CHAPTER IV

INDUSTRY AND MINING

TRANSFER OF FIELD AND PARLIAMENTARY DECLARATION

4.1 The legislative jurisdiction with regard to industries and mining has been distributed between the Union and the States as per entries 23 and 54 of the State and Union Lists respectively. These entries are as follows:

"23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union".

"54. Regulation of mines and mineral development to the extent which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest".

The powers regarding industry are similarly distributed between the States and the Union by entries 24 of List II and entries 7 and 52 of List I. These entries are as follows:

24. Industries subject to the provisions of (entries 7 and 52) of List I.

7. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.

52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.

4.2 Thus the Constitution does not finally distribute the powers in regard to industry and mining but leaves it to be decided by Parliament. The Industries (Development and
Regulation) Act, 1951 (65 of 1951) and the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957) have declared that the development and control of certain industries and mines should be under the control of the Union. In addition, certain other central enactments have declared various industries the control of which by the Union is expedient in public interest. Such industries are usually referred to as controlled industries.

Consequences of declaration by Parliament

4.3 As noticed earlier, the result of the Supreme Court's decisions in Hingir-Rampur Coal Co. v. State of Orissa and State of Orissa v. M.A. Tulloch & Co., is that the declaration by Parliament would transfer the legislative field in respect of industries covered by the declaration to the Union field and would effect for the future an implied repeal of any existing State law in the field. So it is clear that in respect of a controlled industry the State legislature has, after the declaration by Parliament, no legislative competence even if the Union Parliament has not enacted any legislation to occupy the field previously occupied by the State legislation.

2. See para 2.16 ante.
Power to acquire a controlled industrial undertaking

4.4 A question has been raised whether a State legislature would be competent to acquire an industrial undertaking in respect of which industry the declaration has been made by the Union Parliament. Some writers have stated that the Union Parliament alone, and not the State legislature, would be competent to make laws with respect to the acquisition of an industrial undertaking pertaining to a controlled industry. This argument is developed on the following lines.

4.5 The power of acquisition and requisitioning of property is given in entry 42 of the Concurrent List and is therefore available to both the Union and State legislatures subject of course, to the rules governing the paramountcy of Union legislation in the concurrent field. Article 298 of the Constitution lays down that the executive power of the Union and of each State extends to the carrying on of any trade or business and to the acquisition, holding, and disposal of property and the making of contracts for the purpose subject to the qualifications mentioned therein. However, article 298 cannot be interpreted to mean that the Parliament or a State legislature can enact a law acquiring any property for any purpose. The Union can acquire property only for Union purpose

and the States for the State's purpose and these purposes are determined with reference to the legislative entries in view of the fact that the executive power follows the legislative power. Acquisition of a controlled industry would therefore be within the Union purpose referable to entry 52 of List I and the State legislatures have no competence for passing a law for the acquisition of a controlled industry.

4.6 Section 20 of the Industries (Development and Regulation) Act 1951 also forbids any State government or local authority from taking over the management or control (in effect requisition) of any industry covered by the declaration that the control should be vested in Parliament. Therefore the same thing would seem to apply to acquisition too.

4.7 The above view has also found expression in some judicial decisions. In Chanana Mal v. State of Haryana, the Punjab and Haryana High Court struck down the Haryana Minerals (Vesting of Rights) Act 1973 (14 of 1973) as beyond legislative competence of the State legislature. This Act was passed for the purpose of conservation, proper development and uniform

---

6. Article 73 and article 162 of the Constitution.
7. "20. General Prohibition of taking over Management or control of industrial undertakings. After the commencement of this Act it shall not be competent for any State Government or a local authority to take over the management or control of any industrial undertaking under any law for the time being in force which authorises any such Government or local authority so to do".
exploitation on scientific lines of the minerals in the State of Haryana and had vested in the State the rights to minerals and had provided for the payment of "amounts" to the previous owners of such minerals. The argument of the State government in support of the legislation was that the Act did not relate to the regulation of mines and minerals development to which entries 23 of the State List and 54 of the Union List related. It was a measure relatable to entry 18 of the State List namely, the legislation with respect to land. This view was challenged on the ground that the declaration furnished by Union government in the Mines and Minerals (Development and Regulation) Act, 1957 took the whole field of legislation with regard to mines and minerals development from the State field and transferred it to the Union field. As a result of such transfer of the field it was no longer competent for the State Government to acquire the mines. Balraj Tuli and Bhopinder Singh Dhillon JJ. constituting the Bench relied on the decision in State of West Bengal v. Union of India, in support of the view that once the legislation was made by Parliament with regard to the regulation of mines and mineral development, it had the power to acquire land wherein such mines and minerals existed and the State government had no power to acquire the same. They particularly relied on the following passage in Chief Justice Sinha's judgment in that case.

"Power to legislate for regulation and development of mines and minerals under control of the Union would by necessary implication include the power to acquire mines and minerals*.10

4.8 They also held that the legislation in question did not relate to land as contended by the State government but related to mines and minerals referred in entries 23 and 54 of the State and Union Lists respectively. The High Court judgment also held that, in the light of the Supreme Court decision in *Hingir-Rampur Coal Co.*, and *M.A. Tulloch & Co.*, and the provisions of the Mines and Minerals (Development and Regulation) Act, 1957, it was clear that the whole field governing the whole of mines and minerals development was transferred from the State to the Union legislative field. Hence the State Act was struck down.

A criticism of the above view

4.9 The above view that acquisition of an industrial undertaking belonging to a controlled industry by State legislation is invalid does not seem to be correct. When the entries in the legislative lists speak of regulation and development in the case of mines (entry 54) and control of industries (entry 52) what is intended seems to be the police

10. Ibid at pp.1265-66.
13. The illusory nature of the amount paid on the acquisition of the mines formed another independent ground for the striking down of the Act.
power regulations and not the acquisition under eminent domain. It is one of the accepted principles of interpretation of the entries that when a particular subject is specifically mentioned in the list it should not be allowed as an incidental power to any other entry. It is well-known that taxing powers which are specifically mentioned are not allowed as ancillary power of the general legislative entries. Thus a tax on land specifically mentioned in entry 49 of List II will not be read as incidental to the power to legislate with respect to land under entry 18 of List II. It has also been held that the power of acquisition and requisition of land will not be allowed as incidental to the power to legislate with respect to the entry 18. Therefore, since acquisition and requisition are specifically mentioned in entry 42 of the Concurrent List it would not be permissible to read the power to acquire an industry or a mine as incidental to the relevant entries in the State and the Union Lists.

4.10 Support for the view canvassed here seems to be available also from the decision of the Supreme Court in Paresh Chandra Chatterjee v. State of Assam. Under the Assam

14. See paras 2.19-20 ante.
16. See in this connection, Rajahmundry Electric Supply Corporation Ltd. v. The State of Andhra, A.I.R. 1954 S.C. 251, where the Supreme Court rejected the argument that the legislative power under an entry would include the incidental power of acquiring the property of any commercial or industrial undertaking (electricity undertaking in that case).
Land Acquisition and Requisition Act, 1948 the Government of Assam requisitioned certain lands pertaining to a tea estate. It was argued that tea industry was within the exclusive legislative power of Parliament in view of the declaration in the Tea Act, 1953 as per entry 52 of List I and hence the State Act was ultra vires to the extent it provided for the acquisition or requisition of tea estate or lands appertaining to it.

Subba Rao J., who was generally soft towards the States in Union-State questions, did not accept this contention. He pointed out that section 15(1)(b) of the Tea Act provided for the contingency of a part of the land on which tea was planted being compulsorily acquired under the provisions of the Land Acquisition Act or of any other law for the time being in force. In such an event, the owner of the tea estate was authorised to apply to the Tea Board for permission to plant tea to the same extent on fresh land. The Tea Act therefore not only did not prohibit the acquisition of any land on which tea was grown but in express terms provided for replacement of the area acquired by other land for the purpose of tea plantation. Hence the validity of the Assam Act was upheld.

If the legislative power for the control of tea industry carried with it to the Union field the power of acquiring a tea estate, obviously, the State Act in the above case should have been declared ultra vires.

18. Other Judges on the Bench were P.B. Gajendragadker, M. Hidayattullah, J.C. Shah and Reghuber Dayal, JJ.
4.11 In the same strain, the Supreme Court held in Kannan Devan Hills Produce Co. v. State of Kerala\(^{19}\) that the Kannan Devan Hills (Resumption of Lands) Act, 1971 (5 of 1971) passed by the Kerala legislature could not be declared invalid because of conflict with the provisions of the Tea Act, 1953. The Act in question had provided for the acquisition by the State Government of the lands in possession of the plantation company which had not been really utilised for plantation purposes.

As in Paresh Chandra Chatterjee's Case it was argued that tea industry being a controlled industry in view of the declaration in the Tea Act, and the legislative power thereof having passed to the Union field by virtue of entry 52 of List I, acquisition of the said lands by the State was beyond its competence.

Speaking for the Supreme Court, Sikri C.J. held that even after the particular industry was transferred to the Union sphere that "would not prevent the State from legislating on subjects other than that particular industry\(^{20}\). In the present case, the Kerala Act was referrable to entry 18 of List II (land) and entry 42 of List III (acquisition and requisition) and the exercise of power under these entries could not be denied on the ground that it had some effect on an industry controlled under entry 52 of List I. The effect was not the same thing as subject-matter. If a State Act otherwise valid had affected a matter in List I it did not

\(^{19}\) A.I.R. 1972 S.C. 2301.
\(^{20}\) Other Judges on the Bench were J.M. Shelat, A.N. Ray, I.D. Dua and H.R. Khanna.
\(^{21}\) Ibid at p.2308.
cease to be a legislation with respect to an entry in List II or List III. Legislation by the State had not made the control of the industry by Union impossible. There was no prohibition in the Tea Act against voluntary sale or compulsory acquisition nor was it established that there was any repugnancy between the provisions of the Tea Act and the Kerala Act in question.

4.12 As a result of the above two holdings of the Supreme Court, it seems that the fact that an industry has become a controlled industry would not prevent the State from exercising their independent powers conferred by the legislative lists even if the exercise of such power has an effect on the controlled industry. It follows therefore, that States are not precluded from exercising the powers under entry 42 of the Concurrent List (acquisition and requisition) in respect of the property of a controlled industry in the absence of paramount Union legislation which would invalidate the State legislation on the principle of repugnancy.

4.13 It is also doubtful if the passage from the West Bengal Case quoted earlier and relied on by the Punjab High Court, really supports the view for which it was cited. It was decided in that case that the Union Government had the power to acquire a coal bearing area belonging to the State of West Bengal. The majority based the decision on entry 42 of List III and the absence of any prohibition in the Constitution

22. Ibid.
23. See para 4.7 ante.
excepting State property from the power under that entry. The minority judgment of K. Subba Rao J. held that entry 42 of List III did not cover State property. He also said "under the entry 'Regulation of mines' a law cannot be made for the acquisition of coal bearing lands themselves, particularly when there is a specific entry for acquisition". This decision can at best support the proposition that if the Union Government has legislated to acquire an industrial undertaking in respect of a controlled industry a State legislature cannot acquire it in the face of Union legislation. A question whether, in a case where the Union has merely issued the declaration regarding the control of the industry but has not proceeded to exercise the independent power of acquisition of that industry under entry 42 of the Concurrent List, a State is precluded from exercising its power of acquisition of the undertaking was not considered in the West Bengal case. It is submitted therefore that as has been held by the Supreme Court in the Bank Nationalisation Case, acquisition and requisition of an industrial undertaking is a matter coming within the concurrent field; and in the absence of inconsistent Union

25. Ibid at p.1276.
26. R.C. Cooper v. Union of India, A.I.R. 1970 S.C. 564. Shah J.'s judgment for the majority observed: "Power to legislate for acquisition of "property" in Entry 42, List III therefore includes the power to legislate for acquisition of an undertaking" (p.591). Ray J.'s dissenting judgment was also to the same effect on this point. See p.629.
legislation the States are not precluded from exercising their powers. Therefore it seems that the mere prohibition in section 20 of the Industrial Development and Regulation Act, prohibiting the States from requisitioning controlled industries is unconstitutional.

Undue restriction of State powers

4.14 The effect of a declaration transferring a part of the field from the State to the Union, sometimes would seem to unduly restrict the competence of the States on purely technical grounds. In Baijnath v. State of Bihar the validity of the Bihar Government's measures in collecting increased rents and royalties in respect of minor minerals was in question. Section 10 of the Bihar Land Reforms Act, 1950 had vested estates in the State. Thereafter the State became the lessor of the mining leases. In 1957 the Mines and Minerals (Regulation and Development) Act, 1957 was passed. Section 2 of that Act contained a declaration that the development and regulation of all minerals under the Union auspices was expedient in public interest. Section 15 of that Act however, authorised the State government to make rules regarding the prospecting mining etc. of minor minerals. In 1965 the Bihar Land Reforms Act was amended adding a proviso to section 10(2) to the effect that the terms and conditions of existing leases would stand modified to be in accordance with the Bihar Minor

Minerals Concession Rules, 1964 framed under section 15 of the Central Act. Sub-rule (2) was added to rule 20 of the above rules, the effect of which was to make the Bihar Rules applicable to leases granted or renewed before the commencement of the rules but subsisting when they came into effect. The Bihar Government's attempt to collect rents and royalties under the new rules and the amended Bihar Act was challenged. The Bihar High Court upheld the validity of the Bihar Government's measures. The Bihar Government was competent to introduce the proviso in question in exercise of its power under entry 23 of List II before the field of minerals was transferred to the Union Government. Even after such transfer the proviso in question merely incorporated by reference the Bihar Rules made under section 15 of the Central Act in regard to minor minerals and hence there was no objection to the State amendment. Even if this could not be done on the pith and substance theory, the Bihar Legislature could support its measure on entry 18 of List II dealing with land.

On appeal to the Supreme Court, Hidayatullah C.J. held that the declaration in the Central Act transferred the whole field relating to minor minerals to the jurisdiction of Parliament and no scope was left for the enactments of the second proviso to section 10 in the Land Reforms Act. The pith

30. Others on the Bench were J.N. Shelat, V. Bhargava, K.S. Hegde and A.N. Grover JJ.
and substance of the amendment to section 10 of the Land Reforms Act fell within entry 23 of State List although it incidentally touched entry 18, land, and not vice-versa as held by the High Court. Hence the amendment was invalid and entry 18 of State List was of no help. The State Government could not by virtue of its rule-making power delegated by section 15 of the Central Act, frame a rule to modify vested rights which could only be taken away by competent legislature. As no such Parliamentary law had been passed the second sub-rule to rule 20 of the Bihar Rules which provided for retrospective increase in the fees etc. was invalid.

4.16 Since minor minerals had been left to the States by section 15 of the Central Act, it is difficult to accept the Supreme Court's judgment. In view of this specific provision it is quite possible to argue that the minor minerals to that extent have not been transferred from entry 23 of the State List. The State amendment in that case, though apparently referrible to entry 18 of List II, but which on the pith and substance theory could not have been upheld on the basis of that entry, was clearly sustainable, as noted by the Supreme Court on entry 23. The mistake is in holding, in the face of a clear provision in the Central Act leaving minor minerals to the States regulation by rule-making, that the legislative power regarding regulation and development of minor minerals was also transferred to the Centre.

4.17 As a sequel to the decision of the Supreme Court in this case, the Parliament passed the Bihar Land Reforms Laws
(Regulating Mines and Minerals) Validation Act, 1969, which retrospectively validated by referential legislation the proviso to section 10(2) and sub-rule 20(2) earlier struck down by the Court. And a challenge to the validity of the validating Act of 1969 was repelled by the Supreme Court in Krishna Chandra v. Union of India.

4.18 If the Supreme Court had correctly interpreted that the Mines and Minerals (Regulation and Development) Act, 1957 did not transfer the 'minor minerals' also to the Union sphere, the validation Act by the Parliament and subsequent litigation regarding it could have been avoided.

INTERPRETATION BY THE COURTS

Meaning of the term 'industry'

4.19 The meaning to be given to the term 'industry' in entries 24 of List II and 52 of List I had come up for decision in some cases. In Tika Ramji v. State of U.P., the validity of the U.P. Sugar Cane (Regulation of Supply and Purchase) Act, 1953 (U.P. Act 24 of 1953) and certain rules and orders issued thereunder was challenged before the Supreme Court in Article 32 petitions. The Act was passed after the regulation of sugar industry was transferred to the Union field by the Industries (Development and Regulation) Act, 1951.