Madan Mohan Pathak And Anr. vs Union Of India (Uoi) And Ors. on 21 February, 1978

Equivalent citations: AIR1978SC803, 1978LABLC612, (1978)ILLJ406SC, (1978)2SCC50, [1978]3SCR334, AIR 1978 SUPREME COURT 803, 1978 2 SCC 50, 1978 LAB. I. C. 612, 1978 (1) LABLN 516, 1978 3 SCR 334, 1978 (1) LABLJ 406

Author: P.N. Bhagwati

Bench: M.H. Beg, D.A. Desai, P.N. Bhagwati, P.N. Shinghal, S. Murtaza Fazal Ali, V.R. Krishna Iyer, Y.V. Chandrachud

JUDGMENT

1. The Life Insurance Corporation was constituted under the Life Insurance Corporation A

2. Provisions of Section 11(2) may read as follows :

(2) Where the Central Government is satisfied that for the purpose of securing uniformit

Explanation :The compensation payable to an employee under this Sub-section shall be in

3. Section 11(2) of the Act shows that the Central Government had ample power to revise

4. The objects and reasons of the Act were set out as follows :

The provisions of the Payment of Bonus Act, 1965 do not apply to the employees employed

2. It is proposed to set aside, with effect from the 1st April, 1975, these provisions o

3. The bill seems to achieve the above object.

5. The statement of objects and reasons discloses that the purpose of the impugned Act w

6. If Parliament steps in to set aside such a settlement, which the Central Government c

7. The first hurdle in the way of this attack upon the Act undoing the settlement under

8. The Act is a very short one of 3 sections. After defining the settlement as the one w
Notwithstanding anything contained in the Industrial Disputes Act, 1947, the provisions

9. The object of the Act was, in effect, to take away the force of the judgment of the C

10. I may, however, observe that even though the real object of the Act may be to set as

11. Apart from the consideration mentioned above there are also other considerations put
43. The State shall endeavour to secure by suitable legislation or economic organisatio

He submits that Article 43 casts an obligation on the State to secure a living wage for

12. Furthermore, I think that the principle laid down by this Court in Union of India an
Under our jurisprudence the Government is not exempt from liability to carry out the re

In that case, equitable principles were invoked against the Government. It is true that,

13. Mr. Garg has also strongly attacked Section 3 of the Act as violative of Article 14

14. I am sorry that due to the very short interval left for me to dictate my opinion in

15. It is true that the right to receive bonus which had teen recognised by the Central
31 (2A) Where a law does not provide for the transfer of the ownership or right to poss

16. I have, however, no doubt that the conclusion reached by my learned brother Bhagwati

17. I think that Section 3 of the impugned Act is struck by the provisions of Article 19

18. The things done or omitted to be done could certainly not mean that the rights confe

19. For the reasons given above, I reach the same conclusion as my learned brother Bhagw

P.N. Bhagwati, J.

20. These writ petitions are filed by employees of the Life Insurance Corporation challenging the constitutional validity of the Life Insurance Corporation (Modification of Settlement) Act, 1976. This unusual piece of legislation was enacted by Parliament during the emergency at a time when there could hardly be any effective debate or discussion and it sought to render ineffective a solemn and deliberate Settlement arrived at between the Life Insurance Carporation and four different associations of its employees for payment of cash bonus. It is necessary, in order to appreciate the various contentions arising in the writ petitions to recapitulate briefly the facts leading up to the enactment of the Life Insurance Corporation (Modification of Settlement) Act, 1976, hereinafter referred to as the impugned Act.

21. The Life Insurance Corporation is a statutory authority established under the Life Insurance Corporation Act, 1956 and Under Section 6 it is the general duty of the Life Insurance Corporation to carry on life insurance business, whether in or outside India, and it is required to so exercise its powers as to secure that life insurance business is developed to the best advantage of the community. It is not necessary to refer to the various provisions of the Life Insurance Corporation Act, 1956 which define the powers, duties and functions of the Life Insurance Corporation Act, since we are not concerned with them in these writ petitions. It would be enough to refer to Section 49 which confers power on the Life Insurance Corporation to make regulations. Sub-section (1) of that section provides that the Life Insurance Corporation may, with the previous approval of the Central Government, make regulations, not inconsistent with the Act, "to provide for all matters for which provision is expedient for the purpose of giving effect to the provisions" of the Act and Sub-section (2) enacts that in particular and without prejudice to the generality of the power conferred under Sub-section (1), such regulations may provide for-

> (1)) the method of recruitment of employees and agents of the Corporation and the terms and conditions of service of such employees or agents;
>
> (bb) the terms and conditions of service of persons who have become employees of the Corporation under Sub-section (1) of Section 11;

The Life Insurance Corporation has in exercise of the power conferred under Clauses (b) and (bb) of Sub-section (2) of Section 49 and with (he previous approval of the Central Government, made the Life Insurance Corporation (Staff) Regulations, 1960 defining the terms and conditions of service of its employees. There is only one Regulation which is material for our purpose, and that is Regulation 58 which is in the following terms : The Corporation may, subject to such directions as the Central Government may issue, grant non-profit sharing bonus to its employees and the payment thereof, including conditions of eligibility for the bonus, shall be regulated by instructions issued by the Chairman from time to time.

We have set out Regulation 58 in its present form as that is the form in which it stood throughout the relevant period. It will be a matter for consideration as to what is the effect of this Regulation on the Settlement arrived at between the Life Insurance Corporation and its employees in regard to

bonus.

22. It appears that right from 1959 Settlement were arrived at between the Life Insurance Corporation and its employees from time to time in regard to various matters relating to the terms and conditions of service of Class III and Class IV employees including bonus payable to them. The last of such Settlement dated 20th June, 1970, as modified by the Settlement dated 26th June, 1972, expired on 31st March, 1973. Thereupon four different associations of employees of the Life Insurance Corporation submitted their charter of demands for revision of scales of pay, allowances and other terms and conditions of service on behalf of Class III and Class IV employees. The Life Insurance Corporation carried on negotiations with these associations between July 1973 and January 1974 at which there was free and franc exchange of views in regard to various matters including the obligation of the Life Insurance Corporation to the policy-holders and the community and ultimately these negotiations culminated in a Settle-men; dated 24th January, 1974 between the Life Insurance Corporation and these associations. The Settlement having been arrived at otherwise than in the course of conciliation proceeding, was binding on the parties Under Section 18, Sub-section (1) of the Industrial Disputes Act, 1947 and since the four associations which were parties to the employees, the Settlement was binding on the Life Insurance Corporation and all its Class III and Class IV employees. The Settlement provided for various matters relating to the terms and conditions of service but we are concerned only with Clause (8) which made provision in regard to bonus. That clause was in the following terms :

> (i) No profit sharing bonus shall be paid. However, the Corporation may, subject to such directions as the Central Government may issue from time to time, grant any other kind of bonus to its Class III & IV employees.
>
> (ii) An annual cash bonus will be paid to all Class III and Class IV employees at the rate of 15% of the annual salary (i.e. basic pay including of special pay, if any, and dearness allowance and additional dearness allowance) actually drawn by an employee in respect of the financial year to which the bonus relates.
>
> (iii) Save as provided herein all other terms and conditions attached to the admissibility and payment of bonus shall be as laid down in the Settlement on bonus dated the 26th June, 1972.

It is also necessary to reproduce here Clause (12) as that has some bearing on the controversy between the parties :

> PERIOD OF SETTLEMENT :
>
> (1) This Settlement shall be effective from 1st April, 1973 and shall be for a period of four years, i.e., from 1st April, 1973 to 31st March, 1977.
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> (2) terms of this Settlement shall be subject to the approval of the Board of the Corporation and the Central Government (3) This Settlement disposes of all the

demands raised by the workmen for revision of terms and conditions of their service.

(4) Except as otherwise provided or modified by this Settlement, the workmen shall continue to be governed by all the terms and conditions of service as set forth and regulated by the Life Insurance Corporation of India (Staff) Regulations, 1960 as also the administrative instructions issued from time to time and they shall, subject to the provisions thereof including any period of operation specified therein be entitled to the benefits thereunder.

It was common ground between the parties that the Settlement was approved by the Board of the Life Insurance Corporation as also by the Central Government and the Chief of Personnel by his Circular dated 12th March, 1974 intimated to the Zonal and Divisional Managers that the approval of the Central Government to the Settlement having been received, the Life Insurance Corporation should proceed to implement the terms of the Settlement. The Executive Director also issued a circular dated 29th March, 1974 containing administrative instructions in regard to payment of cash bonus under Clause 8(ii) of the Settlement. These administrative instructions set out directions in regard to various matters relating to payment of cash bonus and of these, two are material. One was that in case of retirement or death, salary up to the date of cessation of service shall be taken into account for the purpose of determining the amount of bonus payable to the employee or his heirs and the other was that the bonus shall be paid along with the salary for the month of April, but in case of retirement or death, payment will be made "soon after the contingency". There was no dispute that for the first two years, 1st April, 1973 to 31st March, 1974 and 1st April, 1974 to 31st March, 1975, the Life Insurance Corporation paid bonus to its Class III and Class IV employees in accordance with the provisions of Clause 8(ii) of the Settlement read with the administrative instructions dated 29th March, 1974. But then came the declaration of emergency on 26th June, 1975 and troubles began for Class III and Class IV employees of the Life Insurance Corporation.

23. On 25th September, 1975 an Ordinance was promulgated by the President of India called the Payment of Bonus (Amendment) Ordinance, 1975 which came into force with immediate effect. Subsequently, this Ordinance was replaced by the Payment of Bonus (Amendment) Act, 1976 which was brought into force with retrospective effect from the date of the Ordinance, namely, 25th September, 1975. This amending law considerably curtailed the rights of the employees to bonus in industrial establishments, but it had no impact so far as the employees of the Life Insurance Corporation were concerned since the original Payment of Bonus Act was not applicable to the Life Insurance Corporation by reason of Section 32 which exempted the Life Insurance Corporation from its operation. The Central Government, however decided that the employees of establishments which were not covered by the Payment of Bonus Act would not be eligible for payment of bonus but e ex-gratia cash payment in lieu of bonus would be made "as may be determined by the Government taking into account the wage level, financial circumstances etc. in each case and such payment will be subject to a maximum of 10% and pursuant to this decision, the Life Insurance Corporation! was advised by the Ministry of Finance that no further payment of bonus should be made to the employees "without getting the same cleared by the Government". The Life Insurance Carporaion thereupon by its Circular dated 26th September, 1975 informed all its offices that since the question of payment of bonus was being reviewed in the light of the Bonus Ordinance dated 25th September,

1975, no bonus should be paid to the employees "under the existing provisions until further instructions". The All-India Insurance Employees' Association protested against this stand taken by the Life Insurance Corporation and pointed out that the Life Insurance Corporation was bound to pay bonus in accordance with the terms of the Settlement and the direction not to pay bonus was clearly illegal and unjustified. The Life Insurance Corporation conceded that payment of bonus was covered by the Settlement but contended that it was subject to such directions also the Central Government might issue from time to time and since the Central Government had advised the Life Insurance Corporation not to make any payment of bonus without their specific approval, the Life Insurance Corporation was justified in not making! payment to the employees. This stand was taken by the Life Insurance Corporation in its letter dated 7th February, 1976 addressed to the All India Insurance Employees' Association and this was followed by a Circular dated 22nd March, 1976 instructing all the offices of the Life Insurance Corporation not to make payment by way of bonus.

24. The All-India Insurance Employees' Association and some others thereupon filed writ petition No. 371 of 1976 in the High Court of Calcutta for a writ of Mandamus and Prohibition directing the Life Insurance Corporation to act in accordance with the terms of the Settlement dated 24th January, 1974 read with the administrative instructions dated 29th March, 1974 and to rescind or cancel the Circulars dated 26th September, 1975, 7th February, 1976 and 22nd March, 1976 and not to refuse to pay cash bonus to Class III and Class IV employees along with their salary for the month of April 1976 as provided by the Settlement read with the administrative instructions. The writ petition was resisted by the Life Insurance Corporation on various grounds to which it is not necessary to refer since we are not concerned with the correctness of the judgment of the Calcutta High Court disposing of the writ petition. Suffice it to state, and that is material for our purpose, that by a judgment dated 21st May, 1976 a Single Judge of the Calcutta High Court allowed the writ petition and issued a writ of Mandamus and Prohibition as prayed for in the writ petition. The Life Insurance Corporation preferred a Letters Patent! Appeal against the judgment of the learned Single Judge but in the mean time the impugned Act had already come into fore and it was, therefore, stated on behalf of the Life Insurance Corporation before the Division Bench that there was no necessity for proceeding with the appeal and hence the Division Bench made no order in the appeal. The result; was that the judgment of the learned Single Judge remained intact: with what effect, is a matter we shall presently consider.

25. On 29th May, 1976 Parliament enacted the impugned Act providing inter alia for modification of the Settlement dated 24th January, 1974 arrived at between the Life Insurance Corporation and its employees. The impugned Act was a very short statute consisting only of three sections. Section 1 gave the short title of the impugned Act, Section 2 contained definitions and Section 3, which was the operative section, provided as follows:

> Notwithstanding anything contained in the Industrial Disputes Act, 1947, the provisions of the settlement in so far as they relate to the payment of an annual cash bonus to every Class III and Class IV employees of the Corporation at the rate of fifteen per cent, of his annual salary, shall not have any force or effect and shall not be deemed to have had any force or effect on and from the 1st day of April, 1975.

Since the impugned Act did not set at naught the entire settlement dated 24th January, 1974 but merely rendered without force and effect the provisions of the Settlement in so far as they related to payment of annual cash bonus to Class III and Class IV employees and that too not from the date when the Settlement became operative but from 1st April, 1975, it was said to be a statute modifying the provisions of the Settlement. The plain and undoubted effect of the impugned Act was to deprive Class III and Class IV employees of the annual cash bonus to which they were entitled under Clause 8(ii) of the Settlement for the years 1st April, 1975 to 31st March, 1976 and 1st April, 1976 to 31st March, 1977 and therefore, two of the associations along with their office bearers field the present writ petitions challenging the constitutional validity of the impugned Act.

26. There were two grounds on which the constitutionality of the impugned Act was assailed on behalf of the petitioners and they were as follows :

A. The right of Class III and Class IV employees to annual cash bonus for the years 1st April, 1975 to 31st March, 1976 and 1st April, 1976 to 31st March, 1977 under Clause 8(ii) of the Settlement was property and since the impugned Act provided for compulsory acquisition of this property without payment of compensation, the impunged Act was violative of Article 31(2) of the Constitution and was hence null and void.

B. The impugned Act deprived Class III and Class IV employees of the right to annual cash bonus for the years 1st April, 1975 to 31st March, 1976 and 1st April, 1976 to 31st March, 1977 which was vested in them under Clause 8(ii) of the Settlement and there was, therefore, clear infringement of their fundamental right under Article 19(1)(f) and since this deprivation of the right to annual cash bonus, which was secured under a Settlement arrived at as a result of collective bargaining and with full and mature deliberation on the part of the Life Insurance Corporation and the Central Government after taking into account the interests of the policy-holders and the community and with a view to approximating towards the goal of a living wage as envisaged in Article 43 of the Constitution, amounted to an unreasonable restriction, the impugned Act was not saved by Article 19(5) and hence it was liable to be struck down as invalid.

We shall proceed to consider these grounds in the order in which we have set them out, though we may point out that if either ground succeeds, it would be unnecessary to consider the other.

27. But before we proceed, further, it would be convenient at this stage to refer to one other contention of the petitioner based on the judgment of the Calcutta High Court in Writ Petition No. 371 of 1976. The contention was that since the Calcutta High Court had by its judgment dated 21st May, 1976 issued a writ of Mandamus directing the Life Insurance Corporation to pay annual cash bonus to Class III and Class IV employees for the year 1st April, 1975 to 31st March, 1976 along with

their salary for the month of April, 1976 as provided by the Settlement and this judgment had become final by reason of withdrawal of the Letters Patent Appeal preferred against it, the Life Insurance Corporation was bound to obey the writ of Mandamus and to pay annual cash bonus for the year 1st April, 1975 to 31st March, 1976 in accordance with the terms of Clause 8(II) of the Settlement. It is, no doubt, true, said the petitioners, that the impugned Act, if valid, struck at Clause 8(ii) of the Settlement and rendered it ineffective and without force with effect from 1st April, 1975 but it did not have the effect of absolving the Life Insurance Corporation from its obligation to carry out the writ of Mandamus. There was, according to the petitioners, nothing in the impugned Act which set at naught the effect of the judgment of the Calcutta High Court or the binding character of the writ of Mandamus issued against the Life Insurance Corporation. This contention of the petitioners requires serious consideration and we are inclined to accept it.

28. It is significant to note that there was no reference to the judgment of the Calcutta High Court in the Statement of Objects and Reasons, nor any non-obstante clause referring to a judgment of a court in Section 3 of the impugned Act. The attention of Parliament does not appear to have been drawn to the fact that the Calcutta High Court had already issued a writ of Mandamus commanding the Life Insurance Corporation to pay the amount of bonus for the year 1st April, 1975 to 31st March, 1976. It appears that unfortunately' the judgment of the Calcutta High Court remained almost unnoticed and the impugned Act was passed in ignorance of that judgment. Section 3 of the impugned Act provided that the provisions of the Settlement in so far as they relate to payment of annual cash bonus to Class III and Class IV employees shall not have any force or effect and shall not be deemed to have had any force or effect from 1st April, 1975. But the writ of Mandamus issued by the Calcutta High Court directing the Life Insurance Corporation to pay the amount of bonus for the year 1st April, 1975 to 31st March, 1976 remained untouched by the impugned Act. So far as the right of Class III and Class IV employees to annual cash bonus for the year 1st April, 1975 to 31st March, 1976 was concerned, it became crystallised in the judgment and thereafter they became entitled to enforce the writ of Mandamus granted by the judgment and not any right to annual cash bonus under the settlement. This right under the judgment was not sought to be taken away by the impugned Act. The judgment continued to subsist and the Life Insurance Corporation was bound to pay annual cash bonus to Class III and Class IV employees for the year 1st April, 1975 to 31st March, 1976 in obedience to the writ of Mandamus. The error committed by the Life Insurance Corporation was that it withdrew the Letters Patent Appeal and allowed the judgment of the learned Single Judge to become final. By the time the Letters Patent Appeal came up for hearing, the impugned Act had already come into force and the Life Insurance Corporation could, therefore, have successfully contained in the Letters Patent Appeal that, since the Settlement, in as far as it provided for payment of annual cash bonus, was annihilated by the impugned Act with effect from 1st April, 1975, Class III and Class IV employees were not entitled to annual cash bonus for the year 1st April, 1975 to 31st March, 1976 and hence no writ of Mandamus could issue directing the Life Insurance Corporation to make payment of such bonus. If such contention had been raised, there is little doubt, subject of course to any constitutional challenge to the validity of the impugned Act, that the judgment of the learned Single Judge would have been upturned and the Writ petition dismissed. But on account of some inexplicable reason, which is difficult to appreciate, the Life Insurance Corporation did not press the Letters Patent Appeal and the result was that the judgment of the learned Single Judge granting writ of Mandamus became final and binding on the parties. It is

difficult to see how in these circumstances the Life Insurance Corporation could claim to be absolved from the obligation imposed by the judgment to carry out the Writ of Mandamus by relying on the impugned Act.

29. The Life Insurance Corporation leaned heavily on the decision of this Court in Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality in support of its contention that when the settlement in so far as it provided for payment of annual cash bonus was set at naught by the impugned Act with effect from 1st April, 1975, the basis on which the judgment proceeded was fundamentally altered and that rendered the judgment ineffective and not binding on the parties. We do not think this decision lays down any such wide proposition as is contended for and on behalf of the Life Insurance Corporation. It does, not say that whenever any actual or legal situation is altered by retrospective legislation, a judicial decision rendered by a court on the basis of such factual or legal situation prior to the alteration, would straightaway, without more, cease to be effective and binding on the parties. It is true that there are certain observations in this decision which seem to suggest that a court decision may cease to be binding when the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. But these observations have to be read in the light of the question which arose for consideration in that case. There, the validity of the Gujarat Imposition of Taxes by Municipalties (Validation) Act, 1963 was assailed on behalf of the petitioners. The Validation Act had to be enacted because it was held by this Court in Patel Gordhandas Hargovindas v. Municipal Commissioner, Ahmedabad that since Section 73 of the Bombay Municipality Boroughs Act, 1925 allowed the Municipality to levy a 'rate' on buildings or lands and the term 'rate' was confined to an imposition on the basis of annual letting value, tax levied by the Municipality on lands and buildings on the basis of capital value was invalid. Section 3 of the Validation Act provided that notwithstanding anything contained in any judgment, decree or order of a court or tribunal or any other authority, no tax assessed or purported to have been assessed by a municipality on the basis of capital value of a building or land and imposed, collected or recovered by the municipality at any time before the commencement of the Validation Act shall be deemed to have invalidly assessed, imposed, collected or recovered and the imposition, collection or recovery of the tax so assessed shall be valid and shall be deemed to have always been valid and shall not be called in question merely on the ground that the assessment the tax on the basis of capital value of the building or land was not authorised by law and accordingly any tax so assessed before the commencement of the Validation Act and leviable for a period prior to such commencement but not collected or recovered before such commencement may be collected or recovered in accordance with the relevant municipal law. It will be seen that by Section 3 of the impugned Act the Legislature retrospectively imposed tax on building or land on the basis of capital value and if the tax was already imposed, levied and collected on that basis, made the imposition levy, collection and recovery of the tax valid, notwithstanding the declaration by the Court that as 'rate', the levy was incompetent. This was clearly permissible to the Legislature because in doing so, the Legislature did not seek to reverse the decision of this Court on the interpretation of the word 'rate', but retrospectively amended the law by providing for imposition of tax on land or building on the basis of capital value and validated the imposition, levy, collection and recovery of tax on that basis. The decision of this Court holding the levy of tax to be incompetent on the basis of the unamended law, therefore, became irrelevant and could not stand in the way of the tax being assessed, collected and recovered on the basis of capital value under the law as

retrospectively amended. That is why this Court held that the Validation Act was effective to validate imposition, levy, collection and recovery of tax on land; or building on the basis of capital value. It is difficult to see how this decision given in the context of a validating statute can be of any help of the Life Insurance Corporation. Here, the judgment given by the Calcutta High Court, which is relied upon by the petitioners, is not a mere declaratory judgment holding an impost or tax to be invalid, so that a validation statute can remove the defect pointed out by the judgment amending the law with retrospective effect and validate such impost or tax. But it is a judgment giving effect to the right of the petitioners to annual cash bonus under the Settlement by issuing a writ of Mandamus directing the Life Insurance Corporation to pay the amount of such bonus. If by reason of retrospective alteration of the factual or legal situation, the judgment is rendered erroneous, the remedy may be by way of appeal or review, but so long as the judgment stands, it cannot be disregarded or ignored and it must be obeyed by the Life Insurance Corporation. We are, therefore, of the view that, in any event, irrespective of whether the impugned Act is constitutionally valid or not, the Life Insurance Corporation is bound to obey the writ of Mandamus issued by the Calcutta High Court and to pay annual cash bonus for the year 1st April, 1975 to 31st March, 1976 to Class III and Class IV employees. Now, to the grounds of constitutional challenge :

Re : Ground A :

30. This ground raises the question whether the; impugned Act is violative of Clause (2) of Article 31. This clause provides safeguards against compulsory acquisition or requisitioning of property by laying down conditions subject to which alone property may be compulsorily acquired or requisitioned and at the date when the impugned Act was enacted, it was in the following terms :

> No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for acquisition or requisitioning of the property for an amount which may be fixed by such law or which may be determined in accordance with such principles and given in such manner as may be specified in such law; and no such law shall be called in question in any court on the ground that the amount so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise than in cash :
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> Clause (2) in this form was substituted in Article 31 by the Constitution (Twenty-fifth Amendment) Act, 1971 and by this amending Act, Clauses (2A) and (2B) were also introduced in Article 31 and they read as follows:
>
> (2A) "Where a, law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives, any person of his property.
>
> (2B) Nothing in Sub-clause (f) of Clause (1) of Article 19 shall effect any such law as is referred to in Clause (2).

The argument of the petitioners was that the right of Class III and Class IV employees to 'annual cash bonus' for the years 1st April, 1975 to 31st March, 1976 and 1st April, 1976 to 31st March, 1977 under the Settlement was property and since the impugned Act provided for transfer of the ownership of this right to the Life Insurance Corporation which was 'State' within the meaning of Article 12, it was a law providing for compulsory acquisition of property as contemplated under Clause (2A) of Article 31 and it was, therefore, required to meet the challenge)1 # of Article 31, Clause (2). The compulsory acquisition of the right to annual cash bonus' sought to be effectuated by the impugned Act, said the petitioners, was not supported by public purpose nor did the impugned Act provide for payment of any compensation for the same and hence the impugned Act was void as contravening Clause (2) of Article 21.

31. The first question which arises for consideration on this contention is whether the right of Class III and Class IV employees to 'annual cash bonus' for the years 1st April, 1975 to 31st March, 1976 and 1st: April, 1976 to 31st March, 1977 under the Settlement was property so as to attract the inhibition of Article 31, Clause (2). The Life Insurance Corporation submitted that at the date when the impugned Act was enacted Class III and Class IV employees had no absolute right to receive 'annual cash bonus' either for the year 1st April, 1975 to 31st March, 1976 or for the year 1st April, 1976 to 31st March, 1977 and! there was, therefore, no property which could be compulsorily acquired under the impugned Act. The argument of the Life Insurance Corporation was that the Life Insurance Corporation (Staff) Regulations, 1960 which laid down the terms and conditions of services inter alia of Class. III and Class IV employees did not contain any provision for payment of bonus except Regulation 58 and since under this Regulation, grant of annual cash bonus by the Life Insurance Corporations was subject to such directions as the Central Government might issue, the right of Class 11I and Class IV employees to receive annual cash bonus could not be said to be an absolute right. It was a right which was liable to be set at naught by any directions that might be issued by the Central Government and in fact the Central Government did issue a direction to the Life Insurance Corporation not to make payment of bonus to the employees "without getting the same cleared by the Government" and consequently, Class III and Class IV employees had no absolute right to claim bonus. The result, according to the Life Insurance Corporation, also followed on a proper interpretation of Clauses 8(i) and 8(ii) of the Settlement, for it was clear on a proper reading of these two clauses that annual cash bonus payable to Class III and Class IV employees under Clause 8(ii) was, by reason of Clause 8(I), subject to such directions as the Central Government might issue from time to time and the Central Government having directed that no further pay ment of bonus should be made to the employees, Class III and Class IV employees were not entitled to claim annual cash bonus from the Life Insurance Corporation. This argument of the Life Insurance Corporation is plainly erroneous and it is not possible to accept it. Regulation 58 undoubtedly says that non-profit sharing bonus may be granted by the Life Insurance Corporation to its employees, subject to such directions as the Central Government may issue and, therefore, if the Central Government issues a direction to the contrary, non-profit sharing bonus cannot be granted by the Life Insurance Corporation to any class of employees. But here, in the present case, grant of annual cash bonus by the Life Insurance Corporation to Class III and Class IV employees under Clause 8(ii) of the Settlement was approved by the Central Government as provided in Clause 12 and the 'direction' contemplated by Regulation 58 was given by the Central Government that annual cash bonus may be granted as provided in Clause 8(ii) of the Settlement. It was not

competent to the Central Government thereafter to issue another contrary direction which would have the effect of compelling the Life Insurance Corporation to commit a breach of its obligation Under Section 18, Sub-section (1) of the Industrial Disputes Act, 1947 to pay annual cash bonus in terms of Clause 8(ii) of the Settlement. Turning to Clause 8(i) of the Settlement, it is true that under this clause non-profit sharing bonus could be granted by the Life Insurance Corporation 'subject to such directions as the Central Government may issue from time to time', but these words giving overriding power to the Central Government to issue directions from time to time are conspicuously absent in Clause 8(ii) and it is difficult to see how they could be! projected or read into that clause. Clauses 8(I) and 8(ii) are distinct and independent clauses and while Clause 8(I) enacts a general provision that non-profit sharing bonus may be paid by the Life Insurance Corporation to Class III and Class IV employees subject to such directions as the Central Government might issue from time to time, Clause 8(ii) picks out one kind of non-profit sharing bonus and specifically provided that annual cash bonus shall be paid to all Class III and Class IV employees at the rate of 15 per cent of the annual salary and this specific provision in regard to payment of annual cash bonus is made subject to only the approval of the Central Government which was admittedly obtained. It is, therefore, clear that Class III and Class IV employees had absolute right to receive annual cash bonus from the Life Insurance Corporation in terms of Clause 8(ii) of the Settlement and it was not competent to the Central Government to issue any directions to the Life Insurance Corporation to refuse or withhold payment of the same.

32. It is true that under Clause 8(ii) of the Settlement the annual cash bonus for a particular year was payable at the rate of 15 per cent, of the annual salary actually drawn by the employee in respect of the financial year to which the bonus related and it would, therefore, seem that the bonus was payable at the end of the year and not before, but it was not disputed on behalf of the Life Insurance Corporation that even an employee who retired or resigned before the expiration of the year, as also the heirs of a deceased employee who died during the currency of the year, were entitled to receive proportionate bonus and the Life Insurance Corporation in fact recognised this to be the correct position in its administrative instructions dated 29th March, 1974 and actually paid proportionate bonus to the retiring or resigning employee and the heirs of the deceased employee The annual cash bonus payable under Clause 8(ii) of the Settlement, therefore, accrued from day-to-day, though payable in case of retirement, resignation or death, on the happening of that contingency and otherwise, on the expiration of the year to which the bonus related. There was thus plainly and unquestionably a debt in respect of annual cash bonus accruing to each Class III or Class IV employees from day-to-day and consequently, on the expiration of the year 1st April, 1975 to 31st March, 1976, the annual cash bonus payable under Clause 8(ii) of the Settlement was a debt due and owing from the Life Insurance Corporation to each Class III or Class IV employee and so also at the date when the impugned Act came into force, each Class III or Class IV employee was entitled to a debt due and owing to him from the Life Insurance Corporation in respect of the annual cash bonus from 1st April, 1976 up to that date. The question is whether these debts due and owing from the Life Insurance Corporation were property of Class III and Class IV employees within the meaning of Article 31(2). So also, was the right of each Class III and Class IV employee to receive annual cash bonus for the period from the date of commencement of the impugned Act up to 31st March, 1977 property for the purpose of Article 31(2) ? These questions we shall now proceed to consider, for on the answer to them depends the applicability of Article 31(2).

33. It is clear from the scheme of fundamental rights embodied in Part 11I of the Constitution that the guarantee of the right to property is contained in Article 19(1)(f) and Clauses (1) and (2) of Article 31. It stands to reason that 'property' cannot have one meaning in Article 19(1)(f), another in Article 31 Clause (1) and still another in Article 31, Clause (2). 'Property' must have the same connotation in all the three Articles and since these are constitutional provisions intended to secure a fundamental right, they must receive the widest interpretation and must be held to refer to property of every kind. While discussing the scope and content of Entry 42 in List III of the Seventh Schedule to the Constitution, which confers power on Parliament and the State Legislatures to legislate with respect to "acquisition and requisitioning of property", it was 'pointed out by Shah, J., speaking on behalf of the majority in R. C. Cooper v. Union of India that property which can be compulsorily acquired by legislation under this Entry means the "highest right a man can have to anything, being that right which one has to lands or tenements, goods or chattels which does not depend on another's courtesy : it includes ownership, estates and interests in corporeal things, and also rights such as trade-marks, copyrights, patents and even rights in personam capable of transfer or transmission, such as debts; and signifies a beneficial right to or a thing considered as having a money value, especially with reference to transfer or succession, and to their capacity of being injured". It would, therefore, seem that, according to the decision of the majority in R. C. Cooper's case, debts and other rights in personam capable of transfer or transmission are property which can form the subject-matter of compulsory acquisition. And this would seem to be unquestionable on principle, since even jurisprudentially debts and other rights of action are property and there is no reason why they should be excluded from the protection of the constitutional guarantee. Hidayatullah, C.J., had occasion to consider the true nature of debt in H. H. Maharajtudhiraja Madhav Rao Jiwaji Rao Scindia Bahadur and Ors. v. Union of India where the question was whether the Privy Purse payable to the Ruler was property of which he could be said to be deprived by the Order of the President withdrawing his recognition as Ruler. The learned Chief Justice, making a very penetrating analysis of the jural relationship involved in a debt, pointed out that a debt or a liability to pay money passes through four stages. First there is a debt not yet due. The debt has not yet become a part of the obligor's 'things' because no net liability has yet arisen. The Second stage is when the liability may have arisen but is not either ascertained or admitted. Here again the amount due has not become a part of the obligor's things, The third stage is reached when the liability is both ascertained and admitted. Then it is property proper of the debtor in the creditor's hands. The law begins to recognise such property in insolvency, in dealing with it in fraud of creditors, fraudulent preference of one creditor against another, subrogation, equitable esteppel, stoppage intransitive etc. A credit-debt is then a debt fully provable and which is fixed and absolutely owing. The last stage is when the debt becomes a judgment debt by reason of a decree of a Court." and applying this test, concluded that the Privy Purse would be property and proceeded to add : "As soon as an Appropriation Act is passed there is established a credit-debt and the outstanding Privy Purse becomes the property of the Ruler in the hands of Government. It is also a sum certain and absolutely payable." Since the effect of the Order of the President was to deprive the Ruler of his Privy Purse which was his property the learned Chief Justice held that there was infringement of the fundamental right of the Ruler under Article 31(2). Hegde, J., also pointed out in a separate but concurring judgment that since the right to get the Privy Purse was a legal right "enforceable through the courts", it was undoubtedly property and its deprivation was sufficient to found a petition based on contravention of Article 31(2). It was also held by this Court in State of Madhya

Pradesh v. Ranajirao Shinde and Anr. that a right to receive cash grant annually from, the State was property within the meaning of that expression in Article 19(1)(f) and Clause (2) of Article 31. The right to pension was also regarded as property for to purpose of Article 19(1)(f) by the decisions of this Court in Deokinanda Prasad v. State of Bihari [1971] Supp S.C.R. 634 and State of Punjab v. K. R. Erry & Sobhag Rai Mehta . This Court adopted the same line of reasoning when it said in State of Gujarat and Anr. v. Shri Ambica Mills Ltd., Ahmedabad that "unpaid accumulations represent the obligation of the employers to the employees and they are the property of the employees". Mathew, J., speaking on behalf of the Court, observed that the obligation to the employees owned by the employers was "property from the standpoint of the employees". It would, therefore, be seen that property within the meaning of Article 19(1)(f); and Clause (2) of Article 31 comprises every form of property, tangible or intangible, including debts and chose in action, such as unpaid accumulation of wages, pension, cash grant and constitutionally protected Privy Purse. The debts due and owing from the Life Insurance Corporation in respect of annual cash bonus were, therefore, clearly property of Class III and Class IV employees within the meaning of Article 31, Clause (2). And so also was their right to receive annual cash bonus for the period from the date of commencement of the impugned Act up to 31st March, 1977, for that was a legal right enforceable through a court of law by issue of a writ of Mandamus, Vide the observation of Hegde, J., at page 194 in the Privy Purse case.

34. But a question was raised on behalf of the Respondents whether debts and chose in action, though undoubtedly property, could form the subject-matter of compulsory acquisition so as to attract the applicability of Article 31, Clause (2). There is divergence of opinion amongst jurists in the United States of America on this question and though in the earlier decisions of the American courts, it was said that the power of eminent domain cannot be exercised in respect of money and chose in action, the modern trend, as pointed by Nicholas on Eminent Domain, Vol. 1, page 99, para 2, seems to be that the right of eminent domain can be exercised on chose in action. But even if the preponderant view in the United States were that chose in action cannot come within the power of eminent domain, it would not be right to allow us to be unduly influenced by this view in the interpert of the scope and ambit of Clause (2) of Article 31. We must interpret Article 31, Clause (2) on its own terms without any preconceived notions borrowed from the law in the United States on the subject of eminent domain. Let us see how this interpretative exercise has been performed by this Court in the decisions that have been rendered so far and what light they throw on the question as to whether chose in action can be compulsorily acquired under Clause (2) of Article 31. We shall confine our attention only to the question of compulsory acquisition of chose in action and not say anything in regard to compulsory acquisition of money, for in these appeals the question arises only in regard to chose in action and it is not necessary to consider whether money can form the subject-matter of compulsory acquisition. This question came to be considered by a Constitution Bench of this Court in State of Bihar v. Kameshwar Singh [1952] S.C.R. 889. Section 4(b) of the Bihar Land Reforms Act, 1950, which provided for vesting in the State of arrears of rent due to the proprietors or tenure holders for the period prior to the date of vesting of the estates or tenures held by them, on payment of only 50 per cent of the amount as compensation, was challenged as constitutionally invalid on the ground that there was no public purpose for which such acquisition could be said to have been made. The necessity for existence of public purpose was not sought to be spelt out from Article 31, Clause (2), because even if there were violation of that clause, it would be

protected by Article 31A and the Ninth Schedule read with Article 31-B, the Act being included as Item I in the Ninth Schedule, but it was said that public purpose was an essential element in the very nature of the power of acquisition and even apart from Article 31, Clause (2), no acquisition could be made save for a public purpose. It was in the context of this argument that Mahajan, J., observed that money and chose in action could not be taken under the power of compulsory acquisition, since the only purpose which such taking would serve would be to augment the revenues of the State and that would clearly not be a public purpose. The learned judge pointed out at pages 942-944 of the Report :

> It is a well accepted proposition of law that property of individuals cannot be appropriated by the State under the power of compulsory acquisition for the mere purposes of adding to the revenues of the State no instance is known in which it has been taken for the mere purpose of raising a revenue by sale or otherwise Taking money under the right of eminent domain, when it must be compensated in money afterwards is nothing more or less than a forced loan Money or that which in ordinary use passes as such and which the Government may reach by taxation and also rights in action which can only be available when made to produce money, cannot be taken under this power".

> for the taking would not be for a public purpose, and proceeded to and that the only purpose to support the acquisition of the arrears of rent was "to raise revenue to pay compensation to some of the zamindars whose estates are being taken" and this purpose did not fall within any definition, however, wide, of the phrase 'public purpose' and the law was, therefore, to this extent unconstitutional. Mukherje, X, came to the same conclusion and observed at page 961 of the Report :

> Money as such and also rights in action are ordinarily excluded from this List by American jurists and for good reasons. There could be no possible necessity for taking either of them under the power of eminent domain. Money in the hands of a citizen can be reached by the exercise of the power of taxation, it may be confiscated as a penalty under judicial order But, as Cooley has pointed out, taking money under the right of eminent domain when it must be compensated by money afterwards could be nothing more or less than a forced loan and it is difficult to say that it comes under the head of acquisition and is embraced within its ordinary connotation.

> Chandra sekhara Aiyer, J., also took the same view and held that money and chose in action were exempt from compulsory acquisition "not on the ground that they are movable property, but on the ground that generally speaking there could be no public purpose in their acquisition". Patanjali Sastri, C.J., and Das, J., on the other hand held that the arrears of rent constituted a debt due by the tenants. It was nothing but an actionable claim against the tenants which was undoubtedly a species of 'property' which was assignable and, therefore, it could equally be acquired by the State as a species of 'property'. These two rival views were referred to by Venkatarama Aiyer, J. speaking on behalf of the Court in Bombay Dyeing & Manu factoring Co. Ltd. v. The

> State of Bombay and Ors. [1958] S.C.R. 1122 but the learned Judge did not treat the majority view as finally settling the law on the subject. It appears that in the subsequent case of State of Madhya Pradesh v. Ranajirao Shinde (supra) Hegde, J., delivering the judgment of the Court observed that the majority view in Kamesh-war Singh's case was followed by this Court in Bombay Dyeing & Manufacturing Co.'s case, but we do not think that this observation correctly represents what was decided in Bombay Dyeing & Manufacturing Co's case. Venkatarama Aiyer, J., rested his decision in Bombay Dyeing & Manufacturing Co's case on alternative grounds : if the impugned section provided for the acquisition of money, and if money could not be acquired, then the section was void under Article 19(1)(f) as imposing an unreasonable restriction on the right to hold property. If, on the other hand, money could be acquired, the section was void as offending Article 31, Clause (2) since the section did not [provide for payment of compensation. The decision in Bombay Dyeing & Manufacturing Co.'s case did not, therefore, lay down that money and chose in action could not be acquired under Article 31, Clause (2).

35. But in State of Madhya Pradesh v. Ranojirao Shinde (supra) this Court did hold that money and chose in action could not form the subject-matter of acquisition under Article 31, Clause (2) and the reason it gave for taking this view was the same as that which prevailed wife the majority judges in Kameshwar Singh's case. This Court held that the power of compulsory acquisition conferred under Article 31, Clause (2) could not be utilised for enriching the coffers' of the State; that power could be exercised only for a public purpose and augmenting the resources of the State could not be regarded as public purpose. Hegde, J., speaking on behalf of the Court, pointed out that if, it were otherwise, "it would be permissible for the legislatures to enact laws acquiring all public debts due from the State, annuity deposits returnable by it and provident fund payable by it by providing for the payment of some nominal compensation to the persons whose rights are acquired, as the acquisitions in question would augment the resources of the State", but nothing so bad could 'be said to be within the contemplation of Clause (2) of Article 31. Let us first examine on principles whether this reasoning qua chose in action is sound and commends itself for our acceptance.

36. This premise on which this reasoning is based is that the only purpose for which chose in action may be acquired is augmenting the revenues of the State and there can be no other purpose for such acquisition. But this premise is plainly incorrect and so is the reason A ing based upon it. Why can chose in action not be acquired for a public purpose other than mere adding to the revenues of the State ? There may be debts due and owing by poor and deprived tillers, artisans and landless labourers to moneylenders and the State may acquire such debts with a view to relieving the weak and exploited debtors from the harassment and oppression to which they might be subjected by their economically powerful creditOrs. The purpose of the acquisition in such a case would not be to enrich the coffers of the State. In fact, the coffers of the State would not be enriched by such acquisition, because having regard to the financial condition of the debtors, it may not be possible for the State to recover much, or perhaps anything at all, from the impoverished debtOrs. The purpose of such acquisition being relief of the distress of the poor and helpless debtors would be clearly a public purpose. We have taken one example by way of illustration, but in a modern welfare State, dedicated to a socialist pattern of society, myriad situations may arise where it may be

necessary to acquire chose in action for achieving a public purpose. It is not correct to say that in every case where chose in action may be acquired, the purpose of acquisition would necessarily and always be augmenting of the revenues of the State and nothing else. Even the theory of forced loan may break down in case of acquisition of chose in action. There is a fundamental difference between chose in action and money, in that the former has not; the same mobility and liquidity as the latter and its "values is not measured by the amount recoverable under it, but it depends on a variety of factors' such as the financial condition of the person liable, the speed and effectiveness of the litigative process and the eventual uncertainty as to when and to what extent it may be possible to realise the chose in action. Even after the chose in action is acquired, the State may not be able to recover the amount due under it and there may even be cases where the chose in action may be released by the State. Where money is given as compensation for taking of money, the theory of forced loan -may apply, but it is difficult to see how it can be applicable where chose in action is taken and money representing its value, which in a large majority of cases would be less than the amount recoverable under it, is given as compensation. Moreover, the theory of forced loan stands considerably eroded after the amendment of Article 31, Clause (2) by the Constitution (Twenty-fifth Amendment) Act, 1971, because under the amended clause, even if an amount less than the just equivalent is given as compensation for acquisition of property, it would not be violative of the constitutional guarantee. It is true, and this thought was, also expressed by Krishna Iyer, J., and myself in our separate but concurring judgment in the State of Kerala v. The Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. .) that, notwithstanding the amended Clause (2) of Article 31, the legislature would be expected, save in exceptional socio-historical setting to provide just compensation for acquisition of property, but if for any reason the legislature provides a lesser amount than the just equivalent, it would not be open to challenge on the ground of infringement of Clause (2) of Article 31. Then, how can the theory of forced loan apply when chose in action is acquired and what is paid for it is not the just equivalent but a much lesser amount, which is of course not illusory. Moreover, there is also one other fallacy underlying the argument that there can be no public purpose in the acquisition of chose in action and that is based on the assumption that the public purpose contemplated by Article 31, Clause (2) lies in the use to which the property acquired is to be put as for example, where land or building or other movable property is acquired for being used for a public purpose. But this assumption is not justified by the language of Article 31, Clause (2), because all that this clause requires is that the purpose for which the acquisition is made must be a public purpose, or, in other words, the acquisitions must be made to achieve a public purpose. Article 31, Clause (2) does not require that the property acquired must itself be used for a public purpose. So long as the acquisition subserves a public purpose, it would satisfy the requirement of Clause (2) of Article 31 and, therefore, if? it can be shown that the acquisition of chose in action is for subserving a public purpose, it would be constitutionally valid. Hegde, J., expressed an apprehension in State of Madhya Pradesh v. Ranojirao Shinde (supra) that if this view were accepted, it would be permissible for the legislature to enact laws acquiring the public debts due from the State, the annuity deposits returnable by it and the provident fund payable by it by providing for payment of some nominal compensation to the persons whose; rights were acquired. We do not think this apprehension is well founded. It is difficult to see what public purposes can possibly justify a law acquiring the public debts due to the State or the annuity deposits returnable by it or the provident fund payable by it. If the legislature enacts a law acquiring any of these chose in action, it could only be for the purpose of augmenting the revenues of the State or reducing State

expenditure and that would clearly not be a public purpose and the legislation would plainly be violative of the constitutional guarantee embodied in Article 31, Clause (2). We would, therefore, prefer the minority view of Das, J., in Kameshwar Singh's case (supra) as against the majority view of Mahajan, J., Mukherje, J. and Chandrasekhar Aiyer, J.

37. So much on principle. Turning now to the authorities, we find that, apart from the view of the majority judges in Kameshwar Singh's case and the decision in the State of Madhya Pradesh v. Ranojirao Shinde (supra), there is no other decision of this Court which has taken the view that chose in action cannot be compulsorily acquired under Article 31, Clause (2). There are in fact subsequent decisions which clearly seem to suggest the contrary. We have already referred to JR. Cooper's case. The majority judgment of Shah, J., in that case gives the widest meaning to 'property' which can be compulsorily acquired and includes within it "rights in personam capable of transfer or transmission, such as debts". The majority view in Kameshwar Singh's case (supra) and the decision in State of Madhya Pradesh v. Ranojirao Shinde (supra) on this point can no longer be regarded as good law in view of this statement of the law in the majority judgment of Shah, J. There again, in the Privy Purse case (supra), Hidayatullah, C.J., held that the Privy Purse payable to a Ruler was a credit-debt owned by him and since he was deprived of it by the Order of the President, there was violation of his fundamental right under Article 31, Clause (2). The learned Chief Justice thus clearly recognised that debt or chose in action could form the subject matter of compulsory acquisition under Article 31, Clause (2). Hegde, J., also took the same view in his separate but concurring judgment in the Privy Purse case. It will, therefore, be seen that the trend of the recent decisions has been to regard debt or chose in action as property which can be compulsorily acquired under Clause (2) of Article 31. We are accordingly of the view that the debts due and owing from the life Insurance Corporation to Class HI and Class IV employees in respect of annual cash bonus were 'property' within die meaning of Article 31, Clause (2) and they could be compulsorily acquired under that clause.

38. The question, however, still remains whether by the impugned Act there was compulsory acquisition of the debt due and owing from the life Insurance Corporation to Class III and Class IV employees in respect of annual cash bonus. It was not disputed on behalf of the Life Insurance Corporation that if the impugned Act had the affect of compulsorily acquiring these debts belonging to Class III and Class IV employees, it would be void as offending Article 31, Clause (2), since it admittedly did not provide for payment of any compensation. The Statement of Objects and Reasons undoubtedly said that the provisions of the Settlement in regard to payment of annual cash bonus were being set aside with effect from 1st April, 1975 with a view to enabling the Life Insurance Corporation to make ex-gratia payment to the employees at the rates determined on the basis of the general Government policy for making ex-gratia payments to the employees of non-competing public sector undertakings". But the impugned Act did not contain any provision, to that effect and Class III and Class IV employees were deprived of the debts due and owing to them without any provision in the statute for payment of compensation. The learned Attorney-General on behalf of the Life Insurance Corporation, however, strenuously contended that there was no compulsory acquisition of the debts due and owing to Class III and Class IV employees under the impugned Act, but all that the impugned Act did was to extinguish those debts by annihilating the provisions of the Settlement in regard to payment of annual cash bonus with effect from 1st April, 1975. The debts due

and owing from the Life Insurance Corporation to Class III and Class IV employees, said the learned Attorney-General, were extinguished and not compulsorily acquired and hence there was no contravention of Article 31, Clause (2). Now, prior to the Constitution (Fourth Amendment) Act, 1955, which introduced Clauses (2A) and (2B) in Article 31. there was considerable controversy as to the inter-relation between Clauses (1) and (2) and that coloured the interpretation of the words "taken possession of or acquired" in Clause (2) as it stood prior to the amendment. The majority view in The State of West H Bengal v. Subodh Gopal Bose and Ors. [1954] S.C.R. 587 and Dwarkadas Shrinhas of Bombay v. The Sholapur Spinning & Weaving Co. Ltd. and Ors. [1954] S.C.R. 674 was that Clauses (1) and (2) of Article 31 were not mutually exclusive but they dealt with same topic and the deprivation contemplated in Clause (1) was no other than the compulsory acquisition or taking possession of property referred to in Clause (2) and hence where the deprivation was so substantial as to amount to compulsory acquisition or taking possession, Article 31 was attracted. The introduction of Clause (2A) in Article 31 snapped the link between Clauses (1) and (2) and brought about a dichotomy between these two clauses. Thereafter, Clause (2) alone dealt with compulsory acquisition or requisitioning of property by the State and Clause (1) dealt with deprivation of property in other ways and what should be regarded as compulsory acquisition or requisitioning of property for the purpose of Clause (2) was defined in Clause (2A). It was as if Clause (2A) supplied the dictionary for the meaning of compulsory acquisition and requisitioning of property' in Clause (2). Clause (2A) declared that a law shall not be deemed to provide for the compulsory acquisition or requisitioning of property, if it does not provide for the transfer of the ownership or right to possession of the property to the State or to a corporation owned or controlled by the State. It is only where a: law provides for the transfer of ownership or right to possession of any property to the State or to a corporation owned or controlled by the State that it would have to meet the challenge of Clause (2) of Article 31 as a law providing for compulsory acquisition or requisitioning of property. Whenever, therefore, the constitutional validity of a law is challenged on the ground of infraction of Article 31, Clause (2), the question has to be asked whether the law provides for the transfer of ownership or right to possession of any property to the State or to a corporation owned or controlled by the State. Here, the Life Insurance Corporation is a corporation owned by the State as its entire capital has been provided by the Central Government. The debts due and owing to Class III and Class IV employees from the Life Insurance Corporation are cancelled or extinguished by the impugned Act. Does that amount to transfer of ownership of any property to the Life Insurance Corporation within the meaning of Clause (2A) of Article 31 ? If it does, Article 31, Clause (2) would be attracted, but not otherwise. That depends on the true interpretation of Article 31, Clause (2A).

39. Now, whilst interpreting Article 31, Clause (2A), it must be remembered that the interpretation we place upon it will determine the scope and ambit of the constitutional guarantee under Clause (2) of Article 31. We must not, therefore, construe Clause (2A) in a narrow pedantic manner nor adopt a doctrinaire or legalistic approach. Our interpretation must be guided by the substance of the matter and not by lex scripts. When Clause (2A) says that in order to attract the applicability of Clause (2) the law must provide for the transfer of ownership of property to the State or to a corporation owned or controlled by the State, it is not necessary that the law should in so many words provide for such transfer. No particular verbal formula need be adopted. It is not a ritualistic mantra which is required to be repeated in the law. What has to be considered is the substance of the law and not its

form The question that is to be asked is : does the law in substance provide for transfer of ownership of property, whatever be the linguistic formula employed ? What is the effect of the law : does it bring about transfer of ownership of property ? Now, 'transfer of ownership' is also a term of wide import and it comprises every mode by which ownership may be transferred from one person to another. The mode of transfer may vary from one kind of property to another : it would depend on the nature of the property to be transferred. And moreover, the court would have to look to the substance of the transaction in order to determine whether there is transfer of ownership involved in what has been brought about by the law.

40. There is no doubt that in the present case the impugned Act extinguished or put an end to the debts due and owing from the Life Insurance Corporation to Class III and Class IV employees. That was the direct effect of the impugned Act and it can, therefore, be legitimately said that in substance the impugned Act provided for extinguishment of these debts, though it did not say so in so many words. This much indeed was not disputed on behalf of the Life Insurance Corporation and the controversy between the parties only centerd round the question whether the extinguishment of these debts involved any transfer of ownership of property to the Life Insurance Corporation. The learned Attorney General on behalf of the Life Insurance Corporation sought to make a distinction between extinguishment and transfer of ownership of a debt and contended that when ownership of a debt is transferred, it continues to' exist as a debt in the hands of the transferee, but when a debt is extinguished it ceases to exist as a debt and it is not possible to JJ say that the debtor has become the owner of the debt. There can be no transfer of ownership of a debt, said the learned Attorney-General, unless the debt continues to exist as such in the hands of the transferee, and, therefore, extinguishment of a debt does not involve transfer of ownership of the debt to the debtor. This contention of the learned Attorney-General, though attractive at first blush, is, in our opinion, not well founded. It is not correct to say that there can be no transfer of F ownership of a right or interest unless such right or interest continues to have a separate identifiable existence in the hands of the transferee. It is not difficult to find instances where ownership of a right or interest may be transferred from one person to another by extinguishment. Take for example, a case where the lessor terminates the lease granted by him to the lessee by exercising his right of forfeiture or the lessee surrenders the lease in favour of the lessor. The lease would in such a case come to an end and the interest of the lessee would be extinguished and correspondingly, the reversion of the lessor would be enlarged into full ownership by the return of the leasehold interest. There would clearly be transfer of the leaser-hold interest from the lessee to the lessor as a result of the determination of the lease and the extinguishment of the interest of the lessee. The same would be the position where a law provides' for cancellation of the lease and in such a case, if the lessor is the State H or a corporation owned or controlled by the State, it would amount to compulsory acquisition of the leasehold interest of the lessees within meaning of Clause (2A) of Article 31. It was in fact to held by this Court and in our opinion, rightly in Ajit Singh v. State of Punjab where Sikri, J., speaking on behalf of the majority, pointed out at page 149 that if "the State is the landlord of an estate and there is a lease of that property and a law provides for the extinguishment of leases held in an estate-it would properly fall under the category of acquisition by the State because the beneficiary of extinguishment would be the State". Where by reason of extinguishment of a right or interest of a person, detriment is suffered by him, and a corresponding benefit accrues to the State, there would be transfer of ownership of such right or interest to the State. The question would always be : who is

the beneficiary of the extinguishment of the right or interest effectuated by the law? If it is the State, then there would be transfer of ownership of the right or interest to the State, because what the own of the right or interest would have lost by reason of the extinguishment would be the benefit accrued to the State. This was precisely the reason why Hegde, J., speaking on behalf of the Court observed in the State of Madhya Pradesh v. Ranojirao Shinde (supra) that it was possible to view the abolition of cash grants under the Madhya Pradesh law impugned in that case "as a statutory transfer of rights of the grantees to the State". It was pointed out in that case that there was no difference between taking by the State of money that is in the hands of others and the abrogation of the liability of the State to make payment to others, for in the former case the State would be compulsorily taking others' property, while in the latter it would be seeking to appropriate to itself the property of others which is in its hands. It is, therefore, clear that when a debt due and owing by the State or a corporation owned or controlled by the State is extinguished by law, there is, transfer of ownership of the money representing the debt from the creditor to the State or the State owned/controlled corporation. So long as the debt is due and owing to the creditor, the State or the, State owned controlled corporation is under a liability to pay the amount of the debt to the creditor and, therefore, if the amount of the debt is X, the total wealth of the creditor-would be A plus X, while that of the State or State owned/controlled corporation would be minus X. But if the debt is extinguished, the total wealth of the creditor would be reduced by X and that of the State or State owned controlled corporation augmented by the same amount. Would this not be in substance and effect of transfer of X from the creditor to the State or State owned/controlled corporation ? The extinguishment of the debt of the creditor with corresponding benefit to the State or State owned/controlled corporation would plainly and indubitably involve transfer of ownership of the amount representing the debt from the former to the latter. This is the" real effect of extinguishment of the debt and by garbing it in the form of extinguishment, the State or State owned controlled corporation cannot obtain benefit at the cost of the creditor and yet avoid the applicability of Article 31, Clause (2). The verbal veil constructed by employing the device of extinguishment of debt cannot be permitted to conceal or hide the real nature of the transaction. It is necessary to remember that we are dealing here with a case where a constitutionally " guaranteed right Is sought to be enforced and the protection of such right should not be allowed to be defeated or rendered illusory by Jegis lative strategems. The courts should be ready to rip open such stratgems and devices and find out whether in effect and substance the legislation trenches upon any fundamental rights. The encroachments on fundamental rights are often subtle and sophisticated and they arc disguised in language which apparently seems to steer clear of the constitutional inhibitions. The need for a perspective and alert Bar is, therefore, very great and the courts too have to adopt a bold and dynamic approach, if the fundamental rights are to be protected against dilution or erosion.

41. In the light of this discussion, the conclusion is inevitable that the direct effect of the impugned Act was to transfer ownership of the debts due and owing to Class III and Class IV employees in respect of annual cash bonus to the Life Insurance Corporation and since the Life Insurance Corporation is a corporation owned by the State, the impugned Act was a law providing to compulsory acquisition of these debts by the State within the meaning of Clause (2A) of Article 31. If that be so, the impugned Act must be held to be violative of Article 31, Clause (2) since it did not provide for payment of any compensation at all for the compulsory acquisition of these debts.

Re : Ground (B)

42. Since the impugned Act has been held void as offending Article 31, Clause (2) under Ground (A), it is unnecessary to consider Ground (B) based on infraction of Article 19(1)(f). It is the settled practice of this Court to decide no more than what is absolutely necessary for the decision of a case. Moreover, once it is held that the impugned Act falls! within Article 31, Clause (2), its validity cannot be tested by reference to Article 19(1)(f) by reason of Clause (2B) of Article 31. Hence we do not propose to discuss the very interesting arguments advanced before us in regard to Article 19(1)(f).

43. We accordingly allow the writ petitions and declare the Life Insurance Corporation (Modification of Settlement) Act, 1976 void as offending Article 31, Clause (2) of the Constitution and issue a writ of Mandamus directing the Union of India and the Life Insurance Corporation to forebear from implementing or enforcing the provisions of that Act and to pay annual cash bonus for the years 1st April, 1975 to 31st March, 1976 and 1st April, 1976 to 31st March, 1977 to Class m and Class IV employees in accordance with the terms of Clause 8(ii) of the Settlement dated 24th January, 1974. The respondents will pay the costs of the writ petitions to the petitioners.

ORDER

44. We agree with the conclusion of Brother Bhagwati but prefer to rest our decision on the ground that the impugned Act violates the provisions of Article 31(2) and is, therefore, void. We consider it unnecessary to express any opinion on the effect of the judgment of the Calcutta High Court in W.P. No. 371 of 1976.