Kali Pada Chowdhury vs Union Of India on 3 May, 1962

Equivalent citations: 1963 AIR 134, 1963 SCR (3) 904, AIR 1963 SUPREME COURT 134, 1962 SCD 707 1962 ALLCRIR 448, 1962 ALLCRIR 448

Author: P.B. Gajendragadkar

Bench: P.B. Gajendragadkar, Bhuvneshwar P. Sinha, K.N. Wanchoo, J.C. Shah

PETITIONER:
KALI PADA CHOWDHURY

Vs.

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT:
03/05/1962

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
SINHA, BHUVNESHWAR P.(CJ)
SUBBARAO, K.
WANCHOO, K.N.
SHAH, J.C.

CITATION:
1963 AIR 134 1963 SCR (3) 904
CITATOR INFO :
R 1982 SC1413 (19)

ACT:
Mining Regulation--Mining Boards, consultation with--Constitution of boards, if obligatory--Regulations made without constituting Mining Boards--Validity of-- Coal Mines Regulations, 1957 reg. 127 (3)--Mines Act, 1952 (35 of 1952), SS. 12, 59.

HEADNOTE:
Section 12 of the Mines Act, 1952, provides that the Central Government may constitute a Mining Board for any part of the territories to which the Act extended or for any group or class of mine-. In 1957 only one mining board i.e. the

Bihar Mining Board was in existence and other mining boards were not constituted. Section 57 empowers the Central Government to make Regulations. Section 59(3), as it then stood, provided that before the draft of any regulation was published it should be referred to every Mining Board concerned and that it shall not be published until each such Mining Board had had a reasonable opportunity of reporting on it. The Central Government referred the draft of the Coal Mines Regulations to the Bihar Mining Board which circulated the draft to all the members of the Board and the members communicated their opinions individually to the Central Government. Thereafter, the Regulations were duly published and came into force. The petitioner's, who were being prosecuted in Bengal for violation of the Regulations, contended that the Regulations were invalid as : (i) it was incumbent upon the Central Government under 's. 12 of the Act to constitute all the Mining Boards and to refer the draft Regulations to all the Boards before they. could be published under s. 59. and (ii) the communication of opinions by individual members 'of the Bihar Mining Board did not amount to consultation with the Board within the meaning of s. 59(3).

Held (Per majority, Subba Rao, J., dissenting), that the 'Coal Mines Regulations, 1957, had been duly framed and published. Section 59(3) merely provided that if a Mining Board was in existence at the relevant time it was obligatory on the Central Government to consult it before

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the draft Regulation was published. But s. 12 was not mandatory and it was not obligatory on the Central Government to constitute any or all of the Mining Boards. There was nothing in the Act or. in the context which justified reading the word "may" in s. 12 as "shall". The Mining Board constituted under s. 12 had to perform two functions, viz., to make a report in respect of regulations or rules referred to it and to decide cases which may be referred to it under s. 81. The working of the Act was not dependent on the constituting of Mining Boards. This construction of s. 12 did not render the provisions of s. 59(3) nugatory. Apart from consulting the Boards, all parties affected by the draft had an opportunity to make their suggestions or objections and these had to be considered before the draft was settled and the regulations were finally made.

Banwarilal Agarwalla v. state of Bihar, [1961] 1 S.C.R. 33, explained.

Held, further, that the requirement of s. 59(3) had been complied with in referring the draft Regulations to the Bihar Mining Board. All that s. 59(3) required was that a reasonable opportunity should be given to the Board to make its report. How the Board chose to make its report, was not a matter which the Central Government could control.

Per Subba Rao, J.-,The Coal Mines Regulations were not

validly made. The Supreme Court had directly decided in Banwarilal v. State of Bihar that the Regulations were bad as there was no consultation with any Mining Board under s. 59 (3) as the Boards were not in existence. A fair construction of ss. 12 and 59 (3) of the Act' also showed that if the Central Government wanted to' make regulations under s. 57 it had to appoint Mining Boards and to refer the regulations to them before publication. If the Central Government wanted to exercise the power under s. 59 it had first to exercise the power under s. 12. The power to make regulations was coupled with a duty to consult the Mining Boards, and to discharge its duty it was incumbent upon the Central Government to appoint the Mining Boards. Apart from this, the Regulations is so far as they purported to regulate mines in West Bengal had not been validly made as no Mining Board for the West Bengal area had been consulted before making the Regulations. The Act did not empower the Central Government to make regulations in regard to mines in one part of the country by consulting a Board constituted for another part of the Country.
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Banwarilal Agarwalla v. State of Bihar. [1962] 1 S.C.R. R33, followed.
Alcock Ashdown & Co. v.. The Chief Revenue Authority, Bombay, A. I. R. 1923 P. C. 138, referred to.

JUDGMENT:

ORIGINAL JURISDICTION: Criminal Appeal Writ Petition No. 15 of 1962 Petition under Art. 32 of the Constitution of India for the enforcement of Fundamental Rights.

B. Sen and K. L. Hathi for the petitioner.

C. K.. Daphtary, Solicitor-General of India, B. B. L. Iyengar and B. H. Dhebar, for the respondents. S.Choudhury, S. C. Banerjee and P. K. Chatterjee for the Intervener.

1962. May 3. The judgment of Sinha, C. J., Gajendradagkar, Wanchoo and Shah, JJ., was delivered by Gajendragadkar, J., Subba Rao, J. delivered a separate Judgment. GAJENDRAGADKAR, J.-The four petitioners who are in charge of the working of the mine owned by the colliery known as Salanpur ,A" Seam Colliery in the District of Buidwan, are being prosecuted for the alleged contravention of the provisions of Regulation 127(3) of the Coal Mines Regulations, 1957, framed under the Mines Act, 1952 (35 of 1952) (hereinafter called the Act). By their petition filed under Art.. 32 of the Constitution, the petitioners pray that an order or writ in the mature of prohibition should be issued quashing the said criminal proceedings on the ground that the said proceedings contravene Art. 20(1) of the Constitution and as such, are void. To this petition have been impleaded as opponents 1 to 4, the Union of India, the Chief Inspector of mines, Dhanbad (W.B.), the Regional Inspector of Mines, Sitarampur and the Sub-Divisional Magis- trate, Asansol, respectively. The

prosecution of the petitioners has commenced at the instance of opponents 2 and 3 and the case against them is being tried by opponent No. 4. The petitioners' contention is that Regulation No. 127(3)whose alleged contravention has given rise to thepresent proceedings against them is invalid, ultra vires and inoperative and so, the prosecution of the petitioners contravenes Art. 20(1) of the Constitution. It is on this basis that they want the said proceedings to be quashed and ask for an order restraining opponents 2 and 3 from proceeding with the case and opponent No. 4 from trying it. The case in question is C. 783 of 1961 pending in the court of opponent No. 4.

Regulation 127(3) is a part of the Coal Mines Regulations framed by opponent No. 1 in exercise of the powers conferred upon it by section 57 of the Act, the same having been previously published as required by sub-section (1) of B. 59 of the said Act. Regulation 127(3) provides that no working which has approached within a distance of 60 metres of any disused or abandoned workings (not being workings which have been examined and found to be free from accumulation of water or other liquid matter), whether in the same mine or in an adjoining mine, shall be extended further except with the prior permission in writing of the Chief Inspector and subject to such conditions as he may specify therein. There is a proviso and explanation attached to this provision, but it is unnecessary to refer to them. The case against the petitioners is that they have contravened the provisions of Regulation 127(3) in that they extended the working of the mine further than the permitted limits without the prior permission in writing of opponent No. 2. The petitioners' case is that this Regulation is invalid and inoperative and so, its contravention cannot validly be made the basis of their prosecution having regard to the provisions of Art. 20(1) of the Constitution. According to the petitioners opponent No, 1 is no doubt conferred with the power of making Regulations under s. 57 of the Act,but O. as it stood at the relevant time, has imposed an obligation on opponent No. 1 that the draft of the said Regulations shall not be published unless the Mining Boards therein specified have had a reason. able opportunity of reporting to it as to the expediency of making the Regulations in question and as to the suitability of its provisions. The petitioners allege that at the relevant time, 'when the Regulations were made in 1957, no Mining Boards bad been established under s. 12 of the Act. Three Boards had been established under s. 10 of the Indian Mines Act of 1923, but as a result of the subsequent amendments made in the provisions of s. 10, the composition of two of the 'said Boards became invalid with the result that two of them could not be treated as Boards validly constituted. These invalid Boards were the Madhya Pradesh Mining Board and the West Bengal Mining Board. A third Board existed at the relevant time and that is the Bihar Mining Board. This Board had been constituted on the 22nd February, 1946 under s. 10 of the earlier Act as it then stood. The petitioner' case is that it was obligatory for opponent No. 1 to consult all the three Boards and since to out of the three Boards were not properly constituted, the fact that reference was made to the individual members of the said two invalid Boards did not satisfy the requirement of s. 59(3). According to the petition, a reference was made to the Bihar Mining Board, but the Board did not, make a report to opponent No. 1 as a Board but its individual members communicated their opinions to opponent No. 1. Therefore, on the whole, s. 59(3) had not been complied with and that makes the whole body of Regulations issued in 1957 invalid and inoperative. That, in brief, is the basis on which the petitioners want the criminal proceedings pending against them to be quashed. The respondents dispute the main contention of the petitioners that s. 59(3) has not been complied with. According to them, s. 59(3) has been duly complied with and the Regulations made ire valid. The respondents concede that two of the three existing Boards were invalid; but their case is that it

is only the validly existing Board that had to be consulted and the Bihar Mining Board, which was the validly existing Board at the relevant time, had been duly- consulted. The respondents allege that the fact that individual members of the Bihar Mining Board communicated their opinions to opponent No. 1 does not introduce any infirmity in the Regulations which were subsequently published in the Gazette and which, under S. 59(5) have, in consequence, the effect as if enacted in the Act.

On behalf of the petitioners, Mr. Sen contends that s. 59(3) 'imposes 'an obligation on the Central Government to consult the Boards therein specified and he argues that reading s. 12 of the Act in the light of s. 59(3), it follows that the Central Government has to constitute Mining Boards for the areas or mines in respect of which the Regulations are intended to be made and since two of the Boards had not been validly constituted, s. 12 had not been complied with and s. 59(3) had been contravened. Mr. Sen suggested that his contention about the mandatory character of the provisions contained in sections 12 and 59(3) is concluded by a recent decision of this Court. On the other hand, the learned Solicitor-General for the respondents contends that the said decision has no material or direct bearing on the question about the construction of s. 12. He concedes that the said decision has concluded the point that the requirement of a. 59(3) is mandatory. It is, therefore, necessary, in the first instance, to examine the effect of the said decision.

In "Banwari Lal Agarwalla v. State of Bihar" (1), this Court- had occasion to consider the validity of the prosecution launched against the appellant on the ground of the contravention of one of the Regulations made in 1957. It appears that in that case, the respondents stated before the Court that the Mining Boards constituted under s.10 of the Act of 1923 were continuing to operate at the time the relevant Regulations were framed and that there was full consultation with the said Mining Boards before the said Regulations were framed. The respondents, no doubt, contended that s.59(3) was directory and not mandatory and according to them, no obligation had been imposed upon the Central Government to consult Mining Boards even if they were in existence. Alternatively, it was suggested that the Mining Boards which had been constituted under the earlier Act were continued under the Act by virtue of s.24 of the General Clauses Act and that the said Boards bad been duly consulted. On the other hand, the appellant urged that the Boards to which the respondents referred were not validly constituted under the Act and had not been properly consulted. It was also argued on his behalf that both sections 12 and 59(3) were mandatory. It is in the light of these facts that the effect of the decision of this Court in Banwari Lal's case (1) has to be appreciated. Das Gupta, J., who spoke for the Court set out in his judgment the argument of the appellant that both sections 12 and 59 were mandatory, but, as the judgment shows, the Court considered the question as to whether s.59 (3) was mandatory and came to (1) (1962) 1 S.C.R. 33.

the conclusion that it was. The Court did not consider whether s.12 was mandatory and in the course of the judgment, there is no reference at all either to the question of construing s.12 or to its effect. Having held that s.59 (3) was mandatory, the Court remanded the case to the learned Magistrate before whom the proceeding were pending with a direction that he should try the issue as to whether the Boards constituted under the earlier Act validly functioned under the Act and whether they had been duly consulted. It would be noticed that if the Court had considered the question about the mandatory character of the provisions of s.12, it would have construed the said provisions and

would have addressed itself to the question as to whether the failure of the Central Government to constitute valid Boards as suggested by the appellant in that case itself made the impugned Regulation invalid. This course was not adopted obviously for the reason that the respondents pleaded that the requisite Boards were in existence and had been consulted and so, the controversy between the parties was narrowed down to the question as to whether s. 59 (3) requires that the Central Governments must consult existing Boards or not. Apparently, the respondents contended that even if Boards have been constituted under s. 1 2, it is not obligatory on the Central Government to consult them under s.59(3). The requirement about the said consultation is directory and not mandatory. It is this contention which has been rejected by the Court and having held that s.59 (3) was mandatory and that existing Board must be consulted before Regulations are framed, the question of fact which then fell to be considered was remitted to the trial Magistrate for his decision. Therefore, we are satisfied that the effect of the decision of this Court in Banwari Lal Agarwalla's case is that if a Board is in existence at the relevant time, it is obligatory, on the Central Government to consult it before a draft Regulation is published and in that sense s.59(3) is mandatory. It would, we think, not be right to assume that the contention of appellant that s.12 like a.59(3) is mandatory was decided without discussing the question about its construction and its effect. The facts pleaded by the respondents in that case made it unnecessary to decide the appellant's contention based on the mandatory character of s.12. Therefore we do not think Mr. Sen is justified in contending that the point which he seeks to raise in the present appeal about the effect of s. 12 is concluded by the decision in Banwari Lal Agarwalla's case. That being so, we must proceed to examine Mr. Sens contention on the merits. At this stage, it is necessary to read both sections 12 and

59. Section 12 deals with the constitution of Mining Boards. Section 12(1) provides that the Central Government may constitute for any part of the territories to which the Act extends, or for any group or class of mines, a Mining Board consisting of seven persons as specified in clauses

(a) to(e). The point which calls for our decision is whether the first part of s. 12(.1) imposes an obligation on the Central Government to constitute Board when it is proposed to make Regulations to which s.59(3) applies. Section 59 as it stood in the Act prior to its amendment in 1959 read thus:-

> "59 (1) The power to make regulations and rules conferred by sections 57 and 58 is subject to the condition of the regulations and rules being made after previous publication.
>
> (2) The-date to be specified in accordance, with clause (3) of section 23 of the General Clauses Act, 1897 (10 of 1897), as that after which a draft of regulations or rules proposed to be made will be taken under consideration, shall not be less than, three months from the date on which the draft of the proposed regulations or rules is published for general information. (3) Before the draft of any regulation is published under this section, it shall be referred to every Mining Board which is, in the opinion of the Central Government, concerned with the subject dealt with by the regulation and the regulation shall not be so published until each such Board has had a , reasonable opportunity of reporting as to the expediency of making the same and as

to the suitability of its provisions.

(4) No rule shall be made unless the draft thereof has been referred to every Mining Boar(constituted in that part of the territories to which this Act extends which is affected by the rule, and unless each such , Board has had a reasonable opportunity of reporting as to the expediency of making the same and as to the suitability of its provisions.

(5) Regulations and rules shall be published in the Official Gazette and, on such publication, shall have effect as if enacted in this Act.

(6) The provisions of sub-sections (1), (2) and(4) shall not apply to the first occasion on which rules referred to in clause (d) or clause (e) of section 58 are made.

(7) The regulations and rules made under sections 57 and 58 shall be laid down before Parliament, as soon as may be, after they are made."

The petitioners' contention is that in construing section 12, we must have regard to the provisions of s.59(3). By an amendment made in 1959 by Act 62 of 1959, sub. s(3) of s. 59 has been deleted and combined provision is made both for regulations and rules by subsection (4) by making a suitable amendment in the said sub-section so as to include both regulations and rules within its scope. Sub-section (4) thus amended reads thus:

"59(4). No regulation or rule shall be made unless the draft thereof has been referred to every Mining Board constituted in that part of the territories to which this Act extends which is affected by the regulation or rule and unless each such Board has had a reasonable opportunity of reporting as to the expediency of making the same and as to the suitability of its provisions."

Before construing s.12, it may be useful to refer to the relevant provisions of the Act which confer power on or assign some duties or functions to the said Boards. Section 14(1) provides inter alia that a Board constituted under s. 12 may exercise such of the powers of an Inspector under this- Act as it thinks necessary or expedient to exercise for the purpose of deciding or reporting upon any matter referred to it. Section 14(2) confers upon the Board the powers of a Civil Court for the purposes therein specified. It would thus be seen that the Boards constituted under s. 12 may have occasion either to make a report in respect of regulations or rules referred to them tinder s. 59, or' they may have to decide cases sent to them under s. 81. Section 59 which speaks of reference of the rules and regulations to the Boards has already been cited. Section 81(1) provides that if the court trying any case instituted at the instance of the Chief Inspector or other officers therein specified is of opinion that the case is one which should, in lieu of a prosecution, be referred to a Mining Board, it may stay the criminal proceedings, and report the matter to the Central Government with a view to such reference being made. Section 81(2) authorises the Central Government either to refer the case to the Mining Board or to direct the court to proceed with the trial. Thus, if the Central Government decides to refer a pending criminal case to the Board, the Board has to decide it. That is the two-fold

function which may be assigned to the Board under provisions of the Act. Mr. Sen contends that if s. 59(3) is mandatory, it follows that consultation with the relevant Board was treated as essential by the legislature before the Central Government finalised the regulations ; and from this obligation imposed by s. 59(3), it must follow as a corollary that the relevant Boards must be constituted by the Central Government' under s. 12. In other words, the argument is that a. 59(3) postulates the existence of the relevant Boards and makes it obligatory on the Central Government to consult them and this can be satisfied only if the Central Government is compelled to constitute Boards under section 12. Prima facie., there is some force in this contention. But, on the other hand, if s. 59(3) is read as imposing an obligation on the Central Government to consult the Board if it is in existence, then no corollary would follow from the mandatory character of the said provision as is suggested by Mr. Sen. Section 59(3) as it stood before the amendment of 1959, provides that every Mining Board which, in the opinion of the Central Government, is concerned with the subject dealt with by the regulation, shall be consulted ; and this means that there should be a Mining Board before it is consulted and that the said Mining Board should, in the opinion of the Central Government, be concerned with the subject dealt with by the regulation. This provision does not mean that a Mining Board must be constituted, for that is the subject-matter of the provisions contained in s. 12. If s. 12 is not mandatory, then s. 59(3) must be read in the light of the position that it is open to the Central Government to constitute the Board or not to constitute it, and that being so, s. 59(3) would then mean only this and no more that if the Board is in existence and it is concerned with the subject, it must be consulted.

Similarly, a. 59(4) as it stands after the amendment of 1959, requires that the draft of the rule or regulation shall be referred to every. Mining Board constituted in 'that part of the territories to which the Act extends which is affected by. the regulation or rule. That again means no more than this that if a Board is constituted in the part of the territories which is affected by the regulation, it shall be consulted. It is not as if this construction adds any words in s. 59(3) or s. 59(4); it merely proceeds on the basis that s.12(1) is not mandatory. Therefore. in our opinion, in construing s. 12 (1) it would not be logical to assume that S. 59(3) or s.59(4) imposes an obligation on the Central Government to constitute a Board, because as we have just indicated the constitution of the Boards is not the subject-matter of s.59 (3) or s. 59 (4) ; that is the subject-matter' of the Central Government to constitute a Board must be determined in the light of the construction of s. 12. Reverting then to the material words used in s. 12 itself, if, it seems clear that the said words do not permit the construction for which Mr. Sen contends. It is not disputed that the context may justify the view that the use of the word "may" means "'shall"; but if we substitute the word "shall" for "may" in s. 12(1), it would be apparent that the argument about the mandatory character of the provisions of s. 12(1) would just not work. To say that the Central Government shall constitute for any part of the territories to which the Act extends, or for any group or class of mines a Mining Board, would emphatically being out the contradiction between the obligation sought to be introduced by the use of the word "shall" and the obvious discretion left to the Central Government to constitute the Board for any part of the territories or any group or class of mines' The discretion left to the Central Government in the matter of constitution of Boards which is so clearly writ large in the operative part of the said provision indicates that in the context, "may" cannot mean "shall". Section 12(1) really leaves it to the discretion of the Central Government to constitute a Board for any part of the territories and that means, it may not constitute a Board for some parts of the

territories. Likewise, discretion is left to the Central Government to constitute. a Board for a group or class of mines and that means that for some groups or classes of mines, no Board need be constituted. Whether or not Boards should be constituted for parts of territories or for groups or classes of mines, has been left to be determined by the Central Government according, to the requirements of the territories or the exigencies of the groups or classes of mines. Therefore, we are unable to accept the argument that a. 12(1) imposes an obligation on the Central Government to constitute Boards in order that in making regulations, there should be appropriate Boards who have to be consulted under s. 59(3). The directory nat ner of the provisions of s. 121(1) rather strengthen the construction placed upon s. 59(3) by this Court in the case of Banwari Lal Agarwalla that if there are Boards in existence, they must be consulted before draft regulations are published under section 59. But that is very different from saving that Boards must be constituted in all areas or in respect of all groups or classes of mines which are intended to be covered by the regulations ,proposed to be made by the Central Government. Mr. Sen relied on section 5 for showing that the use of the word "may" in that section really means "shall". The said section provides that the Central Government may appoint such a person as possesses the prescribed qualifications to be the Chief Inspector of Mines for all territories to which the Act extends; and it may be conceded that the implementation of the material provisions of the Act depends upon the appointment of the Chief Inspector of Mines and so, in the context, "'may" in a. 5 would really mean ,'shall" so far as the appointment of the Chief Inspector is concerned. But this section itself shows that "may" may not necessarily mean ,'shall" in regard to the appointment of Inspectors contemplated by the latter part "may" means "may" or it means ""shall". would inevitably depend upon the context in which the said word occurs and as we have just indicated, the context of s. 12(1) is not in favour of the construction for which Mr. Sen contends. It cannot be said that like the appointment of the Chief Inspector of Mines, the constitution of the Boards is essential for the working of the Act, for, without the constitution of the-Boards, the working of the Act can smoothly proceed apace. We have already pointed out that there are only two functions which can be assigned to the Boards; under s. 81(2) it is; discretionary for the Central Government to refer a pending criminal case to the Board or not, and under a. 59(3) consultation with the Board is necessary only if the Board is in existence. Therefore, the working of the Act is not necessarily dependent on the constitution of the Boards, and that distinguishes the context or s. 12 from the context of section 5. There is another provision of the Act to which reference may be made in this connection. Section 61 deals with the making of the bye-laws. Section 61(1) provides that the owner, agent or manager of a mine may, and shall, if called upon to do so by the Chief Inspector, or Inspector, frame and submit to the Chief Inspector or Inspector a draft of bye-law,% in the manner indicated in the said sub-section. Section 61(2), inter alia, authorises the Chief Inspector or the'Inspector to propose amendments in the said draft. Section 61(3) then lays down that if within a period of two months from the date on which' any draft bye-laws or draft amendments are sent by the Chief Inspector or Inspector to the owner, agent or manager under sub-section (2), and the Chief Inspector or Inspector and the owner, agent or manager are unable to agree as to the terms of the bye-laws to be made under sub-section (1), the Chief Inspector or Inspector shall refer the draft bye-laws for settlement to the Mining Board, or where there is no Mining Board, to such officer or authority as the Central Government may, by general or special order, appoint in this behalf It would be noticed that this sub-section assumes that there may not be in exi- stence a Mining Board in the area where the mine in question is situated or for the group or class of mines to which the said mine belongs. Now, if the petitioners' construction of s. 12 read with

s. 59(3) is accepted, it would follow that in order to make the regulations binding on all the mines situated in the whole of the country, there must be Mining .Board in respect of all the said mines either territory-wise or group-wise or class-wise- and that would not be consistent with the assumption made by section 61(3) that in certain areas or in respect of certain groups or classes of mines a Mining Board may not be in existence. It is in this indirect way that s.61(3) supports the construction which we are disposed to place on section 12(1).

It is then urged that if the respondents' construction of s.12 is upheld, s. 59(3) or s. 59(4) would be rendered nugatory and the whole purpose of consuiting the Boards would be defeated. We are not impressed by this argument. In testing the validity of this argument, it is necessary to recall the scheme of s. 59. Section 57 confers power on the Central Government to make regulations and s. 58 confers power on the said Government to make, rules as therein specified respectively. Section 59(1) requires that the power. to make regulations is subject to the condition that the said regulations would be made after previous publication. Section 59(2) then provides for the period which has to pass before the said draft can be taken into consideration. Section 59(3) refer to the consultation with the Boards. Logically, consultation with the Boards is the first step to be taken in making ,regulations; publication of the draft regulations is' the second step; allowing the prescribed period to pass before the draft is considered is the third step and publishing the regulations after considering them is the last step. After the regulations are thus published, they shall have effect as if enacted in the Act. That is S. 59,5). The 'first publication is the publication of the draft under s. 23(3) of the General Clauses Act and it is significant that the object of this publication is to invite objections or, suggestions from persons or bodies affected by the draft regulations. Section 23(4) of the General Clauses Act provides that the authority having power to make the rules or, regulations shall consider any objection or suggestion which may be received with respect to the draft before the date specified therein, so that the whole object ,of publishing the draft is to give notice to the parties concerned with the regulations which are intended to be framed and the object of the requirement that the said draft will not be considered until the prescribed period has passed is to enable parties concerned to file their objections. Therefore, the scheme of s. 59 clearly shows that apart from consulting the Boards to which s. 59(3) refers, all parties affected, by the draft would have an opportunity to make their suggestions or objections and they would be considered before the draft is settled and regulations are finally made. Therefore, in our opinion, it would not be correct to say that the construction of s. 59(3) for which the respondents contend would enable the Central Government to make regulations without consulting the opinion of persons affected by them. The result then is that s. 12(1) is directory and not .mandatory and s. 59(3), or a. 59(4) after the amendment in 1959 is mandatory in the sense that before the draft regulation is published, it is obligatory for the Central Government to consult the Board which is constituted under s. 12. If no Board is constituted, there can be, and need be, no consultation. It is in the light of this position that the grievance made by the petitioners against the validity of their prosecution has to be judged. We have already noticed that it is common ground between the parties that the Madhya Pradesh Minning Board and the West Bengal Mining Board which were constituted under a. 10 of the Act of 1923 have become invalid after the amendment of s. 10 by the Amending Act 5 of 1935. Under s. 10 as it originally stood, the Board was constituted by the Provincial Government and it was composed of five members. After the amendment, a Board had to be constituted by the Central Government and, it was to consist of seven members. That is why the respondents concede that the Madhya

Pradesh and West Bengal Mining Boards could not be said to be validly constituted for the purpose of s. 12 even by the application of s. 24 of the General Clauses Act. The position then is that at the time when the regulations were framed in 1947, there, was only one Board which properly constituted and that is the Bihar Mining Board. It was constituted in 1946 and by virtue of a. 24 of the General Clauses Act, it continued as a valid Board under s.12. This Board has been consulted by the Central Government before the regulations were made. It is not disputed that the draft regulations were sent by the Central Government to the Bihar Mining Board through the State Government.It_ appears that after the Board received the said draft, it was circulated by the Chairman of the Board to all the members of the Board and the members communicated their opinions individually. It is argued that the communication by individual members of the Board of their opinions to the Central Government cannot be said to amount to the consulation with the Board and so, it is urged that the requirement of s.59(3) has not been complied with. We do not think there is any substance in this argument. All that s.59(3) requires is that a reasonable opportunity should be 'given to the Board to make its report as to the expediency or the suitability of the proposed regulations. How the Board chooses to make its report is not a matter, which the Central Government can control. The Central Government has discharged its obligation as' soon as it is shown that a copy of the draft regulations was sent to the Board, and if the Board thereafter, instead of making a collective report, chose' to. sent individual opinions, that cannot be said to constitute the contravention of s.59(3). Indeed, s.59(3) does not impose an obligation on the Board to make any report at all It is true that since under s.14, the Board is empowered to make a report, it is unlikely that any Board, when consulted, would refuse to make a report. But, nevertheless, the position still remains that if the Board refused to- make a report, that will not introduce any infirmity in the regulations which the Central Government may ultimately frame and publish under s.59(5). We must accordingly hold that the regulations framed in 1957 have been duly framed and published under s.59(5) and as such, they shall have effect as if enacted in the Act. The result is, the petition fails and is dismissed. SUBBA RAO, J.-I regret my, inability to agree. The facts relevant to the question raised lie in a small compass. The petitioners are incharge of the working of a mine, known as Salanpur "A" Seam Colliery, in the District of Burdwan, West Bengal. On the allegation that they contravened the provisions of Regulation 127(3) of the Coal Mines Regulations, 1957 (hereinafter called the Regulations), a criminal complaint was filed against them in the Court of Sub-divisional Magistrate, Asansol, and the said Magistrate has taken cognizance of the said complaint under s. 190(1)

(c) of the Code of Criminal Procedure, read with s. 73 of the Mines Act, 1952 .(hereinafter called the Act). The petitioners challenge the validity of the maid Regulations on the ground that they were made in contravention of the provisions of s. 59(3) of the Act. Section 59(3) of the Act imposes a condition on the Central Government to give a reasonable opportunity to a Mining Board before making regulations in exercise of the power conferred on it by the Act. Under s.10 of the Indian Mines Act, 1923, the Central Government in the year 1946 constituted the Bihar Mining Board with jurisdiction over the area covered by the Province of Bihar. The Central Government sent the draft Regulations to the said Board. The Chairman of the Board circulated the said draft Regulations to all the members of the Board and the members communicated their opinions individually to the Central Government. Thereafter the Central Government made the said Regulations governing the whole of India, except Jammu and Kashmir, and to every coal mine therein, in compliance with the

other provisions of s. 59 of the Act.

The question in this petition is whether the Regulations so made after consulting the Bihar, Board alone would be valid and in force in the West Bengal area so as to sustain a criminal prosecution on the basis of an infringement of the said Regulation in respect of a mine in that area. This question may be divided into two parts, namely (1) where the Central Government has' not constituted a Mining Board, can it ignore the condition laid down under s. 59(3) of the Act and (2) if giving a reasonable opportunity within the meaning of s. 59(3) of. the Act is necessary condition for the validity of the Regulations made thereunder, can the Central Government validly make a regulation in respect of West Bengal after giving such a reasonable opportunity to a Mining Board constituted for Bihar ?

In my view, the first question is directly covered by the decision of this Court in Banwari Lal V. State of Bihar(,). There, Das Gupta J., delivered the judgment of the Court. As it is contended that the said decision should be confined only a case where a Mining Board has been validly constituted under the Act and should not be applied to a case where such a Board has not been constitu- ted, it would be necessary to scrutinize the decision carefully to ascertain' the exact scope of the said decision. The facts of that case where there was an accident in the Central Bhowra Colliery in Dhanbad in Bihar, as a result of which 23 persons lost their lives the Regional Inspector of Mines, Dhanbad filed a complaint against the appellant for allegedly committing an offence under s. 74 of the Mines Act, 1952, i.e., for contravening regulations 107 and 127 of the Coal Mines Regulations, 1957 ; after the Sub-Divisional Officer took Cognizance of the complaint, the appellant made an application to the Patna High Court under Art. 226 of the Constitution contesting the validity of the said proceedings on the ground, inter alia, that there was no Mining Board constituted under S. 12 of the Act and therefore the Central Government had made the Regulations without, consulting Mining Board as it, should do under s. 59(3) of the Act. The second ground on which a prayer for quashing the proceedings was based, with which alone we are now concerned, was stated in the judgment thus : "the Coal Mines Regulations, 1957, are invalid having been framed in contravention of S. 59(3) of the Mines Act, 1952." The contention of learned counsel, who elaborated this ground, was stated thus : "'As regards the other contention that the regulations are invalid the appellant's argument is that the provisions of s. 12 and s. 59 of the Mines Act, 1952, are mandatory." Then the, learned Judge quoted in extenso s. 59(3) of the Act and (1) (1962) 1 S.C.R. 33.

proceeded to state the relevant basic facts and posed the question raised in the case thus:

> "It was not disputed before us that when the Regulations were framed, no. Board , as required under s. 12 had been constituted and so, necessarily there had been no reference to any Board as required under s. 59. 'the question raised is whether the omission to make such a reference make the rules invalid."

It is manifest from the question so posed that the question considered by the Court was whether the making of the Regulation without reference to a Mining Board, as it was not in existence, would be invalid. Then the learned Judge considered the language of a. 59(3) of the Act and observed at P. 851 :

> "..... it is legitimate to note that the language used in. this case is emphatic and appears to be designed to express, an anxiety of the legislature that the publication of the, regulation, which it; condition precedent to the making of the regulations, should itself be subject to two conditions precedent-first, a reference to the Mining Board concerned, and secondly, that sufficient opportunity to the Board to make & report as regards. the expediency and suitability of the proposed regulations."

The learned Judge then proceeded to considered the reasons for imposing such a condition and observed.

> "Even a cursory examination of the purposes set in the 27 clauses of s. 57 shows that that most of them impinge heavily on the actual working of the mines. To mention only a few of these are sufficient to show that the very purpose of the Act may will be defeated unless suitable and practical regulations are' framed to help the achievement of this purpose."

Then he pointed out that s. 12 of the Act unabled the Government to appoint Boards providing representations for different interests which would be in a position to help the Central Government to make suitable and practical regulations. In the words of the learned Judge, "The constitution is calculated to ensure that all aspects including on the one hand the need for securing the safety and welfare of labour and on the other hand the practicability of the provision proposed from the point of view of the likely expense and other considerations can be throughly examined. It is certainly to the public benefit that Boards thus constituted should have an opportunity of examining regulations proposed in the first place,% by an administrative department of the government and of expressing their opinion." According to him, the constitution of the Board in the manner prescribed served a real purpose and, therefore the constitution by the Central Government with such 'a Board was made a condition of the making of the Regulations. When it was contended that the insistence upon consultation might effect the public welfare under emergent circumstances he. pointed out that under s. 60 of the Act, which provided for such a contingency, the Central Government might make regulations without previous reference to Mining Boards and therefore no such 'consideration could prevent the Court from holding that' the giving of an opportunity to the Board was a condition precedent to the exercise of the power of making regulations. The learned Judge summarised his reasoning thus:

> "'An examination of all the relevant circumstances viz., the language used, the scheme of the legislation, the benefit to the public on insisting on strict compliance as well as the risks to public interest on insistence on such compliance leads us to the conclusion that the legislative intent was to insist on these provisions for consultation with the Mining Board as a prerequisite for the validity of the regulations.
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> This conclusion is strengthened by the fact that in s. 60 which providing for the framing of regulations in certain cases without following the procedure enjoined in s. 59, the legislature took care to add by a proviso that any regulation so made "shall not remain in force for more than two years from the making thereof ". By an amendment

> made in 1959 the period has been changed to one year. It is not unreasonable to read this proviso as expressing by implication the legislature's intention that when the special circumstances mentioned in s. 60 do not exist and there is no scope for the application of that section no regulation made in contravention of a. 59 will be valid for a single day."

The learned Judge concluded his discussion thus, a' p. 853 :

> "For all the reasons giving above, we are of opinion that the provisions of S. 59(3(of the Mining Act, 1952, are mandatory."

Pausing here for a moment, I find it very difficult to bold that this Court held, expressly or by necessary implication, that s. 59(3) of the Act was mandatory only if the concerned Board was in existence. The argument advanced, the question posed, the reasons given and the conclusion arrived at were all against giving such a limited scope to the said judgment, It was contended that both s. 12 and s. 59 were mandatory. III Posing the question to be decided, the learned Judge clearly referred to "the omission to make such a reference". The word "such" clearly refers to the omission to make a reference, as no Board- was constituted under s. 12 of the Act. So, as regards the posing of the question there was absolutely no ambiguity and the learned Judge had clearly in mind what the Court was asked to decide upon. The reasons given by the learned Judge for holding that it was obligatory of the Central Government to consult the Board before the making the regulation would equally apply whether the Board existed or not. The conclusion arrived at by the learned Judge that consultation with such a Board was a condition precedent for the exercise of the power would apply to both the cases. If it was a condition precedent for the exercise of the power, how could it cease to be one if a Board was not in existence? The condition is not the existence of the Board, but the consultation with a Board. In one case, the Government would not consult the Board though it existed, and in the other case it would not consult, as the Board did not exist. In either case, the condition was broken. But it is said that the last three, paragraphs of the judgment make it clear that the learned Judge was not considering the case where a Board had not been constituted. There, the learned Judge was considering the question whether the Mining Boards constituted under s. 10 of the Mines Act, 1923, were continuing to operate at the time the Regulation were made and there was full consultation with the ,Mining Boards before the, Regulations were framed. put tile learned Judge was not able to decide that question, as there was not sufficient material on the record. Therefore, this Court directed the Magistrate to decide that question. I fail to see how these paragraphs in any way help us to hold that this Court confined its decision only to a case where a Board has been constituted. On the other hand, the observations in the first of these three paragraphs clearly indicate to the contrary. The relevant observations are "As has been pointed out above, it was not disputed before us that at time when the regulations were framed to now Mining Board had been constituted under the Mines Act, 1952 and consequently no consultation with any Mining Board constituted under the 1952 Act took place."

This shows that the entire judgment up to that point proceeded on the basis that there was no consultation with the Mining Board, as no such Board was constituted. Thereafter the learned Judge was only considering the alternative contention advanced by the State, namely, that the pro-existing

Board was consulted and that that consultation was sufficient compliance with the provisions of s. 59(3) of the Act. If I might analyse the mind of the learned Judge, the process of reasoning may be summarized thus: On behalf of the appellant it was argued that there was no consultation with the Board as it was not constituted under s. 12 of the Act and, therefore, the Regulations made under the Act without such consultation were void. The learned Judge accepted the contention. Then it was argued for the Government that though there was no consultation with the Board constituted under s. 12 of the Act, consultation with a pre-existing Board would be enough compliance with the section. As there was no material on the record, the learned Judge could not decide on that question and therefore directed it to be decided by the Magistrate. On the other hand, as it was common case that no Board under s. 12 of the Act had been constituted, if the contention of the Government, now pressed before us, was correct, no other question would have arisen for, according to the State, a. 59 (3) could not be invoked in a case where no Board had been in existence. The plea that there was a consultation with the pre-existing Board was taken not by the appellant but by the State and such a plea would be unnecessary if s. 58 (3) of the Act did not lay down the condition of consultation with the Board when it did not exist.

To my mind, the judgment of the Court is clear and unambiguous on this point and it decided that, as there was no consultation with any Mining Board under s. 59(3) of the Act, as the Board was not in existence, the Regulations were bad. The present argument is an attempt to persuade us to go back on a clear pronouncement on the point by a Constitution Bench- of the Court.

That apart, I am satisfied on a true construction of the provisions of s. 12 and a. 59(3) of the Act that the Central Government has to exercise the power under s. 12 if it intends to exercise the power under a. 59 of the Act. Under s. 12, ,the Central Government may constitute for any part of the territories to which this Act extends or for any group or class of mines, a Mining Board", consisting of persons with specific qualifications representing different interests in the mines. Under ,R. 59, the power to make regulation conferred by a. 57 is subject to the condition of the regulations being made after previous publication, and under sub-s. (3) thereof ""Before the draft of any regulations is published under this section,it shall be referred to every Mining Board which is, the opinion of the Central Government, con-

cerned with the subject dealt with by the regulation, and the regulation shall not be so published until each such Board has had a reasonable opportunity of reporting as to the expediency of making the same and as to the suitability of its provisions". As interpreted by this Court, the said condition is a condition precedent for the making of the Regulations under the said section. If the contention of the learned Solicitor-General be accepted, the condition may have to be disannexed from the power by a situation brought about the conscious withholding of the exercise of the connected power by the Central Government under s. 12 of the Act. Central Government by its own default can ignore the condition imposed in public interest. The construction leading to this anomalous result can. not be accepted unless the provisions compel us to do so. It is a well settled principle of construction that when it is possible to do so, it is the duty of the Court to construe provisions which appear to conflict so that they harmonies. To put it differently, of two possible constructions, one which gives a consistent meaning to different parts of an enactment should be preferred. In the instant case, the two sections can be harmonized without doing violence to the language used. Section 12 is an

enabling provision under it a power it; given to the Central Government to appoint a Mining Board. Section 57, read with s. 59, confers another power on the Central Government to make regulation subject to, among others a condition that the draft of the regulations shall be referred to a Mining Board. These two powers are connected: if they are read together, as we should do in an attempt to reconcile them, it could be reason'. ably hold that the power conferred under a. 12 has to be exercised by the Central Government if it intends to make regulations under s. 57-of the Act. This construction carries out the full intention of Legislature in enacting s.59 as interpreted by this Court. Both the powers can be exercised without the one detracting from the other. The construction suggested by the respondents enables the Central Government to defeat the public purpose underlying the imposition of the condition under s.59 of the Act and that suggested by the petitioners enables the exercise of the two powers without the one coming into conflict with the other. I would on the principle of harmonious construction, prefer 'to accept the latter construction to the former.

Let us took at the provisions from a different perspective. It is a well established doctrine that when the power is coupled with a duty of the person to whom it is given to exercise it, then the exercise of the power is imperative:

> see Maxwell on interpretation of Statutes, 11th Edn., p.
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> 234. It has also been bold that "if the object for which the power is conferred contemplates giving of a right, there would then be a duty cast on person to whom the power is given to exercise it for the benefit of the party to whom the right is given when required on his behalf." Dealing with s. 51, Income-tax Act, 1918 which provides that the Chief Revenue Authority may" state the case to High Court Lord Phillimore observed in Alcock Ashdown & Co. v. The Chief Revenue Authority Bombay(1).
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> "No doubt that the section does not say that the authority "shall" state the case, it only says that it may and it is rightly urged that "may" does not mean "shall, only the capacity or power is given to the authority. But when a capacity or power is given to a public authority there may be circumstances which couple with the power a duty to exercise it, and where there is a serious (1) A. 1. R. 1923 P. C. 138.

point of law to be considered there does lie a duty upon the Revenue authority to state a case for opinion of the Court and if he does not appreciate that there is such a serious point, it is in the power of the Court to con-

trol him and to order him to state the case."

Under the Act, there are two connected powers a power to appoint a Mining Board and a power to make regulations subject to a condition. The condition imposed on the power confers a right on a Mining Board to be consulted before a regulation is made. A combined reading of s. 12 and ss. 57 and 59 shows that the power or powers conferred on the Central Government are coupled with a

duty to consult the Board whenever the Central Government seeks to exercise the power under s.57. I have no hesitation in holding that the power is coupled with a duty and that the power has to be exercised when the 'duty demands it. The Central Government in making the Regulations has a duty to consult the Mining Board and the Mining Board has a right to be so consulted and to discharge its duty it is incumbent upon the Central Government to exercise the connected power by appointing the Board.

It is said that under s. 59 of the Act, the Regulations and the Rules shall be referred to a Mining Board and that under s. 58 the Central Government has the power to make a rule providing for the appointment of the Chairman and members of the Mining Board and that if s. 59 is mandatory, the Government can never exercise the power under s. 58(a). No such difficulty could arise under the Act before its amendment in 1959. Under a. 69(3), as it stood then, the condition of consultation with a Mining Board was imposed only on the power of the Government to make a. regulation and that s.57 of the Act which confers a power on the Central Government to make regulations did not contain any. clause corresponding to cl. (a) of s. 58 of the Act. That apart, s. 58(a) may legitimately be invoked by the Central' Government only after a Board had been consti- tuted in regard to the future appointments. Any. how this argument may have some bearing when this question of construction of the provisions of s. 59 was raised before this Court on the last occasion and none at present, as the true construction of the said section was finally settled by this Court.

That apart, a comparative study of the other provisions of the Act would also lead to the same conclusion. Under the Act, there are many enabling provisions empowering the Central Government to appoint specified authorities to discharge different duties and functions described in various sections. Should it be held that the Central Government need not appoint the authorities under any circumstances, the Act would become a dead letter. Even the appointment of 'the Chief Inspector and Inspectors is left to the discretion of the Central Government: see s. 5 of the Act. If the Government need not appoint the Chief Inspector or the Inspectors, the duties and functions allotted to them could not be discharged or performed. A resonable construction would, therefore, be that if the said duties and functions have to be per. formed, the Government hat; to appoint the officers. So too, if the Central Government seeks to exercise the powers under s. 57 of the Act, read with s. 59 thereof, it has to appoint the Board. I therefore , hold on a fair construction of ss. 12 and 59 of the Act, that' the Central Government has a duty to appoint the, Mining Board if it seeks to exercise its power under s. 57 of the Act.

The next argument is that the Bihar Board has been consulted in the manner prescribed by s. 59(3) of the Act and, therefore. the regulation made after such consultation are valid. I cannot agree with this contention either. The said Board was appointed under s. 10(1) of the Indian Mines Act, 1923 and it is not disputed that the Board must be deemed to have been duly constituted under the present Act. It is also not disputed that the said Board was only constituted to have jurisdiction over the area comprised in the present Bihar State, that is, it has no jurisdiction over West Bengal. Under s. 12 of the Act, the Central Government may constitute for any part of the territories to which this Act extends or for any group or class of a Mines., a Mining Board. Under s. 59, the Central Government shall refer the draft to every Mining Board which, in the opinion of the Central Government, is concerned with the subject dealt with by the regulation'. Now, can it be said that the

Board constituted for a part of the territories to which the Act extends, namely, to the State of Bihar, could be a Board concerned with the subject dealt with by the regulations, namely, the mines in West Bengal area ? The entire object of s. 59 is to consult the persons intimately connected with the mining operations of a particular area so that suitable regulations may be made to govern the working of those mines. It could never have been the intention of the Legislature to empower the Government to make regulations in regard to mines in one part of the country by consulting a Board constituted for another part of the country. Such an intention could not be attributed to the Legislature. Indeed, the Central Government, when it is constituted the Boards, expressly indicated its intention that all the Boards, including the Board functioning in West Bengal, should be consulted, but as the Board constituted there was not one constituted legally under the Act, the consultation with. the said Board had become futile. I therefore, hold that the Regulations in so far as they purport to regulate the mines situate in West Bengal have not been validly made under the Act inasmuch as a condition precedent imposed by s. 59 of the Act on the exercise of the Government's power to make a regulation was not complied with.

In the result, I direct the issue of a writ of prohibition against respondents 1 to 4 restraining them from proceeding with the criminal case launched against the petitioners. The petitioners will have their costs.

By COURT : In view of the majority opinion of the Court the Writ Petition fails and is dismissed.