New Satgram Engineering Works & Anr vs Union Of India & Ors. And Vice Versa on 14 August, 1980

Equivalent citations: 1981 AIR 124, 1981 SCR (1) 406, AIR 1981 SUPREME COURT 124, 1981 (1) SCR 406, (1981) 1 SCR 408 (SC), 1980 (4) SCC 570

Author: A.P. Sen

Bench: A.P. Sen, V.R. Krishnaiyer, O. Chinnappa Reddy

PETITIONER:
NEW SATGRAM ENGINEERING WORKS & ANR.

Vs.

RESPONDENT:
UNION OF INDIA & ORS. AND VICE VERSA

DATE OF JUDGMENT14/08/1980

BENCH:
SEN, A.P. (J)
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SEN, A.P. (J)
KRISHNAIYER, V.R.
REDDY, O. CHINNAPPA (J)

CITATION:
1981 AIR 124 1981 SCR (1) 406
1980 SCC (4) 570
CITATOR INFO :
D 1985 SC 192 (3,4,5)
RF 1986 SC1234 (40)

ACT:
Coal Mines (Nalionalisation) Act, 1973 , Sections 2(h), 18(2) read with sub-sections (3) and (4) of section 19 of the Act as amended, interpreation of- Disbursement of amounts to the owners of coal mines, sections 20 to 27 of the Coal Mines (Nationalisation) Act, scope of.

HEADNOTE:
M/s. Shethia Mining and Manufacturing Corporation, Calcutta owned three non-coking coal mines one of which was New Satgram Coal Mines. besides a workshop called the New Satgram Engineering Works built on a plot adjacent to the

New Satgram Coal Mines in 1964, a building known as the Technical Director's Bungalow, built somewhere in 1957-58 outside the mining area but adjacent to it, and another building constructed in 1960-61 on the same plot of land, namely the Guest House used for the residence of officers and staff of mines.

The management of the New Satgram Coal Mines along with two other coal mines was taken over by the Central Government under the Coal Mines. (Taking over of Management) Act, 1973, with effect from January 31, 1973. Thereafter the Coal Mines (Nationalisation) Act, 1973 was passed and by virtue of section 3(1) thereof, the right title and interest of M/s. Shethia Mining and Manufacturing Corporation vested in the Central Government with effect from May 1973 and subsequently by a notification in the Government company that is, the Coal (India) Ltd. On May 17, 1973, the Central Government took over possession of the Technical Director's Bungalow and the Guest House. The. appellants who had filed two writ petitions challenging the taking over and the Nationalisation Act in the Supreme Court withdrew them and filed a petition under Article 226 of the Constitution in the Delhi High Court for the issuance of a writ or direction in the nature of mandamus in regard to the taking over of New. Satgram Engineering Works and the dues pertaining to the New Satgram Coal Mines and New Majri Coal Mines. The High Court partly allowed the petition but declined to go into the question as to whether the Engineering Unit, together with Shethia Bhavan and all its assets etc the Technical Director's Bungalow and Guest House were or not covered by the definition. of the term "mine" in section 2(h)(vi), (vii) & (xi) of the Nationalisation Act. Hence the appeals by special leave one by New Satgram Engineering Works and the other by the Union of India.

Allowing the Government's appeal and dismissing the appeal of the Engineering Works, the Court

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HELD: (1) When the facts themselves are seriously controverted, the dispute relating to the properties in question raise a "serious question of title" and the parties must get their rights adjudicated upon in a civil court and not

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under Art. 226 of the Constitution. The question whether the engineering unit, was "situate in, or adjacent to" the new Satgram Coal Mines and was "substantially" used for the purposes of the mine as well as the question whether the Technical Director's Bungalow and the Guest House were "solely" used for the residence of officers and staff of the mine and! therefore. fell within the definition of 'mine' as contained in s. 2(h) of the Nationalisation Act, cannot be decided in proceedings under Art. 226 of the Constitution. The proper remedy is by way of a suit. [416H; 418G-H]

(2) Parliament instead of providing that the word

'mine' shall have the meaning assigned to it in the Mines Act, 1952, has given an enlarged definition of 'mine' in s. 2(h) so that not merely the colliery but everything connected with the mining industry should vest in the Central Government, that is, not only that part of the industry which consisted of raising, winning and getting coal but also that part of it which consisted in the sale of coal and its supply to customers both of which are a part of an integrated activity. Parliament by an enlarged definition of mine as contained in section 2(h) of the Act has indicated the nature of the properties that vest, and the question whether a particular asset is taken within the sweep of i. 2(h) depends on whether it answers the description given therein. [415 H, 416 A-D]

(3) The language used in s. 2(h)(vii) and (xi) of the Coal Mines (Nationalisation) Act, 1973 are different. Sub-clause (vii) used the words "in, or adjacent to, a mine" and "used substantially" for the purposes of the mine or a number of mines under the same management, in relation to workshops. The use of the word 'and' makes both the conditions conjunctive. Sub-Clause (xi) used the words "if solely used" for the location of the management, sale or liaison offices, or for the residence of officers and staff of the mine, in relation to lands and buildings. The difference in language between the two expressions "used substantially" and "solely used" is clear. A workshop cr a building constructed initially for the purpose of a coal mine cannot by its being diverted to other purposes cease to belong to the mine. What is of the essence is whether the workshop or the building originally formed a part and parcel of the coal mine. The subsequent user may not b. very material. [415 B-E]

(4) Merely because the land on which a workshop of a coal mine is located bears a different plot number, or even if there is a compound wall between the main office of the coal mine and the workshop, it would not cease to be part of the mine. The question in such cases will always be whether the workshop is "located in, or adjacent to, a mine" and was "used substantially for the purposes of the mine under the same management". Further the question whether a workshop is "substantially" used for the purposes of a mine necessarily involves an enquiry as to whether it pertains to, or in substance is, part of the mine. The value of jobs executed for the mine as against those for others is not really determinative of the question. If a workshop is, in fact a part of a coal mine, it does not cease to be so merely because its utilisation lies in the production of materials supplied to third parties. While a workshop may form part of a mine and is substantially used as such, it may be utilised for turning out other products; it all depends upon the circumstances of each case, whether it forms part of a mine or not. [416F-G, 417 D-F]

(5) Sub-sections (3) and (4) of section 19 of the Act

are part of an integrated scheme and must be read with sub-section (2) of section 18. According to the provisions of sub-sections (3) and (4) of section 19 the Central
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Government, or the Government company was exclusively entitled to receive monies in question to the exclusion of other persons up to the specified ate and to utilise the same in discharge of the liabilities of the coal mine which could not be discharged by the appointed day. Under the scheme of the Act, the owner of the coal mine which has vested in the Central Government under sub-section (1) of section 3 is entitled to receive, besides the compensation amount as determined under section 8, additional compensation amount under sub-section (1) of section 9, simple interest thereon at 40% per annum for the period specified therein, together with "such amount as may become due" to tho owner of the coal mine in relation to the period during which the management of the coal mine remained vested in the Central Government 35 provided by sub-section (2) of section 18. [421 C-E]

Provisions in sections 8, 9, 18 and 19 make it clear that unless the requirements of section 19 are fulfilled there can be no ascertainment of "such amount as may become due" to the owner of a coal mine, in relation to the period during which the management of the coal mine remained vested in the Central Government, as required under sub-section (2) of section 18. Anr other construction would render sub-section (2) of section 18 entirely otiose. The amounts collected on behalf of the erstwhile owners of coal mines, represent the money of such owners without distinction, and whether they were sale proceeds of coal or realisations from debtors. the amounts were liable to be spent not only in the discharge of liabilities of the coal mine which could not be discharged by the appointed day, but also were liable to be spent for the purposes of management. All the rights and liabilities arise from the provisions of the Acts, and the net balance in relation to the management period, means the difference between authorised collections and legitimate liabilities of the erstwhile owners. It is necessarily this balance which "becomes due in relation to the period during which the management of the coal mines remained vested the Central Government" within the meaning of sub-section (2) of section 18. [423 B-E]

When there is a payment made by the Central Government under subs. (2) of section 18, the elaborate procedure provided under sections 20-27 have to be followed. The owner of a coal mine is entitled to the payment by the Commissioner of Payments, under section 26 of "the balance, if any out of the total amount of money credited to the account of the coal mine" after he has gone through all the stages provided for in Chapter VI. Such being the scheme, there is no question of the owner of a coal mine, who is divested of his right, title and interest under sub-section

(1) of section 3 to realise from the Central Government any amount due to a coal mine, which remained to be realised until the specified date, that is, June 30, 1975. In the instant case, in view of all these provisions of sections 20 to 27 of the Act and particularly, of sub-section (1) of section 26 the claims made by the appellants Engineering Works are not proper. They are certainly not entitled to recover any definite or ascertained sum. All that they are entitled to under sub-section (5) of section 19 is that they should be furnished with a copy of each statement of accounts prepared under section 19, to its being audited under sub-section (6) and to the audit being conducted in such manner as the Central Government may direct under sub-section (7), and to the payment under sub-section (1) of section 26 of the balance, if any, out of the total amount of money credited to the account of a coal mine after all the liabilities have been discharged. [423F, 424F-H, 425A, D-E]

(6) There is no duty cast on the Central Government to make realisations

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of any money due to a coal mine if it pertains to a period prior to the appointed, day, and to discharge the liabilities of the coal mine beyond the specified dated that is, June 30, 1975. The 'appointed day' under section 2(a) of the Management Act under the Nationalisation Act was January 31, 1973 and May 1, 1973 respectively; while the 'specified date' for purposes of sub-sections (3) & (4) of section 19 was June 30, 1975. All that vested in the Central Government under sub-section (I) of section 3 of the Management Act was the management of all coal mines, as defined in section 2(g) of The Act, which included sundry debts etc., pending nationalisation of such mines, with effect from the appointed day, that is, January 31, 1973. But this was only for the purposes of management, the title all the time remaining in the erstwhile owners of the coal mines. In the course of management under that Act, all the collections belonged to the owners, and the liabilities also in relation to the mines were the liabilities of the owners. 'The Custodian appointed by the Central Government under section 6 of the Management Act was liable for, the net balance in relation to the management period. He had the right to collect and also the right to incur expenditure in relation to the management by reason of the provisions of that Act. [426 C-F]

(7) The conferral of power upon the Central Government under subsections (3) and (4) of section 19 to make realisation of monies due to the coal mines and from such realisation to discharge the liabilities as well as to incur expenses in relation to the management thereof, was a necessary concomitant of the vesting of such coal mines under sub-section (I) of section 3 of the Act. The Nationalisation Act received the assent of the President on

May 30, 1973 but the provisions of sub-section (I) of section 3 were brought into force with retrospective effect, that is, with effect from the appointed day, that is, May 1, 1973. It follows that, although there was a complete extinction of all the rights, title and interest of the owners of coal mines with effect from May 1. ; 1973, there was a fictional extension of the period of management under the Management Act from May 1 to May 30, 1973. There is, therefore, provision made in section 9 that apart from the amount of compensation provided for by section 8, as mentioned in the Schedule, the owners of every coal mine shall be entitled to receive additional compensation under sub-section (I) thereof. This was to be an amount equal to the amount which would have been, but for the provisions of sections 3, 4 and S payable to such owner for the period commencing on May 1, 1973 and ending on the date on which the Act received P the assent of the President that is, May 30, 1973. Under sub-section (1) of section 11 the Central Government is entitled to exercise all such things as the owner of the coal mine was authorised to do. [427C, 426G-427B]

(8) The definitions of coal mine in section 2(h)(xii) includes the current assets belonging to a mine. but by reason of the explanation inserted by the Coal Mines Nationalisation (Amendment) Act, 1978, the expression "current assets" appearing therein does not include amounts which had become due before the appointed day, that is, May 1, 1973. Thus these dues did not vest in the Central Government. This exclusion of sundry debts under the Nationalisation Act does not apply to the Management Act because there was no similar explanation to section 2(g)(xii) of that Act. [427 D-E]

(9) The Management Act was to be followed by the Nationalisation Act and, therefore, the accountability of the Central Government in regard to the management period was provided for in section 19 of the Nationalisation Act. Although there was vesting of the coal mines in the Central Government under

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sub-section (1) of section 3 of the Act, the accounts had still to be settled Sub-sections (3) and (4) of section 19, therefore, extended the period during which the Central Government was authorised to collect monies due to the coal mines and to discharge the liabilities of such coal mines which could not be discharged by the appointed day, that is, May 1, 1973 till the specified date, that is, June 30, 1975. The liabilities of the coal mines were not taken over under the Management Act. Section 7 of the Nationalisation Act implies that after the specified date, that is, June 30, 1975 the erstwhile owners of coal mines would have to meet all their liabilities which could not be discharged before the appointed day. It must result in the inevitable consequence, as a necessary corollary that any amount which

could not be realised by the Central Government until the specified date, would be realisable by the owners directly in order to meet their pre-existing liabilities. [427 F-428 B]

(10) Provisions of sub-section (4) of section 19 of the Coal Mines (Nationalisation) Act, 1973 are in part materia with sub-section (3) of section 22 of the Coking Coal Mines (Nationalisation) Act, 1972. The subsidy receivable from the erstwhile Coal Board established under section 4 of the Coal Mines (Conservation and Safety) Act, 1952, being a payment "by way of reimbursement" was like any other dues, and, therefore, must be treated as 'any money due to the coking coal mine'. Therefore, the directions made by the Court requiring the Union of India to pay to the Satgram Engineering Works Rs. 7,28,342-54 which is to be recovered by the erstwhile Coal Board as subsidy, is incorrect. [428C-D]

Industrial Supplies Pvt. Ltd., & Anr. v. The Union of India & Ors. [1981] 1 SCR p. 375, followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1331/79 and 426 of 1980.

Appeals by Special Leave from the Judgment and order dated 16-4-1979 of the Delhi High Court in W.P. No. 489/76.

M. C. Bhandare, A. C. Gulati, G. S. Chatterjee and B. B. Sawhney for the Appellants in CA No. 1331/79 and for Respondent in CA 4261 80.

Lal Narain Sinha, Att. Genl. and Miss A. Subhashini for the Appellants in CA No. 426 and Respondents in CA No. 1331/79.

The Judgment of the Court was delivered by SEN J.-These appeals by special leave from a judgment of the Delhi High Court. involve interpretation of s. 2(h) of the Coal Mines (Nationalisation) Act,]973, as amended by the Coal Mines Nationalisation Laws (Amendment) Act, 1978, as well as of sub-s. (2) of s. 18 read with sub-ss. (3) and (4) of s. 19 of the Act.

The importance of this case in its legal aspect consists in the question as to whether the Central Government has the power under sub-s. (3) of s. 19 of the Act to receive up to the specified date, i.e., June 30, 1975 any money due to a coal mine notwithstanding that the realisation pertains to a period prior to that date. even though A such amounts may not be the "current assets", by reason of Explanation to s. 2(h)(xii), and to apply such realisations under sub-s. (4) thereof to discharge the liabilities of such coal mine which could not be discharged by the appointed day, i.e., May 1. 1973.

The facts of the case are as follows:

Messrs Shethia Mining & Manufacturing Corporation, Calcutta apparently owned three non-coking coal mines, two in the State of West Bengal viz., New Satgram and New Jamuria coal mines, and one in the State of Maharashtra viz.. New Majri coal mine. The concern also owned a workshop called the New Satgram Engineering Works. in short, "Engineering Unit", built on a plot adjacent to the New Satgram coal mine in 1964. Outside the mining area, but adjacent to it, it had constructed a building known as the Technical Director's Bungalow built somewhere in 1957-58. In or about 1960-61, it had constructed another building on the same plot of land, namely, the Guest House used for the residence of officers and staff of the mines.

The management of the aforesaid coal mines was first taken over under the Coal Mines (Taking over of Management) ordinance. 1973 pending nationalisation of such mines and vested in the Central Government from the appointed day i.e., January 31, 1973. The ordinance was replaced by the Coal Mines (Taking over of Management Act, 1973, hereinafter referred to as the "Management Act". Thereafter, Parliament enacted the Coal Mines (Nationalisation) Acts 1973, hereinafter referred to as the 'Nationalisation Act', providing for the acquisition and transfer of the rights, title and interest of the owners in respect of the coal mines specified in the Schedule with a view to re-organising and reconstructing such coal mines so as to ensure the rational. co-ordinated and scientific development and utilisation of coal resources consistent with the growing requirements of the country.

The Nationalisation Act provides by sub-s. (1) of s. 3 that the right, title and interest of the owners in relation to the coal mines specified in the Schedule shall stand transferred to, and vest absolutely in, the Central Government free from all incumbrances with effect from the appointed day, i.e., May 1. 1973. The mines in question were nationalised and have been mentioned at serial Nos. 383, 577 and 601 in the Schedule. The right, title and interest of Messrs Shethia Mining & Manufacturing Corporation consequently vested in the Central Government and subsequently by a notification in the Government Company, i.e., the Coal (India) Ltd.

The management of the New Satgram Engineering (hereinafter called the petitioners) Works tried at first, to challenge the validity of the Coal Mines (Taking over of Management) ordinance, 1973 by a petition in this Court under Art. 32 of the Constitution being Writ Petition No. 81 of 1973. On February 12, 1973 they obtained rule nisi and an interim order restraining the taking over of the Engineering Unit. On May 4, 1973 the Court made the stay absolute. Between the making of the two orders, the Coal Mines (Taking Over of Management) Act, 1973 was enacted on March 31, 1973 with retrospective effect from January 31, 1973. On May 17, 1973, the Central Government took over possession of the Technical Director's Bungalow and the Guest House.

On May 30, 1973 the Coal Mines (Nationalisation) Act, 1973 was enacted and came into force with retrospective effect from May 1. 1973. On August 30, 1973 the

Management filed another petition under Art. 32 of the Constitution being Writ Petition No. 1673 No. 1973 challenging the validity of the Act. On September 19, 1473 the Court issued rule nisi and an ad interim order in terms of the earlier order.

On August 10, 1975 the Management Act and the Nationalisation Act were both placed in the Ninth Schedule, by the Constitution (Thirtyninth Amendment) Act being item Nos. 98 and 99 thereof on April 1, 1976 the petitioners withdrew their Writ Petitions Nos. 81 and 1673 of 1973 but two days after, i.e., on April 3, 1976 they presented a petition under Art. 226 of the Constitution before the Delhi High Court being Writ Petition No. 489 which has given rise to these appeals.

It is not unworthy of mention here that the main relief, if rot the only substantial relief, sought by the petitioners in their petition under Art. 226 of the Constitution, was for the issue of a writ or direction in the nature of Mandamus in regard to the New Satgram Engineering Works, but it appears that at the hearing in the High Court the submissions ranged over a much wider field. The petitioners alleged that until April 30, 1973, i.e., prior to the appointed day, Messrs Shethia Mining & Manufacturing Corporation were the owners of the two coal mines i.e., New Satgram and New Majri, and as on that day. the outstanding dues from sundry debtors were Rs. 68.74 lacs, further that from January 31, 1973 to April 30, 1973 i.e., during the period of management, the Central Government had despatched coal from the aforesaid two mines worth Rs. 53.22 lacs and that a sum of Rs. 7,28,342.54 was still outstanding as on April 30, 1973 towards subsidy receivable from the erstwhile Coal Board established under s. 4 of the Coal Mines (Conservation and Safety) Act, 1952 on account of hard-rock mining and stowing operations. It was also asserted that between the years 1962 and 1967 the petitioners had advanced a sum of Rs. 2,51,597.24 to the Eastern Railways for the construction of a railway siding, but the project having been abandoned on January 18, 1973 the amount had become due, although no such claim was made in the writ petition.

The High Court partly allowed the writ petition. It declined to go into the question as to whether the Engineering Unit. together with Shethia Bhavan and all its assets etc., the Technical Director's Bungalow. and the Guest House, were or were not covered by the definition of 'mine' in B. 2(h)(vi), (vii) and (xi) of the Nationalisation Act, but declared that the subsidy amounting to Rs. 7,28,342.54 receivable from the erstwhile Coal Board and outstanding as on May 1, 1973 did not vest in the Central Government under sub-s. (1) of s. 3 being impressed with trust. It further held that any amount which could not be realised until June 30, 1975, i.e., the specified date, under sub-s. (3) of s. 19 of the Act, would be realisable by the erstwhile owners of the coal mines. As regards the amount of Rs. 2,51,597.74 advanced by the petitioners to the Eastern Railways for construction of a railway siding, it held that no such claim having been made in the writ petition, they cannot be permitted to raise it.

> In these appeals, three questions arise; (1) whether the High Court having held that there was no special machinery provided in the Act for determining the question whether a particular asset fell within the definition of 'mine' contained in s. 2(h) of the Act, it ought to have, on the facts and circumstances of the present case, decided the said question in the exercise of its jurisdiction under Art. 226 of the Constitution? (2) Whether on a true construction of sub-s. (3) of s. 19 of the Act, the Central Government was entitled, to the exclusion of all other persons, to receive up to the specified date, any money due to the coal mines in question, realised after the appointed day, i.e., May 1, 1973 notwithstanding that the realisation pertained to a period prior to that day, and under sub-s. (4) thereof to discharge the liabilities of the coal mines which could not be discharged by the appointed day, from out of such realisation up to the specified date, i.e., June 30, 1975?

If that be so, whether any amount which could not be realised until the specified date, i.e., June 30, 1975 would be realisable by the erstwhile coal mine owners directly? (3) Whether the amount of subsidy receivable from the Coal Board established under s. 4 of the Coal Mines (Conservation and Safety) Act, 1952 with respect to any period before the appointed day did not fall within the purview of the definition of 'mine' contained in s. 2(h)(xii), being excluded from the expression 'current assets' by reason of the Explanation thereto.

It will be convenient in the first instance to deal with the first point which involves a mixed question of Law and fact. The facts have still to be investigated but the parties seek a declaration of the Law in the light of which the issues may be determined.

The Coal Mines (Nationalisation) Act, 1973 contains no provision for determining the question whether a particular asset falls within the definition of 'mine' as defined in s. 2(h) of the Act or not.

In the Nationalisation Act, 'mine' in s. 2(h) is defined, except What is immaterial, in the following terms:

> "2. Definitions.-In this Act, unless the context otherwise requires, XXX XXX XXX
>
> (h) 'mine' means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes-
>
> (vi) all lands, buildings, works, adits, levels, planes, machinery and equipments, instruments, stores, vehicles, railways, tramways and siding in, or adjacent to, a mine and used for the purposes of the mine;
>
> (vii) all workshops (including buildings, machinery, instruments, stores, equipment of such workshops and the lands on which such workshops stand), in, or adjacent to, a mine and used substantially for the purposes of the mine or a number of mines under the same management; XXX XXX XXX

(xi) all lands and buildings other than those referred to in sub-cl. (x), wherever situated, if solely used for the location of the management, sale or liaison offices, or for the residence of officers and staff, of the mine:

(xii) all other fixed assets. movable and immovable, belonging to the owner of a mine, wherever situate, and current assets, belonging to a mine, whether within its premises or outside.

Explanation.-The expression 'current assets' does not include,

(a) dues representing the sale of coal and coal products effected at any time before the appointed day and outstanding immediately before the said day;

(b) dues from the Coal Board, established under section 4 of the Coal Mines (Conservation, Safety and Development) Act, 1952, prior to the repeal of the said Act with respect to any period before the appointed day;

(c) dues from sundry debtors, loans and advances to other parties and investments, not being investments in the coal mines;"

It will be seen that there is a difference in the language used in s. 2(h)(vii) and (xi). Sub-clause (vii) uses the words "in, or adjacent to, a mine" and "used substantially" for the purposes of the mine or a number of mines under the same management, in relation to workshops. The use of the word 'and' makes both the conditions conjunctive. Sub-clause (xi) uses the words "if solely used"

for the location of the management, sale or liaison offices, or for the residence of officers and staff, of the mine, in relation to lands and buildings. The difference in language between the two expressions "used substantially" and "solely used" is obvious. It is, therefore, possible to contend that lands and buildings appurtenant to a coal mine, if not exclusively used for purposes of the colliery business, would not come within the definition of mine in s. 2(h), i.e., it would depend upon the nature of user, and that the crucial date is the date of vesting. We are inclined to think that the distinction though apparent may not be real in the facts and circumstances of a particular case. A workshop or a building constructed initially for the purpose of a coal mine cannot by its being diverted to other purposes cease to belong to the mine. What is of the essence is whether the workshop or the building originally formed a part and parcel of the coal mine. The subsequent user may not, in our opinion, be very material. To illustrate, a workshops which has come into existence for and because of the mine but which also comes to be used for purposes other than of the mine does not on that account alone cease to be a workshop used substantially for the purposes of the mine. Again, a building which is constructed to locate the management offices of the mine but which is used to accommodate some other concern because of the availability of space does not on that account alone cease to be solely used for locating the management offices of the mine.

By reason of sub-s. (1) of s. 3 of the Act the right, title and interest of the owners in relation to the coal mines specified in the Schedule stand transferred to, and vest absolutely in the Central Government free from all incumbrances. Parliament instead of providing that the word 'mine' shall have the meaning assigned to it in the Mines Act, 1952 has given an enlarged definition of 'mine' in s. 2(h) so that not merely the colliery but everything connected with the mining industry should vest in the Central Government, i.e., not only that part of the industry which consisted of raising, winning and getting coal but also that part of it which consisted in the sale of coal and its supply to customers both of which are a part of an integrated activity. This is manifested by sub-clauses (i) to (xii) of clause (h) of s. 2, i.e., all the assets belonging to a mine vest in the Central Government. As against this, the liabilities are not taken over. Section 7 of the Act provides that every liability of the owner, agent, manager or managing contractor of a coal mine, in respect of any period prior to the appointed day shall be the liability of such owner, agent, manager or managing contractor, as the case may be, and shall be enforceable against him and not against the Central Government or the Government Company. Thus, there was no question of setting up a Tribunal for adjudication of title to the properties vested. Parliament by an enlarged definition of mine as contained in s. 2(h) of the Act has indicated the nature of the properties that vest, and the question whether a particular asset is taken within the sweep of s. 2(h) depends on whether it answers the description given therein. Where there is a dispute as to whether a particular property vests or not, the dispute undoubtedly is a civil dispute and must, therefore, be resolved by a suit.

It was contended that the High Court should have gone into the question of title of the parties with respect to the properties in dispute particularly when sufficient documentary evidence was placed on record, as reflected in the judgment. We are afraid the matter is not as simple as is suggested. The documents on record merely tend to show that the engineering unit though adjacent to, was situate on a different plot, and there was an attempt to show that it was not a workshop in, or adjacent to, a mine. We are of the view that this hardly matters. Merely because the land on which a workshop of a coal mine is located bears a different plot number, or even if there is a compound wall between the main office of the coal mine and the workshop, it would not cease to be part of the mine. The question in such cases will always be whether the workshop is 'located in, or adjacent to, a mine', and was 'used substantially for the purposes of the mine under the same management'. These are but essentially questions of fact to be deter mined according to the facts and circumstances of each particular case. When the facts themselves are seriously controverted, the High Court was justified in observing that the dispute relating to the properties in question raised a 'serious question of title' and the parties must get their rights adjudicated upon in a civil court.

It was pressed upon the High Court that the two businesses of Messrs Shethia Mining & Manufacturing Corporation viz., the colliery business and the engineering business were two separate and distinct businesses, for they were governed by two different sets of laws. It was alleged that there were separate accounts kept, with a separate profit and loss account and a separate balance-sheet with respect to each. According to the management, therefore, the colliery business on the one hand and the engineering business on the other were treated severally for all purposes. It was alleged that between the years 1968 and 1971, the total sales billed by the engineering unit were to the magnitude of Rs. 50,79,675. As against this, the sales to the New Satgram Coal Mines were only to the tune of Rs. 3,71,384 representing the costs of light structurals supplied. With respect to

the remaining sum of Rs. 47,08,391 received by the engineering unit it was alleged to represent sales of light and medium structural works, for which no licence under the Industries (Development and Regulation) Act, 1951 was required, to various public sector undertakings like Hindustan Steel Construction Co. for Bokaro steel plant, Fertilizers & Chemicals Travancore for Durgapur Fertilizer Project, Hindustan Cables, Kapper India, Government of Nagaland etc. viz., to parties altogether unconnected with the coal industry. The question whether a workshop is 'substantially' used for the purposes of a mine necessarily involves an enquiry as to whether it pertains to, or in substance is, part of the mine. The value of jobs executed for the mine as against those for others is not really determinative of the question. If a workshop is, in fact, a part of a coal mine, it does not cease to be so merely because its utilisation Lies in the production of- materials supplied to third parties. While a workshop may form part of a mine and is substantially used as such, it may be utilised for turning out other products; it all depends upon the circumstances of each case, whether it forms part of a mine or not.

The Union of India has joined issue by contending that not only the mine in question but also the workshop has vested in the Central Government. The assertions made by the management with regard to workshop are all denied. It is pleaded that the relationship and nexus of the said workshop is established by its being adjacent to the New Satgram Colliery and by the fact that the workshop was used substantially for the purposes of that mine and other mines under the same management as required by s. 2(h)(vii) of the Nationalisation Act. It is asserted that the management has rested their case on a bald statement that the workshop is not situate in, or adjacent to, a mine, with- out supporting it with any documentary proof. It is alleged that as soon as information regarding passing of the law vesting management of the mine was derived, the management deliberately removed all the relevant books including the books of accounts which could have contradicted their present claim. Obviously the claim of the appellant that the workshop was not substantially used for purposes of the mine is only an afterthought.

With regard to the Technical Director's Bungalow, it is submitted by the Union of India that the said bungalow, wherever situate, is included in sub-clause (xi) of clause

(h) of s. 2. It is urged that merely because that the land under such building is not 'one falling within the mining area' is wholly immaterial. Even otherwise, the said bungalow, in any case, falls under sub-clause (xii) of cl.

(h) of s. 2 of the Act. The said bungalow being a fixed asset belonging to the owners of the mine, forms part of the mine as defined in s. 2(h)(xii). As such, even assuming that the said bungalow was not used solely for the purpose of the residence of officers. it would still be included in the definition of mine under the Nationalisation Act.

Reliance is also placed on the admission made by the management in para 11 of the writ petition that the workshop was 'closed down in July 1970'. The Management Act and the Nationalisation Act came into force in 1973. The said workshop was, therefore, admittedly closed down about 3 years earlier. As such, it is urged that there could be no question of the Technical Director of the coal mine being in charge-of the said workshop at the relevant time so as to justify the plea raised by the

management. It is pointed out that the management have themselves admitted that the building in question was constructed in 1957-58 for the residence of the Technical Director, whereas the workshop was 'constructed in 1964', as stated in para 9 of the petition.

As regards the Guest House also, it is urged by the Union of India that for similar reasons it would be covered by sub-cl. (xi) or (xii) of cl. (h) of s. 2 of the Act.

The question whether the engineering unit was 'situate in, or adjacent to', the New Satgram coal mine and was 'substantially' used for purposes of the mine as well as the question whether the Technical Director's Bungalow and the Guest House were 'solely' used for the residence of officers and staff of the mine and, therefore, fall within the definition of 'mine' as contained in s. 2(h) of the Nationalisation Act, cannot obviously be decided in proceedings under Art. 226 of the Constitution.. The proper remedy is by way of a suit, as rightly observed by the High Court.

It is, however, urged that the filling of a suit would involve the parties into protracted litigation and inordinate delay in settling their claims. The parties request that their dispute with respect to the New Satgram Engineering Works including Shethia Bhawan together with its all assets, Technical Director's Bungalow and the Guest House be referred to arbitration.

This brings us to the main question, namely, as to the scope and effect of sub-ss. (3) and (4) of s. 19 of the Nationalisation Act. On a construction of these provisions, the High Court was of the view that the Central Government, upto the specified day, i.e., June 30, 1975 were entitled to receive to the exclusion of all other persons. any money due to the coal mine, after the appointed day, notwithstanding that realizations pertained to the period prior to that day:

> but with respect to any amounts which could not be realised until June 30, 1975 it held that they would be realizable by the erstwhile owners of the coal mines directly.
>
> For a proper appreciation of the point involved, it is necessary to set out the provisions of s. 19 which read as follows:
>
> "19. Statement of accounts in respect of the period of management by the Central Government, etc.- (1) The Central Government or the Government Company, as the case may be, shall cause the books in relation to each coal mine, the management of which has vested in it under the Coal Mines (Taking over of Management) Act, 1973, to be closed and balanced as on the date immediately before the appointed day, and shall cause a statement of accounts, as on that day, to be prepared, wishing such time, in such form and in such manner as may be prescribed, in relation to each such mine in respect of the transaction effected by it during the period for which the management of such coal mine remained vested in it:
>
> Provided that where two or more coal mines were owned, before the commencement of this Act, by the same owner, a consolidated statement of accounts may be Prepared for all the coal mines owned by such owner. (2) All amounts received by the Central

> Government or the Government company after the closure of such accounts shall where such accounts relate to transactions effected before the appointed day, be included in the said statement of accounts in respect of the coal mine to which the said receipt relates. (3) The Central Government or the Government company in which the right, title and interest of coal mine stand vested shall be entitled to receive, up to the specified date, to the exclusion of all other persons any money, due to the coal mine. realised after the appointed day notwithstanding that the realizations pertain to a period prior to the appointed day.

Provided that where such realizations have not been included in the statement of accounts as on the day immediately before the appointed day, a supplementary statement of accounts shall be prepared and furnished, at such intervals as may be prescribed, by the Central Government or the Government company to the owner of the coal mine.

(4) The liabilities of the coal mine (not being liabilities arising out of advances made by the Central Government or the Government company), which could not be discharged by the appointed day, may be discharged by the Central Government or the Government company up to the specified date, and every payment so made shall be included in the statement of accounts as on the day immediately before the appointed day, indicating therein the period in relation to which the payments were made:

> Provided that the liabilities in relation to the period prior to the appointed day, which have not been discharged on or before The specified date, shall be the liabilities of the owner of the coal mine."
>
> x x x x x In this context, the provisions of sub-s. (2) of s. 18 may also be read. It runs thus:
>
> "18. Payment by the Central Government to the Commissioner.
>
> x x x x x (2) In relation to the sum referred to in sub-

section (1), the Central Government shall pay, in cash, to the Commissioner such amount as may become due to the owner of a coal mine in relation to the period during which the management of the coal mine remains vested in The Central Government."

It was said that by reason of the Explanation to s. 2(h) inserted by the Coal Mines Nationalisation Laws (Amendment) Act,]978, the expression 'current assets' used in sub-cl.(xii) does not include (a) dues representing the sale of coal and coal products effected at any time before the appointed day and outstanding immediately before the said date, and (b) dues from the Coal Board, established under s.4 of the Coal Mines (Conservation, Safety and Development) Act, 1952 prior to the repeal of the said Act, with respect to any period before the appointed day. It was, accordingly, urged that these two items do not fall within the purview of the definition of 'mine' as defined in s.2(h)(xii). and, therefore, they did not vest in the Central Government under sub-s.(1) of s.3 of the Act. It was

urged that the erstwhile owners of coal mines and not the Central Government were entitled to deal with these assets, as they belong to The owners of the coal mines and not to the Central Government. The submission proceeds on a complete misconception of the scheme of the Act.

The learned Attorney General contends that according to the provisions of sub-ss.(3) and (4) of s. 19, the Central Government or the Government company was exclusively entitled to receive the moneys in question to the exclusion of other persons upto the specified date and to utilities the same in discharge of the liabilities of the coal mine which could not be discharged by the appointed day. It is urged that sub-ss. (3) and (4) are part of an integrated scheme and must be read along with sub-s.(2) of s.18. We are clearly of the opinion that the contention advanced by the learned Attorney General accords with the real legislative intent.

Under the scheme of the Act, the owner of the coal mine which has vested in the Central Government under sub-s.(1) of s.3 is entitled to receive, besides the compensation amount as determined under s.8, additional compensation amount under sub-s.(1) of s.9, simple interest thereon at 4% per annum for the period specified therein, together with 'such amount as may become due' to the owner of the coal mine in relation to the period during which the management of the coal mine remained vested in the Central Government as provided by sub-s.(2) of s.18.

To understand the correlation of sub-ss. (3) and (4) of s. 19 with sub-s.(2) of s.18 of the Act. it is necessary to refer to the provisions of Chapter VI entitled 'Commissioner of Payments' which provides for the computation of the amount of compensation and other amounts payable to the erstwhile owners of coal mines, and for matters connected therewith or incidental thereto.

The provisions of Chapter VI are brought into operation by the appointment of a Commissioner of Payments by the Central Government under sub-s.(1) of s.17. There is a statutory duty cast on the Central Government under sub- s.(1) of s.18 that it shall, within 30 days from the specified date, pay, in cash, to the Commissioner for payment to the owner of the coal mine an amount equal to the amounts specified against the coal mine in the Schedule and shall also pay to the Commissioner such sums as may be due to the owner of a coal mine under s. 9. Subs. (2) of s. 18 quoted above enjoins that, in addition to the sum referred to in sub-s.(1), the Central Government shall pay, in cash to the Commissioner 'such amount as may become due to the owner of a coal mine' in relation to the period during which the management of the coal mine remained vested in the Central Government. It is then provided by sub-s.(3) of s.18 that a deposit account shall be opened by the Central Government in favour of the Commissioner, in the Public Account of India, and every amount paid under this Act to the Commissioner shall be deposited by him to the credit of the said deposit account, and thereafter the said deposit account shall be operated by the Commissioner. Separate records are required to be maintained by the Commissioner under sub-s.(4) of s.18 in respect of each coal mine in relation to which payments have been made by him under the Act. Under sub-s.(5) of s. 18, interest accruing on the amounts standing to the credit of the deposit account referred to in sub-s.(3) shall inure to the benefit of the owners of coal mines.

Section 19 of the Act provides for the preparation by the Central Government of a statement of account in respect of the period of management. The Central Government is required under sub-s.

(1) of s.19 to cause the books of accounts in relation to each coal mine, the management of which has vested in it under the Coal Mines (Taking over of Management) Act, 1973 to be closed and balanced as on the date immediately before the appointed day, i.e., April 30, 1973, and to cause a statement of accounts as on that date, to be prepared in relation to each such mine in respect of the transactions effected by it during the period for which the management of such coal mine remained vested in it. Under sub-s.(2) of s.19, all amounts received by the Central Government or the Government company after the closure of such accounts where such accounts relate to transactions effected before the appointed day, to be included in the said statement of accounts, in respect of the coal mine to which such receipts relate.

Under sub-s.(3) of s.19, the Central Government is conferred power to receive up to the specified date, i.e., June 30, 1975 any amount due to the coal mine, to the exclusion of all other persons, realised after the appointed day notwithstanding that the realizations pertained to a period prior to the appointed day. Proviso to sub-s.(3) enjoins that where such realizations have not been included in the statement of accounts as on the day immediately before the appointed day, a supplementary statement of accounts shall be prepared and furnished, at such intervals, as may be prescribed by the Central Government or the Government company to the owner of the coal mine. By sub-s. (4) of s. 19, a duty is cast on the Central Government to discharge.

the liabilities of the coal mine, which could not be discharged upto the specified date, i.e., June 30, 1975 and every payment so made is to be included in the statement of accounts as on the day immediately before the appointed day, indicating the period in relation to which the payments were made.

It is plain on a reading of these provisions, that unless the requirements of s.19 are fulfilled there can be no ascertainment of 'such amount as may become due' to the owner of a coal mine, in relation to the period during which the management of the coal mine remained vested in the Central Government, as required under sub-s.(2) of s. 18. Any other construction would render sub-s. (2) of s. 18 entirely otiose. The amounts collected on behalf of the erstwhile owners of coal mines, represent the money of such owners without distinction and whether they were sale proceeds of coal or realizations from debtors, the amounts were liable to be spent not only in the discharge of liabilities of the coal mine which could not be discharged by the appointed day, but also were liable to be spent for the purposes of management. All the rights and liabilities arise from the provisions of the Acts, and the net balance in relation to the management period means the difference between authorized collections and legitimate liabilities of the erstwhile owners. It is necessarily this balance which 'becomes due in relation to the period during which the management of the coal mines remained vested in the Central Government' within the meaning of sub-s.(2) of s.18.

It would, therefore, be obvious that the various steps provided by s.19 are to be taken for the compliance of the requirements of s.18. When there is payment made by the Central Government under s.18. the provisions of ss.20-27 become attracted. Every person having a. claim against the owner of a coal mine has to prefer such claim under sub- s.(1) of s.20 before the Commissioner of Payments within 30 days from the specified date. Proviso to sub-s.(1) confers powers on the Commissioner of Payments to entertain such claim within a further period of 30 days but not

thereafter, on being satisfied that the claimant was prevented by sufficient cause from preferring the claim within the specified period. Under sub-s.(2) of s.20 claims in relation to a Provident Fund, Pension Fund, Gratuity, etc., established for the welfare of the persons employed by the owner of a coal mine may be filed on behalf of the persons so empowered by the Coal Mines Provident Fund Commissioner appointed by the Central Government, under s.3C of the Coal Mines Provident Fund, Family Pension and Bonus Schemes Act, 1948. By sub-s.(3) of s.20 the Commissioner of Payments is empowered to entertain claims, not being a claim which was time-barred on January 31, 1973, but was rejected merely on the ground that such claim was time-barred, and such claim should be deemed not to have been rejected and shall be restored on his file and shall be dealt with in the manner specified in s.23. Section 21 provides for priority of claims in relation to arrears of Provident Fund, Pension, Gratuity, etc. Section 22 provides for priority of certain debts in relation to every other claim, viz. (a) all sums due to the State Government including royalty and dead rent, (b) all amounts due in respect of any compensation or liability for compensation under the Workmen Compensation Act, 1923 etc.,

(c) all sums deducted by the employer from the salary or wages of any workman or any other employee for credit to any Provident Fund, or any other fund established for the welfare of the employees, but not deposited to the credit of such fund. Sub-section (3) of s.22 provides that the debts specified in sub-s.(2) shall rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportion and be paid accordingly. Admission or rejection of claims by the Commissioner of Payments is provided fol by s. 23 disbursement of amounts by him to the claimants by s. 24 payment of interest on admitted claims by s.24A, recovery of amounts advanced by the Central Government by s.25. It is after meeting all these liabilities that the Commissioner of Payments is required to serve a notice on the owners of the coal mines, the managing contractors, and the owners of any machinery, equipment or other property which has vested in the Central Government or a Government company under the Act and which does not belong to the owners of the coal mines, may apply to him for payment.

Under the scheme of the Act the owner of a coal mine is entitled to the payment by the Commissioner of Payments under s.26, of the balance, if any, out of the total amount of money credited to the account of a coal mine', after he has gone through all the stages provided for in Chapter VI. Sub-s.(1) of s.26 of the Act reads:

> "26. Disbursement of amounts to the owners of coal mines.- (1) If out of the monies paid to him in relation to a coal mine or group of coal mines specified, in the second column of the Schedule, there is a balance left after meeting the liabilities of all the secured and unsecured creditors, the Commissioner shall disburse such balance to the owner of such coal mine or group of coal mines."

Such being the scheme, there is no question of the owner of a coal mine, who is divested of his right, title and interest under sub-s.(1) of s.3 to realise from The Central Government any amount due to a coal mine, which remained to be realised until the specified date, i.e., June 30, 1975.

The Commissioner of Payments is, therefore, required under s.26 to pay to the owner of such coal mine the balance left, if there is any, out of the monies paid to him in relation to a coal mine, after meeting the liabilities of all the secured and unsecured creditors. Sub-section (5) of s.26 makes a provision for apportionment of such amount between the owner of the coal mine and the owner of machinery, equipment and other property which does not belong to the owner of the coal mine. Any amount which remains undisbursed or unclaimed for a period of three years has to be transferred by the Commissioner of Payments to the General Revenue Account of the Central Government under s.27.

In view of all these provisions of ss.20 to 27 of the Act, and particularly of sub-s.(1) of s.26, we fail to see the propriety of the claim made by the petitioners. The petitioners are certainly not entitled to recover any definite or ascertained sum. All that they are entitled to under sub-s.(5) of s.19 is that they should be furnished with a copy of each statement of accounts prepared under s.19, to its being audited under sub-s.(6) and to the audit being conducted in such manner as the Central Government may direct under sub-s.(7), and to the payment under sub-s.(1) of s.26 of the balance if any, out of the total amount of money credited to the account of a coal mine after all the liabilities have been discharged.

The learned Attorney General makes a statement that this has all been done before a Commissioner of Payments was appointed under sub-s.(1) of s.17. Nevertheless, the petitioners assert that the Central Government has not accounted for the realisation, if any, and the disbursement of two amounts of Rs. 68.74 lakhs and Rs. 58.22 lakhs, representing the outstanding dues from sundry debtors as on the appointed day, i.e., January 31, 1973 and the value of coal despatched from the mines in question during the period of management, i.e., from January 31, 1973 and April 30, 1973 respectively. In view of this assertion, we direct the Central Government to appoint a Commissioner of Payments under sub-s.(1) of s. 17 of the Coal Mines (Nationalisation) Act, 1973 to go into the dispute as to these items.

There still remains the question whether the powers of the Central Government under sub-ss.(3) and (4) of s.19 of the Act extend only up to the specified date, that is, up to June 30, 1975. In dealing with the question, the High Court having regard to the provisions of ss.20 to 27 of the Act rightly observes that the Nationalisation Act provides for claims to be preferred and for disbursement after adjudication of such claims, and if any balance is left after meeting the liabilities, it is only then that the Commissioner of Payments can under sub s.(1) of s.26 disburse it to the owner of the coal mine. It then goes on to say:

> "however, any amount which could not be realised until June 30, 1975 would be realisable by the erstwhile coal mine owners directly."

To put it conversely, there is no duty cast on the Central Government to make realisation of any money due to a coal mine if it pertains to a period prior to the appointed day, and to discharge the liabilities of the coal mine beyond the specified date, that is, June 30, 1975. To understand the implications of this it is necessary to briefly deal with the different stages by which nationalisation of coal mines was brought about.

There are three dates. 'Appointed day' under s.2(1) of the Management Act was January 31, 1973; that under the Nationalisation Act was May 1, 1973 while the 'specified date' for purposes of sub ss.(3) and (4) of s.19 was June 30, 1975.

All that vested in the Central Government under sub- s.(1) of s.3 of the Management Act was the management of all coal mines, as defined in s.2(g) of the Act, which included sundry debts etc., pending nationalisation of such mines, with effect from the appointed day, i.e., January 31, 1973. But this was only for the purposes of management, the title all the time remaining in the erstwhile owners of the coal mines. In the course of management under that Act, all the collections belonged to the owners; and the liabilities also in relation to the mines were the liabilities of the owners. The Custodian appointed by the Central Government under s.6 of the Management Act was liable for the net balance in relation to the management period. He had the right to collect and also the right to incur expenditure in relation to the management by reason of the provisions of that Act.

The Nationalisation Act received the assent of the President on May 30, 1973 but the provisions of sub-s.(1) of s. 3 were brought into force with retrospective effect, that is, with effect from the appointed day i.e., May 1, 1973. It follows that although there was a complete extinction of all the rights, title and interest of the owners of coal mines with effect from May 1, 1973, there was a fictional extension of the period of management under the Management Act from May 1 to May 30, 1973. There is, therefore, provision made in s.9 that apart from the amount of compensation provided for by s.8, as mentioned in the Schedule, the owners of every coal mine shall be entitled to receive additional compensation under sub-s.(1) thereof. This was to be an amount equal to the amount which would have been, but for the provisions of ss. 3, 4 and 5 payable to such owner for the period commencing on May 1, 1973 and ending on the date on which the Act received the assent of the President, that is, May 30, 1973. Under sub-s.(1) of s.11 the Central Government is entitled to exercise all such powers and to do all such things as the owner of the coal mine was authorised to do. The conferral of power upon the Central Government under sub-ss.(3) and (4) of s.19 to make realisation of monies due to the coal mines and from such realisations to discharge the liabilities as well as to incur expenses in relation to the management thereof, was a necessary concomitant of the vesting of such coal mines under sub-s.(1) of s.3 of the Act.

Sub-section (1) of s.3 provides that the right, title and interest of the owners in relation to the coal mines shall vest in the Central Government free from all incumbrances. As set out above, the definition of coal mine in s.2(h)(xii) includes the current assets belonging to a mine, but by reason of the Explanation inserted by the Goal Mines Nationalisation Laws (Amendment) Act, 1978, the expression "current assets" appearing therein does not include amounts which had become due before the appointed day, i.e., May 1, 1973. Thus, these dues did not vest in the Central Government. This exclusion of sundry debts under the Nationalisation Act does not apply to the Management Act because there was no similar explanation to s.2(g)(xii).

The Management Act was to be followed by the Nationalisation Act and, therefore, the accountability of the Central Government in regard to the management period was provided for in s.19 of the Nationalisation Act. Although there was vesting of the coal mines in the Central Government under sub-s.(1) of s.3 of the Act, the accounts had still to be settled. Sub-sections (3)

and (4) of s.19 therefore, extended the period during which the Central Government was authorised to collect monies due to the coal mines and to discharge the liabilities of such coal mines which could not be discharged by the appointed day, that is, May 1, 1973, till the specified date i.e., June 30, 1975.

As we have stated, the liabilities of the coal mines were not taken over. Section 7 of the Act, in terms, provides that every liability of the owner, agent, manager or managing contractor of a coal mine in respect of any period prior to the appointed day shall be the liability of the owner, agent, manager or managing contractor, as the case may be, and shall be enforceable against him and not against the Central Government or the Government company. It logically follows that after the specified date, i.e., June 30, 1975 the erstwhile owners of coal mines would have to meet all their liabilities which could not be discharged before the appointed day. It must result in the inevitable consequence, as a necessary corollary that any amount which could not be realised by the Central Government until the specified date, would be realisable by them directly in order to meet their pre-existing liabilities.

In Industrial Supplies Pvt. Ltd. & Anr. v. The Union of India & Ors. we have by our Judgment delivered on August 7, 1980 held that the subsidy receivable from the erstwhile Coal Board, established under s.4 of the Coal Mines (Conservation and Safety) Act, 1952, being a payment "by way of reimbursement" was like any other dues, and, therefore, must be treated as 'any money due to the coking coal mine' within the meaning of sub-s.(3) of 9.22 of the Coking Coal Mines (Nationalisation) Act, 1972, and, therefore, it could be utilised for the discharge of liabilities of such coking coal mines under sub-s.(4) thereof, which provisions are in pari materia with sub-ss. (3) and (4) of s.19 of the Coal Mines (Nationalisation) Act, 1973. We accordingly, set aside the direction made by the High Court requiring the Union of India to pay to the petitioners Rs. 7,28,342.54 which it had recovered from the erstwhile Coal Board as subsidy.

If the Commissioner of Payments finds that these two items of Rs. 68.74 lakhs and Rs. 58.22 lakhs and the subsidy amount of Rs. 7,28,342.54 have been duly accounted for, nothing further need be done. Obviously, the Commissioner of Payments cannot make an award, he can only enquire into the question and make the necessary directions, if any. The parties will have their remedy of an appeal under sub-s.(7) of s.23 of the Act.

The result, therefore, is that the appeal of the Union of India must succeed and is allowed and that of the New Satgram Engineering Works fails and is dismissed, with costs throughout.

The judgment and order of the High Court is, accordingly modified by directing the appointment of a Commissioner of Payments under sub-s.(1) of s.17 of the Coal Mines (Nationalisation) Act, 1973, who shall proceed to adjudicate upon the disputes between the parties, with advertence to the observations made above.

In accordance with our order dated May 9, 1980, we direct the Central Government to appoint Sri Salil Kumar Datta, a retired Judge of the Calcutta High Court, as a Commissioner of Payments under sub-s.(1) of s.17 of the Coal Mines (Nationalisation) Act, 1973. Sri Datta will also act as an Arbitrator to adjudicate upon the disputes as indicated in our judgment delivered today with

advertence to the observations made therein.

Sri Datta as a Commissioner of Payment-cum-Arbitrator shall be entitled to draw his last pay as a Judge of the Calcutta High Court.

This order is made by consent of the parties. The learned Attorney General stated at the hearing that a retired Judge of the Calcutta High Court should be appointed as a Commissioner of Payments and he should also act as an Arbitrator. The learned counsel for the opposite party agreed to this course being adopted. They left the choice of the person to be appointed to the Court.

Due to inadvertence, certain typographical errors have crept in our order dated May 9, 1980. We direct that the clerical errors be corrected.

At p.2, in the 5th line, for the words and figures "April 3, 1973", the words and figures "April 30, 1973" be substituted. In the 6th line on that page, for the words and figures "June 30, 1976", the words and figures "June 30, 1975" be inserted.

It is regrettable that certain other errors have also crept in, which we have rectified in our judgment delivered today.

The order dated May 9, 1980 stands corrected accordingly. It shall be read in the light of the judgment pronounced by us in these appeals.

S.R. C.A. 1331/79 dismissed.

C.A. 426/80 allowed.