A

SANJEEV COKE MANUFACTURING COMPANY

v.

BHARAT COKING COAL LTD. AND ANOTHER

B

December 10, 1982

[P.N. BHAGWATI, O. CHINNAPPA REDDY, E.S. VENKATARAMIAH, BHARUL ISLAM AND AMARENDRA NATH SEN, JJ.]

C *(A) Constitution of India, 1950, Articles 226 and 32—Practice and Procedure—In proceedings involving constitutional issues, courts cannot travel beyond their scope.*

(B) Interpretation of Statutes—Rules of Construction—Value of grammar.

D *(C) Constitution of India, 1950—Legislative validity of—Tests for determination—Affidavits made in the courts to sustain legislation, value of.*

(D) Constitution of India, 1950, Articles 39(b), 31C and 14—Directive Principle of State Policy under Article 39(b)—Immunity of challenge under Article 31 C on ground of violation of Article 14 is not permissible, Coking Coal Mines (Nationalisation) Act 36 of 1972.

E

(E) Constitution of India, Article 14—Whether Coking Coal Mines (Nationalisation) Act is violative of Art. 14.

(F) Judicial review of matters of State policy like scheme of Nationalisation—Proceedings under Article 226.

F *(G) Constitution of India, Article 39(b)—Whether "material resources of the community"* referred to *is confined to "natural resources".*

(H) Constitution of India, Article 31 C (as amended by the Constitution Forty Second Amendment Act 1976, and Articles 14 and 39 Scope of—Article 31 C with its extended protection is constitutionally valid.

G *(I) Coking Coal Mines (Nationalisation) Act (Act 36 of 1972) Sections 3 (g), 3(b) and 4(1)—The definition of "Coke oven plants" in Section 3(b) should be read together with clauses (vi) and (x) of 3(i) defining "mine" for understanding the correct description of "Mines" in the Act.*

H *(J) Costs in proceedings under Articles 226 or 32 when the grievances are not frivolous, cost should not be awarded, when the petition is dismissed.*

Consequent to the passing of the Coking Coal Mines (Emergency Provisions) Act, 1971, which was replaced by the Coking Coal Mines (Nationalisation) Act, 1972, the Coal Mines (Taking Over of Management) Act, 1973 and the Coal Mines (Nationalisation) Act, 1973, all coal mines known to exist in the country were nationalised, whether they are coking coal mines or non-coking mines. Along with them coke oven plants in or belonging to the mines were also nationalised. In addition twelve specified coke oven plants not belonging to the owners of the mines, but known to exist near about the mines were also nationalised. All other coke oven plants were left out of the scheme of nationalisation for private exploitation.

Sanjeev Coke Manufacturing Company, Bhowra Coke Company who were owners of the coke oven plants described in items 2 and 9 of the Second Schedule filed writ petitions in the Calcutta High Court challenging the inclusion of their coke oven plants in the Second Schedule as violative of the provisions of Article 14 of the Constitution. The writ petitions were withdrawn to the Supreme Court under Article 139 A.

Dismissing the petitions, the Court

HELD : 1. It is not open to a court to answer academic or hypothetical questions on such considerations, such as that they dealt with Constitutional amendments and not ordinary law, which of their own force permitted violation of freedoms through laws passed for certain purposes, particularly so when serious constitutional issues are involved. Judges are not authorised to make disembodied pronouncements on serious and cloudy issues of constitutional policy without battle lines being properly drawn. Judicial pronouncements cannot be immaculate legal conceptions. It is but right that no important point of law should be decided without a proper *lis* between parties properly ranged on either side and a crossing of the swords. It is in expedient for the Supreme Court to delve into problems which do not arise and express opinion thereon. [1016 A-C]

2. Adjectives are attractive forensic aids but in matters of interpretation they are diverting intruders. They should not be allowed to get the better of the nouns which they qualify. [1020 G-H]

3:1. Validity of legislation is not to be judged merely by affidavits filed on behalf of the State, but by all the relevant circumstances which the court may ultimately find out and more especially by what may be gathered from what the legislature has itself said. [1029 F-G]

3:2. Courts are not really concerned with the hollowness or the self-condemnatory nature of the statements made in the affidavits filed by the respondents to justify and sustain the legislation. The deponents of the affidavits filed into court may speak for the parties on whose behalf they swear to the statements. They do not speak for the Parliament and Parliament is never before the Court. Once a statute leaves Parliament House, the Court's is the only authentic voice which may echo (interpret) the Parliament. This the court will do with reference to the language of the statute and other permissible aids. [1029 A-D]

A 3:3. No act of Parliament can be struck down because of the understanding or misunderstanding of Parliamentary intention by the executive government or because their (the Government's) spokesmen do not bring out relevant circumstances but indulge in empty and self defeating affidavits. They do not and cannot bind Parliament. [1029 E-F]

B 4:1. The Coking Coal Mines (Nationalisation) Act 1972 is a legislation for giving effect to the policy of the State towards securing the principle specified in Article 39(b) of the Constitution and is, therefore, immune under Article 31-C from attack on the ground that it offends the fundamental right guaranteed by Article 14. [1027 C-D]

C 4:2. By the Coking Coal Mines Nationalisation Act all coking coal mines known to exist in the country were nationalised. Other coke oven plants which did not belong to the owners of the mines but which were located near about the nationalised coking coal mines were also identified and nationalised by express provision to that effect. At that stage of the rationalisation and nationalisation of the coal mining industry, it was apparently thought necessary and sufficient to nationalise such coke oven plants as were in or belonged to the nationalised coking coal mines or as were identified as located near the nationalised coking coal mines, leaving out all other coke oven plants.

D [1021 F-H; 1022 A-B]

4:3. The object of the coking coal Mines (Nationalisation Act is to recognise and reconstruct coking coal mines and coke oven plants for the purpose of protecting, conserving and promoting scientific development of the resources of coking coal needed to meet the growing requirements of the Iron and Steel Industry and for matters connected therewith and incidental thereto. The requirements of the Iron and Steel industry are recognised as *'Growing requirements'* and it is found necessary to protect, conserve and promote the scientific development of resources of coking coal so as to meet those 'growing requirements'. The Act is contemplating the future. If the object of the Act is to provide for the future, it does not make any difference, if in the past or in the present, the hard coke produced by the nationalised coking coal mines is diverted elsewhere than the Iron and Steel Industry. The requirements of the Iron and Steel Industry which are to be met by the nationalised coke oven plants are its growing requirements, that is to say, its future requirements.

E F [1026 E-H; 1027 A]

5:1. The Coking Coal Mines (Nationalisation) Act is not violative of Article 14 of the Constitution. There has been no such infringement, as could be seen from the facts of the right guaranteed under Article 14. [1027 D; 1028 F]

G 5:2. The process of nationalisation of the Coal industry is, of course, not complete as yet. Nationalisation of any industry or means of production may not be and need not be effected all at once. It may be achieved in stages. If in the process of nationalisation some units are left out in the earlier stages either because it is so planned or because of some mistake it cannot be said that there has been a violation of Article 14. Nor can any inference be drawn of discrimination from the circumstance that subsequently eighty seven new coke oven plants have been allowed to come up. Obviously there is demand for hard coke from industries other than the iron and steel industry and normally,

the State does not want to stifle those industries by making it difficult for them to obtain their requirements, especially since the production of the Nationalised Coke Oven Plants has first to meet the requirements of the iron and steel industry. What is important to note is that these eighty seven new coke oven plants are not situated in or about coal mines though they are in the coal field area, as indeed they are bound to be. [1028 E-H]

6. The distribution between public, private and joint sectors and the extent and range of any scheme of nationalisation are essentially matters of State policy which are inherently inappropriate subjects for judicial review. Scales of justice are just not designed to weigh competing social and economic factors. In such matters legislative wisdom must prevail and judicial review must abstain. The contention that Article 39(b) would be attracted, if the industry as a whole was nationalised and not if only a part of the industry was nationalised is, therefore, misplaced. [1026 B-D]

7:1. The expression "Material resources of the community" as used in Article 39(b) of the Constitution is not confined to natural resources; it is not confined to resources owned by the public; it means and includes all resources, natural and man-made, public and private-owned. [1026 A-B]

7:2. The expression "material resources of the community" means all things which are capable of producing wealth for the community. There is no warrant for interpreting the expression in so narrow a fashion as to confine it to public-owned material resources and exclude private owned material resources. The expression involves no dichotomy. The words must be understood in the context of the constitutional goal of establishing a sovreign, socialist, secular democratic republic. [1022 H; 1023 A-B]

7:3. When Article 39(b) refers to material resources of the community it does not refer only to resources owned by the community as a whole, but it refers also to resources owned by individual members of the community. Resources of the community do not mean public resources only but include private resources as well The distribution envisaged by Article 39(b) necessarily takes within its stride the transformation of wealth from private-ownership into public-ownership and is not confined to that which is already public-owned. [1023 G-H; 1024 A-B]

State of Karnataka v. *Ranganathan Reddy*, [1978] 1 S.C.R. 641 @ 689 followed.

8:1. The question of the validity of Article 31 C stands concluded by the decision of the Supreme Court in *Keshavananda Bharati's* case. in which it was expressly ruled that Article 31 C, as it stood at that time i.e., as inserted by the Constitution (Twenty-fifth Amendment) Act, 1971, was constitutionally valid. No doubt the protection of Article 31C was at that time confined to law giving effect to the policy of the clauses (b) and (c) of Article 39. By the Constitution Forty Second Amendment Act, the protection was extended to all laws giving effect to all or any of the principles laid down in Part IV. The dialectics, the logic and the rationale involved in upholding the validity of Article 31C when it confined its protection to laws enacted to further Article 39(b) or Article 39(c) should uncompromisingly lead to the same resolute

conclusion that Article 31 C with its extended protection is also constitutionally valid. It cannot also be said that the nature of the Directive Principles enunciated in other Articles of Part IV of the Constitution is so drastic or different from the Directive Principle in clauses (b) and (c) of Article 39, that the extension of constitutional immunity to laws made to further those principles would afford the basic structure of the constitution Any observations made to the contrary in *Minerva Mills' case*, [1981] 1 S.C.R. 206 may be held to be *obiter*. [1016 D-H]

9:2. To contend that a law founded on discrimination is not entitled to the protection of Article 31 C, as such a law can never be said to further the directive principles affirmed in Article 39(b) would be to put the cart before the horse. If the law made to further directive principle is necessarily non-discriminatory or is based on a reasonable classification, then such law does not need any protection such as that afforded by Article 31 C. Such law would be valid on its own strength, with no aid from Article 31 C. To make it a condition precedent that a law seeking the haven of Article 31 C must not be discriminatory or based on reasonable classification is to make Article 31 C meaningless. If Article 14 is not offended, no one need give any immunity from an attack based on Article 14. [1019 A; 1020 A-B]

The broad egalitarian principle of social and economic justice for all was implicit in every Directive Principle, and, therefore, a law designed to promote a directive principle, even if it came into conflict with the formalistic and doctrinaire view of equality before the law, would most certainly advance the broader egalitarian principle and the desirable constitutional goal of social and economic justice to all. If the law was aimed at the broader egalitarianism of the Directive Principles, Article 31 C protected the law from needless, unending and rancourous debate on the question whether the law contravened Article 14's concept of equality before the law. The law seeking the immunity afforded by Article 31 C must be a law directing the policy of the State towards securing a Directive Principle. The object of the law must be to give effect to the Directive Principle and the connection with the Directive Principle must not be "same remote or tenuous connection". [1020 B-F]

9:3. When Article 31 C comes in, Article 14 goes out. There is no scope for bringing in Article 14 by a side wind as it were, that is, by equating the rule of equality before the law of Article 14 with the broad egalitarianism of Article 39(b) or by treating the principle of Article 14, as included in the principle of Article 39(b). To insist on nexus between the law for which protection is claimed and the principle of Article 39(b) is not to insist on fulfilment of the requirement of Article 14. They are different concepts and in certain circumstances, may even run counter to each other. That is why the need for the immunity afforded by Articles 31 C. [1021 A-B]

10:1. The word "Mine" as defined in Section 3(j) of the Coking Coal Mines (Nationalisation) Act 36 of 1972 does include 'Coke Oven Plant'. If the definition of 'Coke Oven Plant' in Section 3(b) is read alongside clauses (vi) and (x) of Section 3(j) which defines mine, it becomes plain that 'coke oven plant' belonging to or in a mine is treated as comprised in 'mine' as defined. Therefore, all coke oven plants belong to or in the mines mentioned in the First Schedule,

by the very force of definition of 'mine', go with the mines and the right, title, and interest thereto vest in the Central Government under Section 4(1) of the Act. [1008 D-F; 1010 D] A

Bharat Coking Coal Ltd. v. *P.K. Agarwala and Anr*, [1979] 3 S.C.R. 609, over ruled.

10:2. The object of the Coking Coal Mines (Nationalisation) Act was to nationalise all coking coal mines and coke oven plants situated in or about the mines whether or not they belonged to the owners of the mines. Those which belonged to the owners of the mines, went with the mines, but those which did not belong to the owners of the mines, obviously did not go with the mines, and separate provision had to be made for their nationalisation, and payment of compensation etc. That was the reason for the separate definition of "Coke Oven Plant" and the separate provision for the nationalisation of certain coke oven plants. The reason was not any dichotomy between the word 'mine' on the one hand and the words "coke oven plant" on the other. [1010 E-F] B C

10:3. All coke oven plants were not nationalised; only those which were situated in or about the nationalised coking coal mines were nationalised. There was no separate legislation providing for the take over of all coke oven plants but as a part of the legislation to take over coking coal mines, such coke oven plants were also nationalised. Quite obviously coke oven plants situated in or about coal mines had to be nationalised along with the mines in the interests of convenience and efficiency of the coal industry and to minimise the opportunities for clandestine operations for which the coal industry has become notorious. Coke oven plants away from the mines were not touched either by the Coking Coal (Emergency Provisions) Act or the Coking Coal (Nationalisation) Act. [1010 H; 1011 A-C] D E

Amarendra Nath Sen, J. (Contra) costs generally follow event. When a citizen is deprived of his property by a State action and feels aggrieved by the act of the State and approaches the Court and if it cannot be said that his grievance is absolutely frivolous, the citizen in such a case should not be saddled with the costs simply because the Court finds that his grievance has no valid legal basis. [1034 G-H] F

ORIGINAL JURISDICTION : Transferred Cases Nos. 1 and 2 of 1980.

Transferred from the Calcutta High Court Matter No. 307 of 1979 with the petitions pending in the Court.

WITH G

Special Leave Petition (Civil) No. 2020 of 1980.

From the Judgment and Order dated the 27th November, 1979 of the Calcutta High Court in F.M.A.T. No. 3124 of 1979.

S.N. Kacker, *A.K. Ganguli* and *G.S. Chatterjee* for the Petitioner in Transfered Case No. 1 of 1980. H

A *M.C. Bhandare, Sukumar Bose, G.S. Chatterjee* and *Miss Mirdula Ray* for Transferred Case No. 2 of 1980.

G.S. Chatterjee for the Petitioner.

L.N. Sinha, Attorney General, *M.L. Verma* and *Miss A. Subhashini* for the Respondents.

The following Judgment were delivered

CHINNAPPA REDDY, J. In these cases, Sanjeev Coke Manufacturing Co. and Sunil Kumar Ray, representing the Bhowra Coke Company question the nationalisation of the Coke Oven Plants belonging to them.

The history of the legislation concerning the take-over of the Management and the Nationalisation of Coal Mines has been set out in some of the earlier judgments of this Court (*Tara Prasad Singh* v. *Union of India, etc.*[1]) and it is not necessary for us to recall here that history in any great detail. The Coking Coal Mines (Emergency Provisions) Act, 1971, the Coking Coal Mines (Nationalisation) Act, 1972, the Coal Mines (Taking Over of Management) Act, 1973, and the Coal Mines (Nationalisation) Act, 1973 were respectively enacted in that order.

First came the Coking Coal Mines (Emergency) Provision Act 1971 which provided for the taking over of the management of coking coal mines and coke oven plants pending nationalisation of such mines and plants. Sec. 3(1) of the Act declared that on and from the appointed day, the management of all coking coal mines shall vest in the Central Government. All coking coal mines which were known to exist were specified in the First Schedule to the Act and Sec. 3(2) declared that those were the coking coal mines whose management vested in the Central Government under sub-sec. (1). It was further provided that if any coal mine was found, after investigation made by the Coal Board, to contain coking coal, a declaration to the effect shall be made by the Board and thereupon the management of such mine shall vest in the Central Government and the mine shall be deemed to be included in the First Schedule. The idea clearly was not to leave out of the management of the Central Government any coking coal mine. The words 'mine', 'coking coal mine' and 'coke oven plant' were separately defined in

(1) [1980] 3 S.C.R. 1042.

the Act. 'Mine' was defined widely enough that 'coking coal mine' would take within its expanse 'coke oven plants' belonging to or in a mine. By the very force of the definition of 'mine', the management of coke oven plants belonging to or in coking coal mines also stood vested in the Central Government from the appointed day. This aspect of the matter will be considered in slightly greater detail when we refer to the provisions of the Coking Coal Mines Nationalisation Act. As one may well expect, there were some coke oven plants which were situated near about coking coal mines but which did not belong to the owners of such mines and the management of which did not, therefore, automatically vest in the Central Government along with the vesting of the management of the coking coal mines. It was apparently thought necessary and desirable that the management of such coke oven plants also should be taken over. Twelve such coke oven plants were identified and specified in the Second Schedule and by Sec. 7 of the Act the management of the coke oven plants specified in Second Schedule were declared to vest in the Central Government.

Next, The Coking Coal Mines (Nationalisation) Act, 1972 was enacted "to provide for the acquisition and transfer of the right, title and interest of the owner of the coking coal mines specified in the First Schedule, and the right, title and interest of the owners of such coke oven plants as are in or about the said coking coal mines with a view to reorganising and reconstructing such mines and plants for the purpose of protecting, conserving and promoting scientific development of the resources of coking coal needed to meet the growing requirements of the iron and steel industry and for matters connected therewith or incidental thereto". By Section 4 of the Act the right, title and interest of the owners in relation to the coking coal mines specified in the First Schedule stands transferred to and vests absolutely in the Central Government. The First Schedule mentions the names of 214 coking coal mines, with their location and with the names and addresses of the owners of the mines. 'Coking coal mine' is defined by Section 3(c) to mean "a coal mine in which there exist one or more seams of coking coal, whether exclusively or in addition to any seam of other coal". 'Mine' is defined by s. 3(j) to mean "any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on", and to include, among other things.

> "(vi) all lands, buildings, works, adits, levels, planes, machinery and equipment, vehicles, railways, tramways and

A sidings belonging to, or about, a mine;" and

"(x) all lands, buildings and equipment belonging to, or in, a mine where the washing of coal or manufacture of coke is carried on ;"

B We may also notice here the definition of 'Coke Oven Plants' as in s. 3(b) which is as follows :

"coke oven plant" means the plant and equipment with which the manufacture of hard coke has been, or is being, carried on, and includes—

C

(i) ... ...

(ii) ... ...

(iii) ... ...

D (iv) ... ...

(v) all lands, buildings and equipment belonging to the coke oven plant where the washing of coal is carried on,

(vi) ... ...

E

If the definition of 'coke oven plant' in s. 3(b) is read alongside clause (vi) and (x) of s. 3(j) which defines mine, it becomes plain that 'coke oven plant' belonging to or in a mine is treated as comprised in 'mine' as defined. Therefore, all coke oven plants belong to or in the mines mentioned in the First Schedule, by the very force of the definition of F 'mine', go with the mines and the right, title and interest thereto vest in the Central Government under s. 4(1) of the Act. But the object of the Act was not merely to acquire the right, title and interest of the owners of the coking coal mines specified in the First Schedule including the coke oven plants in or belonging to such coking coal mines but also to acquire the right, title and interest of the owners G of coke oven plants which were generally, in or about such coking coal mines, even if they did not belong to the owners of such mines. Apparently, it was not thought sufficient to acquire the coke oven plants in the acquired mines or belonging to the owners of the acquired mines but it was thought necessary, also, to acquire the H coke oven plants which were near about the acquired mines. So a separate provision had to be made in the Act to acquire such

coke oven plants as were near about the acquired mines but did not belong to the owners of the mines. Twelve such coke oven plants, the same twelve coke oven plants which were mentioned in the Second Schedule to the Coking Coal Mines (Emergency Provisions) Act, are again specified in the Second Schedule to the Coking Coal Mines Nationalisation Act too and s. 5 of the Act provides that the right, title and interest of the owners of each of the coke oven plants specified in the Second Schedule, being the coke oven plants which are situated in or about the coking coal mines specified in the First Schedule also vest in the Central Government. Thus, all coke oven plants which belonged to or which were in the mines specified in the First Schedule stood transferred to the Central Government along with those mines and, in addition, the twelve coke oven plants specified in the Second Schedule which did not belong to the mines but which were near about coking coal mines also stood transferred to the Central Government.

In order that the ground may straight away be cleared, we must mention here that in *Bharat Coking Coal Ltd.* v. *P.K. Agarwala and Anr.*(1) Krishna Iyer and A.P. Sen, JJ. considered the definitions of "Mine" and "coke oven plant" in the Coking Coal Mines (Nationalisation) Act, 1972 and expressed the view, wrongly in our opinion, that 'Coking Coal Mine' did not include a 'coke oven plant'. The learned judges appear to have thought that there was a dichotomy between the word 'mine' on the one hand and the words 'coke oven plant' on the other and that was why separate provision was made in the same Act for the nationalisation of mines and coke oven plants. The learned Judges observed :

> "It must be said in fairness to counsel that there was some bafflement when confronted by these provisions although on a broader consideration, we are clear in our mind that a dichotomy was made by the statute between mines on the one hand as defined in Section 3(j) and coke oven plants as defined in s. 3(b) on the other. To give meaning to this dichotomy one has to read coke oven plants as clearly out from the mines, which in turn means that mere equipment where washing of coal or manufacture of coal is done as a simple subsidiary or an equipment or machinery which is a small part of a mine cannot be exalted to the position of

(1) [1979] 3 SCR 609.

A a coke oven plant which, as Section 3(b) bears out, is an important but separate equipment with which the manufacture of hard coke is carried on. This is a processing of considerable significance, for coal that is extracted from a colliery has an independent existence. It cannot be confused with a minor item such as is covered by s. 3(j)(xi) or (x) of
B the Act. It is easy to find industrial similarity when we are referring to oil mines. It is one thing to take over oil fields and minor machinery or equipment that may be attached thereto necessary for the very mining operation, but by no stretch of imagination can it be said that
C nationalisation of oil fields or mines also covers oil refineries. In this view, we think that there is no substance in the submission on behalf of the appellant (Union of India) that mine by definition includes coke oven "

We are afraid, we are unable to agree with the view expressed by
D Krishna Iyer and A.P. Sen, JJ. that 'coal mine' as defined in s. 3(j) particularly cls. (vi) and (x) does not include 'coke oven plant'. As already mentioned by us, there were in existence 'coke oven plants' in or about coking coal mines, some of which belonged to the owners of the mines and some to persons other than the owners of the mines. The object of the Coking Coal Mines (Nationalisation)
E Act was to nationalise all coking coal mines and coke oven plants situated in or about the mines whether or not they belonged to the owners of the mines. Those which belonged to the owners of the mines went with the mines but those which did not belong to the owners of the mines, obviously, did not so go with the mines and separate provision had to be made for thier nationalisation, and
F payment of compensation etc. That was the reason for the separate definition of 'coke oven plant' and the seperate provision for the nationalisation of certain coke oven plants. The reason was not any dichotomy between the word 'mine' on the one hand and the words 'coke oven plant' on the other as was supposed in *Bharat Coking Coal Ltd.* v. *P.K. Agarwala.* As was said, the separate
G definition of coke oven plant and the separate provision for the nationalisation of coke oven plants was necessary to cover those coke oven plants which were situated in or about the nationalised mines but which did not belong to the owners of those mines. It is important to note that all coke oven plants were not nationalised;
H only those which were situated in or about the nationalised coking coal mines were nationalised. There was no separate legislation providing for the take-over of all coke oven plants but as a

part of the legislation to take over coking coal mines, such coke oven plants as were in or about the mines were also nationalised. Quite obviously coke oven plants situated in or about coking coal mines had to be nationalised along with the mines in the interests of convenience and efficiency of the coal industry and to minimise the opportunities for clandestine operations for which the coal industry has become notorious. Coke oven plants away from the mines were not touched either by the Coking Coal (Emergency Provisions Act) or the Coking Coal Mines (Nationalisation) Act.

The Coking Coal Mines (Nationalisation) Act, 1972 was followed soon thereafter by the Coal Mines (Taking Over of Management) Act, 1973. Coal Mine is defined by sec. 2(b) of the Act to mean a mine in which there exists one or more seams of coal. It is seen that the definition of coal mines takes in coking coal mines also. Mine is defined by Section 2(g) in practically the same terms as in Section 3(j) of the Coking Coal Mines (Nationalisation) Act with some differences which are not material for the purposes of this case. Sec. 3(1) provides that on and from the appointed day, the managements of all coal mines shall vest in the Central Government. The provision is peremptory; all coal mines whether they are coking coal mines or non-coking coal mines are included; none is excluded. Sec. 3(2) further provides that the coal mines specified in the schedule to the Act shall be deemed to be the coal mines the management of which shall vest in the Central Government under sub-sec. (1) and further that if the existence of any coal mine comes to the knowledge of the Central Government, the Central Government shall make a declaration about the existence of such mine and the management of such coal mine shall thereupon be deemed to vest in the Central Government and the coal mine deemed to be included in the schedule. After the Coal Mines (Taking over of management) Act 1972, came the Coal Mines (Nationalisation) Act, 1973 which was enacted "to provide for the acquisition and transfer of the right, title and interest of the owners in respect of the coal mines specified in the schedule with a view to re-organising and re-constructing such coal mines so as to ensure the rational, coordinated and scientific development and utilisation of coal resources consistent with the growing requirements of the country in order that the ownership and control of such resources are vested in the State and thereby so distributed as best to subserve the common good and for matters connected therewith or incidental thereto". The expressions 'coal mine' and 'mine' are

defined on practically the same lines as in the Coal Mines (Taking Over of Management) Act. Sec. 3(1) declares that on the appointed day, the right, title and interest of the owners in relation to the coal mines specified in the schedule shall stand transferred to and shall vest absolutely in the Central Government free from all encumbrances. Sec. 3(2) provides that if the existence of any other coal mine comes to the knowledge of the Central Government, after the appointed day, the provisions of the Coal Mines (Taking over of Management) Act shall apply to such mine until that mine is nationalised by an appropriate legislation. We have already mentioned that the expression 'mine' is defined in the Coal Mines (Taking over of Management) Act and the Coal Mines (Nationalisation) Act in practically the same terms as in the Coking Coal Mines (Emergency Provisions) Act and the Coking Coal Mines (Nationalisation) Act. The definition is so wide, as to take in coke oven plants belonging to or in the mine. So, all coke oven plants belonging to or in a coal mine are nationalised along with the mine. But, there are no provisions in the Coal Mines (Nationalisation) Act 1973 corresponding to Section 5 of and the Second Schedule to the Coking Coal Mines Nationalisation Act 1972 to cover coke oven plants which are situated near the coal mines but which do not belong to the owners of the mines. Therefore, coke oven plants not belonging to or in coal mines (not already nationalised under the Coking Coal Mines (Nationalisation) Act are left out of the Coal Mines (Taking over of Management) Act and the Coal Mines (Nationalisation) Act, 1973. Of course, coke oven plants situated away from the mines are not touched by either the Coal Mines (Nationalisation) Act, 1973 or the Coking Coal Mines (Nationalisation) Act, 1972.

The final result of these statutes is that all coal mines known to exist in the country are nationalised, whether they are coking coal mines or non-coking coal mines. Along with them coke oven plants in or belonging to the mines also stand nationalised. In addition twelve specified coke oven plants not belonging to the owners of the mines but known to exist near about the mines are also nationalised. All other coke oven plants are left out of the scheme of nationalisation. The design revealed by the Acts is that mining of coal is reserved entirely for the public sector, and so, all existing coal mines, whether coking coal or non-coking coal, are nationalised and the management of mines which may be discovered in the future is automatically taken over by the Central Government until nationalisation by appropriate legislation; and, the

manufacture of hard coke from coal is reserved for the joint sector and so all coke oven plants belonging to or in coal mines and twelve specified coke oven plants are nationalised while all other coke oven plants are left for private exploitation ; there is no ban against any new coke oven plants being set up.

Sanjeev Coke Manufacturing Company, who were the owners of the coke oven plant described in Item 9 of the Second Schedule and Bhowra Coke Company, who were the owners of the Coke oven plant described in Item 2 of the Second Schedule filed writ petitions in the Calcutta High Court challenging the inclusion of these coke oven plants in the Second Schedule. The writ petitions have been withdrawn to this Court for disposal. The principal ground of challenge was that other coke oven plants standing in exactly the same position as the coke oven plants of the petitioners were left out and had not been nationalised; there was, therefore, rank discrimination. It was said that as many as eighty seven new coke oven plants were allowed to come into existence subsequent to the Nationalisation Act and so the nationalisation of twelve of the existing coke oven plants was *ex-facie* arbitrary and discriminatory. There were other grounds, branches and shades of challenge to which we shall refer later in the course of the judgment. The straight answer of the Central Government was that the provisions of the Act were immune from the challenge based on the ground of discrimination because of the protection afforded by Art. 31C of the Constitution. The Central Government also defended the inclusion of the coke oven plants of the petitioners in Second Schedule on merits and explained how it came about that certain coke oven plants were excluded.

The principal question for consideration, therefore, is whether the Coking Coal Mines (Nationalisation) Act, 1972 is entitled to the protection of Art 31C of the Constitution Art. 31C of the Constitution, which was introduced by the Twenty-fifth Amendment Act, 1971, as it stood before the Forty-second Amendment, provided, "Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing the principles specified in cl (b) or cl.(c) of Art. 39 shall be deemed to be void on the ground that it was inconsistant with, or takes away or abridges any of the rights conferred by Art. 14, Art. 19 or Art. 31". By the Constitution Forty-second Amendment Act, the protection of Art. 31C was extended not merely to laws giving effect to the policy of the State towards securing the principles specified in cl.(b) or (c)

A of Art.39 but to laws giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV of the Constitution. The constitutionality of the original Art. 31C as introduced by the Constitution Twenty-fifth Amendment Act, was upheld by the Court in *Keshvananda Bharati* v. *The State of Kerala*(1) Section 4 of the Constitution Forty-second Amendment Act of 1976 B which substituted the words "all or any of the principles laid down in Part IV" for the words "the principles specified in Cl.(b) or (c) of Art. 39" was struck down by this Court in *Minerva Mills's case*(2) on the ground that the nature and quality of the amendment was such that it virtually tore away the heart of basic fundamental freedoms by totally withdrawing the protection of Articles 14 and 19 in respect C of a large category of laws; the amendment destroyed the balance between Part III and Part IV of the Constitution and thereby *ipso facto* destroyed the basic structure of the Constitution. The decision of the Court in *Minerva Mills'* was strongly relied upon by Shri A.K. Sen, learned counsel for the petitioners to support his submissions regarding what he claimed was the true content and D interpretation of Art. 31C.

We have some misgivings about the *Minerva Mills'* decision despite its rare beauty and persuasive rhetoric.

We confess the case has left us perplexed. In the first place, E no question regarding the constitutional validity of s.4 of the Constitution Forty-second Amendment Act, 1976 appears to have arisen for consideration in that case. The question was about the nationalisation and takeover by the Central Government of a certain textile mill under the provisions of the Sick Textile Undertakings (Nationalisation) Act, 1974. The validity of some of the provisions of that F Act was impugned. The Act had been included in the Ninth Schedule to the Constitution by the Constitution Thirty-ninth Amendment Act, 1975. The validity of Art. 31B which provides immunity to the Acts and Regulations specified in the Ninth Schedule from attack based on inconsistency with the Fundamental Rights was challenged and that question, therefore, directly arose for consi- G deration. The question was, however, not decided in the *Minerva Mills case*. Section 39 of the Sick Textile Undertakings (Nationalisation) Act, 1974, had also declared that the Act was enacted for giving effect to the policy of the State towards securing the principles specified in cl.(b) of Art.39 of the Constitution. Article 31C of the H

(1) [1973] Supp. S.C.R. 1.
(2) [1981] 1 S.C.R. 206.

Constitution which had been introduced into the Constitution by the Constitution Twenty-fifth Amendment Act 1971 expressly provided that "Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards securing the principles specified in cl.(b) or cl.(c) of Art. 39 shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31". The Sick Textiles (Undertakings) Nationalisation Act 1974 was passed, we may mention here, before the Constitution Forty Second Amendment Act came into force. In order, therefore, to challenge the provisions of the Sick Textile Undertakings (Nationalisation) Act, 1974 on the ground of inconsistency or abridgement or taking away of the Fundamental Rights conferred by Art. 14 or Art. 19, it was necessary for the petitioners to challenge the Constitutional validity of the Constitution Twenty-fifth Amendment Act, 1971 by which Art. 31C was first introduced into the Constitution. That, however, was not open to the petitioners because of the decision of this Court in *Keshavananda Bharati's case*. It was so conceded too by the Learned counsel who appeared for the petitioner in the *Minerva Mills case*. The counsel who appeared, however, chose to question the constitutional validity of Section 4 of the Constitution Forty-second Amendment Act, 1976 by which the immunity afforded by Art. 31C was extended by replacing the words "the principles specified in cl. (b) or cl. (c) of Art. 39" by the words "all or any of the principles laid down in Part IV". No question regarding the constitutional validity of s. 4 of the Constitutional Forty-second Amendment Act, 1976 arose for consideration in the case, firstly, because the immunity from attack given to a law giving effect to the policy of the State towards securing the principles specified in cl. (b) or cl. (c) of Art. 39 was given by the Constitution Twenty-fifth Amendment Act 1971 itself and secondly because the Sick Textile Undertakings (Nationalisation) Act had been enacted before the Constitution Forty-second Amendment Act, 1976. Yet, counsel successfully persuaded the Court to go into the question of the validity of s. 4 of the Constitution Forty-second Amendment Act. An objection was raised before the Court by the learned Attorney General that the Court should not concern itself with hypothetical or academic questions. The objection was overruled on the ground that the Forty-second Amendment was there for anyone to see and that the question raised was an important one dealing with, not an ordinary law, but, a constitutional amendment which had been brought into

operation and which of its own force permitted the violations of certain freedoms through laws passed for certain purposes. We have serious reservations on the question whether it is open to a Court to answer academic or hypothetical questions on such considerations, particularly so when serious constitutional issues are involved. We (judges) are not authorised to make disembodied pronouncements on serious and cloudy issues of constitutional policy without battle lines being properly drawn. Judicial pronouncements cannot be immaculate legal conceptions. It is but right that no important point of law should be decided without a proper lis between parties properly ranged on either side and a crossing of the swords. We think it is inexpedient for the Supreme Court to delve into problems which do not arise and express opinion thereon.

In the second place, the question of the constitutional validity of Art. 31C appears to us to be concluded by the decision of the Court in *Keshavananda Bharati's case.*

In *Keshavananda Bharati's case,* the Court expressly ruled that Art. 31C as it stood at that time was constitutionally valid. No doubt, the protection of Art. 31C was at that time confined to laws giving effect to the policy of the cls. (b) and (c) of Art. 39. By the Constitution Forty-second amendment Act, the protection was extended to all laws giving effect to all or any of the principles laid down in Part IV. The dialectics, the logic and the rationale involved in upholding the validity of Art. 31C when it confined its protection to laws enacted to further Art. 39(b) or Art.39(c) should, uncompromisingly lead to the same resolute conclusion that Art. 31C with its extended protection is also constitutionally valid. No one suggests that the nature of the Directive Principles enunciated in the other Articles of Part IV of the Constitution is so drastic or different from the Directive Principles in cls (b) and (c), of Art. 39, that the extension of constitutional immunity to laws made to further those principles would offend the basic structure of the Constitution. In fact, no such argument appears to have been advanced in the *Minerva Mills case* and we find no discussion and no reference whatsoever, separately to any of the distinct principles enunciated in the individual Articles of Part IV of the Constitution decision in *Minerva Mills.* The argument advanced and the conclusion arrived at both appear to be general, applicable to every clause of Art. 39, and every Article of Part IV of the Constitution, no less to clauses (b) and (c) than to the other clauses. We wish to say no more about

the *Minerva Mills case* as we are told that there is pending a petition to review the judgment. A

Thirdly, notwithstanding the strong reliance placed upon Minerva Mills by the learned counsel for the petitioners, we are not really concerned with the decision in that case since that is not the point at issue before us. What the Court held there was that s. 4 of the Constitution Forty-second Amendment Act was invalid. But we are not faced with that question here. We are concerned with the validity of the Constitution Twenty-fifth Amendment Act, 1971 and it was conceded before us, as it was conceded before the Bench in the *Minerva Mills case* that the Constitution Twenty-fifth Amendment Act is constitutionally valid. B C

The main submission of Shri A.K. Sen, learned counsel for the petitioner in one of the cases was based on the assumption that Art. 31 C as it stood before the Constitution Forty-second Amendment was constitutionally valid. Even so, according to Shri Sen, the protection of Art. 31 C would not be available to a legislation which was not shown to have any real and substantial nexus to the Directive Principles enunciated in cl. (b) or cl. (c) of Art. 39. A law founded on arbitrariness and discrimination, he said could never be said to be a law to further the directive principles in clauses (b) and (c) of Art. 39. Shri Sen would say that Art. 39(b) itself contemplated a broader egalitarian principle than that embodied in Art. 14 and, therefore, it was impossible to conceive of a law offending the egalitarian principle as furthering the directive principle voiced in Art. 39(b). On these questions, it was submitted, there was no difference between the views of the majority of the Judges who decided *Minerva Mills* and the dissenting Judge. He particularly invited our attention to the following observations of Bhagwati, J. at pp. 329-330 : "It will, therefore, be seen that if a law is enacted for the purpose of giving effect to a Directive Principle and it imposes a restriction on a Fundamental Right, it would be difficult to condemn such restriction as unreasonable or not in public interest. So also where a law is enacted for giving effect to a Directive Principle in furtherance of the constitutional goal of social and economic justice it may conflict with a formalistic and doctrinaire view of equality before the law, but it would almost always conform to the principle of equality before the law in its total magnitude and dimension, because the equality clause in the Constitution does not speak of more formal equality before the D E F G H

A law but embodies the concept of real and substantive equality which strikes at inequalities arising on account of vast social and economic differentials and is consequently an essential ingredient of social and economic justice. The dynamic principle of egalitarianism fertilises the concept of social and economic justice; it is one of its essential elements and there can be no real social and economic B justice where there is a breach of the elgalitarian principle. If, therefore, there is a law enacted by the legislature which is really and genuinely for giving effect to a Directive Principle with a view to promoting social and economic justice, it would be difficult to say that such law violates the principle of egalitarianism and is not in accord with the principle of equality before the law as understood C not in its strict and formalistic sense, but in its dynamic and activist magnitude. In the circumstances, the Court would not be unjustified in making the presumption that a law enacted really and genuinely for giving effect to a Directive Principle in furtherance of the cause of social and economic justice, would not infringe any Fundamental Right under Article 14 or 19". . . . . D . . . . . .

. . . If this be the correct interpretation of the constitutional provisions, as I think it is, the amended Article 31 C does no more than codify the existing position under the constitutional scheme by providing immunity to a law enacted really ann genuinely for giving E effect to a Directive Principle, so that needlessly futile and time-consuming controversy whether such law contravenes Article 14 or 19 is eliminated."

at pp. 337-338: "Now the question is what should be the test for determining whether a law is enacted for giving effect to a F Directive Principle. One thing is clear that a claim to that effect put forward by the State would have no meaning or value; it is the court which would have to determine the question. Again it is not enough that there may be some connection between a provision of the law and a Directive Principle. The connection has to be between the law and the Direetive Principle and it must be a real G and substantial connection. To determine whether a law satisfies this test, the court would have to examine the pith and substance, the true nature and character of the law as also its design and the subject matter dealt with by it together with its object and scope. If on such examination, the court finds that the dominant object of H the law is to give effect to the Directive Principle, it would accord protection to the law under the amended Article 31C. But if the court finds that the law though passed seemingly for giving effect

to a Directive Principle, is, in pith and substance. One for accomplishing an unauthorised purpose—unauthorised in the sense of not being covered by any Directive Principle, such law would not have the protection of the amended Art. 31C." . . . . .

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. . : .The point I wish to emphasize is that the amended Article 31C does not give protection to a law which has merely some remote or tenuous connection with a Directive Principle. What is necessory is that there must be a real and substantial connection and the dominant object of the law must be to give effect to the Directive Principle, and that is a matter which the court would have to decide before any claim for protection under the amended Article 31C can be allowed.

at pp. 339-340 : "Where, therefore, protection is claimed in respect of a statute under the amended Article 31C, the court would have first to determine whether there is real and substantial connection between the law and a Directive Principle and the predominant object of the law is to give effect to such Directive Principle and if the answer to this question is in the affirmative, the court would then have to consider which are the provisions of the law basically and essentially necessary for giving effect to the Directive Principle and give protection of the amended Article 31 C only to those provisions. The question whether any particular provision of the law is basically and essentially necessary for giving effect to the Directive Principle, would depend, to a large extent, on how closely and integrally such provision is connected with the implementation of the Directive Principle. If the court finds that a particular provision is subsidiary or incidental or not essentially and integrally connected with the implementation of the Directive Principle or is of such a nature that, though seemingly a part of the general design of the main provisions of the statute, its dominant object is to achieve an unauthorised purpose, it would not enjoy the protection of the amended Article 31(C) and would be liable to be struck down as invalid if it violates Article 14 or 19."

While we broadly agree with much that has been said by Bhagwati J. in the extracts above quoted, we do not think that those observations really advance Mr. Sen's contention. To accept the submission of Shri Sen that a law founded on discrimination is not entitled to the protection of Art. 31C, as such a law can never be said to be to further the Directive Principle affirmed in Art. 39(b), would indeed be, to use a hackneyed phrase, to put the cart before

A the horse. If the law made to further the Directive Principle is necessarily non-discriminatory or is based on a reasonable classification, then such law does not need any protection such as that afforded by Art. 31C. Such law would be valid on its own strength, with no aid from Art. 31C. To make it a condition precedent that a law seeking the haven of Art. 31C must be non-discriminatory or
B based on reasonable classification is to make Art. 31C meaningless. If Art. 14 is not offended, no one need give any immunity from an attack based on Art. 14. Bhagwati J. did not say anything to the contrary. On the order hand, it appears to us, he was at great pains to point out that the broad egalitarian principle of social and economic
C justice for all was implicit in every Directive Principle and, therefore, a law designed to promote a Directive Principles, even if it came into conflict with the formalistic and doctrinaire view of equality before the law, would most certainly advance the broader egalitarian principle and the desirable constitutional goal of social and economic justice for all. If the law was aimed at the broader egalitarianism of
D the Directive Principles, Art. 31C protected the law from needless, unending and rancorous debate on the question whether the law contravened Art. 14's concept of equality before the law. That is how we understand Bhagwati J's observations. Never for a moment did Bhagwati J. let in by another door the very controver / which was shut out by Art. 31C. / Of course, the law seeking the immunity
E afforded by Art. 31C must be a law directing the policy of the State towards securing a Directive Principle. Here, we are content to use the very words of Art. 31C. While we agree with Bhagwati, J. that the object of the law must be to give effect to the Directive Principle and that the connection with the Directive Principle must not be 'some remote or tenuous connection', we deliberately refrain from
F the use of the words 'real and substantial', 'dominant', 'basically and essentially necessary' and 'closely and integrally connected' lest anyone chase after the meaning of these expressions, forgetting for the moment the words of the statute, as happened once when the words 'substantial and compelling reasons' were used in connection with appeals against orders of acquittal and a whole body of literaG ture grew up on what were 'substantial and compelling reasons'. As we have already said, we agree with much that has been said by Bhagwati J. and what we have now said about the qualifying words is only to caution ourselves against adjectives getting the better of the noun. Adjectives are attractive forensic aids but in matters of in-
H terpretation they are diverting intruders. These observations have the full concurrence of Bhagwati J.

We are firmly of the opinion that where Art. 31C comes in Art. 14 goes out. There is no scope for bringing in Art. 14 by a side wind as it were, that is, by equating the rule of equality before the law of Art. 14 with the broad egalitarianism of Art. 39(b) or by treating the principle of Art. 14 as included in the principle of Art. 39(b). To insist on nexus between the law for which protection is claimed and the principle of Art. 39(b) is not to insist on fulfilment of the requirement of Art. 14. They are different concepts and in certain circumstances, may even run counter to each other. That is why the need for the immunity afforded by Art. 31C. Indeed there are bound to be innumerable cases where the narrower concept of equality before the law may frustrate the broader egalitarinism contemplated by Art. 39(b). To illustrate, a law which prescribes that every landholder must surrender twenty percent of his holding as well as a law which prescribes that no one shall hold land in excess of 20 acres, may both satisfy the ritual requirements of Art. 14. But clearly, the first would frustrate and the second would advance the broader egalitarian principle. We are, therefore, not prepared to accept the submission of Shri Sen, that any law seeking the protection of Art. 31C must not be a law founded on discrimination.

The next question for consideration is whether the Coking Coal Nationalisation Act is a law directing the policy of the State towards securing 'that the ownership and control of the material resources of the community are so distributed as best to subserve the common good'. Coal is, of course, one of the most important known sources of energy, and, therefore, a vital national resource. While coal is necessary as a source of energy for very many industries, coking coal is indispensable for the country's crucial iron and steel industry. So, Parliament gave the first priority to coking coal. First there was legislation in regard to the coking coal mines and then there was legislation in regard to all coal mines, coking as well as non-coking. By the Coking Coal Mines Nationalisation Act all coking coal mines known to exist in the country were nationalised. Coke oven plants which were part of the coking coal mines so nationalised being in or belonging to the owners of the mines also stood automatically nationalised. Other coke oven plants which did not belong to the owners of the mines but which were located near about the nationalised coking coal mines were also identified and nationalised by express provision to that effect. At that stage of the rationalisation and nationalisation of the coal mining industry, it

A was apparently thought necessary and sufficient to nationalise such coke oven plants as were in or belonged to the nationalised coking coal mines or as were identified as located near the nationalised coking coal mines, leaving out all other coke oven plants.

B The nationalisation of the coking coal mines and the coke oven plants was 'with a view to reorganising and reconstructing such mines and plants for the purpose of protecting, conserving and promoting scientific development of the resources of coking coal needed to meet the growing requirements of the iron and steel industry and for matters connected therewith or incidental thereto'. We do not entertain the slightest doubt that the nationalisation of the coking C coal mines and the specified coke oven plants for the above purpose was towards securing that 'the ownership and control of the material resource of the community are so distributed as best to subserve the common good'. The submission of Shri A.K. Sen was that neither a coal mine nor a coke oven plant owned by private parties was a 'material resource of the community'. According to the learned D counsel they would become material resources of the community only after they were acquired by the State and not until then. In order to qualify as material resources of the community the ownership of the resources must vest in the community i.e., the State. A legislation such as the Coking Coal Mines Nationalisation Act may be a legislation for the acquisition by the State of Coking Coal Mines and E coke oven plants belonging to private parties but it is not a legislation towards securing that the ownership and control of the material resources are so distributed as best to subserve the common good. Shri Sen invited our attention to the emphasis which Krishna Iyer, J. laid on the word "distribute" occurring in Art. 39(b) of the F Constitution in *State of Karnataka* v. *Ranganatha Reddy*[1] and Krishna Iyer, J's description of it as 'the key word' and the dissertation on 'the genius of the Article'. Shri Sen urged that if the word "Distribute" was given its proper emphasis, it would inevitably follow that material resources must belong to the community as a whole, that is to say, to the State or the public, before they could G be distributed as best to subserve the common good. Since those material resources which belonged to the State only could be distributed by the State, Shri Sen argued that material resources had first to be acquired by the State before they could be distributed. A law providing for acquisition was not a law for distribution. We are unable to appreciate the submission of Shri Sen. The expression H

(1) [1978] 1 S.C.R. 641 at 689.

'material resources of the community' means all things which are capable of producing wealth for the community. There is no warrant for interpreting the expression in so narrow a fashion as suggested by Shri Sen and confine it to public-owned material resources, and exclude private-owned material resources. The expression involves no dichotomy. The words must be understood in the context of the Constitutional goal of establishing a sovereign, socialist, secular, democratic republic. Though the word 'socialist' was introduced into the Preamble by a late amendment of the Constitution, that socialism has always been the goal is evident from the Directive Principles of State Policy. The amendment was only to emphasise the urgency. Ownership, control and distribution of national productive wealth for the benefit and use of the community and the rejection of a system of misuse of its resources for selfish ends is what socialism is about and the words and thought of Art. 39 (b) but echo the familiar language and philosophy of socialism as expounded generally by all socialist writers. To quote a recent writer, "Socialism is, first of all, a protest against the material and cultural poverty inflicted by capitalism on the mass of the people. It expresses a concern for the social welfare of the oppressed, the unfortunate and the disadvantaged. It affirms the values of equality, a classless society, freedom and democracy. It rejects the capitalist system and its competitive ethos as being inefficient in its USE OF RESOURCES— — — — —. They (Socialists) want a new system, whether by reform or revolution, in which productive wealth is OWNED and CONTROLLED by the community and USED FOR COMMUNAL ENDS".

We may also look at it this way. When we say that the State of Himachal Pradesh possesses immense forest wealth or that the State of Bihar possesses immense mineral wealth, we do not mean that the Governments of the States of Himachal Pradesh and Bihar own the forest and mineral wealth; what we mean is that there is immense forest and mineral wealth in the territories of the two States, whether such wealth is owned by the people as a whole or by individuals. Again, when we talk of, say, a certain area in Delhi being a Bengali, Punjabi or South Indian area, we do not mean that the area is owned by Bengalis, Punjabis or South Indians but only that large numbers of Bengalis, Punjabis or South Indians live in that area. When Art. 39 (b) refers to material resources of the community it does not refer only to resources owned by the community as a whole but it refers also to resources owned by individual members of the community. Resources of the community do not mean

A public resources only but include private resources as well. Nor do we understand the word "distribute" to be used in Art. 39 (b) in the limited sense in which Shri Sen wants us to say it is used, that is, in the sense only of retail distribution to individuals. It is used in a wider sense so as to take in all manner and method of distribution such as distribution between regions, distribution between industries, B distribution between classes and distribution between public, private and joint sectors. The distribution envisaged by Art. 39(b) necessarily takes within its stride the transformation of wealth from private-ownership into public ownership and is not confined to that which is already public-owned. The submissions of Shri Sen are well-C answered by the observations of Krishna Iyer, J. in *State of Karnataka* v. *Ranganatha Reddy* which we quote below :

> "The key word is distributed and the genius of the article, if we may say so, cannot but be given fully play as it fulfils the basic purpose of re-structuring the economic D order. Each word in the article has a strategic role and the whole article is a social mission. It embraces the entire material resources of the community. Its task is to distribute such resources. Its goal is so to undertake distribution as best to subserve the common good. It re-organizes by such distribution the ownership and control.
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> 'Resources' is a sweeping expression and covers not only cash resources but even ability to borrow (credit resources). Its meaning given in Black's Legal Dictionary is :
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> F
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> > "Money or any property that can be converted into supplied; means of raising money or supplies; capabilities of raising wealth or to supply, necessary wants; available means or capability of any kind".
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> G
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> And material resources of the community in the context of reordering the national economy embraces all the national wealth, not merely natural resources, all the private and public sources of meeting material needs, not H merely public possessions. Everything of value or use in the material world is material resources and the individual being a member of the community his resources are part

of those of the community. To exclude ownership of private resources from the coils of Article 39(b) is to cipherise its very purpose of redistribution the socialist way. A directive to the State with a deliberate design to dismantle feudal and capitalist citadels of property must be interpreted in that spirit and hostility to such a purpose alone can be hospitable to the meaning which excludes private means of production or goods produced from the instruments of production. Shri A.K. Sen agrees that private means of production are included in 'material resources of the community' but by some baffling logic excludes things produced. If a car factory is a material resource, why not cars manufactured? 'Material' may cover everything worldly and 'resources', according to Random House Dictionary, takes in 'the collective wealth of a country or its means of producing wealth : money or any property that can be converted into money; assets'. No further argument is needed to conclude that Articles 39(b) is ample enough to rope in buses. The motor vehicles are part of the material resour ces of the operators.

The next question if whether nationalisation can have nexus with distribution. Should we assign a narrow or spacious sense to this concept? Doubt less, the latter, for reasons so apparent and eloquent. To 'distribute', even in its simple dictionary meaning, is to 'allot, to divide into classes or into groups' and 'distribution' embraces 'arrangement, classification, placement, disposition, apportionment, the way in which items, a quantity, or the like, is divided or apportioned; the system of dispersing goods through out a community' (see Random House Dictionary). To classify and allocate certain industries or services or utilities or articles between the private and the public sectors of the national economy is to distribute those resources. Socially conscious economists will find little difficulty in treating nationalisation of transport as a distributive process for the good of the community. You cannot condemn the concept of nationalisation in our Plan on the score that Article 39(b) does not envelope it. It is a matter of public policy left to legislative wisdom whether a particular scheme of take-over should be undertaken".

A We hold that the expression 'Material resources of the community' is not confined to natural resources; it is not confined to resources owned by the public; it means and includes all resources, natural and man-made, public and private-owned.

B The learned counsel submitted that Art. 39(b) would be attracted if the industry as a whole was nationalised and not if only a part of the industry was nationalised. According to him, all the coke oven plants wherever they existed had to be nationalised and no privately owned coke oven plants could be allowed to be set up in the future, if Art. 39(b) was to be applied. We are unable to see C any force in this submission. The distribution between public, private and joint sectors and the extent and range of any scheme of nationalisation are essentially matters of State policy which are inherently in appropriate subjects for judicial review. Scales of justice are just not designed to weigh competing social and economic factors. In such matters legislative wisdom must prevail and judicial D review must abstain.

Another submission of the learned counsel was that the coke produced by the nationalised coke oven plants was always sold in the open market in the past and was never used by the steel industry because steel plants had their own captive coke ovens to meet their E requirements. That the coke produced by the nationalised coke oven plants was previously used and is even now being used by consumers other than those of the steel industry is neither here nor there since we are really concerned with the future for which the Act provides. The object of the Coking Coal Mines (Nationalisation) Act is to reorganize and reconstruct coking coal mines and coke F oven plants for the purpose of protecting, conserving and promoting scientific development of the resources of coking coal needed to meet the growing requirements of the Iron and Steel Industry and for matters connected therewith and incidental thereto. The requirements of the Iron and Steel Industry are recognized as '*growing* G *requirements*' and it is found necessary to protect, conserve and promote the scientific development of resources of coking coal so as to meet those growing requirements. The Act is contemplating the future. If the object of the Act is to provide for the future, we do not see what difference it makes if in the past or in the present, H the hard coke produced by the nationalised cocking coal mines is diverted elsewhere than the Iron and Steel Industry. The requirements of the Iron any Steel Industry which are to be met by the

nationalised coke oven plants are its growing requirements, that is to say, its future requirements. The design of nationalisation as it appears from the statute itself, including the preamble, is that the increasing future demands of the iron and steel industry are to be met by the nationalised coke oven plants and demands of other industry are to be met by the non-nationalised and new coke oven plants That the iron and steel industry is not now utilising the hard coke produced by the nationalised coke oven plants is not material since the industry is expected to expand, its requirements of hard coke are expected to grow and the nationalised coke oven plants are to be harnessed and be in readiness to meet those requirements.

In view of the foregoing discussion, we hold that the Coking Coal Mines (Nationalisation) Act, 1972 is a legislation for giving effect to the policy of the State towards securing the principle specified in Art. 39(b) of the Constitution and is, therefore, immune, under Art. 31(C), from attack on the ground that it offends the fundamental right guaranteed by Art. 14.

But we do not also see that there is any merit in the attack based on Art. 14. The facts that we are able to gather from the several affidavits filed in the case are like this : In the beginning, that is, when the Coking Coal Mines (Nationalisation) Act was passed, there were in existence seventy five coke oven plants. Later, that is, after the Nationalisation Acts came into force, eighty seven new coke oven plants came into existence. Now, out of the original seventy five coke oven plants, forty six were parts or units of the coking coal mines which were nationalised by the Coking Coal Mines (Nationalisation) Act. Those forty six coke oven plants stood nationalised as parts or units of the Coking Coal Mines. Another coke oven plant which was in the same position went out of the statutory nationalisation design by reason of the judgment of this Court in *Bharat Coking Coal Company* v. *P.K. Agarwala and another*, a judgment from which we have now retracted. We are told that the coke oven plant which was the subject matter of *Bharat Coking Coal Company* v. *P.K. Agarwala* has since been acquired by the Central Government by private treaty. Out of the remaining twenty six coke oven plants, twelve were identified as situated near nationalised Coking Coal Mines and so they were expressly specified in the 1972 Nationalisation Act and nationalised.

Of the remaining fourteen, eleven were parts or units of non-coking Coal Mines and they too stood nationalised when non-coking coal Mines also were nationalised by the Coal Mines Nationalisation Act, 1973. That leaves out three pre-existing coke oven plants unaccounted. After the passing of the Nationalisation Acts, eighty seven new coke oven plants were allowed to come into existence. Thus, finally, we have three pre-existing and eighty seven new coke oven plants outside the nationalisation scheme.

From the additional affidavit filed by P.R. Desai on behalf of Bharat Coking Coal Limited, it transpires that when the Coking Coal Mines (Nationalisation) Act, 1972 was passed, fourteen coke oven plants were left out as they were not situated in or about coking coal mines but they were expected to be nationalised when the coal mines in which they were located or to which they belonged were to be nationalised by the Coal Mines (Nationalisation) Act, 1973. In fact, eleven coke oven plants were so nationalised. But it was later discovered that three coke oven plants, Nichitpur Coke Oven Plant, Shri Gopinathpur Coke Oven Plant and Royal Tisra Coke Oven Plant did not belong to the owners of the collieries after which they were named and near which they were located. So they were not covered by the 1973 Nationalisation Act too. Quite obviously, legislation is now necessary to nationalise these three coke oven plants also. The process of nationalisation of the coal industry is, of course, not complete yet. Nationalisation of any industry or means of production may not be and need not be effected all at once. It may be achieved in stages. If in the process of nationalisation, some units are left out in the earlier stages, either because it is so planned or because of some mistake, we do not think we can possibly say that there has been a violation of Art. 14. Nor can we draw any inference of discrimination from the circumstance that subsequently eighty seven new coke even plants have been allowed to come up. Obviously, there is demand for hard coke from industries other than the iron and steel industry and, naturally, the state does not want to stifle those industries by making it difficult for them to obtain their requirements, especially since the production of the Nationalised Coke oven plants has first to meet the requirements of the iron and steel industry. What is important to note is that these eighty seven new coke oven plants are not situated in or about coal mines though they are in the coal field area, as indeed they are bound to be.

Shri Ashok Sen drew pointed attention to the earlier affidavit filed on behalf of Bharat Coking Coal Company and commented severally on the alleged contradictory reasons given therein for the exclusion of certain coke oven plants from the Coking Coal Mines (Nationalisation) Act. But, in the ultimate analysis, we are not really to concern ourselves with the hollowness or the self-condemnatory nature of the statements made in the affidavits filed by the respondents to justify and sustain the legislation. The deponents of the affidavits filed into Court may speak for the parties on whose behalf they swear to the statement. They do not speak for the Parliament. No one may speak for the Parliament and Parliament is never before the Court. After Parliament has said what it intends to say, only the Court may say what the Parliament meant to say. None else. Once a statute leaves Parliament House, the Court's is the only authentic voice which may echo (interpret) the Parliament. This the court will do with reference to the language of the statute and other permissible aids. The executive Government may place before the court their understanding of what Parliament has said or intended to say or what they think was Parliament's object and all the facts and circumstances which in their view led to the legislation. When they do so, they do not speak for Parliament. No Act of Parliament may be struck down because of the understanding or misunderstanding of Parliamentary intention by the executive government or because their (the Government's) spokesmen do not bring out relevant circumstances but indulge in empty and self-defeating affidavits. They do not and they cannot bind Parliament. Validity of legislation is not to be judged merely by affidavits filed on behalf of the State, but by all the relevant circumstances which thec ourt may ultimately find and more especially by what may be gathered from what the legislature has itself said. We have mentioned the facts as found by us and we do not think that there has been any infringement of the right guaranteed by Art. 14.

In the Writ Petition filed by Sanjeev Coking Coal Company, a question has been raised about the identity of the coke oven plant, sought to be taken over. Item 9 of the Second Schedule to the Coking Coal Mines (Nationalisation) Act is as follows :—

Sl. No.	Name of the coke oven plant	Location of the coke oven plant	Name & address of the owners of the coke oven plant
x	xx	xxx	xxx
9.	New Sudamdih	New Sudamdih Colliery, Post office Patherdih, Distt. Dhanbad.	Sanjeev Coke Manufacturing Company, Care of H. D. Adjmera, Post Office Patherdih District Dhanbad.
x	xx	xxx	xxx

The submission of the petitioner was that Item 9, which was the new Sudamdih Coke Oven Plant did not belong to the petitioners, but non-the-less they were wrongly shown as the owners. Taking advantage of the error, that is, the wrong description of the owner, the Central Government had taken over the coke oven plant belonging to them, though it was not the New Sudamdih coke oven plant at all. The submission of the petitioners would suggest that there were two coke oven plants—one belonging to the New Sudamdih mine and the other belonging to the Sanjeev Coking Coal Company and that as a result of the mixing up of the names of the plant and owner, the coke oven plant belonging to the petitioners has been taken over. The respondents have denied that there were two coke oven plants—one belonging to the owners of the mine and another belonging to the Sanjeev Coking Coal Company. It is submitted on behalf of the respondents that there was only one coke oven plant and that as it did not belong to the owners of the mine, it had to be included separately in the Second Schedule. If it was part of the mine or if it belonged to the owners of the mine, there was no need to include it separately in the Second Schedule. That there has never been any real doubt about the identity of the coke oven plant that was meant to be taken over and in fact taken over is clear from the very statements in the affidavit filed on behalf of the petitioners. In paragraph 19 of the petition, it is stated: "Your peti-

tioner's coke oven plant is included in the Second Schedule in Item No. 9 thereof." In paragraph 23, it is stated : "Your petitioner states that your petitioner has never been the owner of any coke oven plant by the name of New Sudamdih, the name of the coke oven plant of your petitioner is Sanjeev Coke Manufacturing Company's coke oven plant. Although the said coke oven plant is situated near New Sudamdih Colliery as every coke oven plant has got to be situated near a colliery, the address of the coke oven plant of your petitioner is not New Sudamdih Colliery. Your petitioner states that the name of your petitioner's coke oven plant has been wrongly given in the second schedule to the said Act." We do not think there is any possible doubt about the identity of the coke oven plant shown as Item No. 9 in the second schedule to the Coking Coal Mines (Nationalisation) Act. It is the coke oven plant belonging to the Sanjeev Coking Coal Company.

One point which was touched by Shri A. K. Sen, the learned counsel for Sunil Kumar Ray, was that in any event the coaltar plant of the petitioners did not vest in the Government, as a result of the Nationalisation Act. Shri Sen, however, conceded that the definition of coke oven plant was wide enough to include the coaltar plant. Therefore, he did not press the point.

In the result, the Writ Petitions of Sanjeev Coking Coal Company and Sunil Kumar Ray are both dismissed with costs, quantified at Rs. 10,000/- in each case.

AMARENDRA NATH SEN, J. I have had the benefit of reading in advance the judgment of my learned Brother Chinnappa Reddy, J. All the material facts have been set out in the judgment of my learned brother who has also carefully considered all the arguments which were advanced from the Bar. It does not, therefore, become necessary for me to reproduce the same in this judgment.

After tracing the history of the relevant Acts and analysing the provisions thereof my learned brother has held :—

> "The final result of these statutes is that all coal mines known to exist in the country are nationalised, whether they are coking coal mines or non-coking coal mines.

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> Along with them coke oven plants in or belonging to the mines also stand nationalised. In addition twelve specified coke oven plants not belonging to the owners of the mines but known to exist near about the mines are also nationalised. All other coke oven plants are left out of the scheme of nationalisation. The design revealed by the Acts is that mining of coal is reserved entirely for the public sector, and as, all existing coal mines, whether coking coal or non-coking coal, are nationalised and the management of mines which may be discovered in the future is automatically taken over by the Central Government until nationalised by appropriate legislation; and, the manufacture of hard coke from coal is reserved for the joint sector and so all coke oven plants belonging to or in coal mines and twelve specified coke oven plants are nationalised while all other coke oven plants are left for private exploitation; there is no ban against any new coke oven plants being set up."

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I entirely agree with these observations. In these writ petitions, the validity of the inclusion of the coke oven plants belonging to the petitioners in the second schedule has been challenged mainly on the ground that other coke oven plants standing in exactly the same position as the coke oven plants of the petitioners were left out and had not been nationalised. The petitioners complain that there has been a clear violation of Art. 14 of the Constitution. The principal answer of the Central Government to the charge of discrimination is that the provisions of the Act are immune from the challenge based on the ground of discrimination in view of the protection afforded by Art. 31C of the Constitution. The Central Government also contends that the inclusion of the coke oven plants of the petitioners in the second schedule is clearly justified without any infringement of Art. 14 of the Constitution.

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My learned brother on a consideration of the facts and circumstances of the case and the submissions made on behalf of the respective parties has come to the conclusion that there is no merit in the attack based on Art. 14. He has also held that Art. 31C of the Constitution will in any event afford a clear answer to the charge of discrimination, if there be any; and he has further expressed the

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view that the declaration in the instant case that the law is for giving effect to the policy of the State towards securing "that the ownership and control of the material resources of the community are so distributed as to best subserve the common good" as enumerated in Art. 39 (b) of the Constitution, is clearly justified.

I must frankly confess that I had doubts in my mind as to the legality of the nationalisation of the coke oven plants of the petitioners in view of the discrimination alleged. But on an anxious and very careful consideration of the matter I have come to the conclusion that in the facts and circumstances of this case it cannot be said that there has been any such discrimination as infringe Art. 14 of the Constitution.

My learned brother Chinnappa Reddy, J. in his judgment observed :—

> "Coke oven plants which were part of the coking coal mines as nationalised being in or belonging to the owners of the mines also stood automatically nationalised. Other coke oven plants which did not belong to the owners of the mines but which were located near about the nationalised coking coal mines were also identified and nationalised by express provision to that effect. At that stage of the rationalisation and nationalisation of the coal mining industry, it was apparently thought necessary and sufficient to nationalise such coke oven plants as were in or belonged to the nationalised coking coal mines or as were identified as located near the nationalised coking coal mines, leaving out all other coke oven plants.
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> The nationalisation of the coking coal mines and the coke oven plants was 'with a view to reorganising and reconstructing such mines and plants for the purpose of protecting, conserving and promoting scientific development of the resources of coking coal needed to meet the growing requirements of the iron and steel industry and for matters connected therewith or incidental thereto'. We do not entertain the slightest doubtthat the nationalisation

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of the coking coal mines and the specified coke oven plants for the above purpose was towards securing that 'the ownership and control of the material resources of the community are so distributed as best to subserve the common good.'

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I agree with these observations. To my mind, therefore, there was a logical basis for the nationalisation of the coke oven plants of the petitioners, leaving out a few and I am not satisfied that there has been any rank or arbitrary discrimination in violation of Art. 14. I am further of the opinion that even if on the basis of a doctrinaire and formalistic attitude, it could be said that Art. 14 had been infringed, Art. 31C of the Constitution and the appropriate declaration, in the peculiar facts and circumstances of this case, would provide the necessary remedy for such violation, if there be any. Applicability of Art. 31C and the validity of the declaration will, to my mind, depend on the particular facts and circumstances of a case. In the present case as the State has enacted the law in directing its policy towards securing the principles formulated in Art. 39 (b) of the Constitution, Art. 31C is properly attracted and the declaration is valid.

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The decision of this Court in *Minerva Mills* case relied on by Mr. Sen, is not of any great assistance and in the view that I have taken it does not become necessary for me to refer to the same. It has been represented to us that the said decision is pending review in this Court. I, therefore, refrain from dealing with the said decision and from making any observations or comments on the same.

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I agree with my learned brother that these writ petitions must fail and should be dismissed. Costs generally follow event. To my mind, however, when a citizen is deprived of his property by a State action and feels aggrieved by the act of the State and approaches the Court and if it cannot be said that his grievance is absolutely frivolous, the citizen in such a case should not be saddled with the costs simply because the Court finds that his grievance has no valid legal basis. To my mind, it cannot be said that the Writ petitions filed by the petitioners were vexatious particularly in view

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of the earlier decision of this Court in *Bharat Coking Coal Ltd.* v. *P.K. Agarwala*.[1] I would, therefore, dismiss these writ petitions without any order as to costs. A

S.R. *Petition dismissed.* B

(1) [1979] 1 S.C.R. 609.