open to the State Legislature to embark upon those fields. It was the process of

manufacture or production that was held to fall within the field of Parliament by reason of the 1951 Act. In the present case I am of opinion that the impugned legislation in its true character and purpose is not in relation to process of manufacture or production nor is the impugned legislation one in relation to any specified scheduled industry inasmuch as Oriental Gas Company is in my opinion gas works engaged in the supply of gas and is not an industry within the meaning of entry 52 or entry 24.

35. Mr. Advocate General contended that the petitioner had no right to maintain the application. The application has been made by the Calcutta Gas Company (Proprietary)'' Ltd. who are the Managers of Oriental Gas Company Ltd. Mr. Advocate-General contended first that there was no deprivation of property as far as the petitioner is concerned and secondly that the petitioner''s right, if any, was one of contract with the Oriental Gas Company Ltd. and thirdly that the petitioner had no locus standi under the provisions of the Companies Act to represent Oriental Gas Company Ltd. Mr. P. R. Das contended that the petitioner was entitled to bring to the notice of the Court that it was the legal duty of those administering the legislation to refrain from giving effect to a legislation which was illegal. Mr. Das contended that the petitioner had the legal right to manage Oriental Gas Company Ltd. and that legal right was the subject matter of the impugned legislation inasmuch as it took away the right of management and control and vested the same in the State. Mr. Das also contended that the legislation committed a statutory breach of the petitioner''s right of the management of Oriental Gas Company and therefore it was the legal duty of the State of West Bengal to refrain from giving effect to that legislation. It is clear from the provisions of the State Act of 1960 that as far as the petitioner''s contract in respect of agency or managing agency is concerned it is not touched upon by the legislation. Section 4(c) of the State Act of 1960 states that all contracts, excluding any contract or contracts in respect of agency or managing agency, subsisting immediately before the appointed day and affecting the undertaking of the company shall cease to have effect or to be enforceable as against the company and shall be of as full force and effect against or in favour of the State of West Bengal. Therefore as far as the contract of the petitioner is concerned it is totally outside the purview of the Act. It is true that the management and control of the company under the said Act of 1960 vests in the State and it shall run the undertaking and use and utilise the same for the purpose of production of gas and supply. Suppose any property is requisitioned the question will arise as to whether on such requisition the manager of the property will have any locus standi to make an application against the State. The answer must be in the negative inasmuch as it is that person whose property is acquired, who alone has the right to maintain any action or proceeding. In the case of persons having contractual relation with the owner of property which is affected by legislation, the agent or manager would not be able to enforce rights of the owner. There must be a legal right of the person applying and the duty which is sought to be enforced must

also be a legal duty. In the present case the petitioner has no legal right under the legislation inasmuch as the petitioner''s rights, if any, are not touched or affected by the legislation. Mr. Das contended that right of management was taken away by the statute and therefore there was encroachment or violation of the petitioner''s right. To that Mr. Advocate General answered that it was open to the petitioner to take steps for breach of contract or 1 reach of contractual right if any. Mr. Advocate General relied on the decisions reported in (26) The State of Orissa Vs. Madan Gopal Rungta, (27), Shantabai Vs. State of Bombay and Others, , (29) C.K. Achuthan Vs. The State of Kerala and Others, (28) Mahadeo Vs. The State of Bombay, in support of his contention that if the petitioner had a personal right or a contractual right and if the State had not taken possession of that right or interfered with it the petitioner had no interest to maintain the application. In the decision reported in (26) The State of Orissa Vs. Madan Gopal Rungta, it was said that unless there is a legal right the petitioner can not maintain an application. In that case the High Court of Orissa gave interim relief to a petitioner under Art. 226 without adjudging as to whether the petitioner was entitled to any rights. The Supreme Court held that without adjudication of rights the Court could not afford any interim relief. Mr. P. R. Das contended that the decision was in his favour inasmuch as it showed that the Court could go into the question of the adjudication of rights. The mere possibility of examination of right is, in my opinion, not sufficient authority for the proposition that the Court will afford relief to the petitioner where the petitioner''s right is first doubtful and secondly is not a legal right. In the decision reported in (27) Shantabai Vs. State of Bombay and Others, there was a lease for a period of 12 years granted by the owner of an estate to his wife. The estate was subsequently acquired by the State of Madhya Pradesh. The lease was the subject matter of an application under Art. 32 of the Constitution inasmuch as the Forest Officer cancelled the lease. It was held by the Supreme Court that the right acquired in such a case would be either in the nature of some profits a prendre or a purely personal right under a contract and whatever rights, if any, might have accrued to the petitioner under that document she could not complain of the infringement by the State of any fundamental right for the enforcement of which alone a petition under Art. 32 was maintainable. Mr. P. R. Das contended that the present application was not for enforcement of fundamental rights but was for the purpose of complaining the infraction of right of management by means of illegal legislation, and the petitioner was justified to make the application. In the decision reported in (27) Shantabai Vs. State of Bombay and Others, Mr. Das contended that possession had not been taken there, but in the present case possession was taken and therefore the petitioner being deemed to be the owner of the undertaking under Union Act of 1951 would be entitled to complain that the right of management of the petitioner was taken. I have already held that the Union Act of 1951 does not apply and the petitioner can not be described as owner and it is in fact not the owner of an industrial undertaking and therefore can not assert the right of the owner. If the right of management of the company is taken away by the State Act of 1960. the petitioner is, in my opinion, left

with its contract surviving under the Act and is free to pursue its remedies. Chief Justice S. R. Das said at (27) page of the report (AIR 1958 S.C. 534) : "The State has not acquired or taken possession of her contract in any way. The State is not a party to the contract and claims no benefit under it. The petitioner is still the owner and is still in possession of the contract, recorded as her property, and she can hold it or dispose of it as she likes and if she can find a purchaser. The petitioner is free to sue the grantor upon that contract and recover damages by way of compensation. The State is not a party to the contract and is not bound by the contract, and accordingly acknowledges no liability under the contract which being purely personal does not run with the land. If the petitioner maintain that.....the State is also bound by that contract, she can sue the State, as to which we say nothing and claim damages." Mr. Das contended that if the petitioner wanted to proceed against the company, the company would contend that the breach of contract, if any, was occasioned by the statute and the State, and the company was not responsible to pay any dmages. On the other hand if the petitioner company sued the State, Mr. Das contended, the contract would be alleged to be not touched by the State and the petitioner company would be asked to pursue remedies against the State. In my opinion the petitioner''s contract is the only right. Contractual rights are not enforceable by writs of mandamus. The remedies are by way of suit. Mr. Das referred to Halsbury''s Laws of England. 3rd Edn. Vol. II, paragraph 194 at p. 104, to show that as long as the petitioner could show that there was some right on the part of the petitioner to the performance of legal duty by the party against whom the remedy was sought it was entitled to maintain the application. As I have already indicated, the emphasis is on legal right of the petitioner and legal duty under the statute on the part of the respondent. In the present case, I am of opinion, that there is no legal right of the petitioner to maintain the application nor is there any legal duty under the statute on the part of the respondent as far as the petitioner is concerned. In the decision reported in (.29) C.K. Achuthan Vs. The State of Kerala and Others, , it was held that if there was breach of a contract, it would entitle the person aggrieved to sue for damages or in appropriate cases even specific performance but he could not complain, that there had been deprivation of the right to practise any profession or to carry on any occupation, trade or business such as was contemplated under Art. 19 of the Constitution, nor could Art. (51 be invoked to prevent cancellation of the contract in exercise of powers conferred by one of the terms of the contract. In that case the petitioner held contract for the supply of milk and his contract was cancelled. He thereupon made an application under Art. 32. That application was rejected. It is beyond any dispute that breach of contract can not sustain an application under Art. 32. In the other ease (28) Mahadeo Vs. The State of Bombay, some proprietors of the former State of Madhya Pradesh granted by agreement with the petitioner the right to take forest produce. The forest eventually vested in the State of Madhya Pradesh. After the vesting the Government disclaimed those agreements. The petitioners claimed relief on the ground that there was invasion of their fundamental rights. It was held that so far as the rights were claimed if they

were part of share in the proprietary light or even a right to profit a prendre registration was needed to convey the right. If the agreements conferred proprietary rights the same were acquired and if the agreements created personal right by contract the same did not run with the land. The only remedy was to sue for breach of contract. As to other agreements which were registered it was held that the same conveyed more than the right to take leaves and that they conveyed other forest produce like timber, bamboos etc., and those rights were spread over many years and were not contracts of sale of goods. If they were proprietary rights these vested in the State. Assuming that the document did not amount to grant of any proprietary right by the proprietors to the petitioner the latter could have only benefit of their respective contracts or licences and in either case as the State had not by the Act acquired or taken possession of such contracts or licences there had been no infringement of the petitioner''s fundamental right. In the present case it is beyond any controversy that as far as the State Act, 1960 is concerned, it does not touch the petitioner''s contract. If there is the indirect effect of right of management of the petitioner being modified or extinguished as Mr. Das put it, I fail to see how the petitioner acquires any legal right under the statute to demand performance by the State of West Bengal of a legal duty. Under the statute the petitioner has no right and the statute does not touch any right of the petitioner. The petitioners right, if any, is in respect of a contract. It is indisputable that there is no infringement of fundamental right. The question is whether the petitioner has any legal right to maintain an application under Article 226 of the Constitution. I have already indicated and 1 hold that the petitioner''s contract of management is not affected by the statute and contractual rights are not enforceable by writ of mandamus. It is stated in Tapping on Mandamus at pp. 27, 28 that the prosecutor must be clothed with a clear legal and equitable right to something which is properly the subject of the writ, as a legal right by virtue of an Act of Parliament. In the case of the King v. Lords Commissioners of the Treasury (30) 4AD & E 976 (111 E.R. 1050) Lord Denman said: "The party applying should have shown some words, in one of the statutes, requiring the Lords of the Treasury to do the particular acts insisted upon." Mr. Dar- relied on footnote (S) paragraph 161, page 86 that a mandamus would lie to compel a corporation to pay a sum of money pursuant to an agreement which could not be enforced by action. The authority for that proposition is R. v. Bristol and Exeter Rail Co. (31) (1845) 3 Ry & Can. Case. 777. The report was not placed before me. This case was considered in the decision of P. K. Banerjee v. Simonds (32) reported in AIR 1947 Cal. 314 and it was not found whether the rule in the Railway and Canal case required payment to be made to by the company or a jury to be summoned by the company. It is stated at footnote (S) that the agreement was for payment of a sum by a railway company in settlement of claim for damages but could not be enforced by action because it was not under seal. In my opinion no aid can be derived from that case because in the present case there is no agreement between the State and the petitioner. If the petitioner complains of invasion of contractual rights of management, the remedies, if any, are by suit. It is stated in

Halsbury''s Laws of England, 3rd Edition, Volume II, paragraph 196, page 105, that the Court will only enforce the performance of statutory duties by public bodies on the application of a person who can show that he has himself a legal right to insist on such performance. The legal right must be under a statute and the legal duty must also be enjoined under the statute. An application for a mandamus for the inspection of church warden''s accounts was refused because the applicant''s right as a parishioner is a mere private right. See R. v. Clear (33) (1825) 4 B & C 899. In the case of R. v. Lewishem Union (34) (1897) 1 Q.B. 498, Bruce, J. said that the applicant for a mandamus should have a legal and specific right to enforce the performance of those duties. In the same case Wright, J. said that the applicant, in order to entitle himself to a mandamus must show that he has a legal specific right to ask for the interference of the Court. In the present case I am of opinion that the petitioner has no legal specific right to enforce the performance of a legal duty. The impugned statute does not. touch the petitioner. The petitioner''s private contractual right can not found a writ of mandamus, and in my opinion does not warrant the petitioner to maintain an application under Art. 226.

36. As to the other contention of Mr. Advocate-General that the petitioner company by reason of provisions contained in s. 384 in the Companies Act is no longer competent to be manager inasmuch as the petitioner was a manager of a foreign company and secondly that the petitioner by reason of s. 615 of the Companies Act was validly appointed, and thirdly that the definitions of Secretaries and Treasurers and of Managing Agent and Manager in the Companies Act showed that an individual would be manager or managing agent by whatever name called and a firm would be secretaries and treasurers by whatever name called. Therefore. Mr. Das contended that the petitioner was under the Companies Act in the position of secretaries and treasurers and not manager and therefore section 384 did not apply. I am unable to accept the contention of Mr. Das that the effect of sec. 645 is to validate appointment even after the time limit laid down in the substantive s. 384. In the first place s. 645 applies only to appointment under the statute and not to appointment in respect of a contract. The present appointment of the petitioner was by agreement and it was not under the Companies Act and therefore the petitioner, in my opinion, is unable to invoke s. 645 of the Companies Act to validate the appointment. In the present case I do not wish to decide as to the right of the petitioner company under the Companies Act inasmuch as it may prejudice rights of the petitioner company vis-a-vis the Oriental Gas Co.. Ltd. In my opinion for the purpose of this application it is sufficient that the petitioner has no right to make an application under Art. 226 of the Constitution.

37. Mr. Das contended that State Act of 1960 offended Articles 14, 19 and 31 of the Constitution. It is in my opinion not necessary to go into these questions in details. I should indicate Mr. Das''s argument in short. As to infraction of Art. 14 Mr. Das relied on the decisions reported in (35) Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, (First Sholapur Case). (36) The State of West Bengal Vs.

Anwar Ali Sarkar, (Anwar Ali''s case) (37) Ram Prasad Narayan Sahi and Another Vs. The State of Bihar and Others, (Shahi land case) and (38) Ameerunnissa Begum and Others Vs. Mahboob Begum and Others, (Hyderabad Succession case). Mr. Das contended first that the legislation must exhibit some exceptional features which are not possessed by others and secondly that the classification should never be arbitrary but should rest upon some real and substantial distinction bearing a reasonable and just relation to the things in respect of which classification is made. In other words the impugned legislation must show that there is real and substantial distinction. The legislation must point out the distinction between the company which becomes the subject matter of this legislation and other companies. Mr. Das contended that the impugned Act does not distinguish this company from others by exhibiting exceptional features which are not possessed by others. Mr. Das also contended that the presumption of constitutionality of a legislation is of no assistance when on the case of the statute there is no classification. Mr. Das posed the question as to whether this was the only company which could be called to be mismanaged, though he did not admit that it was mismanaged or that there was any allegation to that effect. Relying on Anwar Ali''s case Mr. Das said that as speedier trial was held to be possible under Criminal Procedure Code in that case, it could be said in the present case that under the Parliament Act of 1951 steps could be taken to increase production and to improve quality and there was no basis for enacting this discriminating and in-equal legislation. It is now well Fettled that under Art. 14 of the Constitution first, the classification has to be rational and based on intelligible differentia and secondly the basis of differentiation must have rational nexus with its avowed policy and object. S. R. Das, C.J. in Dalmia''s case (39) reported in 1958 S.C.A. 770 of the report analysed the true scope of Art. 34 of the Constitution. It is well settled now that a law may be constitutional even though it relates to a single individual, if on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself. There is a presumption of constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of constitutional principles. The Legislature understands and correctly appreciates the need of its own people and its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds. The Legislature is free to recognise degrees of harm and may confine the restrictions to those cases where the need is deemed to be the clearest. In order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, common report. If there is nothing on the face of the law or the surrounding circumstances on which the classification may reasonably be regarded as based, it cannot be held that there must be some undisclosed and unknown reasons for subjecting individuals or corporations to hostile or discriminating legislation. Mr. Advocate-General contended that Oriental Gas Co., Ltd., was a class by itself inasmuch as there was no other Gas Company in Calcutta. I have already indicated that public purpose is not justiciable and that it is not

necessary to mention in explicit terms that it is required for public purpose. If the legislaton in its true character is one for public purpose, if the legislature, as the objects and reasons of the present legislation show, determined that this piece of legislation was necessary, it was free to recognise degrees of harm and might confine restrictions to those cases where the need was deemed to be the clearest. A statute may itself indicate the persons or things to which provisions are intended to apply and a basis of the classification of such persons or things may appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to the notice of the court. In the present case I am of opinion the surrounding circumstances in the objects and reasons of the Act and the provisions of the Act sufficiently and amply demonstrate that it is a piece of legislation affecting gas and gas works and a piece of legislation needed for public purpose and is a valid piece of legislation needed for management and control of Oriental Gas Co., Ltd.. which has fallen into low supply of gas required for public undertakings; authorities and the general public. There is reasonable and intelligible classification of the only gas company in Calcutta and this has rational relation to the object sought to be achieved by the statute in question.

38. Mr. Das next contended that there was violation of Art. 19 in as much as there was restriction on the petitioner to carry on the business of management. Mr. Das relied on the decision reported in (40) Chintaman Rao Vs. The State of Madhya Pradesh, in support of his contention that; it had to be shown that there was reasonable relation of the provisions of the Act to the purpose in view and in as much as, according to Mr. Das, reasons were not given in the act, the court could not consider whether the restrictions were reasonable or not. The legislation in my opinion, has given reasons for the necessity of the legislation. The various sections of the impugned act show as to why and how the legislation is not merely necessary but is going to be applied for public purpose. If there is any restriction, it is for the Oriental Gas Co. itself to complain and not for the petitioners who are the managers of the company. Assume that there is restriction on the petitioner not to carry on the business of management for 5 years. The question is whether that is reasonable or not in view of the present legislation, Mr. Das contended that since the court and not the legislature was the judge and unless the legislature shows that there was reasonable relation of the provisions of the act to the purpose in view, the court could not judge. The professed purpose according to Mr. Das was increasing production and improving quality but the legislature did not say that this could not be achieved unless petitioner was prohibited from carrying on business for 5 years. Mr. Das more than once said that there was no complaint as far as the petitioner was concerned and that therefore the legislation was arbitrary and unreasonable restriction.

39. In order to assess the question of reasonableness of restrictions, it has to be ascertained as to why such restrictions have become necessary in the present case. The objects and reasons of the Act and the Act itself furnish the answer. Reasonable

restrictions have to be considered from the standpoint of the interest of the public and not from the point of view of persons upon whom restrictions are imposed. See (1958) S.C.A. 806 (41). In the case of State of Madras Vs. V.G. Row, . the Supreme Court held that the nature of the right alleged to be infringed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time should all enter into the judicial verdict. The Legislature is tils best judge of what is good for the community. See (16) The State of Bihar Vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others, . Reasonableness has to be judged in an objective manner. The restrictions imposed when examined in the light of the principles stated above show that it is necessary for a public purpose to requisition the company for purposes of management and control and it is necessary to remedy the evil of low supply of gas. This low supply of affected industrial undertakings, hospitals, local authorities and the public. It is therefore in the interest of the general public that the State should restrict the management of the company in order to secure and control the supply of gas. It is in public utility and purpose that the restriction on management is reasonable.

40. Mr. Das finally contended that there was violation of Art. 31 of the Constitution, viz.. that no compensation was given to the petitioner. The simple answer to that question is that the petitioner''s right under the contract is not touched and therefore the petitioner is not entitled to any compensation.

41. All these questions as to Articles 14, 19 and 31, Mr. Advocate-General contended are irrelevant in view of Art. 31A of the Constitution. Art. 31A was introduced by the Constitution, 4th Amendment Act. 19555. The objects and reasons of the 4th Amendment Act are:

.....Subsequent judicial decisions interpreting articles 14, 19 and 31 have raised serious difficultes in the way of the Union and the States putting through other and equally important social welfare legislation on the desired lines, e.g., the following:-

.....(iii) It is often necessary to take over under State management for a temporary period a commercial or industrial undertaking or other property in the public interest or in order to secure the I letter management of the undertaking or property. Laws providing for such temporary transference to State management should be permissible under the Constitution.

42. In the context of the Objects and Reasons, Art. 31A as it now stands imparts immunity and immutability to all laws notwithstanding anything contained in Art. 13 when such laws provide for (b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper Management of the property, or (d) the extinguishment or modification of any rights of managing agents, managing directors, directors or managers of corporations or of any voting rights of shareholders thereof. Such laws by reason of

Art. 31A are no longer to be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Art. 14, Art. 19 or Art. 31.

43. Mr. Advocate-General is in my opinion right in containing that Art. 31A is a complete answer to all controversies about Art. 14, Art. 19 and Art. 31. Assuming that the petitioner''s alleged right of management is capable of being complained of under Art. 226, it is fully answered by Art. 31A and the petitioner has no light to complain of any infraction of Art. 14, 19 or Art. 31.

44. Mr. Das finally contended that under s. 20 of the Union Act of 1951, it was no longer competent to the State Legislature to make any law or to take any action. Mr. Advocate-General contended first that that section was ultra vires. If I have to go into the question as to whether that section is ultra vires, notice has to be given to the Attorney-General for the purpose of the present application. I do not consider it necessary to go into the question as to whether that particular section is ultra vires or not. The other answer given by Mr. Advocate-General is, in my opinion, sound and acceptable. The true meaning of sec. 20 is that if any action is sought to be taken under Act, 65 of 1951, it is only the Union which can take action and no State can take any action under Act 65 of 1951.

45. I have dealt with all the points raised by Mr. Das and I am of opinion that the petitioner is not entitled to maintain this application and the petitioner is not entitled to any of the reliefs asked for. I am of opinion that the State Act of 1960 is a valid piece of legislation and is free from attacks on any of the grounds that Mr. Das contended.

46. Before I conclude I should express my thanks and gratitude to Mr. Advocate General, Mr. P. R. Das, Dr. A.C. Gupta and Mr. S. Banerjee for having given me that assistance during the vacation.

47. I dismiss the application with costs. The respondents appearing at the hearing are entitled to costs as of hearing. Certified for two counsel. The rule is discharged. Mr. Banerjee, counsel for the petitioner, asked for interim stay. 1 am unable to accede to Mr. Banerjee''s prayer. This is a case where I am of opinion that no stay can be granted. I granted interim injunction up to the 25th of October last. Mr. Banerjee''s prayer for continuance of the interim injunction can not be allowed and is refused.