REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE/ORIGINAL JURISDICTION

CIVIL APPEAL NO.1012 OF 2002

PROPERTY OWNERS' ASSOCIATION & OTHERS ...APPELLANTS

VERSUS

STATE OF MAHARASHTRA & OTHERS ...RESPONDENTS

WITH

SPECIAL LEAVE PETITION (CIVIL) NO.4367 OF 1992

SPECIAL LEAVE PETITION (CIVIL) NO.5204 OF 1992

SPECIAL LEAVE PETITION (CIVIL) NO.5777 OF 1992

SPECIAL LEAVE PETITION (CIVIL) NOS.6191-6192 OF 1992

SPECIAL LEAVE PETITION (CIVIL) NO.7950 OF 1992

SPECIAL LEAVE PETITION (CIVIL) NO.8797 OF 1992

SPECIAL LEAVE PETITION (CIVIL) NO.6744 OF 1993

SPECIAL LEAVE PETITION (CIVIL) NO.2303 OF 1995

SPECIAL LEAVE PETITION (CIVIL) NO.13467 OF 1995

WRIT PETITION (CIVIL) NO.934 OF 1992

WRIT PETITION (CIVIL) NO.660 OF 1998

WRIT PETITION (CIVIL) NO.342 OF 1999

WRIT PETITION (CIVIL) NO.469 OF 2000

WRIT PETITION (CIVIL) NO.672 OF 2000

WRIT PETITION (CIVIL) NO.66 OF 2024

J U D G M E N T

NAGARATHNA, J.

Table of Contents

Preface:

One of the greatest American Judges, Justice Benjamin N. Cardozo in his book "*The Nature of Judicial Process, 1932"* wrote:

> "The great tides and currents which engulf the rest of men do not turn aside in their course and pass the Judges by."

1.1 In the field of constitutional law, progressive and dynamic interpretation of the Constitution in light of socio-economic developments in the Country must dominate. To such an organic text as the Constitution of India, a flexible interpretation must be given which the changing times require. Neither can there be canonization of the socialist policy followed by the State nor can the principles akin to *laissez faire* economics be ignored at a time when they have been resurrected by the State itself to suit the developments of the economy in the Country and for the benefit of the people of India. Chief Justice Earl Warren's statement is apposite as a reminder to our judicial conscience: (Fortune, November 1955)

> "Our Judges are not monks or scientists, but participants in the living stream of our national life, steering the law between the dangers of rigidity on the one hand and of formlessness on the other. Our system faces no theoretical dilemma but a single continuous

problem: how to apply to ever-changing conditions the never-changing principles of freedom."

1.2 Can principles of liberalization, privatisation and globalisation adopted in India since the year 1991, reforms in the economy and structural changes that have been brought about in these last three decades hold a mirror against the socio-economic policies that were followed in the decades immediately after India attained independence? As a result, can the judgments of this Court which interpreted the Constitution to be compatible with the policies of the State then be considered to be "*a disservice to the broad and flexible spirit of the Constitution*" and the authors of the said judgments being critiqued today?

1.3 I have perused the erudite and comprehensive opinion authored by Hon'ble the Chief Justice of India Dr Dhananjaya Y. Chandrachud on the questions referred to this nine-Judge Bench. I have also perused the opinion proposed by learned brother Dhulia, J.

The letter and spirit of the judgment of the learned Chief Justice has ignited me to pen a separate opinion, concurring with his opinion on certain issues while giving my own views on

certain other aspects which is also my response to learned brother Dhulia, J.'s views.

1.4 How does ownership and control of "material resources privately owned" transform into the "material resources of the community" for distribution as best to subserve the common good? This is the thrust of my opinion.

Reference of questions to nine-Judge Bench:

2. The genesis of the reference of the questions for consideration could be traced to the order dated 01.05.1996 passed by a three-Judge Bench of this Court reported in ***Property Owners' Association vs. State of Maharashtra, (1996) 4 SCC 49 ("Property Owners' Association")***. The said order was followed by an order dated 21.03.2001 passed by a five-Judge Bench of this Court in the very same case (SLP (C) No.5302 of 1992 with connected matters); which for immediate reference is extracted as under:

> "In these cases the main challenge is to constitutional validity of Chapter-VIIIA which was inserted in 1986 in the Maharashtra Housing and Area Development Act, 1976 which, *inter alia*, provided for the acquisition of certain properties on payment of hundred times the monthly rent for the premises. By the said amendment,

Section – 1A was also inserted in that Act and it contains a declaration that the Act is for giving effect to the policy of the State towards securing the principles specified in Clause(b) of Article 39 of the Constitution of India. In view of Article 31C of the Constitution, the contention of the State was that the validity of any part of the statute on the ground that it violated Article 14 or 19 of the Constitution, was not permissible.

The case was heard by a Bench of Three Judges. At that time on behalf of the appellants a contention was sought to be raised, *inter alia*, to the effect that Article 31C did not survive because of the events subsequent to the decision in ***Kesavananda Bharati's case 1973 (4) SCC 225.*** It was also submitted before that Bench that the doctrine of revival, as it applied to ordinary statutes, did not apply to the Constitutional Amendment and when a part of the Forty-second Amendment, which amended Article 31C, had been held to be invalid it did not result in the automatic revival of the unamended Article 31C.

In view of the aforesaid contention which was raised, by order dated 1st May, 1996 reported in 1996 (4) SCC 49, the matter was referred to a larger Bench of not less than five Judges for hearing and deciding these matters.

We heard the counsel at length on various issues which arise in these cases. One of the points which arises for consideration relates to the interpretation of Article 39(b) of the Constitution. In ***State of Karnataka and Anr. Etc. vs. Shri Ranganatha Reddy and Anr. Etc. (1978) 1 SCR 641*** validity of Karnataka Contract Carriages (Acquisition) Act, 1976 was challenged and the question which arose was whether the State Government could acquire and then transfer counter-signed portions of Inter State permits to Road Transport Corporation. Two judgments were delivered in that case. Krishna Iyar, J. for himself and two other learned Judges, while concurring with the decision of Untwalia, J. (with whom three other Judges agreed), interpreted Article 39(b) of

the Constitution and then came to the conclusion that the Act had direct nexus with Article 39(b) and by virtue of Article 31C its validity could not be challenged on the ground of its being violative of Article 14 or 19(1) (f) of the Constitution. Untwalia, J. in his judgment observed that "we do not consider it necessary to express any opinion with reference to Article 31C read with Clauses (b) and (c) of Article 39 of the Constitution. Our learned brother Krishna Iyer, J. has prepared a separate judgment especially dealing with this point. We must not be understood to agree with all that he has said in his judgment in this regard".

The need to interpret Article 39(b) again arose in the case of ***Sanjeev Coke Manufacturing Company vs. Bharat Coking Coal Ltd. and Anr. (1983) 1 SCR 1000.*** While upholding the validity of Coking Coal Mines (Nationalisation) Act, 1972 and the two other connected enactments the Constitutional Bench adopted the interpretation of Article 39(b) as enunciated by Krishna Iyer, J. in ***Ranganatha Reddy's case (supra).*** This interpretation has also been followed by a Division Bench of this Court in ***State of Maharashtra and Anr. vs. Basantibai Mohanlal Khetan and Ors. (1986) 2 SCC 516.***

The interpretation put on Article 39(b) by Krishna Iyer, J. in ***Ranganatha Reddy's case*** was not specifically assented to in the majority decision but in ***Sanjeev Coke's case*** (supra) it is the observations in the judgment of Krishna Iyer, J. which have been followed.

Having heard the counsel at length, we are of the opinion that the views expressed in ***Sanjeev Coke's case*** required reconsideration keeping in view the importance of the point in issue, namely, the interpretation of Article 39(b) it will appropriate if these cases are heard by a larger Bench of not less than Seven Judges.

The papers be laid before the Hon'ble the Chief Justice for appropriate orders."

2.1 Later, on 20.02.2002, a seven-Judge Bench passed an order referring the matter to a larger Bench. That is how these cases are before this nine-Judge Bench. For ease of reference the order dated 20.02.2002 is extracted as under:

> "A Bench of five learned Judges has referred to a Bench of seven learned Judges these matters for the reason that it was of the opinion that the view expressed in the case of ***Sanjeev Coke Manufacturing Company vs. Bharat Coking Coal Ltd. & Anr.*** ***(1983 (1) SCC 147)*** required consideration.
>
> Put shortly, the question is as to the interpretation of Article 39(b) of the Constitution which speaks of the distribution for the public good of the ownership and control of the material resources of the community. In ***State of Karnataka vs. Ranganatha Reddy & Anr. (1978 (1) SCR 641),*** two judgments were delivered. In the judgment delivered by Krishna Iyer, J., speaking for himself and two other judges, the view was taken that material resources of the community covered all resources, natural and man-made, publicly and privately owned. The other judgment, delivered by Untwalia, J., on behalf of himself and three other Judges, did not consider it necessary to express any opinion with regard to Article 39(b); it was, however, made clear in this, the majority judgment that the learned Judges did not subscribe to the view taken in respect of Article 39(b) by Krishna Iyer, J.
>
> The view taken by Krishna Iyer, J. in the case of Ranganatha Reddy was affirmed by a Constitution Bench in the case of ***Sanjeev Coke*** (aforementioned).
>
> Now, in the course of the argument before us, the learned Solicitor General, appearing for the Union of India and the State of Maharashtra, has drawn our attention to the judgment of a Bench of nine learned

Judges in the case of ***Mafatlal Industries Ltd. vs. Union of India (1997 (5) SCC 536).*** Speaking for himself and four other Judges, Jeevan Reddy, J. said, "That the material resources of the community are not confined to public resources but include all resources, natural and man-made, public and private owned is repeatedly affirmed by this Court.", and reference was made to the cases of ***Ranganatha Reddy, Sanjeev Coke and State of Tamil Nadu vs L. Abu Kavur Bai & Ors. (1984 (1) SCC 515).***

Having given due consideration, we are of the opinion that this interpretation of Article 39(b) requires to be reconsidered by a Bench of nine learned Judges: we have some difficulty in sharing the broad view that material resources of the community under Article 39(b) covers what is privately owned. G

Given that there is some similarity in the issues here involved and in the case of ***I.R. Coelho vs. State of Tamil Nadu (1999 (7) SCC 580)*** which already stands referred to a larger Bench, preferably of nine learned Judges, we are of the view that these matters should be heard by a Bench of nine learned Judges immediately following the hearing in the case of I.R.Coelho.

Given the importance of the matter and the fact that constitutional issues are involved in I.R.Coelho as also in this case, we direct that parties shall file skeleton arguments within eight weeks.

The papers shall be placed before the Hon'ble the Chief Justice for appropriate directions."

The aforesaid orders of reference provide the canvas in respect of which the issues have to be considered and answered. Therefore, the facts narrated by the learned Chief Justice will not

have any relevance to the merits of the dispute *vis-à-vis* the provisions of the Act under challenge.

2.2 The learned Chief Justice has framed and considered two broad issues in his proposed judgment, which are extracted hereinunder:

> "a. Whether Article 31C (as upheld in ***Kesavananda Bharati***) survives in the Constitution after the amendment to the provision by the forty-second amendment was struck down by this Court in ***Minerva Mills***?
>
> b. Whether the interpretation of Article 39(b) adopted by Justice Krishna Iyer in ***Ranganatha Reddy*** and followed in ***Sanjeev Coke*** must be reconsidered. Whether the phrase 'material resources of the community' in Article 39(b) can be interpreted to include resources that are owned privately and not by the State?"

Re: First issue:

3. I respectfully concur with the opinion expressed by the learned Chief Justice on the first issue. I am in complete accord with the reasoning that, in the absence of any indication that Parliament intended a "repeal without substitution," the original text of Article 31C as it existed before the Constitution (Forty-Second) Amendment Act, 1976 must be reinstated following the invalidation of the said amendment. In ***Minerva Mills Ltd. vs.***

Union of India, AIR 1980 SC 1789 ("Minerva Mills"), when the amendment was struck down for deviating from constitutional principles, the logical consequence that must follow the declaration of invalidity of the amendment is to revert to those original principles which the amendment deviated from. This is by giving effect to Article 31C, to the extent it was upheld in ***H.H. Kesavananda Bharati Sripadagalvaru vs. State of Kerala, AIR 1973 SC 1461 ("Kesavananda Bharati")***. This represents a return to the Constitution's original text, aligning with the basic structure of the Constitution. Consequently, invalidating Section 4 of the Forty-Second Amendment should automatically result in the restoration of the unamended Article 31C.

The Constitution of India: A living Tree:

4. Before dealing with the second issue, I would like to preface the same with the living tree doctrine of our Constitution.

4.1 Emile Durkheim, the French sociologist who formally established the academic discipline of Sociology and is commonly cited as one of the principal architects of modern Social Science, likened society to a living organism. Given that Constitutions are

built to clothe societies with order, it is only logical that they be treated as living organisms capable of growth and change. It involves an understanding of the Constitution as an evolving and organic instrument. For the living tree theorists, it matters little what the intentions were at the time of Constitution making. What matters the most is how the Constitution can be interpreted to contain rights in their broadest realm. The doctrine suggests that the past plays a critical but non-exclusive role in determining the contents of the Constitution. Although the rights and freedoms under a Constitution may be rooted in the past and historically determined, they cannot be considered to be frozen by particular historical anomalies.

4.2 As per Woodrow Wilson, former President of the United States of America, *"a Constitution must of necessity be a vehicle of life; that its substance is the thought and habit of the nation and as such it must grow and develop as the life of the nation changes."*

4.3 In India, the living tree doctrine has been largely inspired from Canadian jurisprudence. Its origin in the judicial record

seems to be in a 1938 Federal Court judgment where the then Governor-General of India referred a question to the Court relating to the constitutionality of the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938. While expanding upon what canons of interpretation and construction the Court would use to answer the question, Sir Maurice Gwyer CJ stated that *"a Constitution of government is a living and organic thing, which of all instruments has the greatest claim to be construed ut res magis valeat quam pereat (in a manner in which it becomes operative rather than null)."* The Court urged that in the case of federal constitutions, *"a broad and liberal spirit should inspire those whose duty it is to interpret it"* but they were not *"free to stretch or pervert the language of the enactment to further any interest."*

4.4 Subsequently, in the landmark judgment of ***State of West Bengal vs. Anwar Ali Sarkar, AIR 1952 SC 75 ("Anwar Ali Sarkar")***, this Court struck down the West Bengal Special Courts Act, 1950, holding that it violated Article 14 of the Constitution. Vivian Bose J. in a separate judgment stated that provisions of the Constitution must not be interpreted *"without*

regard to the background out of which they arose." Justice Bose articulated that the Constitution must be interpreted progressively to "*give life to a great nation and order its being,"* and not in a manner as would relaunch *"discarded tools."* While being conscious that people who forget their history are condemned to repeat it, he emphasised that a Constitution must be interpreted having regard not only to the historical circumstances under which it emerged, but also in a manner as would *"mould the future as well as guide the present."* It may be apposite to quote a paragraph from Justice Bose's erudite judgment, which brings out many elements embodied in the living tree doctrine:

> "*I cannot blot out their history and omit from consideration the brooding spirit of the times. They are not just dull, lifeless words static and hide-bound as in some mummified manuscript, but, living flames intended to give life to a great nation and order its being, tongues of dynamic fire, potent to mould the future as well as guide the present. The Constitution must, in my judgment, be left elastic enough to meet from time to time the altering conditions of a changing world with its shifting emphasis and differing needs."*

4.5 Almost two decades later, in ***Kesavananda Bharati,*** the Court utilised the *living* metaphor to decide upon the amending

powers of the Parliament. The Court held that the Parliament could amend the Constitution even to abridge fundamental rights, ***"as long as the basic structure of the Constitution is retained."*** In reaching this conclusion, the Court referred to multiple iterations of the understanding of the *living constitution*. Therefore, justification for solidifying the constituent power of the Parliament to ensure flexibility of the Constitution, was found in the *living* Constitution metaphor.

4.6 In ***Supreme Court Advocates-On-Record Association vs. Union of India, (1993) 4 SCC 441 ("Supreme Court Advocates-On-Record Association")***, this Court applied this metaphor while discussing the independence of judiciary. This Court, in addition to calling it an ***"ever evolving organic document,"*** applied the *living tree* metaphor to the Indian Constitution as follows:

> *"The Framers of the Constitution planted in India a living tree capable of growth and expansion within its natural limits. It lives and breathes and is capable of growing to keep pace with the growth of the country and its people."*

4.7 Further, in ***Zee Telefilms Ltd. vs. Union of India, AIR 2005 SC 2677 ("Zee Telefilms")***, the *living* Constitution

metaphor was employed in adopting an expansive understanding of the term "State" as appearing under Article 12 of the Constitution. It was held that the term "other authorities" was included under Article 12 at the time of framing of the Constitution with a limited objective of granting judicial review of actions of such authorities which are created under the Statute and which discharge State functions. The schism between the private and the public had become obscure with time and the Court must take note of such changes. Therefore, the Court concluded that the position of various institutions in the continuum between the private and the public need to be revaluated having regard to the organic blurring of margins of the public-private dichotomy. It was laid down that the Constitution should be interpreted in light of our whole experience and not merely in that of what was the state of law at the commencement of the Constitution. That the Constitution was a "living organism" capable of change, with changing circumstances.

4.8 In further expansion of fundamental rights, this Court in ***Justice K.S. Puttaswamy (Retd.) vs. Union of India***, ***(2017) 10 SCC 1 ("Puttaswamy")***, held that privacy was essential to the

exercise of most fundamental rights and hence, must itself be regarded as a fundamental right. While engaging in such an expansive interpretation of the constitutional provisions, the Court described the Constitution as a "living instrument" that was resilient enough to ensure its continued relevance. The Court opined that the Constitution is a *"sacred living document susceptible to appropriate interpretation of its provisions based on changing needs."* This Court referred to a "brooding spirit" with several qualities which inspired the Constituent Assembly and was given the corporeal form of the Constitution of India.

4.9 The living tree metaphor is also evident in several other decisions of this Court, such as, ***National Legal Services Authority vs. Union of India, (2014) 5 SCC 438***; ***Joseph Shine vs. Union of India, (2019) 3 SCC 39; Navtej Johar vs. Union of India, (2018) 10 SCC 1; Anuj Garg vs. Hotel Association of India, AIR 2008 SC 63; Secretary, Ministry of Defence vs. Babita Punia, (2020) 7 SCC 469; Lt. Colonol Nitisha & Others vs. Union of India, AIR 2021 SC 1797.***

4.10 Thus, we see that throughout the years, this Court has applied the *living* metaphor in the adjudication of a wide spectrum of controversies. While toying with different variants of the *living* Constitution metaphor, the Court has consistently emphasised on two of the principal elements of the *living tree* doctrine- the original understanding in the roots of the constitutional tree; and the possibility of growth and development, within its natural limits.

4.11 Such is the balance between the two contesting theories of originalism and the living Constitution. Dr. Jack M. Balkin, a Professor at Yale Law School, contends that the basic idea of constitutional interpretation is that interpreters must be faithful to the original meaning of the constitutional text and to the principles that underlie the text. But, he suggests, fidelity to the *original meaning* does not require fidelity to the *original expected application*. Therefore, original expected application is merely evidence of how to apply text and principle. He explains,

> *"Each generation is charged with the obligation to flesh out and implement text and principle in their own time. They do this through building political institutions, passing legislation, and creating precedents, both judicial and nonjudicial. Thus, the method of text and principle is*

a version of framework originalism and it views living constitutionalism as a process of permissible constitutional construction."

4.12 I find that this idea is most useful in interpreting Directive Principles of State Policy. Evidently, with great foresight, the framers of our Constitution did not limit either themselves or succeeding generations to any one economic school of thought. In fact, the speeches of Dr. Ambedkar in the Constituent Assembly evince that while the economic philosophy adopted by the Government may swiftly pass from one generation to another, the ideal of economic democracy finds firm place within our Constitution. There is no strict economic *diktat* in the Constitution for the Parliament to follow; however, the Directive Principles act as the principles or goals that the Parliament must regard on its path to progress.

4.13 Krishna Iyer, J. adjudicated on the construction of "material resources of the community" in the backdrop of a constitutional, economic and social culture that gave primacy to the State over the individual in a broad-sweeping manner. As a matter of fact, the 42nd Amendment had, *inter alia,* inserted the word "Socialist" into the Preamble to the Constitution. By

abundant caution, I must observe that "Socialist" is starkly distinguished from "Socialism", which is an economic policy of organising society and the political economy of the country. Regardless, on a conspectus understanding of all contributing factors such as the discussions in Constituent Assembly and the tide of the times that found in the broad house of economic democracy a legitimate State policy, can we castigate former judges and allege them with "disservice" only for reaching a particular interpretive outcome?

Re: Second issue:

Submissions:

5. Learned senior counsel and learned counsel for the intervenors contended that Article 39(b) read with Article 31C give primacy to the Directive Principles as opposed to the fundamental rights guaranteed under Articles 14 and 19. That unless a material resource is transformed as a "material resource of the community", "the ownership and control" of the said material resource cannot be distributed by the State. That there is a distinction between "material needs" and "material resources of the community". An individual's resources cannot be a part of the resources of the

community. In other words, merely because an individual is a member of the community, his resources cannot be construed as resources of the community. That "material resources of the community" must produce goods and services for the community or wealth for the community. The opinion of Krishna Iyer, J. in ***State of Karnataka vs. Ranganatha Reddy, AIR 1978 SC 215 ("Ranganatha Reddy")*** and the judgment in ***Sanjeev Coke Manufacturing Co. vs. Bharat Coking Coal Ltd. (1983) 1 SCC 147 : AIR 1983 SC 239 ("Sanjeev Coke")*** were entered in the context of nationalisation and cannot be applied in other contexts.

It was further submitted that Article 39(b) deals with "distribution of ownership and control of the material resources of the community". It does not deal with acquisition of privately owned material resources for the purpose of subsequent distribution by the State.

5.1 Learned Attorney General, Sri R. Venkataramani, leading the arguments on behalf of the respondents and intervenors submitted that under Article 39 (b) and (c), there cannot be a narrow reading of the expression "material resources of the community". That there cannot be any limitation on the said

expression. Sri Rakesh Dwivedi, learned senior counsel appearing for the State of West Bengal contended that the expression "material resources" excludes only resources which are meant for personal use; otherwise all other resources would come within the scope and ambit of the aforesaid expression. The term "community" cannot be equated with State/Government. It is a term of wider import and encompasses all citizens who would form a community of individuals. Similarly, the expression "so distributed as best to subserve the common good" must be given the widest interpretation. Also, Article 39 (b) and (c) must be read in the context of Article 38 which Articles are meant to achieve economic justice. Sri Gopal Sankarnarayan contended that if "ownership and control of material resources of the community" excluded private ownership, there would be no challenge under Article 19 and the protection of Article 31C then be redundant.

5.2 With regard to the second issue the learned Chief Justice in paragraph 202 has raised the following two questions after an elaborate discussion of the relevant judgments on the subject:

a. Do all privately owned resources fall within the ambit of "material resources of the community"?

b. Is the acquisition of private resources by the State a form of distribution recognised by Article 39(b)?

5.3 It is observed by the learned Chief Justice that Article 39(b) is not a source of legislative power and the power to acquire private resources, in certain situations, continues to be traceable to other provisions in the Constitution, including the sovereign power of eminent domain, which is in Entry 42 - List III of the Seventh Schedule of the Constitution. Further, even if a law is in furtherance of Article 39(b) and protected by Article 31C, it is susceptible to a challenge to its constitutionality under other provisions of the Constitution including Article 300A.

5.4 In the backdrop of the above principles, the question whether all private properties are covered within the ambit of Article 39(b) has been considered. There can be no cavil with regard to the five significant elements emerging from Article 39(b), but the question considered is, whether, privately owned resources fall within the ambit of the phrase "material resources of the community". In the context of the definition of the said expression, it is noted that four opinions, namely, of Krishna Iyer,

J. in ***Ranganatha Reddy;*** Chinnappa Reddy, J. speaking for the Bench in ***Sanjeev Coke;*** Fazl Ali, J. speaking for the Bench in ***State of Tamil Nadu vs. L. Abu Kavur Bai, (1984) 1 SCC 515 ("Abu Kavur Bai")*** and Venkataramiah, J. speaking for the Bench in ***State of Maharashtra vs. Basantibai Mohanlal Khetan, (1986) 2 SCC 516 ("Basantibai")*** are doubted in the reference before us. Therefore, the proposed judgment of the learned Chief Justice considers the meaning of the expression "material", "resources" and "community" independently to conclude that none of the definitions indicate that the phrase excludes "private property" from the provision. However, a distinction is sought to be made between the following two propositions: holding that *"private property"* may form part of the phrase "material resources of the community" on the one hand and that "*all private properties"* fall within the net of the phrase on the other hand.

5.5 It is observed by the learned Chief Justice that the opinion by Krishna Iyer, J. in ***Ranganatha Reddy*** and the consequent observations in ***Sanjeev Coke*** by Chinnappa Reddy, J. fell into error as the said judgments cast the net wide by holding that

all resources which meet "material needs" are covered by the phrase. That in ***Sanjeev Coke,*** it was observed by this Court that "all things capable of producing wealth of the community" fall within the ambit of the phrase. In other words, all resources of the individuals are consequentially the resources of the community.

5.6 While interpreting Article 39(b) of the Constitution, it is opined by the learned Chief Justice that if Article 39(b) was meant to include **all** resources owned by an individual, it would state that the "ownership and control of **resources** is so distributed as best to subserve the common good". Similarly, if the provision were to exclude privately owned resources, it would state "ownership and control of **resources of the State** ...." instead of its present phrasing. The use of the word "of the community" rather than "of the State" indicates a specific intention to include *some* privately owned resources. Therefore, it is opined that not **all** privately owned resources fall within the ambit of the phrase. However, privately owned resources are not excluded as a class and some private resources may be covered. Of course, they must be a "material" resource and they must be

"of the community". Therefore, according to the learned Chief Justice the judgments doubted in the reference order are incorrect to the extent that they hold that "all resources" of an individual are part of the community and thus, all private property is covered by the phrase "material resources of the community".

5.7 I again have no cavil to the aforesaid discussion but what follows is the observation of the learned Chief Justice that the interpretation given by Krishna Iyer, J. in ***Ranganatha Reddy*** and Chinappa Reddy, J. in ***Sanjeev Coke,*** endorse a particular economic ideology and structure for our economy. That in substance the authors of those judgments namely, Krishna Iyer, J. in ***Ranganatha Reddy*** and ***Bhim Singhji vs. Union of India, AIR 1981 SC 234 ("Bhim Singhji")*** and Chinappa Reddy, J. in ***Sanjeev Coke*** were influenced by a particular school of economic thought, which prioritised the acquisition of private properties by the State being beneficial for the nation. That these two judges consistently referred to the vision of the framers of the Constitution as the basis to advance their economic ideology as the guiding principle of the provision.

5.8 As opposed to the above, Dr. Ambedkar has been quoted by the learned Chief Justice to state that economic democracy in India is not tied to one economic structure, such as Socialism or Capitalism, but to the aspiration of a welfare state. The learned Chief Justice further opines "*thus, the role of this Court is not to lay down economic policy, but to facilitate this intent of the framers to lay down the foundation for an "economic democracy". The Krishna Iyer doctrine does a disservice to the broad and flexible spirit of the Constitution.*" This is the finding on the first question of the second issue.

My view on the aforesaid observations:

5.9 While considering the metamorphosis of the Indian economy from the early challenges to the transition towards liberalization and market-based reforms and from the dominance of public investment to the co-existence of public and private investment, it has been observed by the learned Chief Justice that "*the doctrinal error in the Krishna Iyer approach was, postulating a rigid economic theory, which advocates for greater state control over private resources, as the exclusive basis for constitutional governance. … a single economic theory, which views the*

acquisition of private property by the state as the ultimate goal, would undermine the very fabric and principles of our constitutional framework." The above comments on Krishna Iyer, J. are in my opinion unwarranted and unjustified.

5.10 It is a matter of concern as to how the judicial brethren of posterity view the judgments of the brethren of the past, possibly by losing sight of the times in which the latter discharged their duties and the socio-economic policies that were pursued by the State and formed part of the constitutional culture during those times. Merely because of the paradigm shift in the economic policies of the State to globalisation and liberalisation and privatisation, compendiously called the "Reforms of 1991", which continue to do so till date, cannot result in branding the judges of this Court of the yesteryears *"as doing a disservice to the Constitution"*.

5.11 At the outset, I may say that such observations emanating from this Court in subsequent times creates a concavity in the manner of voicing opinions on judgments of the past and their authors by holding them doing a disservice to the

Constitution of India and thereby implying that they may not have been true to their oath of office as a Judge of the Supreme Court of India. I may say that with passage of decades after the enforcement of the Constitution and on India becoming a Republic, the transformative impact of the Constitution has been deep and pervasive not only on governance in the Country, whether at the Central, State or local level but its impact on the Indian judiciary is also a significant aspect of Indian constitutional development. As a result, the basic features of the Constitution including the Preamble, Fundamental Rights, Directive Principles of State Policy, Separation of Powers, Judicial Review and Independence of the judiciary have impacted both governance as well as the judiciary. Bearing in mind the goals of the Constitution as enumerated in the Directive Principles of State Policy, Parliament and State Legislatures have made legislation for giving effect to such goals and since the inception of our Republican State it is the obligation on the part of this Court to consider the correctness of such legislation in light of the vision of the framers of the Constitution as well as the transformative nature of the Indian Constitution and the intent

of the policy makers and the law. It is in the above background that the Judges of this Court have been deciding constitutional issues over the decades. Of course, no particular line of thinking is static and changes are brought about by the State by bearing in mind the exigencies of the times and global impact particularly on the Indian economy. Such attempts to create an environment suitable to the changing times have to be also appreciated by the judiciary, of course, by suitably interpreting the Constitution and the laws. But by there being a paradigm shift in the economy of this Country, akin to *Perestroika* in the erstwhile USSR, in my view, neither the judgments of the previous decades nor the judges who decided those cases can be said to have done a "disservice to the Constitution". The answer lies in the obligation that this Court, in particular, and the Indian judiciary, in general, has in meeting the newer challenges of the times by choosing only that part of the past wisdom which is apposite for the present without decrying the past judges. I say so, lest the judges of posterity ought not to follow the same practice. I say that the institution of the Supreme Court of India is greater than individual judges, who are only a part of it at different stages of

history of this great Country! Therefore, I do not concur with the observations of the learned Chief Justice in the proposed judgment. I say so for the following narration.

From 1950 to 1991: Planned economy to Liberalization, Privatisation and Globalisation ("LPG"):

6. Much like many countries finding liberation from colonial rule, the immediate task before independent India was to alleviate its population out of poverty and systematically organize its economy. To that end, India adopted a mixed economy model wherein both public and private sectors could coexist. Turning to command economies, the Indian State sought to triumph over inter-regional disparities in resources and development through economic planning, an approach that had proven successful in command economies to bring sustained transformation of resources and implementation of plans in national interests rather than inefficient allocation of resources.

6.1 Buttressed by the Bombay Plan, proposed by influential industrialists, the Industrial Policy Resolution of 1948 and the over-expansive vision of the State shared by nearly every political party, the early years of the Indian Government had it play a

dominant role in the setting up of heavy enterprises and being a controller of the economy and resources. Consequently, the market was not merely strongly regulated but also led by the public sector manifesting as state interventions and regulations with the aim of protecting indigenous industries.

6.2 With that in sight, the Planning Commission was set up in 1950 to oversee the entire range of planning, including resource allocation, implementation and appraisal of five-year plans under the leadership of the first Prime Minister Jawaharlal Nehru. In 1951, deterred by significant loss of foreign reserves on food import, India's First five-year plan focused on agriculture and irrigation to boost farm output. Some scholars tout this as a success as the economy grew at 3.6%, instead of the target of 2.1%. Soon thereafter, the Second Plan, launched in 1956, saw deficit financing as an acceptable tool for much needed rapid industrialization and self-reliance focusing on heavy industries and capital goods. Coupled with the Industrial Policy Resolution 1956, the Second Plan initiated the development of public sector and ushered in the *licence Raj*. The resolution, adopted by the Parliament in 1956, enumerated as a national objective the

establishment of a socialist pattern of society and categorized industries into three groups:

- Schedule A: Industries which were to be exclusively in the public sector. These were industries of basic and strategic importance;

- Schedule B: Industries that were to be progressively state owned and the State would generally set up new enterprises but in which private enterprise would be expected only to supplement the state effort; and

- Schedule C: All the remaining industries, and their future development was, in general, left to the initiative and development of private sector. Though, it was left open to the State and the private sector was still subject to the *licence Raj*.

This over-expansion State control enabled it to undertake large scale projects without either reliance on or negotiations with or even competition from the private sector. The construction of the Bhakra-Nangal Dam, Hirakund Dam etc. as

well as steel plants in Rourkela, Bhillai and Durgapur were deified by the State as new “temples of a modern India”.

6.3 However, the substantial peril of curbing the invisible hand of the economy and enterprising spirit of the private sector was that the economic policy stuck reserved and restricted India to the earmarked industries and ignored new technologies, innovations and domains that, though transforming, were not in the horizons of bureaucracy. On the other hand, funds were also substantially reallocated away from agriculture, thereby, causing food shortages and a spike in inflation. Furthermore, the State was forced to import foodgrains which depleted foreign exchange reserves.

6.4 Under the leadership of Prime Minister Lal Bahadur Shastri, the Indian Government was convinced that in the domain of agriculture it needed to loosen its tight strings on centralized planning and price controls and instead focus on technological development. With India transforming into a food-sufficient and self-reliant entity after the Green Revolution and introduction of

the Minimum Support Price regime, the role of the Planning Commission was trimmed.

6.5 In the second half of 1960s, the severe drought of 1965 increased food grain imports and consequently, exacerbated the balance of payments crisis. To counter the same, on June, 1966, the Indian Government devalued the Indian rupee by a sharp 57%, thereby accelerating inflation while it was actually aimed at boosting exports.

6.6 Monumentally, to expand the sources of credit and monitor the banking system as per the control of the Government's planning and economic policy, the Government nationalized fourteen private banks on 20th July 1969. It was thought that the aim of financial inclusion and ready access to credit for small agriculturalists could be achieved by State control of the banking system. Agnostic of immediate profit motive and credit-worthiness, Banks operated and expanded to the "un-banked." However, in due course, it has been observed that limited competition and poor credit assessment severely hampered the efficiency and health of the banking system.

6.7 Around the 1980s, there had been a rising realization of the cons of protectionist policies and the merits of a market-led economy. Therefore, the sixth five-year plan marked the beginning of economic liberalization in India and outlined a series of measures aimed at boosting the economy's competitiveness. Notable steps included removal of large-scale price controls, reductions in import duties and the beginning of the end of *licence Raj*. A significant deviation from the policy of 1956, a joint venture between the Government of India and Suzuki – a Japanese automaker – rolled off the assembly line in 1983, the first Maruti car. In the following years, large-scale efforts were undertaken to usher in information technology and telecom revolutions in the country along with promoting exports and the utility of foreign investment and capital goods.

6.8 The political economy of the country from 1950s till the late 1980s had made apparent that the underlying political current and rhetoric of an idyllic but industrial society based on a socialistic pattern had been failing to deliver on the hopes of a modern lifestyle and Indians' entrepreneurial spirit. This is despite the five technological missions initiated in mid-1980s. It

is not uncertain that the deficit spending of the 80s led by high external debt, double-digit inflation, short-term debt reaching 147% of foreign exchange reserves, etc. shine a light on macroeconomic crisis that India found itself in at the end of the 1980s. In this backdrop, amidst a series of negotiations and policy reforms, Prime Minister P.V. Narasimha Rao spoke to the nation on July 9, 1991 of the impending need to bring in far-reaching changes and reforms that would bolster the economy and take it to a modern globalized world. Recounting the difficulties, he said:

> "...For the last eighteen months, there has been paralysis on the economic front. The last two governments postponed taking vital decisions. The fiscal position was allowed to deteriorate. The balance-of-payment crisis became unmanageable. Non-resident Indians and foreign leaders became more and more reluctant to lend money to India.
>
> Consequently, India's external reserves declined steeply, and we had no foreign exchange to import even such essential commodities as diesel, kerosene, edible oil, and fertiliser. The net result was that when we came to power, we found the financial position of the country in a terrible mess. ..."

6.9 The New Industrial Policy of 1991 put an end to the shackles that bound the Indian industry into inefficiency and

non-competitiveness. While the opening up of the economy was gradual, the Monopolies and Restrictive Trade Practices was diluted allowing market players to scale up without government approval and automatic approvals for Foreign Direct Investment (FDI) with majority holding and qualifiable foreign technological agreements were assured along with many other solutions. One of the many recognizable inflection points in India is the Budget Speech of 1991 delivered by India's then Finance Minister, Dr. Manmohan Singh, July 24th, 1991, who whilst paraphrasing Victor Hugo said, "No power on earth can stop an idea whose time has come."

6.10 The reforms that were to follow have been colloquially termed as Liberalisation, Privatisation and Globalisation. In practice, the country saw the dismantling of *licence Raj*, some years later an active disinvestment framework and quite openly, an expression of willingness to let globalized market forces signal directions to the economy. Much need not be laboured on this aspect.

6.11 Having seen India's potential and political commitment to a modern market economy, the International Monetary Fund (IMF) provided assistance leading to macroeconomic stabilization. In the years since, several policies such as import liberalization, unrestricted FDI inflows in some sectors, tax exemptions, promotion of exports, etc. have been adopted which would have seemed antithetical to the very idea and core of Indian economy and societal structure to the most earnest well-wishers of India only some decades ago.

6.12 While the status of health or inequity indicators is not being used as an aid for constitutional interpretation, I must also note that the "LPG policy" of 1991 can also be credited for providing the much needed impetus to the Central and State Governments for fulfilling several goals set out in the Directive Principles of State Policy which had been earlier difficult to achieve.

6.13 The golden thread throughout India's economic history post-independence has been to focus on a transformative socio-economic growth of the people of India by way of experimentation

through various plans, projects and pipe dreams. The mid-1980s was a turning point when the need for innovation, modernisation and concomitant avenues for development ushered in the Reforms of 1991 as the country faced shortages in foreign exchange reserves and foreign debts were mounting and there was a crisis of balance of payments. There has been no looking back since then except to usher in various schemes/programmes for the welfare of the people which earlier had not really percolated to the deserving and eligible citizens for reasons which are well known.

6.14 It is in the period between the late 1960s and early 1980s that this Court gleaned the thrust to economic policies of the State and sought to provide a judicial imprimatur for the success of the economic policies. Thus, bank nationalisation, road transport nationalisation, amendments to Land Reforms laws, urban land ceiling laws, acquisition of lands, abolition of land tenures etc. were upheld by this Court while at the same time tightening the powers of amendment of the Constitution. This was by the evolution of the basic structure doctrine which found its strong voice in ***Kesavananda Bharati*** and perpetrated in

Minerva Mills and ***Waman Rao vs. Union of India, AIR 1981 SC 271 ("Waman Rao")*** in the year 1980 and in subsequent decades.

6.15 One cannot lose sight of the precarious condition India was in when it gained Independence in the August, 1947 and at the dawn of the Republic in January, 1950. The provisions of the Constitution have hence sought to achieve a transformation in the socio-economic conditions of the people of India given the situation as it emerged in the colonial period. The transition of the Indian economy towards privatization and liberalization is ultimately for the welfare of the people of India. Heavy capital investment in the public sector in the early decades after Independence and its failure to yield good results in the subsequent decades and the move towards disinvestment and privatization are all experiments in achieving the constitutional goals which are static but the path to achieve them may vary with the passage of time.It is in the above backdrop that the judgments of this Court must be viewed rather than viewing the Judges who authored the judgments as doing a disservice to the Constitution of India.

Back to the second issue:

7. The further observations of the learned Chief Justice are that "however, there is no bar on the inclusion of private property as a class and if privately owned resource meets the qualifiers of being a "material resource" and "of the community", it may fall within the net of the provision. Thus, Mr. Zal Andhyarujina's formulation that "material resources of the community" refers to either natural resources (which are those of the nation) or those resources which in a large sense can be said to be of community, even though they may be in private hands: not be right".

7.1 In order to determine whether a particular privately owned resources falls within the fold of Article 39(b), certain factors have been delineated by the learned Chief Justice so as to constitute the same as a "material resource of the community", namely:

(a) nature of the resource and inherent characteristics;
(b) the impact of the resource on the well-being of the community;
(c) the scarcity of the resource; and
(d) the consequences of such a resource being concentrated in the hands of the private owners.

7.2 The fact that the community may have a vital interest in the character of the resources and their retention in the private hands would make them fall within the ambit of the expression "material resources of the community" is the test which has been innovated. Placing reliance on the Public Trust Doctrine, it is observed by the learned Chief Justice that the doctrine mandates the government to protect the resources for the enjoyment of the general public, such as, forests, mineral bearing lands etc. rather than to permit their use for commercial gains. Significantly, this does not mean that the State cannot distribute such resources, sometimes even to private entities, rather while distributing such resources, the state is bound to act in consonance with the principles of public trust so as to ensure that no action is taken which is detrimental to public interest (*vide* ***Centre for Public Interest Litigation vs. Union of India, (2012) 3 SCC 1, paras 74-78 ("Centre for Public Interest Litigation")***) are the observations of the learned Chief Justice.

7.3 Reliance is placed by the learned Chief Justice on ***In Re: Natural Resources Allocation, Special Reference No.1 of 2012 ("Natural Resources Allocation"),*** reported in ***(2012) 10***

SCC 1, wherein it was observed that the Public Trust Doctrine has expanded beyond resources like air, sea, water and forests, to include other resources such as spectrum which also have a community or public element. That no part of such resources can be dissipated as a matter of largess, charity, donation or endowment, for private exploitation. That one set of private citizens cannot prosper at the cost of another set of private citizens, because such resources are owned by the community as a whole.

7.4 On the aspect of "vesting" private resources in the State, adverting to the arguments of Mr. Zal Andhyarujina and Mr. Sameer Parekh, as well as Ms. Uttara Babbar, learned senior counsel, it is opined by the learned Chief Justice that their argument that the acquisition of the privately owned resource is a prerequisite to the applicability of Article 39(b) and only the process of distribution which follows the acquisition is covered by the provision, is a narrow interpretation of the word "distribution". Referring to ***Natural Resources Allocation,*** it is observed that Article 39(b) only lays down a restriction on the object of the distribution, i.e., it must be to subserve the

"common good". However, there is no bar on the mode of distribution. That this Court must not tread into the domain of economic policy, or endorse a particular economic ideology while undertaking constitutional interpretation. To hold that the term "distribution" cannot encompass the vesting of a private resource would amount to falling into the same error as the Krishna Iyer, J.'s doctrine, i.e. to lay down a preference of economic and social policy. Ultimately, in paragraph 229, following conclusions have been deduced by the learned Chief Justice:

> "229. In a nutshell, the answers arrived at by this Court to the reference before us may be summarised in the following terms:
>
> a. Article 31C to the extent that it was upheld in ***Kesavananda Bharati v. Union of India*** remains in force.
>
> b. The majority judgment in ***Ranganatha Reddy*** expressly distanced itself from the observations made by Justice Krishna Iyer (speaking on behalf of the minority of judges) on the interpretation of Article 39(b). Thus, a coequal bench of this Court in ***Sanjeev Coke*** violated judicial discipline and erred by relying on the minority opinion.
>
> c. The single-sentence observation in ***Mafatlal*** to the effect that material resources of the community' include privately owned resources is not part of the *ratio decidendi* of the judgment. Thus, it is not binding on this Court.

d. The direct question referred to this bench is whether the phrase 'material resources of the community' used in Article 39(b) includes privately owned resources. Theoretically, the answer is yes, the phrase *may* include privately owned resources. However, this Court is unable to subscribe to the expansive view adopted in the minority judgment authored by Justice Krishna Iyer in ***Ranganatha Reddy*** and subsequently relied on by this Court in ***Sanjeev Coke***. Not every resource owned by an individual can be considered a 'material resource of the community' merely because it meets the qualifier of 'material needs'.

e. The inquiry about whether the resource in question falls within the ambit of Article 39(b) must be context-specific and subject to a non-exhaustive list of factors such as the nature of the resource and its characteristics; the impact of the resource on the well-being of the community; the scarcity of the resource; and the consequences of such a resource being concentrated in the hands of private players. The Public Trust Doctrine evolved by this Court may also help identity resources which fall within the ambit of the phrase "material resource of the community".

f. The term 'distribution' has a wide connotation. The various forms of distribution which can be adopted by the state cannot be exhaustively detailed. However, it may include the vesting of the concerned resources in the state or nationalisation. In the specific case, the Court must determine whether the distribution 'subserves the common good'."

7.5 My opinion relates to the conclusion in sub-paras (d), (e) and (f) of the above conclusions, while I am in complete agreement with sub-para (a) and I have certain observations to

make on the judgments of this Court in ***Ranganatha Reddy, Sanjeev Coke, Abu Kavur Bai*** and ***Basantibai*** on the merits of the said decision.

(i) In sub-para (d) while holding that theoretically the phrase "material resources of the community" *may* include privately owned resources, it is also opined that not every resource owned by an individual can be considered a "material resource of the community" merely because it meets the qualifier of "material needs".

(ii) In sub-para (e), while considering the question whether a resource falls within the ambit of Article 39(b), the factors to be considered have been delineated.

(iii) In sub-para (f), it is observed that vesting of the concerned resources in the state or nationalisation is covered within the connotation of the term "distribution" which has a wide connotation and can take various forms.

7.6 My immediate answer to the aforesaid conclusions is that "material resources" can, in the first instance be divided into two basic categories, namely: (i) state owned resources and, (ii) privately owned resources. There can be no contra-opinion to the fact that all state-owned resources, i.e., resources which belong to the State, are essentially "material resources of the community" which are held in public trust by the State. The State can also distribute the same in accordance with its socio-economic policy and in accordance with law aligned to the object of Article 39(b) of the Constitution. However, with regard to the "material resources" which belong to the private owners, how do such resources get qualified as "material resources of the community"? In my view, the inquiry does not merely relate to only the resource and its characteristics; the impact of the resource on the well-being of the community; the scarcity of the resource; and the consequences of such a resource being concentrated in the hands of private players. In my view, these are not the only factors which have to be thought of while considering whether a privately owned material resource is a material resource of the community or not. In my view, a privately

owned material resource can be transformed and can indeed acquire a status of "material resource of the community". What are the material resources owned by private persons which can be material resources of the community? They would not include what can be termed as "personal effects" of an individual such as movables in the form of an individual's apparel, household articles of daily use such as furniture, personal jewellery, kitchenware and such other articles. These are articles which are of daily need and use as submitted by learned senior counsel Sri Rakesh Dwivedi. They are resources no doubt but not "material" resources within the meaning of Article 39(b). However, there could be other types of resources privately owned, such as immovable property, which could become "material resources". The expression "of the community" would in my view include all those privately owned "material resources" which have the potential to be transformed as "material resources of the community" excluding personal effects. According to Black's Law Dictionary, Ninth Edition, the expression "personal effects" is defined to mean items of a personal character. In P. Ramanatha Aiyar's Advanced Law Lexicon, Volume 3, 6th Edition, "personal

effects" has been defined to mean things required for satisfying daily necessities but does not include jewellery. This would generally mean such tangible property as is worn or carried about the person, or the designate articles associated with the person, as property having more or less intimate relation to person of possessor or such tangible property as attends the person *vide* ***H.H. Maharaja Rana Hemant Singhji vs. CIT, (1976) 1 SCC 996, 999, para 12.***

7.7 Thus, to constitute an article as part of "personal effects", it is necessary that the article must be associated with the person of the possessor, must more or less have intimate relation with the possessor. Thus, any privately owned "material resources" could be transformed as "material resource of the community". How would this happen? Essentially by four different modes, namely, (i) by nationalisation; (ii) by acquisition; (iii) by vesting of the said resource in the state, by operation of law under specific statutes and (iv) by the owner of a material resource converting such a resource into a "material resource of the community" by way of donation or a gift, a creation of a charitable endowment, a grant or a dedication so that the said material resource is useful

for the community and used or distributed as to subserve the common good. I shall discuss this aspect later.

7.8 Further, the term "distribution" no doubt has a wide connotation but, in my view, it is only "material resource of the community" which can be a subject matter of distribution under Article 39(b) which excludes "personal effects". In other words, material resources under the ownership and control of private persons cannot *per se* be distributed by the State unless the said resources are first transformed as "material resources of the community". In my view, public/State owned resources are *per se* "material resources of the community" and as rightly observed by the learned Chief Justice, the Public Trust doctrine applies to such resources. Secondly, such "material resources of the community" can be distributed as best to subserve the common good. It is only when the aforesaid twin conditions are satisfied that the goal or object of Article 39(b) would be achieved.

7.9 In other words, unless and until private ownership and control of the material resources are transformed or converted into the "material resources of the community" which is a

condition precedent, there cannot be distribution of the said resources by the State. It is only when privately owned material resources are transformed as "material resources of the community" that the State acquires the right to distribute them to subserve the common good. Otherwise, the State would merely transfer privately owned material resource from one owner say, "A" to another person, say "B" without first making it a "material resource of the community" which, in my view, is not the intent of the framers of the Constitution and neither is the same envisaged under Article 39(b).

7.10 Further, the expression "distribution" need not *per se* stop with mere vesting of the privately owned material resources in the State on nationalisation of the said resources. It could be when the said resources are further distributed for the common good that the object and purpose of Article 39(b) would be achieved. In certain situations, however, depending upon the nature of the resource and its characteristics or the scarcity of the resource or the particular policy to be achieved may persuade the State to not actually distribute the said resource amongst the citizens but to retain it with the State and utilise the same for the

common good, i.e., in public interest. In such an event, the State would retain such privately owned resources with itself, either by nationalisation or through acquisition or by way of vesting of the said resource in the state by operation of law. Therefore, distribution may not in all cases be "actual distribution", i.e., by making over the "material resource of the community" to the citizens. But mere vesting of private resource in the State without anything more would not constitute "distribution" in all cases unless the policy of the State determines whether such resources have to remain under the ownership and control of the State. Till then the State must hold the same in public trust for the common good. I shall elaborate on the above aspects.

8. The perspective articulated in the proposed judgment of the learned Chief Justice rests upon certain key deductions, which are culled out hereinunder:

i. That, the framers of the Constitution did not want to impose a rigid socio-economic order under which all private property could vest with the State and any legislation to convert private ownership to public

ownership would fall within the ambit of Article 39(b).

ii. That, the text of Article 39(b) reveals the following five distinct elements, each of which must be satisfied for any legislation to fall within the purview of this provision and be regarded as advancing the ideal enshrined thereunder:

   a. Provision relates to "ownership" and "control";

   b. "Ownership" and "control" is over "material resources";

   c. The material resources which the provision covers are those which are "of the community";

   d. The policy of the State must be directed to secure the "distribution" of the ownership and control of such resources;

   e. The purpose of the distribution must be to "best subserve the common good".

iii. That, the interpretation of Article 39(b) which brings all private property under the umbrella of the phrase "material resources of the community" satisfies only one of the essential elements—namely, that the goods in question constitute a "resource." This approach overlooks the critical qualifiers that these

resources must be both "material" and "of the community."

iv. The language of the provision suggests that not all privately owned resources fall within the scope of the phrase "material resources of the community." However, private resources are not categorically excluded, and certain privately owned assets may indeed be encompassed. To fall within this ambit, the resource must satisfy two essential qualifiers: it must be both a "material" resource and "of the community." Consequently, the judgments questioned before this nine-Judge Bench are flawed insofar as they assert that "all resources" owned by individuals are inherently part of the community and thus include all private property within the scope of "material resources of the community."

v. The determination of whether a particular resource falls within the ambit of Article 39(b) must be assessed in a context-specific manner, guided by a non-exhaustive set of considerations. These include

the nature and characteristics of the resource, its impact on the welfare of the community, its scarcity, and the ramifications of such a resource being concentrated in the hands of private entities. Furthermore, the Public Trust Doctrine, as developed by this Court, may also be instructive and guide in identifying resources that qualify as "material resources of the community."

vi. The term "distribution" carries a broad and expansive meaning. The various methods of distribution that the State may adopt cannot be exhaustively enumerated, but they may include the vesting of the relevant resources in the State, acquisition of the resource, or nationalization.

The situs of elaboration:

9. I find myself in agreement with the judgment proposed by the learned Chief Justice insofar as the observation that not all privately owned resources fall within the ambit of the phrase "material resources of the community" is concerned. I also concur with the proposed judgment as regards the identification

of the five elements of Article 39(b). However, I must elaborate on the proposed judgment, on the legal distinction between how a private resource qualifies as one "of the community" and how such a resource is subsequently distributed to subserve the common good. It is on this crucial point that I have penned my separate opinion.

9.1 In my considered opinion, a fundamental prerequisite for the distribution of a resource in a manner that serves the common good is to first bring that resource within the collective domain of the community, thereby rendering it a "material resource of the community".

9.2 While a public resource owned and/or controlled by the State is inherently part of the community's collective domain, a private resource which is a material resource may be brought within this pool through various mechanisms, including acquisition, nationalization, or by operation of law. The act of distributing a private material resource, however, cannot proceed in isolation from such preliminary steps to first incorporate such private material resource into the community's pool. Thus,

acquisition, nationalization, and vesting by operation of law are instances of actions that bring a private material resource into the community's collective domain, rather than being termed as methods of distributing such resources. It is this crucial distinction that need elaboration.

9.3 In my opinion, I propose to discuss in detail the reasons as to why this material distinction assumes significance in the context of the instant reference and in light of the relevant Articles of the Constitution.

Articles 37, 38 and 39(b) and (c):

10. Articles 37, 38 and 39(b) & (c) of the Constitution read as under:-

> **"37. Application of the principles contained in this Part.—** The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.
>
> **38. State to secure a social order for the promotion of welfare of the people.—** (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

39. Certain principles of policy to be followed by the State.— The State shall, in particular, direct its policy towards securing—

x x x

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;"

Before proceeding further, it would be useful to extract the reply to the debate on the provisions of Directive Principles in general given by Dr. Ambedkar as under:

"It is no use giving a fixed, rigid form to something which is not rigid, which is fundamentally changing and must, having regard to the circumstances and the times, keep on changing. It is, therefore, no use saying that the directive principles have no value. In my judgement, the directive principles have a great value, for they lay down that our ideal is economic democracy. Because we did not want merely a parliamentary form of government to be instituted through the various mechanisms provided in the Constitution, without any direction as to what our economic ideal or as to what our social order ought to be, we deliberately included the directive principles in our Constitution. I think if the friends who are agitated over this question bear in mind what I have said just

> now that our object in framing this Constitution is really twofold: (i) to lay down the form of political democracy, and (ii) to lay down that our ideal is economic democracy and also to prescribe that every government whoever it is in power, shall strive to bring about economic democracy, much of the misunderstanding under which most members are labouring will disappear. (Constitutional Assembly Debates, Volume VII)"
>
> (Source: "Constitutional Law of India" by Dr. Subhash C. Kashyap)

Article 37:

10.1 Article 37 states that the provisions contained in Part-IV of the Constitution (Directive Principles of State Policy) shall not be enforceable by any Court, but the principles therein laid down are nevertheless fundamental in the governance of the Country and it shall be the duty of the State to apply these principles in making laws. Although Prof. K.T. Shah, a member of the Constituent Assembly, sought for the Directive Principles being enforceable and proposed devising a suitable mechanism for that purpose, the said suggestion was turned down and the draft Article 29 was added as Article 37 of the Constitution.

10.2 In ***State of West Bengal vs. Subodh Gopal Bose, AIR 1954 SC 92 ("Subodh Gopal Bose"),*** this Court held that the Directive Principles of State Policy are not justiciable or

enforceable by any Court; nevertheless, there is a duty cast on the courts to interpret the Constitution and the laws in furtherance of the Directive Principles as under Article 37 it has been stated that they are fundamental in the governance of the Country. Thus, it was held that there can be no law which can be in conflict with the Directive Principles of State Policy, although, the Articles in Part-IV by themselves cannot be enforced *per se* in a court of law.

10.3 It is well-known that the Directive Principles of State Policy have been borrowed from the Irish Constitution. Article 45 of the Irish Constitution provides that the application of the Principles of Social Policy shall not be cognizable by any Court, that the said principles are intended for the general guidance of the Irish National Parliament. Further the application of the social policy in making of laws shall be the care of the Irish National Parliament exclusively. Similarly, Article 37 of the Constitution of India states that the Directive Principles shall not be enforceable by any Court but they are fundamental in the governance of this Country and it shall be the duty of the State to apply the Directive Principles in making laws. Also, there is a

metamorphosis of this provision *vide* ***Minerva Mills*** decided by this Court by interpreting the same as per the intention of the framers of the Constitution.

10.4 Moreover, as between fundamental rights and Directive Principles of State Policy, it is a settled position of law that the fundamental rights are enforceable whereas the Directive Principles are to be considered while interpreting Part-III of the Constitution and they are not *per se* enforceable. The Directive Principles are primarily aimed at securing social and economic freedoms by appropriate State action. They are the social conscience of the Constitution; they are the goals and aims sought for achieving a welfare State in India. However, while considering a challenge to a violation of fundamental rights the Directive Principles could be considered and it is only when, to achieve the goals or the aims sought to be promoted through the Directive Principles, if there is a violation of the fundamental rights inasmuch as there is a violation of Articles 14, 15 or 16, that the means of achieving the goals could be struck down. Thus, fundamental rights ought to be interpreted in light of the Directive Principles and the latter should, whenever and

wherever possible, be read into the former. It is also said that fundamental rights and Directive Principles are supplementary and complementary to each other and the provisions in Part-III should be interpreted having regard in such a way to the Preamble and the Directive Principles of the State Policy in Part-IV. It is said that fundamental rights and Directive Principles of the State Policy are the two-wheels of the chariot and are an aid to make social and economic democracy a truism *vide* ***Jilubhai vs. State of Gujarat, AIR 1995 SC 142 ("Jilubhai").*** What is of significance is that the court must give a proper and meaningful interpretation to the Directive Principles so as to harmonize them with the objectives enshrined in the Preamble of the Constitution, namely, Justice – political, social and economic with individual rights in the context of Part-III and Part-IV of the Constitution respectively, *vide* ***Mafatlal***.

10.5 While in the initial years of the enforcement of the Constitution, fundamental rights were given primacy, however, there has been a clear shift in the judicial thinking in considering Directive Principles being fundamental to the governance of the

Country by courts when laws are challenged on the keystone of there being an apparent violation of the fundamental rights.

Article 38:

10.6 The thrust of Article 38 is to promote the welfare of the people by the State by securing and protecting as effectively as it may, a social order in which social, economic and political justice shall inform all the institutions of national life. This Article positions the Indian state as being beyond than what is meant for the maintenance of law and order. The Indian State being a welfare State must pursue social, economic and political justice which must inform all institutions of the national life. While clause (1) of Article 38 is general in nature, clause (2) inserted by Section 9 of the Constitution (Forty-fourth Amendment) Act, 1978 w.e.f. from 20.06.1979 is illustrative of the content of the ideal in clause (1) of Article 38. Clause (2) of Article 38 states that States shall, in particular, strive to minimise the inequality in income and endeavour to eliminate the inequality in status, facilities and opportunities, not only among individuals but also among groups of people, residing in different areas or engaged in different vocations. Article 38 envisions social justice for

enhancing human dignity in an egalitarian, social, economic and political democracy. The said Article essentially speaks of the social and economic revolution which is an example of the Constitution of India's transformative vision. The State takes the responsibility in bringing about a welfare State, a just "social order" where "justice - social, economic and political" prevails and where there is equity, equality and non-discrimination by bringing about "equality of status and of opportunity", as enumerated in the Preamble of the Constitution. Thus, Article 38 is a keystone for the implementation of the Directive Principles.

Article 39:

11. Article 39 (b) and (c) are relevant for the purpose of this reference. In the draft Constitution, Article 39 was Article 31 which was debated upon by the Constituent Assembly and the draft Article 31 was renumbered as Article 39 of the Constitution. In ***Waman Rao,*** it was observed by the Court speaking through learned Y.V. Chandrachud, C.J. that the clauses of Article 39 contain Directive Principles which are vital to the well-being of the Country and the welfare of its people. Article 39 (b) and (c) which are relevant for the purposes of this case, say that the State shall

direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; that the operation of the economic system does not result in the concentration of wealth and means of the production to the common detriment. In Article 39(b), the most significant expression is "distribution". That the material resources of the community have to be so distributed as best to subserve the common good. The task of distribution of the material resources of the community is the responsibility of the State. The distribution must be of the material resources of the community in order to best subserve the common good. What is the subject matter of distribution is the ownership and control of the material resources of the community.

11.1 The main objective of Article 39(b) and (c) of the Constitution is the building of a welfare State with a social order which is egalitarian so as to bring about a non-violent social transformation in the Country. That is why Article 37 of the Constitution states that while the provisions contained in Part IV (Directive Principles of State Policy) though not enforceable by any court, the principles therein laid down are nevertheless

fundamental in the governance of the Country and it shall be the duty of the State to apply these principles in making laws.

11.2 The Directive Principles of State Policy including Articles 39(b) and (c) though not justiciable but inclined towards social and economic justice have a goal of the Constitution as enshrined in the Preamble to be achieved by way of making laws and implementing them. Thus, the Directive Principles of State Policy including Articles 39(b) and (c) have to be implemented through legislation and administrative action in order to carry out the policy laid down in the legislation.

11.3 In ***Kesavananda Bharati,*** it was observed that there is no disharmony between the Directive Principles of State Policy and the fundamental rights, because they supplement each other in aiming at the same goal of bringing about a social revolution and the establishment of a welfare State, which is envisaged in the Preamble so as to make social and economic democracy a truism in the Country. The Directive Principles are the core of the Constitutional goals and they are complementary to each other and sometimes reference is made to them as the "conscience of the Constitution".

11.4 The objectives of the Directives are to remove inequality in the society and to attempt to achieve a fair division of wealth among the members of the society in order to achieve a just and equal society. In a way, a law made to ensure implementation of the Directive Principles is in order to achieve distributive justice in a welfare State. This goal is enshrined in Article 38 of the Constitution which states that the State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, the social order in which justice - social, economic and political – shall, inform all institutions of national life.

11.5 Article 39 (b) states that the State shall, in particular, direct its policy towards securing – the ownership and control of the material resources of the community are so distributed as best to subserve the common good. This Directive Principle has to be read in the context of Article 39(c) which states that the State shall, in particular, direct its policy towards securing that the operation of the economic system does not result in the concentration of wealth and means of the production to the common detriment. Therefore, the Indian State must ensure that the ownership and control of the material resources of the

community are so distributed to subserve the common good with the object of eliminating concentration of wealth and means of production in the hands of a few. What is of significance in Article 39(b) are the following expressions which shall be discussed:

(i) ownership and control;

(ii) material resources;

(iii) of the community;

(iv) so distributed; and

(v) as best to subserve the common good.

Ownership and Control:

11.6 While analysing the above, it can be observed that the expression "ownership and control" is expansively used and must be given a wide connotation even as the expression "ownership and control" sometimes may overlap *vis-à-vis* a material resource. For instance, a person may have ownership and control over a material resource, or he may have ownership but not control over it; while at the other times, a person has control over a material resource but not ownership over it. Hence, the intent of the Constitution makers is to give as wide a connotation as

possible in the context of both ownership and control of material resources.

Material resources:

11.7 As far as "material resources" are concerned, the expression would not only include tangible but also intangible resources; natural or physical resources as well as man-made resources and movable as well as immovable property. Also, the discussion on what would not constitute "material resources" in the context of personal effects of individual as discussed in paragraph 7.6 above is relevant to this discussion. Further, in my view, the phrase "material resources" cannot be restricted by the expression "of the community" insofar as understanding the meaning of the expression is concerned inasmuch as it would include all private material resources and under the ownership and/or control of the private persons. For example, a material resource may be under the ownership of a private person but controlled by the State. Correspondingly, a resource may belong to the State but could be controlled by a private person for instance when a privilege is conferred by the State to such a private person to control the said resource. Typically, an example

is in the context of mining of minerals, when a private person may be the owner of a mine but the State or its entity may take the same under its control by way of a lease under provisions of the Mines and Minerals (Development and Regulation) Act, 1957 enacted in terms of Entry 52 - List I of the Constitution. Similarly, a mine or mineral bearing land may belong to the State which could be made over to a private person by way of a lease wherein the control of the mines is temporarily handed over to the lessee for exploitation of the mineral resources, subject to terms and conditions of the lease. Therefore, in all such cases, the expression "material resources" would include both public as well as private resources, i.e., those which are under the ownership and control of the State or any public body as well as ownership and control of a private person.

Of the community:

11.8 Thus, material resources would include both public as well as private resources which belong to private persons. But what could be distributed is only "material resources of the community", and not material resources which are privately owned. This would mean that material resources of the private

persons cannot *per se* be distributed by the State under Article 39(b) unless it becomes "material resources of the community".

11.9 In other words, even if, apart from public resources, private material resources are also to be distributed under clause (b) of Article 39 of the Constitution, they must first become "resources of the community". This is because it is only material resources "of the community" which can be distributed which would mean exclusion of distribution of private resources *per se* by the State. This implies that if private resources have to be distributed under clause (b) of Article 39, the private resources must first become the "resources of the community". How do material resources which are privately owned become "material resources of the community"? The answer to this question lies in the legal devices that are adopted by the State to transform private material resources into the "resources of the community". This could be, *inter alia*, in the following five ways which are illustrative and not exhaustive in nature:

(i) by nationalisation;

(ii) by acquisition;

(iii) by operation of law, such as vesting of private resources in the State;

(iv) by purchase of the material resource from private persons; and

(v) by the owner of the material resource converting it as a material resource of the community by donation, gift, creation of an endowment or a public trust, etc.

11.10 What is the common denominator in the methods adopted by the State for converting private material resources into "material resources of the community"? In all these three devices, at (i), (ii) and (iii) above, what is of significance is that when, by a process of nationalisation, acquisition or vesting of private resources in the State occurs there are certain legal processes which take place: the **first** process is to convert the private resources into resources of the community by vesting in the State, and the **second** process is to utilise these community resources for the purpose of distribution for the common good. Distribution could be in two ways: firstly, by actual distribution to the deserving and eligible persons as per the policy to be

implemented. Secondly, the State could retain ownership and/or control having regard to the nature of the resources and other relevant factors. The **third** process is that the private owners of these resources are fairly compensated when they lose all rights, title and possession over such material resources when it becomes a material resource of the community".

11.11 Thus, when private persons are so deprived of ownership as well as the control of the material resources which belong to them or are controlled by them, they must be compensated justly and fairly. Otherwise, the conversation of private material resources into "resources of the community" would be contrary to Article 300A of the Constitution which states that no person shall be deprived of his property save by authority of law. In other words, a person can be deprived of his property by the State only by authority of law.

12. I shall discuss the various modes by which privately owned material resources can be transformed as resources of the community which I have adverted into in paragraph 11.9.

12.1 How does nationalisation of certain private resources occur? It could be by way of an enactment of a statute by either the Parliament or a State Legislature. This is by way of a legislation. An instance of this is in ***Ranganatha Reddy*** wherein privately owned carriages and buses were taken over by the State of Karnataka through nationalization by way of an enactment. The nationalized resources could be utilized as best to subserve the common good either by the State through its department or through a corporation, or entity created by the State Government, such as a Government Company, or a Corporation or a Society etc. An example is in the case of ***Rustom Cavasjee Cooper vs. Union of India, AIR 1970 SC 564 ("RC Cooper")*** where fourteen private banks were nationalized and the said banks are functioning as nationalized banks.

12.2 Insofar as the acquisition of private material resources is concerned, it could be by way of a special Statute made for achieving the particular purposes of acquisition, having regard to the nature of such resources and such other factors. In the alternative, acquisition could take place under the prevailing or extant laws pertaining to acquisition such as the erstwhile Land

Acquisition Act, 1894 ("LA Act, 1894") which has now been repealed and substituted by Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("2013 Act"). Acquisition could also be under the respective State laws dealing with acquisition of land or other immovable property. But acquisition should be for a public purpose as defined under the laws.

12.3 Mahajan, J. (as the learned Chief Justice then was) speaking for a Constitution Bench of this Court in ***State of Bihar vs. Kameshwar Singh, AIR 1952 SC 252 ("Kameshwar Singh"),*** has observed:

> "The phrase "public purpose" has to be construed according to the spirit of the times in which particular legislation is enacted.
>
> x x x
>
> The legislature is the best judge of what is good for the community, by whose suffrage it comes into existence...."

A wider approach necessarily means that a comprehensive signification has to be given to the expression "public purpose".

12.4 That the law must also keep pace with the realities of the social and political evolution of the country as reflected in the

Constitution. Therefore, anything that would promote the welfare of the people as envisaged in the Directive Principles of State Policy has to be regarded as "public purpose". Therefore, what was earlier known as economic justice has been crystallised as Directive Principles of State Policy. Hence, the nexus between "public purpose" and Part IV of the Constitution is relevant.

12.5 If public purpose is established under an enactment, then how that public purpose would be carried into the provisions is a matter which is left to the wisdom of the Parliament and State Legislatures. Whether it would be through nationalisation, acquisition or it should resort to pay the market price and buy in the open market any privately owned material resource for transforming it into a "material resource of the community" for the purpose of distribution so as to best subserve the community, is a matter which is within the realm and wisdom of the State.

12.6 The acquisition could be for the purpose of the State utilizing the said land or other immovable property for public purpose in order to subserve the common good or the acquired land could be allotted to deserving and eligible persons in the form of house-sites or houses being constructed by the State.

This is an instance of private resources (land or other immovable property) becoming a property of the community and then being distributed to subserve the common good. However, acquisition of land has to be in terms of the rigour that is prescribed under the provisions of the LA Act, 1894 (now repealed) or in accordance with the 2013 Act, which is in force, such as the time frames which have been prescribed for the issuance of preliminary and final notifications (declaration) under Sections 4 and 6 of the 1894 Act and hearing of objections under Section 5A of the said Act; holding an enquiry and passing of an award in terms of Sections 11 and 11A and taking of possession after making of the award, in which case the land shall vest absolutely in the Government free from all encumbrances; the computation of the payment of compensation and the payment of interest etc. to the land losers. Under the LA Act, 1894, there could not be acquisition of any land unless it was for a public purpose. Section 3(f) defined a "public purpose" as under:

> "Section 3. In this Act, unless there is something repugnant in the subject or context,
>
> x x x
>
> (f) the expression public purpose includes-

(i) the provision of village-sites, or the extension, planned development or improvement of existing village-sites;

(ii) the provision of land for town or rural planning;

(iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;

(iv) the provision of land for a corporation owned or controlled by the State;

(v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State;

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State;

(vii) the provision of land for any other scheme of development sponsored by Government, or, with the prior approval of the appropriate Government, by a local authority;

(viii) the provision of any premises or building for locating a public office,

but does not include acquisition of land for companies."

A reading of the said definition would clearly indicate as to for what public purpose immovable property could be acquired. It is only when the acquisition was for a public purpose could it be said that the acquisition, though made under the LA Act, 1894, was within the scope and ambit of the said Act. Also, certain States have their own definitions of "public purpose" which is not necessary to discuss.

12.7 Further, under the 2013 Act, the acquisition of land as per Sections 11 and 19 of the said Act and the hearing of the objections under Section 15 and the holding of an enquiry under Section 23 and the period within which an award shall be made under Section 25 and matters to be considered in determining compensation as per Section 27; the power to take possession under Section 38 and other provisions, ensure that the

acquisition of land is in accordance with what has been envisaged therein. Moreover, Section 2 of the 2013 Act categorically states that when the appropriate Government acquires land for its own use, hold and control, including for Public Sector Undertakings and for public purpose, it shall include the following purposes, namely:—

> **"2. Application of Act**.–(1) The provisions of this Act relating to land acquisition, compensation, rehabilitation and resettlement, shall apply, when the appropriate Government acquires land for its own use, hold and control, including for Public Sector Undertakings and for public purpose, and shall include the following purposes, namely:—
>
> (a) for strategic purposes relating to naval, military, air force, and armed forces of the Union, including central paramilitary forces or any work vital to national security or defence of India or State police, safety of the people; or
>
> (b) for infrastructure projects, which includes the following, namely:—
>
> (i) all activities or items listed in the notification of the Government of India in the Department of Economic Affairs (Infrastructure Section) number 13/6/2009-INF, dated the 27th March, 2012, excluding private hospitals, private educational institutions and private hotels;
>
> (ii) projects involving agro-processing, supply of inputs to agriculture, warehousing, cold storage facilities, marketing infrastructure for agriculture and allied activities such as dairy, fisheries, and meat processing, set up or owned by the appropriate Government or by a farmers'

cooperative or by an institution set up under a statute;

(iii) project for industrial corridors or mining activities, national investment and manufacturing zones, as designated in the National Manufacturing Policy;

(iv) project for water harvesting and water conservation structures, sanitation;

(v) project for Government administered, Government aided educational and research schemes or institutions;

(vi) project for sports, health care, tourism, transportation or space programme;

(vii) any infrastructure facility as may be notified in this regard by the Central Government and after tabling of such notification in Parliament;

(c) project for project affected families;

(d) project for housing, for such income groups, as may be specified from time to time by the appropriate Government;

(e) project for planned development or the improvement of village sites or any site in the urban areas or provision of land for residential purposes for the weaker sections in rural and urban areas;

(f) project for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by the Government, any local authority or a corporation owned or controlled by the State.

(2) The provisions of this Act relating to land acquisition, consent, compensation, rehabilitation and resettlement, shall also apply, when the appropriate

Government acquires land for the following purposes, namely: —

(a) for public private partnership projects, where the ownership of the land continues to vest with the Government, for public purpose as defined in sub-section (1);

(b) for private companies for public purpose, as defined in sub-section (1): Provided that in the case of acquisition for—

(i) private companies, the prior consent of at least eighty per cent, of those affected families, as defined in sub-clauses (i) and (v) of clause (c) of section 3; and

(ii) public private partnership projects, the prior consent of at least seventy per cent. of those affected families, as defined in sub-clauses (i) and (v) of clause (c) of section 3, shall be obtained through a process as may be prescribed by the appropriate Government:

Provided further that the process of obtaining the consent shall be carried out along with the Social Impact Assessment study referred to in section 4:

Provided also that no land shall be transferred by way of acquisition, in the Scheduled Areas in contravention of any law (including any order or judgment of a court which has become final) relating to land transfer, prevailing in such Scheduled Areas.

(3) The provisions relating to rehabilitation and resettlement under this Act shall apply in the cases where,—

(a) a private company purchases land, equal to or more than such limits in rural areas or urban areas, as may be prescribed by the appropriate Government,

through private negotiations with the owner of the land in accordance with the provisions of section 46;

(b) a private company requests the appropriate Government for acquisition of a part of an area so prescribed for a public purpose:

Provided that where a private company requests the appropriate Government for partial acquisition of land for public purpose, then, the rehabilitation and resettlement entitlements under the Second Schedule shall be applicable for the entire area which includes the land purchased by the private company and acquired by the Government for the project as a whole."

12.8 Similarly, there are State enactments which allow acquisition of land from private owners for the purpose of distribution to eligible persons in order to best subserve the common good. The acquisition process of privately owned land or other immovable property ensures that it ultimately vests with the appropriate Government and transforms the material resource privately owned as material resource of the community. As already noted, such land or other immovable property can be utilized by the State and its authorities, agencies and instrumentalities so as to best subserve the common good. Alternatively, the State could distribute the said land to eligible persons having regard to the nature of the public purpose for which such land is acquired under the respective Acquisition Act

or any other enactment which provides for acquisition of land, such as, Town Planning Act or City Development Authority Act etc.

12.9 However, the public purpose envisaged under the respective Acts must be to achieve a common good. Therefore, the public purpose for which acquisition of immovable property is made must be clearly established in accordance with the provisions of the respective enactments. Any special statute for acquisition of private immovable property must be for a public purpose which is ultimately for achieving a common good.

12.10 Another mode of acquisition of privately owned material resources such as land or other immovable property for the purpose of utilizing the same as best to subserve the common good is by vesting of the same in the State. How does such privately owned land vest in the State? It could be under an enactment, such as the Land Reforms Acts of the respective States, the Urban Land Ceiling Act (since repealed), the Inams Abolition Act, Village Offices Abolition Act, Land Tenures and Ceiling Acts under which lands privately owned or granted by the erstwhile rulers to certain persons and therefore, in the

possession and control of private persons, on the abolition of such ownership and control over such lands by the State enactments, referred to above would vest with the State by operation of law. For instance, if on the appointed date the land is in possession and cultivation of tenants, then such lands covered by the respective tenancies would become vested in the State and thus be the land of the community i.e. "material resource of the community" on their vesting in the State. The State can thereafter grant occupancy rights of such lands to the tenants or other deserving persons in accordance with law i.e. by the tenants proving their tenancy on the appointed date before the Land Reforms Tribunal or as envisaged in the respective enactments. The mechanism is for a tenant to seek registration of occupancy rights on proof of tenancy which is a manner of distribution of the vested land in the State which gets transformed as material resource of the community on their vesting in the State.

12.11 Such material resources could also be bought by the State by paying a valuable consideration instead of acquisition as in the case of immovable property.

12.12 Another mode is when a private owner of immovable or other property transforms his ownership and control of material resources as "material resource of the community" by way of creation of an endowment or a grant or a donation or gift made to the State so that the said material resource converted as a community resource is used by the people at large or by the State depending upon the exigency of each case and the policy of the State. Earlier private lakes, pastures/grazing lands, forest lands, etc., were endowed for public use and therefore would be transformed as "material resource of the community".

12.13 What is significant in all these instances is the fact that private resources are not straightaway "distributed" or handed over to other private persons by the State. Private resources first become the "resources of the community" through the methods adopted by the State either through nationalisation, acquisition or vesting of such resources in the State and once they become resources vested in the State they get transformed as "material resources of the community". Therefore, the expression "material resources" though including private resources must ultimately get transformed as "material resources of the community".

"Material resources of the community" means the community at large would be entitled to claim a benefit of said resources when they are so distributed by the State or retained by the State for a public purpose. In other words, material resources privately owned or controlled by the private persons cannot straightaway be construed to be "material resources of the community".

12.14 The expression "of the community" must be given its true meaning. This is because it is only material resources of the community which can be distributed by the State and not privately owned material resources.

So distributed as best to subserve the common good:

13. The next limb of clause (b) of Article 39 is "distribution" of "material resources of the community" "as best to subserve the common good". Therefore, distribution must be in order to subserve the "common good" and not solely for private good. This would imply that firstly, what is to be distributed is "material resources of the community" and not material resources of the private persons, *per se*, and secondly, the distribution must subserve the common good, which means that it is for the benefit of the public at large. Thus "common good" cannot be equated

to private good which means distributed to other private persons and not being distributed to the public at large, unless distribution to other private persons is for the purpose of the common good and with a public purpose.

13.1 Thus the expression "distribution" as "best to subserve the common good" would not always envisage allocation or assignment or transfer to deserving or eligible persons. For instance, on nationalisation of banks, the Central Government exercises control over the banks as nationalized banks. Additionally, for instance, on nationalization of buses , they could be utilized for the benefit of the general public through a State owned department or through a Corporation or entity created by the State, such as a Government company, a corporation, a society etc. Similarly, land acquired for a public purpose could be used by the State for serving the common good while retaining ownership and control over it and using it for the benefit of the general public which is also a public purpose. Alternatively, by allocation of said land or other immovable property in the form of house sites etc. being allotted, assigned, transferred, conveyed to eligible and deserving persons distribution of ownership and

control of material resources of the community to subserve the common good is achieved.

13.2 As far as the lands or other immovable property which vest with the State by virtue of operation of law are concerned, the persons who are entitled to grant of occupancy rights may make an application under the relevant laws in respect of the vested land as erstwhile tenants and seek registration of occupancy rights for the purpose of cultivation on certain terms and conditions. When in respect of any piece of land, occupancy rights cannot be granted to an applicant, in such an event the land which stood vested in the State would become the State owned land and the same could be utilized for the purpose of making grants, assignments, allotments or conveyance to deserving and eligible persons.

13.3 Further, when private owners of material resources make an endowment, a gift or a donation to the State, their ownership and control over such resources would vest with the State and the State could utilize such material resources as best to subserve the common good. This is the essence of distribution.

Common good:

13.4 What is "common good"? It would mean that while distributing the material resources of the community there must be an object which is achieved, such that there would be no concentration of wealth and means of production in the hands of a few which is also a Directive Principle in clause (c) of Article 39. For instance, if a mining lease is to be assigned to any person who is eligible to take such a lease it must be done in accordance with law such as by an auction and giving due publicity so that it is not with a view to unjustly enrich a person, as this would be contrary to the notion of common good. Therefore, there cannot be a transfer of private resources being in the ownership and control of a private person to another set of private persons only by excluding the public at large. In other words, the State cannot act as an agent for distribution of privately owned material resources by taking ownership and control of the same and handing it over to other private persons selectively. That is not distribution for subserving the common good.

On the other hand, there could also be an instance where only a particular person/entity would be entitled to claim

distribution of a material resource of the community having regard to the object and purpose for which the same is to be distributed which would be for the common good. This is in the context of privatisation of the "material resources of the community" which is a recent phenomenon particularly on the initiation of reforms in the Indian economy since the year 1991. However, private persons/entities who are eligible to have the ownership and/or control of the material resources of the community would do so only if it is to subserve the common good. Therefore, while acting under clause (b), the Directive under clause (c) must also be borne in mind by the State inasmuch as the distribution of material resources of the community must be to subserve the common good and not result in concentration of wealth and means of production to the common detriment. In other words, where the object is to subserve the common good, there would automatically be provisions excluded which induce concentration of wealth and means of production to the common detriment.

13.5 Reference may be made to a recent decision of a three-Judge Bench of this Court in ***Coal India Ltd. vs. CCI, (2023) 10***

SCC 345, ("Coal India Ltd.") (of which I was a Member). In the said case, it was mainly contended that the coal mines operated by the appellants therein pursuant to the provisions of the Coal Mines (Nationalisation) Act, 1973 would be wholly outside the purview of the Competition Act, 2002. This was for the reason that the very purpose and policy underlying the Nationalisation Act was to monopolise the operation of the coal mines and coal mining in the hands of the Central Government and its agencies such as the appellant therein. It was contended that it was a monopoly created by the Nationalisation Act and was accorded protection of Article 31B of the Constitution by inserting the said Act in the Ninth Schedule and it was not an ordinary monopoly. This was for the reason that the State has been charged with the duty to bear in mind the principles of "common good" being secured by the "distribution of scarce resources". It was submitted in the said case that coal, being a mineral of the highest importance in the economic life of the nation, its equitable distribution so as to secure the common good, which is the Directive contained in Article 39(b), led to the creation of a statutorily mandated monopoly through the Nationalisation Act.

Therefore, it could be wholly inconceivable that the Competition Act would still be applicable to the appellant therein.

Holding that the Competition Act applied to the appellant therein and all public sector companies except where the sovereign function of the government may be involved, this Court observed in paragraph 100 as under:

> "100. The expression "common good" in Article 39(b) in a Benthamite sense involves achieving the highest good of the maximum number of people. The meaning of the words "common good" may depend upon the times, the felt necessities, the direction that the Nation wishes to take in the future, the socio-economic condition of the different classes, the legal and fundamental rights and also the Directive Principles themselves. As far as the time dictated content of common good goes, it simply means that "economics" itself not being bound in chains, but it is a dynamic concept. The attainment of common good would be dependent on the appreciation and understanding of a generation as to how economic common good is best achieved. The debate between the advantages and disadvantages of pursuing the policy of State intervention in economic policy which emasculates private enterprise and competition has almost reached its end. The advantages of a fearlessly competitive economy have been realised by the Nation. There is a backdrop to it. In the year 1991, the Nation was in a manner of speaking compelled to revisit its economic policy having regard to the precarious condition of its foreign exchange reserves. The permit raj, which involved acute regulation of economic activity by the State with all its attendant evils, cried out for reforms. A slew of highly liberal reforms in 1991 set the stage for the Nation to make a paradigm shift. As discussed in the Raghavan Committee Report, things moved further in

the direction of attaining faster economic growth. The Act is a measure which is intended to achieve the same. The role which was envisaged for the public sector company could not permit them to outlive their utility or abuse their unique position. Disinvestment done in a proper manner was perceived as a solution. However, sans disinvestment, State monopolies, public sector companies and government companies were expected to imbibe the new economic philosophy. The novel idea, which permeates the Act, would stand frustrated, in fact, if State monopolies, government companies and public sector units are left free to contravene the Act. Now that the Nation was more than 50 years' old after it became a Republic and it no longer was the infant it was, Parliament which best knows the needs of its people, felt that the time was ripe for ushering in the wholesome idea of fair competition. Can it be said that free competition as envisaged under the Act which involves avoidance of anti-competitive agreements, abuse of dominant position and regulation of combinations are against the common good? As to how common good is best served is best understood by the representatives of the people in the democratic form of Government. We must bear in mind the wholesome principle that when Parliament enacts laws, it is deemed to be aware of all the existing laws. Properly construed and operated fairly, the "Act" would, in other words, harmonise with common good, being its goal as well."

Further, this Court in paragraphs 118 to 122, observed as under:

"118. The appellants rely upon the judgment of this Court in *State of T.N.* v. *L. Abu Kavur Bai*, (1984) 1 SCC 515 for the proposition that the scheme of monopoly or nationalisation subserves public good. In the said case, the Court was dealing with a case of nationalisation of transport services. There can be no quarrel with the

proposition that the purpose of the Nationalisation Act was indeed to subserve the common good as held in ***Tara Prasad Singh v. Union of India, (1980) 4 SCC 179***. The purpose of the vesting under the Nationalisation Act was to distribute the resource to subserve the common good.

119. We may, in fact, notice the concern of the Court in ***Tara Prasad Singh*** about coal being not inexhaustible and the need for a wise and planned conservation of the resources being expressed in para 39. No doubt, all this was at the time when the Nation was confronted with the condition of the mines being what it was as brought out in the Statement of Objects.

120. We agree with the appellants and as held by this Court in ***State of Karnataka* v. *Ranganatha Reddy*, (1977) 4 SCC 471** that "distribution" is a word of wide meaning and it is covered by Article 39(*b*) of the Constitution. It must be remembered that the Court had occasion to hold so by way of dealing with the argument that nationalisation did not have a nexus with the word "distribution".

121. The judgment of this Court in ***Waman Rao* v. *Union of India*, (1981) 2 SCC 362** holds that laws passed to give effect to Articles 39(*b*) and 39(*c*) could not be found violative of Article 14. There cannot be any quarrel. We are, in this case, called upon to deal with the case based on the actions taken by the appellant, which is a government company based on its powers under the Nationalisation Act, being challenged on the anvil of a later law made by Parliament, the validity of which, relevantly is not under challenge.

122. Distribution of coal is intended to subserve common good holds this Court in ***Samatha v. State of A.P., (1997) 8 SCC 191***. The content of common good is itself not a static concept. It may take its hue from the context and the times in which the matter falls for consideration by the Court. If Parliament has intended

> that State monopolies even if it be in the matter of distribution must come under the anvil of the new economic regime, it cannot be found flawed by the Court on the ground that subjecting the State monopoly would detract from the common good which the earlier Nationalisation Act when it was enacted, undoubtedly, succeeded in subserving. We see no reason to hold that a State monopoly being run through the medium of a government company, even for attaining the goals in the Directive Principles, will go outside the purview of the Act."

Ultimately, in paragraph 130, it was opined by this Court that there was no merit in the contention of the appellants therein that the Competition Act would not apply to them for the reason that they were governed by the Nationalisation Act.

13.6 Thus, under Article 39(b), there could be policies made by the State towards securing the ownership and control over material resources of the community so as to distribute as best to subserve the common good. However, as discussed above this need not be only by way of a legislation, it could also be by acting under the extant legislations which would envisage a policy having the letter and spirit of Article 39(b). In case there is any enactment made in the context of Article 39(b), in such an event, the same cannot be assailed on the touchstone of Articles 14 or

19, in view of Article 31C of the Constitution. In my view, this bar under Article 31C, *inter alia,* is in order to achieve the salutary object of clause (c) of Article 39 which envisages that the operation of the economic system does not result in the concentration of wealth as means of production to the common detriment. Thus, clause (b) of the said Article is a means to achieve an end in clause (c). Thus, both clauses (b) and (c) of Article 39 being complementary and supplementary to each other have been clearly envisaged in Article 31C of the Constitution and therefore any policy which is in the form of an enactment or a law or any action taken to further the goals of Article 39(b) and (c) cannot be assailed on the basis of grounds available under Articles 14 and 19. Thus, Article 31C provides that no such law giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 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 Articles 14 and 19.

13.7 In ***Ranganatha Reddy,*** while upholding the legislation for nationalisation of contract carriages by the Karnataka State,

it was observed by this Court speaking through Untwalia, J. that "to distribute" means "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 throughout a community". Thus, nationalisation of transport is a distributive process for the good of the community where the State or its instrumentalities would take upon themselves to conduct the economic activity on nationalisation.

13.8 In ***Sanjeev Coke,*** a five-Judge Bench of this Court speaking through Chinnappa Reddy, J. held that the word "distribute" in Article 39(b) "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, distribution between classes and distribution between public, private and joint sectors. 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"

13.9 Similarly, in ***Madhusudan Singh vs. Union of India***, ***(1984) 2 SCC 381 ("Madhusudan Singh")*** while upholding land reforms measures, this Court observed (in para 22) that the surplus agricultural lands from the landlords could be distributed amongst the poor suffering landless tillers of the soil who were at the mercy of the rich landlords or zamindars. Such land reforms legislations, therefore, were for securing and giving effect to objects of Article 39(b) clearly intending to distribute the material resources of the community, viz., the agricultural lands, to a large number of tillers of the soil in order to serve the common good of the aforesaid people on such land vesting in the State by operation of law under various legislations.

13.10 In ***Natural Resources Allocation,*** auction was considered to be a manner of distribution of material resources of the community. This Court observed that the distribution of the "material resources of the community" must be for the "common good" which should be the sole guiding factor under Article 39(b) and the touchstone of testing whether any policy subserves the "common good". As regards the means adopted, it should also be in accordance with law and the principles

enshrined in Article 39(b). The Court also observed that there may be various methods of distribution of material resources of the community including natural resources and it depends upon the wisdom of the executive as to how it would deal in such matters. In the said judgment, this Court concluded as under:

- Maximization of revenue cannot be the sole permissible consideration, for disposal of all natural resources, across all sectors and in all circumstances, therefore disposal of all natural resources through auctions is clearly not a constitutional mandate.

- Reading auction as a constitutional mandate would be impermissible because such an approach may distort another constitutional principle embodied in article 39(b).

- Out of the two concepts namely, "public trust doctrine" and "trusteeship" referred in *2G* case public trust may be accepted as public trust mandates a high degree of judicial scrutiny.

- A judicial scrutiny of methods of disposal of natural resources should depend on the facts and circumstances of each case, in consonance with the principles of equality and common good. Failing which, the court, in exercise of power of judicial review.

- While distributing natural resources the state is bound to act in consonance with the principles of equality and public trust and ensure that no action is taken which may be detrimental to public interest.

- The state action including distribution of natural resources has to be fair, reasonable, non-

> discriminatory, transparent, non-capricious, unbiased, without favouritism or nepotism, in pursuit of promotion of healthy competition and equitable treatment. It should conform to the norms, which are rational, informed with reasons and guided by public interest, *etc.* and this is the mandate of article 14 of the Constitution of India.
>
> While any policy or law which envisages that the goals in Article 39(b) or (c) cannot be called in question in a Court of law on the touchstone of Articles 14 and 19, nevertheless the implementation of the said policy in a discriminatory or arbitrary manner could attract Article 14 or the equality clause. Discrimination and arbitrariness being antithetical to the essence of Article 14, the action of distribution which is essentially an administrative action could be challenged before a Constitutional Law on the basis of the relevant principles applicable in exercise of judicial review of such administrative action."

13.11 While any policy or law may envisage that the goals in Article 39(b) or (c) cannot be called in question in a Court of law on the touchstone of Articles 14 and 19, nevertheless the implementation of the said policy in a discriminatory or arbitrary manner could attract Article 14 or the equality clause. Thus, while the wisdom or correctness of a policy or legislation in furtherance of the goals and objects of Article 39 (b) and (c) cannot be questioned *vide* Article 31C of the Constitution, it does not bar the questioning of the implementation of the policy before

a court of law. Discrimination and arbitrariness being antithetical to the essence of Article 14, the governmental action of distribution which is essentially an administrative action could be challenged before a Constitutional Court on the basis of relevant principles applicable in exercise of judicial review of such administrative action.

I shall now discuss the opinions in the four judgments which are doubted in the reference order.

Ranganatha Reddy:

14. A seven-Judge Constitution Bench of this Court considered the correctness of the Karnataka Contract Carriages (Acquisition) Act, 1976 (Karnataka Act No.21 of 1976) ("Karnataka Act") by which all private contract carriages in the private ownership of persons were sought to be nationalised by acquisition of the vehicles. The High Court had allowed all the writ petitions, struck down the Act as unconstitutional and declared it null and void. There was a direction to restore the vehicles with the relative permits and all other assets to the operators from whom they were taken over. Some consequential

directives for determination of damages in some later proceedings were also issued.

14.1 The State of Karnataka had filed the appeals before this Court. One of the contentions raised on behalf of the owners of the contract carriages was that the acquisition was not for a public purpose and that the compensation provided was wholly illusory and arbitrary. The second contention was that Article 31C does not bar the challenge to the Act as being violative of Article 31(2) of the Constitution as there is no reasonable and substantial nexus between the purpose of the acquisition and securing the principles specified in clauses (b) and (c) of Article 39. Considering the issue of public purpose, the majority held that it is beyond the pale of any controversy now, particularly after the decision of this Court in ***Kesavananda Bharati*** that any law providing for acquisition of property must be for a public purpose and whether the law of acquisition is for public purpose or not is a justiciable issue. The intention of the legislature has to be gathered mainly from the Statement of Objects and Reasons of the Act and its Preamble and various provisions of the Act, its context and set up, and the purpose of acquisition has to be

culled out to ascertain whether it is for a public purpose within the meaning of Article 31(2) of the Constitution.

14.2 Considering the provisions of the Karnataka Act, it was observed that in substance, the acquisition of the contract carriages was for nationalisation of the contract transport service in the State of Karnataka which was for a public purpose. On the question as to whether the compensation or amount paid for the property acquired was illusory and, therefore, in violation of fundamental right under Article 31(2), it was observed that on an interpretation of the provisions of the aforesaid Act, the amount so fixed was neither illusory nor arbitrary. In some respects, it may be inadequate but that cannot be a ground for challenge of the constitutionality of the law under Article 31(2) of the Constitution.

14.3 That the State Government on acquisition and the vesting of the acquired property would enable the Road Transport Corporation to run the vehicles. Since the constitutional validity of the Act was upheld, the majority speaking through Untwalia, J. did not consider it necessary to express any opinion with reference to Article 31C read with clauses (b) and (c) of Article 39.

It was categorically observed that Krishna Iyer, J. had prepared a separate opinion especially dealing with this point but the majority issued a caveat stating that they had not agreed with all that he had stated in his judgment. Consequently, the appeals filed by the State were allowed and the writ petitions filed by the contract carriage operators were unsuccessful.

14.4 Krishna Iyer, J. for himself and on behalf of Bhagwati and Jaswant Singh, JJ. penned a separate opinion while agreeing with the majority on the result. The opinion focussed on judicial perspective *vis-à-vis* constitutionality of economic legislation. It was observed that the quintessence of the Constitution consists in its Preamble, Articles 38, 39(b) and (c), 31 and the bunch of Articles 31A, 31B and 31C.

14.5 On the question whether the Karnataka Act was in accordance with the public purpose, it was observed that the purpose of a public body, to run a public transport service for the benefit of the people operating in a responsible manner through exercise of public power which is controlled and controllable by society through its organs like the Legislature

and, at times, even the Court, is manifestly a public purpose. It was discussed further that there may be a wide range of choices for achieving a public purpose. The State may walk into the open market and buy the items, movable and immovable, to fulfil the public purpose; or it may compulsorily acquire from some private person's possession and ownership the articles needed to meet the public purpose; it may requisition, instead of resorting to acquisition; it may take on loan or on hire or itself manufacture or produce. All these steps are various alternative means to meet the public purpose.

14.6 The State may require several items to run a welfare-oriented administration or a public corporation or answer a community requirement. If the purpose is for servicing the public, as governmental purposes ordinarily are, then everything desiderated for subserving such public purpose falls under the broad and expanding rubric. The nexus between the taking of property and the public purpose springs necessarily into existence if the former is capable of answering the latter. On the other hand, if the purpose is a private or non-public one, the mere fact that the hand that acquires or requires is Government

or a public corporation, does not make the purpose automatically a public purpose. Further, public purpose is vastly wider than the public *necessity*, even as a mere purpose is more pervasive than an urgency. According to Krishna Iyer, J., "Public purpose" should be liberally construed and neither socialist jurisprudence nor capitalist legal culture can govern the concept of public purpose in India's mixed economy and expanding public sector, in the context of progressive developmental programmes.

14.7 At paragraph 37 of the majority judgment, it has been categorically stated *"since we have upheld the constitutional validity of Act on merits by repelling the attack on it by a reasonable and harmonious construction of the Act, we do not consider it necessary to express any opinion with reference to Article 31C read with clauses (b) and (c) of Article 39 of the Constitution. Our learned brother Krishna Iyer, J. has prepared a separate judgment specially dealing with this point. We must not be understood to agree with all that he has said in his judgment in this regard."* Although Krishna Iyer, J. agreed with the majority on upholding the nationalisation of Contract Carriages by the State of Karnataka, he nevertheless made certain

observations on behalf of himself, Bhagwati and Jaswant Singh, JJ. only as a separate afterword. In my view, the same cannot be considered to be the ratio of the judgment but an expression of the constitutional philosophy as understood by them during those decades.

Bhim Singhji:

15. In ***Bhim Singhji,*** the Constitution Bench headed by YV Chandrachud, C.J., dismissed the writ petitions while striking down Section 27(1) of the Urban Land (Ceiling and Regulation) Act, 1976. Writing the majority judgment for himself and on behalf of Bhagwati, J., it was observed by the learned Chief Justice that the Act under challenge was passed with the object of preventing concentration of urban land in the hands of a few persons and with a view to bringing about an equitable distribution of land in urban agglomerations to subserve the common good. "Common good" being the writing on the wall, any disposal which does not serve that purpose would be outside the scope of the Act and therefore lacking in competence in diverse senses. More significantly, it was observed that private property cannot, under our Constitution be acquired or allotted for private

purposes though an enabling power like that contained in sub-section (1) of Section 23 of the aforesaid Act may be exercised in cases where the common good dictates the distribution of excess vacant land to an industry, as defined in clause (b) of the Explanation to Section 23 of the aforesaid Act. It was observed that the governing test of disposal of excess land being "social good", any disposal in any particular case which did not subserve that purpose would be liable to be struck down as being contrary to the scheme and intendment of the Act.

15.1 Krishna Iyer, J. agreeing with the learned Chief Justice and in disagreement with Tulzapurkar and AP Sen, JJ. observed that the purpose of the enactment was to set a ceiling on vacant urban land, to take over the excess and to distribute it on a certain basis of priority. "Common good" was the guiding factor for distribution and that public purpose, national development and social justice were the cornerstone of the policy of distribution. This is different from compulsory taking from some private owners to favour by transfer other private owners.

Sanjeev Coke:

16. In ***Sanjeev Coke,*** the Constitution Bench of this Court considered the validity of the nationalisation of coking oven plants of the appellants therein. In the said case, the validity of Coking Coal Mines (Nationalisation) Act, 1972 was entitled to protection of Article 31C of the Constitution. In the said case, the observations of Bhagwati, J. in ***Minerva Mills*** were relied upon in *extenso* to give a complete approval of the same with "full concurrence".

16.1 One of the arguments raised in the said case was that the word "distribute" in Article 39(b), if given its proper emphasis would inevitably follow that material resources belong to the community as a whole, that is to say, to the State or the public, before they could be distributed as best to subserve the common good. Since those material resources which belong to the State only could be distributed by the State, it was 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. This Court did not appreciate the said submission by Sri Sen. This is also the argument of Sri Zal Andhyarujina.

16.2 This Court observed that 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 member of the community. Resources of the community do not mean public resources only but include private resources as well.

16.3 It was further observed that the word "distribute" to be used in Article 39(b) cannot be construed in the limited sense, 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, distribution between classes and distribution between public, private and joint sectors. The word "distribute" in Article 39(b) 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. In this regard, reliance was also placed on the observations of Krishna Iyer, J. in ***Ranganatha Reddy*** referred to above.

16.4 The next question considered was, whether, nationalisation can have nexus with distribution. It was observed that "socially conscious economists will find little difficulty in treating nationalisation of transport as a distributive process for the good of the community". Therefore, the observations in this case talked about the fact that nationalisation of transport is a part of distributive process for the good of the community. Ultimately, it was held that expression "material resources of the community" is not confined to natural resources and it is not confined to resources owned by the public. It means and includes all resources, natural and man-made, public and private owned. Ultimately, it was observed that Coking Coal Mines (Nationalisation) Act, 1972 is a legislation for giving effect to the policy of the State towards securing the principles specified in Article 39(b) of the Constitution and is, therefore, immune, under Article 31C, from attack on the ground that it offends the fundamental right guaranteed by Article 14. Consequently, the writ petitions filed by Sanjeev Coke Manufacturing Co. were dismissed by a unanimous judgment.

16.5 In this case, the Constitution Bench arrived at its conclusions on the validity of the Coking Coal Mines (Nationalisation Act), 1972 and upheld the same but while doing so in paragraphs 10 to 14 observations were made with regard to the judgment of this Court in ***Minerva Mills***. In fact, paragraph 10 reads as follows: *"We have some misgivings about the Minerva Mills' decision despite its rare beauty and persuasive rhetoric"*. In my view, these observations were wholly unnecessary as they lose sight of the outstanding judicial statesmanship exemplified in the majority judgment authored by learned YV Chandrachud, Chief Justice, in ***Minerva Mills***. One has to bear in mind the fact that the hearings in the case of ***Minerva Mills*** as well as in ***Waman Rao*** were proceeding contemporaneously but before different Benches both headed by learned YV Chandrachud, Chief Justice. Realising the import of the separate opinion of Krishna Iyer, J. in ***Ranganatha Reddy*** and the likelihood of the said opinion gaining momentum in ***Minerva Mills*** as well as in ***Waman Rao*** and rightly so, the then learned Chief Justice took up on himself the responsibility of pronouncing the operative portion of the judgment in ***Minerva***

Mills in May, 1980 and supplementing the reasons in July, 1980 and the judgment in ***Waman Rao*** was delivered in November, 1980 just prior to Krishna Iyer, J. demitting office. It is another matter that Bhagwati, J. frowned upon such a strategy adopted in ***Minerva Mills*** and in fact penned a common separate judgment in ***Minerva Mills*** and ***Waman Rao*** although the issues were distinct though overlapping in certain areas which were minority opinions. In ***Waman Rao,*** only a short order was passed by Bhagwati, J.

16.6 A.N. Sen, J. by his concurring judgment, however, opined that since there was a review of the judgment in ***Minerva Mills*** pending before this Court, he refrained from dealing with the said decision and from making any observations or comments on the same.

Abu Kavur Bai:

17. In this case, the Tamil Nadu Stage Carriage and Contract Carriages (Acquisition) Act, 1973 was held to be constitutional and protected under Article 31C as it gave effect to the Directive Principles under Article 39 (b) and (c). Fazal Ali, J. speaking for the Bench headed by Y.V. Chandrachud, C.J. observed that in

Sanjeev Coke, this Court had opined that where Article 31C comes in, Article 14 goes out and therefore, there is no scope for treating Article 14 as included in the principle of Article 39(b).

17.1 In paragraph 72, the expression "public purpose" was discussed and referring to Black's Law Dictionary (Special Deluxe Fifth Edition) at page 1107, it was observed that the term is synonymous with governmental purpose which has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity and containment of a State. Discussing the expression "material resources of the community" in Article 39(b), it was observed that the argument of Sri Sen that material resources has to be first acquired by the State before they could be distributed and a law providing for acquisition was not a law for distribution was not an argument which could be appreciated.

In my view, a law proving for acquisition is not strictly speaking a law providing for distribution but a law which provides for a public purpose for which acquisition of immovable property could be made. It is only after the vesting of the acquired immovable property with the State that the said property would

be available for distribution as "material resources of the community". This could be for either actual distribution to the eligible and deserving citizens or to be retained by the State for being utilised for a public purpose on the strength of the public trust doctrine.

17.2 There was also discussion on the various nuances of the expression "distribute" and "distribution" in the context of nationalisation and ultimately, it was held that nationalisation of State Carriages and Contract Carriages by way of an acquisition met the twin objects of Article 39 (b) and (c) and accordingly allowed the appeals of the State and set aside the judgment of the Madras High Court.

Basantibai:

18. In this case, this Court considered the correctness of the judgment of the Bombay High Court by which the High Court had declared sub-sections (3) and (4) of the Maharashtra Housing and Area Development Act, 1976 (hereinafter referred as, "MHADA") as void and had given certain ancillary directions. It is not necessary to go into the discussion on the merits of the case. However, while considering the validity of the aforesaid

provisions on the touchstone of Article 14 of the Constitution, this Court, at the outset, proceeded to observe in paragraph 13 of the judgment as: *"We shall proceed to test the validity of the argument keeping aside for the time being the observation in Sanjeev Coke Manufacturing Co. vs. Bharat Coking Coal Ltd., (1983) 1 SCC 147 : AIR 1983 SC 239"*. Then reference was made to ***Kesavananda Bharati*** and ***Minerva Mills.*** On the basis of the aforesaid two decisions, it was observed that in order to ascertain whether the enactment was protected by Article 31C of the Constitution, the Court has to satisfy itself about the character of the legislation by studying all parts of it. The question whether an Act is intended to secure the objects contained in Article 39(b) or not, does not depend upon the declaration by the legislature but depends on its contents. The finding was that MHADA provided for reserving land for securing public amenities without which people could not live there as well as community centres, shopping complexes, parks, roads, drains, playgrounds, all being necessary for civic life and these amenities being enjoyed by all. It was held that this is also a kind of distribution. Reference was made to ***Ranganatha Reddy***

which dealt with the question whether nationalisation of bus transport was covered by Article 39(b) and to Krishna Iyer, J's observations extracted as under:

> "The next question is whether nationalisation can have nexus with distribution. Should we assign a narrow or spacious sense to this concept? Doubtless, 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 throughout 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 envelop it. It is a matter of public policy left to legislative wisdom whether a particular scheme of takeover should be undertaken.
>
> Two conclusions strike as quintessential. Part IV, especially Article 39(*b*) and (*c*), is a futuristic mandate to the State with a message of transformation of the economic and social order. Firstly, such change calls for collaborative effort from all the legal institutions of the system : the legislature, the judiciary and the administrative machinery. Secondly and consequentially, loyalty to the high purpose of the Constitution viz. social and economic justice in the context of material want and utter inequalities on a massive scale, compels the court to ascribe expansive meaning to the pregnant words used with hopeful

> foresight, not to circumscribe their connotation into contradiction of the objectives inspiring the provision. To be Pharisaic towards the Constitution through ritualistic construction is to weaken the social-spiritual thrust of the founding fathers' dynamic faith."

Only the aforesaid portions of Justice Krishna Iyer's judgment were distilled by this Court in this case. Consequently, it was held that the MHADA was brought into force to implement the directive principle contained in Article 39(b) and hence, even if there was any infraction of Article 14, it was cured by Article 31C which clearly was attracted to the case.

18.1 Therefore, it was observed that the MHADA was protected from challenge owing to the applicability of Article 31C of the Constitution and it was immune from the challenge under Articles 14, 19 and 31 of the Constitution.

18.2 It was further observed that land ceiling laws, laws providing for acquisition of land for providing housing accommodation, laws imposing ceiling on urban property etc. cannot be struck down by invoking Article 21 of the Constitution. Consequently, the judgment of the High Court was set aside to the extent that sub-sections (3) and (4) of Section 44 of MHADA

had been held unconstitutional and struck down and the appeal was allowed.

18.3 What is significant about the judgment in ***Basantibai*** is, *firstly*, the case was considered in light of only that portion of the judgment of Krishna Iyer, J. which dealt with the aspect of distribution and it did not discuss other aspects of Krishna Iyer, J.'s judgment which dealt with the question whether even private property can be equated as "material resources of the community". *Secondly*, in this judgment, it has been expressly stated that to test the validity of MHADA, the observations of this Court in ***Sanjeev Coke*** were to be kept aside. Venkataramiah, J. who was the author of the judgment in ***Basantibai*** and a member of the five-Judge Bench in ***Sanjeev Coke*** distanced himself from the observations made by Chinappa Reddy, J. in ***Sanjeev Coke*** as well as the other observations of Krishna Iyer, J. in ***Ranganatha Reddy.***

18.4 However what is common in all these cases is the fact that nationalization of contract carriages in ***Ranganatha Reddy;*** nationalization of coal mines in ***Sanjeev Coke*** and reserving of

land for public amenities under MHADA were all upheld and sustained on the touchstone of Article 39(b) and protected from attack by virtue of Article 31C.

18.5 While Krishna Iyer and Chinappa Reddy, JJ. supported their reasoning on the touchstone of the word "socialist" in the Preamble of the Constitution, Venkataramiah, J. in ***Basantibai*** considered the validity of the MHADA *de hors* the observations made by Chinappa Reddy, J. in ***Sanjeev Coke*** and selected only certain portions of the separate opinion of Krishna Iyer, J. in ***Ranganatha Reddy***. Thus, this Court was able to consider the validity of MHADA on the strength of Articles 39(b) read with Article 31C without taking note of many of the observations in ***Ranganatha Reddy*** and no observation in ***Sanjeev Coke*** made by the aforesaid learned Judges on their "socialist philosophy and on socialism". ***Basantibai*** is a judgment which was delivered in the year 1986, when *Perestroika* was taking place even in a country such as Union of Soviet Socialist Republics (USSR), the home to Socialism, and there was also a beginning of a new thinking in India too commencing with five technological

missions leading to the Reforms of 1991 which I have discussed in the earlier part of my opinion.

19. This Court in ***Tinsukhia Electric Supply Co. Ltd. vs. State of Assam, (1989) 3 SCC 709;*** and ***Assam Sillimanite Ltd. vs. Union of India, 1992 Supp. (1) SCC 692***, followed earlier judgments of this Court in ***Ranganatha Reddy*** and ***Sanjeev Coke***.

Mafatlal:

20. The context of the case in ***Mafatlal*** was a claim for refund made by a taxpayer owing to an unconstitutional or illegal levy. With regard to the arguments made by Sri K Parasaran, learned senior counsel on the distinction between the constitutional values as they obtained in countries like United States of America, Canada United Kingdom and Australia and the Indian Constitution which has set the goal of "justice, social, economic and political" – a total restructuring of our society as envisaged in Articles 38 and 39 of the Constitution, certain observations were made by the nine-Judge Bench of this Court headed by learned Ahmadi, C.J. and speaking through Jeevan Reddy, J. in

paragraphs 84 to 86. In this context, the observations of Krishna Iyer, J. in ***Ranganatha Reddy*** were extracted, which are very apposite to the reference under consideration and which read as under:

> "Constitutional problems cannot be studied in a socio-economic vacuum, since socio-cultural changes are the source of the new values, and sloughing off old legal thought is part of the process of the new equity-loaded legality. ... It is right that the rule of law enshrined in our Constitution must and does reckon with the roaring current of change which shifts our social values and shrivels our feudal roots, invades our lives and fashion our destiny."

It is in the above context that reference was made to the expression "the material resources of the community" and the exposition by Iyer, J. in ***Ranganatha Reddy*** and in ***Sanjeev Coke*** and ***Abu Kavur Bai***. Therefore, those observations could be construed only in the context of the submissions made in the said case on the goal of Justice as envisaged under the Indian Constitution. In this context, the observations of S.C. Sen, J. who wrote a dissenting opinion are instructive. He said, "Article 39 cannot be a basis for retaining whatever has been gathered unlawfully by the Government for common good. Simply stated, the Directive Principles of the State Policy do not license the

Government to rob Peter to pay Paul." They have a persuasive value. Therefore, those observations may be *obiter* in nature but have persuasive value in view of my aforesaid discussion.

21. In ***Kolkata Municipal Corporation vs. Bimal Kumar Shah, 2024 INSC 435 ("Bimal Kumar Shah"),*** Justice P.S. Narasimha has observed that "to hold that all private property is covered by the phrase "material resources of the community" and that the ultimate aim is state control of private resources would be incompatible with the constitutional protection detailed above."

Summary of Conclusion:

22. Having regarding to the lengthy discussion made above, it is necessary to have the summary of conclusions as under:

I. Articles 37, 38 and 39 of the Constitution of India which are part of the Directive Principles of State Policy have to be interpreted by bearing in mind the changing economic policies of the State and not in a rigid watertight compartment. The flexibility of interpretation is having regard to the dynamic changes in the Indian socio-

economic policies meant for the welfare and progress of the people of India. An interpretation of the aforesaid Articles or for that matter any other provision of the Constitution must be viewed in the historical backdrop of the period in which the interpretation was made by this Court during the course of adjudication. Any interpretation which was found to be sound and in consonance with the socio-economic policy of the State during a particular period of time, cannot be critiqued at a later point of time in any quarter including by a court of law merely because the socio-economic policies of the State have changed over a period of time or there is a paradigm shift in the thinking and policies of the State.

II. Articles 37 and 38 of the Constitution have to be borne in mind by the Courts while considering the validity of any policy or statute which intend to further any of the Directive Principles of State Policy.

III. Article 39(b) has to be read in the context of Article 39(c). Articles 39(b) and (c) supplement and complement each other and cannot be construed in silos.

Article 39(b) comprises of following five components, namely,

(i) ownership and control;

(ii) material resources;

(iii) of the community;

(iv) so distributed; and

(v) as best to subserve the common good.

(i) The expression "ownership and control" must be given its widest connotation in the context of "distribution of" "material resources of the community" "as best to subserve the common good".

(ii) "Material resources" can in the first instance be divided into two basic categories, namely, (i) State owned resources which belong to the State which are essentially material resources of the community, held in public trust by the State; and (ii) privately owned resources. However, the expression "material resources" does not include "personal effects" or "personal belonging" of individuals, such as, clothing or apparel, household articles, personal

jewellery and other articles of daily use belonging to the individuals of a household and which are intimate and personal in nature and use. Excluding "personal effects", all other privately owned resources can be construed as "material resources".

Thus, all resources whether they are public resources or privately owned resources which come within the scope and ambit of the expression "material resources" as stated above are included within that expression.

(iii) "Material resources" which are privately owned could be transformed as "material resources of the community", *inter alia,* in the following five ways:

a. by nationalisation, which could be either by way of an enactment made by the Parliament or a State legislature or in any other manner in accordance with law;

b. by acquisition, which could be by way of a special enactment made by the Parliament or a State legislature having regard to Entry 42 – List III of

the Seventh Schedule of the Constitution. Alternatively, the acquisition could be made under the extant Parliamentary or State laws dealing with acquisition;

c. by operation of law, such as vesting of private resources in the State, which could be by virtue of statutes dealing with land reforms, land tenures, abolition of inams, village offices or any other law where by operation of law there would be vesting of private material resources in the State or in any other manner in accordance with law;

d. by purchase of the material resource from private persons by the State, its agencies and instrumentalities in the manner known to law; and

e. by the private owner of the material resource converting his "material resources" as a "material resource of the community" by donation, gift,

creation of an endowment or a public trust or in any other manner known to law.

(iv) In (a) to (d) above, the provision of Article 300A which is a constitutional right to property has to be complied with.

(v) The "material resources of the community" have to be "distributed as best to subserve the common good". Distribution could be in two ways:

Firstly, by the State itself retaining the material resource for a public purpose and/or for public use; and

Secondly, privately owned material resources when converted as "material resources of the community" can be distributed to eligible and deserving persons either by way of auction, grant, assignment, allocation, lease, sale or any other mode of transfer known to law either temporarily or permanently depending upon the mode adopted and unconditionally or with conditions depending upon:

(a) nature of the resource and its inherent characteristics;

(b) the impact of the resource on the well-being of the community;

(c) the scarcity of the resource;

(d) the consequences of such a resource being concentrated in the hands of the private owners; and

(e) any such factors.

(vi) The expression "common good" would, *inter alia,* mean that the distribution of the "ownership and control of material resources of the community" would not lead to concentration of the wealth and means of production in the hands of few which is a Directive Principle in clause (c) of Article 39. Thus, "distribution of material resources of the community" cannot violate the Directive Principle in clause (c) of Article 39 of the Constitution.

IV. The majority judgment of this Court in ***Ranganatha Reddy*** and the judgment in ***Abu Kavur Bai*** relate to nationalisation of contract carriages/State carriages which were upheld by this Court. Nationalisation of coking coal mines was upheld by this

Court in ***Sanjeev Coke***. In ***Bhim Singhji*** and ***Basantibai***, certain provisions of the Urban Land Ceiling Act and the provisions of MHADA respectively were upheld on the touchstone of Article 39(b) of the Constitution.

The nine-Judge Bench in ***Mafatlal*** referred to the judgments of this Court in ***Ranganatha Reddy, Abu Kavur Bai*** etc. in the context of the submission made before, i.e., the Indian Constitution envisages Justice – social, economic and political, to all citizens of India as enshrined in the preamble. This was by way of an *obiter* but having persuasive value.

My Views to the Conclusions arrived at by the learned Chief Justice:

23. My views in response to the conclusions arrived at by the learned Chief Justice to the reference before this Court are summarized as under:

a. Article 31C to the extent that it was upheld in ***Kesavananda Bharati vs. Union of India*** remains in force.

My view: I agree.

b. The majority judgment in ***Ranganatha Reddy*** expressly distanced itself from the observations made by Justice Krishna Iyer (speaking on behalf of the minority of judges) on the interpretation of Article 39(b). Thus, a coequal Bench of this Court in ***Sanjeev Coke*** violated judicial discipline and erred by relying on the minority opinion.

My view: The majority judgment in ***Ranganatha Reddy***, no doubt, did not concur with the views of Krishna Iyer, J. expressed in his separate opinion. However, in ***Sanjeev Coke*** the Constitution Bench of five-Judges independently upheld what was challenged in the said case, namely, the Coking Coal Mines (Nationalisation) Act, 1972 and while doing so in paragraphs 19 and 20 referred to the observations of Krishna Iyer, J. in ***Ranganatha Reddy*** and made certain observations on the majority judgment in ***Minerva Mills***. However, A.N. Sen, J. did not express any opinion on the judgment of this Court in ***Minerva Mills***.

What is significant is that the judgments in ***Ranganatha Reddy*** as well as in ***Sanjeev Coke*** upheld the respective Nationalisation Acts. Therefore, on merits it cannot be held that ***Sanjeev Coke*** violated judicial discipline. One cannot lose sight of the fact that in ***Sanjeev Coke*** this Court did not decide the case only on the basis of the opinion of Krishna Iyer, J. in ***Ranganatha Reddy*** but on merits on the validity of the Nationalisation Act. Therefore, ***Sanjeev Coke*** is good law insofar as on the merits of the matter is concerned.

c. The single-sentence observation in ***Mafatlal*** to the effect that "material resources of the community" include privately owned resources is not part of the *ratio decidendi* of the judgment. Thus, it is not binding on this Court.

My view: It may be *obiter* but has great persuasive value. The discussion made above may be noted.

d. The direct question referred to this Bench is whether the phrase "material resources of the community" used in Article 39(b) includes privately owned resources. Theoretically, the answer is yes, the phrase *may* include privately owned resources. However, this Court is unable to subscribe to the expansive view adopted in the minority judgment authored by Justice Krishna Iyer in ***Ranganatha Reddy*** and subsequently relied on by this Court in ***Sanjeev Coke***. Not every resource owned by an individual can be considered a "material resource of the community" merely because it meets the qualifier of "material needs".

My view: Yes, privately owned resources except "personal effects" as explained above can come within the scope and ambit of the phrase "material resources of the community" provided such resources get transformed as "resources of the community" as discussed by me above. To reiterate,

it would not include personal effects as discussed by me in paragraph 7.6 above.

In view of my aforesaid discussion, I find that the controversy whether every resource owned by an individual can be considered as "material resource of the community" stands clarified.

e. The inquiry about whether the resource in question falls within the ambit of Article 39(b) must be context-specific and subject to a non-exhaustive list of factors such as the nature of the resource and its characteristics; the impact of the resource on the well-being of the community; the scarcity of the resource; and the consequences of such a resource being concentrated in the hands of private players. The Public Trust Doctrine evolved by this Court may also help identify resources which fall within the ambit of the phrase "material resource of the community".

My view: I agree. In addition, I also reiterate my discussion and conclusion on how privately owned

material resource can be transformed as "material resource of the community".

f. The term "distribution" has a wide connotation. The various forms of distribution which can be adopted by the state cannot be exhaustively detailed. However, it may include the vesting of the concerned resources in the state or nationalisation. In the specific case, the Court must determine whether the distribution "subserves the common good".

My view: The term "distribution" has no doubt a wide connotation but vesting in the State of a particular privately owned "material resource" or nationalisation of the same are only conditions precedent to distribution which have to comply with Article 300A of the Constitution. Further, a resource which has vested in the State or a resource retained by a State on nationalisation could be utilised by the State to subserve the common good as a material resource of the community. The public trust doctrine would apply to such material resources.

> Alternatively, the State could decide to actually distribute the "material resources of the community" to eligible and deserving persons by a way of assignment, lease, allotment, grant, etc. The same would also come within the scope and ambit of the expression "distribution".

24. In my view, the judgments of this Court in ***Ranganatha Reddy, Sanjeev Coke, Abu Kavur Bai*** and ***Basantibai*** correctly decided the issues that fell for consideration and do not call for any interference on the merits of the matters and as explained above. The observations of the Judges in those decisions would not call for any critique in the present times. Neither is it justified nor warranted.

25. Reference is answered in the above terms.

26. The Registry to place the matters before Hon'ble the Chief Justice of India for seeking orders for being listed before the appropriate Bench.

27. I must place on record my sincere appreciation to the learned Attorney General, learned Solicitor General and their

teams, learned senior counsel and learned counsel appearing for the respective parties and learned instructing counsel for their valuable assistance to this Bench.

.....J.
(B.V. NAGARATHNA)

NEW DELHI;
NOVEMBER 05, 2024.