A

STATE OF MADHYA PRADESH & ANR.

v.

DADABHOY'S NEW CHIRIMIRI PONRI HILL COLLIERY CO. PVT. LTD.

November 29, 1971

B [S. M. SIKRI, C.J., J. M. SHELAT, P. JAGANMOHAN REDDY AND G. K. MITTER, JJ.]

The Mines & Minerals (Regulation and Development) Act 67 of 1957 as amended by Act 15 of 1958, ss. 9(1) and 30A—Notification issued under Second Part of s. 30A whether can have effect of raising rate of royalty on coal in respect of pre 1949 mining leases above rate of 5% provided in s. 9(1) read with Second Schedule.

C

In 1944 the Ruler of the erstwhile Indian State of Korea granted to D a mining lease in respect of an area of 5.25 sq. miles in the State. According to the terms of the lease the rates of royalty varied from 5% to 25% according to the price of the coal per tons extracted from the leased area, that is to say, from 4 as. per ton if the price was Rs. 5/- per ton to 25% of the price per ton at the pit's head if that price was Rs. 20/- or more. On the merger of the Korea State with Madhya Pradesh the leased area became subject to the provisions of the Mines & Minerals (Regulation and Development) Act 53 of 1948 and the Mineral Concession Rules, 1949. In 1952 D assigned the lease and its benefits to the respondent company. The State of Madhya Pradesh granted its consent to the assignment for the unexpired period of the lease in consideration of the respondent-company agreeing to comply with the terms and conditions of the lease including payment of royalties. On December 28, 1967 Parliament passed the Mines & Minerals (Regulation and Development) Act 67 of 1957 under its power under Entry 54 of List I of the Seventh Schedule to the Constitution. The Act as amended by Act 15 of 1958 was brought into force by a notification of the Central Government with effect from June 1, 1958. Under s. 9(1) of the Act a lessee under a mining lease granted before the commencement of the Act was liable to pay royalty at the rate for the time being specified in the Second Schedule. Under item (1) of the Second Schedule royalty payable in respect of coal was the same as under r. 41 of the Mineral Concession Rules, 1949, that is, 5% of the f.o.r. price, subject to a minimum of fifty naye paise per ton. Under s. 30A which had been inserted by Act 15 of 1958 with retrospective effect, the provisions of s. 9(1) and s. 16(1) were not applicable to mining leases granted before 25th October 1949 in respect of coal, but the Central Government had power if satisfied that it was expedient to do so, to direct by notification in the Official Gazette, that all or any of the said provisions (including rules made under ss. 13 and 18) shall apply to or in relation to such leases "subject to such exceptions and modifications, if any, as may be specified in that or in any subsequent notification". On December 29, 1961 the Central Government issued a notification in exercise of its power under the second part of s. 30A by which it directed application of s. 9(1) with immediate effect to or in relation to the pre-1949 coal mining leases "subject to the modification that the lessee shall pay royalty at the rate specified in any agreement between the lessee and the lessor or at 2½% of f.o.r. price, whichever is higher, in lieu of the rate of royalty specified in respect of coal in the Second Schedule to the said Act." The Collector served upon the respondent company demand notices to pay the arrears of royalty for the period December 29, 1961 to December 31, 1965 at the rates specified in the lease. The com-

D

E

F

G

H

pany in a writ petition before the High Court urged that the exceptions and modifications under s. 30A had to be and were intended to cushion or soften the burden which would otherwise fall on the lessees under s. 9(1) and the Second Schedule and therefore any modification or exception which would be specified in such notification was intended to reduce rather than increase the rate of royalty payable under s. 9(1). The State Government contended that the respondent-company was bound to pay royalty at the rates provided in its lease, that being higher than the minimum of 2½% provided in the notification. The High Court rejected the contention raised by the State as being inconsistent with the purpose for which s. 30A was introduced. The State appealed.

HELD : The notification was issued in exercise of the powers conferred by s. 30A. That power was to apply by issuing a notification thereunder, ss. 9(1) and 16(1) and the rules made under ss. 13 and 18. The notification in terms directed the application of s. 9(1) which meant that on and from December 29, 1961 the company would have to pay royalty as prescribed under that sub-section read with the Second Schedule, that is, at 5%. The notification however applied s. 9(1) subject to one modification, namely, that the lessees under the pre-1949 leases were to pay royalty at the rate provided in their leases or at 2½% whichever was higher. The modification was to the rate applicable under s. 9(1) and the Second Schedule, that is, to the rate of 5%. Considering the object with which s. 30A was enacted *viz.* to phase the rate of 5% and not to impose it at one stroke, the modification could not mean recovery at a rate inconsistent with s. 9(1) and the Second Schedule, that is, at the rate higher than 5% provided thereunder. [620 D-F]

Such a modification, if it were to be construed as meaning payment at a rate higher than 5% would be in excess of the power under s. 30A and also in contravention of the language of s. 9(1) and the Second Schedule. A literal meaning which the State canvassed for could therefore be accepted only at the cost of invalidating the notification. Where two constructions are possible the one which sustains the validity of the law must be preferred. [620 G-H; 621 A]

On a plain reading of the notification it was clear that what it meant was that instead of the rate flowing from the application of s. 9(1) and the Second Schedule, a modified rate should be applied, that is, 'in lieu of the rate of royalty' specified in the Second Schedule, royalty at the agreed rate should be charged if it was lower than 5% or at 2½% minimum, whichever was higher. The notification thus did not empower the State Government to recover royalty at a rate higher than 5% in lieu of the rate chargeable under s. 9(1) and the Second Schedule which provided 5% only. [621 B-C]

The High Court was therefore justified in quashing the impugned order as also the demand notices issued in pursuance of that order.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 167 and 168 of 1968.

Appeals from the judgment and orders dated December 20, 1966 of the Madhya Pradesh High Court in Misc. Petition Nos. 139 and 182 of 1966.

I. N. Shroff, for the appellants (in both the appeals).

S. V. Gupte, Suresh A. Shroff, R. K. Thakur, Bhuvanesh Kumari, K. S. Cooper, M. K. Cooper, J. B. Dadachanji, O. C.

A *Mathur* and *Ravinder Narain,* for respondent No. 1 (in C.A. No. 167 of 1968).

B. P. Maheshwari. for respondent No. 1 (in C.A. No. 168 of 1968).

B *S. P. Nayar,* for respondent No. 2 (in both the appeals).

The Judgment of the Court was delivered by

Shelat, J. By an Indenture of Lease, dated January 12, 1944, made between the then Ruler of Korea State of the one part, referred to as the lessor therein, and Sir Maneckji B. Dadabhoy, C referred to as the lessee, of the other part, the lessor granted to the lessee for a term of 30 years, in consideration of payment of rents and royalties therein mentioned, a mining lease of an area measuring 5.25 sq. miles delineated on the plan annexed thereto, with liberties, powers and privileges and on terms and conditions therein set out. By cl. (2) of that Indenture, the lessee agreed D to pay during the subsistence of the lease royalties at the rates and on dates set out therein. The rates of royalty varied from 5% to 25% according to the price of coal per ton extracted from the leased area, that is to say, from 4 ans. per ton if the price was Rs. 5/- per ton to 25% of the price per ton at the pit's head if that price was Rs. 20/- or more.

E

On the merger of the Korea State with Madhya Pradesh, into the events of which it is not necessary for the purposes of this appeal to go, the leased area became subject to the provisions of the Mines and Minerals (Regulation and Development) Act, 53 of 1948 and the Mineral Concession Rules made thereunder on October 25, 1949. In 1952, Sir Maneckji agreed to assign the F said lease and the benefits, powers and privileges thereunder provided to the respondent-company. Since, under that lease, such assignment could not be made without the previous consent of the lessor and since, by that time, owing to the merger of the Korea State with Madhya Pradesh, the State of Madhya Pradesh had acquired the said area and the rights in respect of it under G the said lease, an agreement was made between the State of Madhya Pradesh and the respondent-company on November 6, 1952 under which the State of Madhya Pradesh granted its consent to the said assignment for the unexpired period of the said lease in consideration of the respondent-company agreeing to comply with the terms and conditions of the said lease including H payment of royalties to the State Government as provided therein. That meant that the respondent-company had to pay henceforth royalty to the State of Madhya Pradesh as the lessor at the rates provided in the original lease.

An unexpected development in the meantime took place. Under an industrial award, called the Mazumdar Award, published on May 25, 1956, increased wages were awarded to colliery workers. To meet the consequent increased expenditure which the collieries had to incur, the Government of India proportionately increased the controlled coal price. A representation made by the respondent-company to the Government of India, dated October 5, 1956 shows that the increase in respect of the coal extracted by the respondent-company was from 14.6.0 and Rs. 15.6.0 to Rs. 17.6.0 and Rs. 18.6.0 per ton. That increase, however, resulted in the respondent-company having to pay royalty at an increased rate since the rate of royalty payable by the company was on graded slabs varying according to the price of coal at the pit's head. The company's representation, therefore, was that the royalty payable by it should be modified so as to bring it in consonance with that payable under the 1948 Act read with the Mineral Concession Rules, 1949 and the First Schedule thereto, namely, at a fixed rate of 5% of the f.o.r. price subject to the minimum of 8 ans. per ton. (rule 41(1)(a)). The Government of India referred the respondent-company to the State Government and advised it to make a similar representation to that Government. Thereafter correspondence went on between the Government of Madhya Pradesh and the respondent-company for a considerable time. The State Government, however, was not agreeable to modify the terms of the said lease and to bring the royalty payable thereunder in consonance with r. 41 of 1949 Rules and the First Schedule thereto.

On December 28, 1957, Parliament passed the Mines and Minerals (Regulation and Development) Act, 67 of 1957 under its power under Entry 54 of List I of the Seventh Schedule to the Constitution. Before the Act was brought into force by a notification as provided by s. 1(3) thereof, an amending Act, being Act 15 of 1958, was passed on May 15, 1958. By a notification dated May 29, 1958, the Central Government brought into force the Act with effect from June 1, 1958.

As its long title recites, the Act was passed to provide for the regulation of mines and the development of minerals under the control of the Union. Sec. 2 declared that it was in the public interest that the Union should take under its control the regulation of mines and the development of minerals. Secs. 6 and 8 provided for the period and the area in respect of which mining leases henceforth could be granted. Sec. 9(1) provided that a lessee under a mining lease granted before the commencement of the Act shall pay royalty at the rate for the time being specified in the Second Schedule. Its sub-sec. 2 provided that a lessee under a lease granted on or after the commencement of the Act

A shall likewise pay royalty in respect of any mineral removed by him from the area leased to him at the rate for the time being specified in the Second Schedule in respect of that mineral. Sub-sec. (3) authorised the Central Government to amend the rates of royalty specified in the Second Schedule, but not so as to exceed twenty per cent. of the sale price at the pit's head. Under B item (1) of the Second Schedule, royalty payable in respect of coal was the same as under r. 41 of the Mineral Concession Rules 1949, that is, 5% of the f.o.r. price, subject to a minimum of fifty naye paise per ton.

The effect of sec. 9 was that the rate of royalty was enhanced C in the case of those lessees, who, under the leases obtained by them before the commencement of the Act, were paying at a rate lesser than 5%, while the royalty payable by lessees similarly placed was reduced if they were paying royalty at a higher rate. Under sec. 9(1) read with the Second Schedule, the respondent-company would have been required to pay royalty at the reduced rate of 5% instead of at the rates varying from 5% to 25% D according as the price fluctuated from time to time. Sec. 16 provided that all mining leases granted before October 25, 1949 should, as soon as may be, after the commencement of the Act, be brought into conformity with the provisions of the Act and the Rules made under secs. 13 and 18.

E The Amending Act, 15 of 1958, by its sec. 2, inserted into the Act sec. 30A with retrospective effect. That section reads as under :

> "Notwithstanding anything contained in this Act, the provisions of sub-section (1) of section 9 and of sub-section (1) of section 16, shall not apply to or in F relation to mining leases granted before the 25th day of October, 1949, in respect of coal, but the Central Government, if it is satisfied that it is expedient so to do, may, by notification in the Official Gazette, direct that all or any of the said provisions (including any rules made under sections 13 and 18) shall apply to or in relation to such leases subject to such exceptions and G modifications, if any, as may be specified in that or in any subsequent notification."

The section falls into two parts. Under the first part, the operation of sections 9(1) and 16(1) was suspended as far as pre-1949 mining leases for coal were concerned. The second H part, however, empowered the Central Government, on its satisfaction that it was expedient to do so, to direct that all or any of those provisions, including rules made under secs. 13 and 18, should apply to such leases subject to such exceptions and modi-

fications, if any, as might be specified in that or any subsequent notification. The "exceptions and modifications" which might be so specified in the notification would obviously be in regard to the application, when such application was decided upon, of secs. 9(1) and 16(1) and the relevant rules.

As a result of the suspension of the operation of sec. 9(1), and consequently of the Second Schedule, the respondent-company remained liable to pay under its lease royalty at the graded rates provided therein which, in consequence of the increase in the controlled price of coal, came to more than 5% prescribed by the Second Schedule.

On December 29, 1961, the Central Government issued a notification in exercise of its power under the second part of sec. 30A, by which it directed application of sec. 9(1) with immediate effect to or in relation to the pre-1949 coal mining leases "subject to the modification that the lessee shall pay royalty at the rate specified in any agreement between the lessee and lessor or at 2½% of f.o.r. price, whichever is higher, in lieu of the rate of royalty specified in respect of coal in the Second Schedule to the said Act." The respondent-company would have been, under this notification, liable to pay royalty at the rate of 5% under the Second Schedule. The question is whether the said modification made any difference.

It appears that the respondent-company continued to press the Central Government to modify and reduce the royalty payable by it under its lease. This is seen from the Central Government's letter, dated July 4, 1962, by which it informed the company in reply to the company's letter of May 21, 1962 that the question of the rate of royalty payable by the colliery was, in consultation with the State Government, under consideration and that action in that connection would shortly be taken. It would seem that as a result of the company's representations and consultation by the Central Government with the State Government, the latter issued an order, dated September 23, 1963 to the Collector, Surguja, directing him to recover from the respondent-company royalty at the rate of 5% with effect from July 1, 1958 subject to the condition that the royalty amount should not be less than Rs. 2,47,000/- per year. The Government, however, directed the Collector to recover the outstanding royalty due for the period prior to July 1, 1958 at the old rates, that is, as provided by the lease.

The State Government, however, changed its mind later on, for, by its order dated October 1, 1965 it partially suspended its order of September 23, 1963 and directed the Collector to recover royalty as from December 29, 1961 at the rates prescribed under the lease "in accordance with the Government of

A India's notification No. S.O. 30, dated 29th December, 1961". Representations by the respondent-company to the State Government to charge royalty at 5% proved futile. However, on January 1, 1966, the Central Government issued a notification under which it directed the lessees of pre-1949 leases to pay royalty at 5% of the f.o.r. price. Thereupon, by its order, dated B February 11, 1966, the State Government issued instructions to the Collector to charge royalty at that rate with effect from 1st of January, 1966. The controversy between the parties, therefore, is confined to the rate of royalty at which the company was liable to pay royalty for the period between December 29, 1961 and December 31, 1965.

C On January 25, 1966, the Collector served upon the respondent-company demand notices to pay the arrears of royalty for the aforesaid period at the rates provided in the lease. The company thereupon filed a revision before the Central Government under the Mineral Concession Rules, 1960. That revision was pending when the company filed a writ petition in March 1966 D in the High Court of Madhya Pradesh for quashing the said order, dated October 1, 1965, the rejection of its representation by the State Government, dated November 19, 1965 and the said demand notices.

The respondent-company urged that the purpose of suspending operation of s. 9(1), till a notification applying it was issued by E the Central Government, was not to burden lessees under pre-1949 leases with royalty at the rate of 5% of the f.o.r. price for the time being prescribed in the Second Schedule, and that even when a notification applying sec. 9 was to be issued, the Central Government was empowered to direct that that section, the Second Schedule and the Rules made under secs. 13 and 18 would apply F with such exceptions and modifications as may be specified in such or any subsequent notification. Such exceptions and modifications had to be and were intended to cushion or soften the burden which would otherwise fall on the lessees under sec. 9(1) and the Second Schedule, and therefore, any modification or exception which would be specified in such notification was intend- G ed to reduce rather than increase the rate of royalty payable under sec. 9(1). The contention, therefore, was that the notification, dated December 29, 1961 could not be read to mean that lessees, such as the respondent-company, whose leases provided for royalty at a rate higher than 5% were to pay royalty at a rate higher than the one provided under sec. 9(1). The State H Government, on the other hand, urged that the language of the notification was clear and provided that such lessees were to pay royalty either at the rate provided in their leases or if the rate provided therein was less than 2½% at that rate, whichever was

higher. Therefore, on a plain construction of the words of the notification, the respondent-company was bound to pay royalty at the rates provided in its lease, that being higher than the minimum of 2½% provided in the notification. The High Court rejected the contention raised by the State as being inconsistent with the purpose for which sec. 30A was introduced. The High Court observed :

> "In our view, the true construction and effect of the notification dated 29th December 1961 is that in regard to coal mining leases granted before 25th October 1949 if the rate of royalty stipulated in the lease was higher than 5% of f.o.r. price per ton, then the royalty payable from 29th December 1961 in respect of coal removed from the leased area after that date would be the one specified on that date in the Second Schedule, namely, 5 per cent of f.o.r. price per ton; in relation to leases where the rate of royalty stipulated in less than 5 per cent but more than 2½ per cent of f.o.r. price per ton, the rate of royalty would be the one specified in the lease agreement; and in respect of leases where the rate of royalty specified was less than 2½ per cent of f.o.r. price per ton, the rate would be 2½ per cent of f.o.r. price per ton from 29th December 1961. It follows from this that the petitioner-company which was, under the terms of its lease liable to pay royalty at a rate higher than 5 per cent of f.o.r. price per ton for the period from 29th December 1961, is rightly entitled to claim that under the notification dated 29th December 1961, it cannot be called upon to pay royalty from 29th September 1961 at the rate stipulated in the lease granted to it but only at the rate of 5 per cent of f.o.r. price per ton specified in the Second Schedule."

The High Court also rejected the State's contention as regards its order dated September 23, 1963 that once the said notification was issued, the State Government could not charge royalty at a rate lower than the one prescribed in the said notification, and that therefore, the State acted properly in rescinding its said order. The High Court held that that order amounted to a modification of the terms of the lease in consideration of the lessee guaranteeing payment of the minimum amount of Rs. 2,47,000/- a year, which the State Government was competent to make, and that therefore, it had no right to rescind it unilaterally. On this view, it held that the company's liability for royalty as from December 29, 1961 would be at the reduced rate of 5% of the f.o.r. price and not as provided by the original lease deed.

A As against these conclusions, counsel for the State took us through the terms of the lease and the provisions of the Act, and in particular secs. 9 and 30A, and formulated three contentions for consideration. These were, (1) that the High Court erred in construing the relevant provisions of the Act and particularly sec. 30A, (2) that it also erred in construing the said notification, and B (3) that the order of the State Government of September 23, 1963 was erroneous having regard to the said notification which fixed the rate of royalty payable by the lessees under the pre-1949 leases, and that that order being inconsistent with the notification had to be rescinded by its subsequent order of November 19, 1965. Counsel urged that upon rescision of its order dated September C 23, 1963, the State Government was entitled to recover royalty as from the date of the said notification at the rate agreed to in the lease or at 2½%, whichever was higher. Therefore, the said demand notices were valid and had to be complied with.

It is well-known that prior to the enactment of the 1948 Act, leases of mining areas had been granted by diverse authorities on D different terms and conditions. The rate of royalty under those leases were inevitably divergent and were often fixed at very low rates. The purpose of enacting the 1948 Act was to bring about uniformity in such leases and with that end that Act had made provisions for power to modify the terms and conditions both in regard to the area and the period under such leases. The object E of such provisions was to regulate in a systematic and scientific manner development of mining and minerals. Though under the Constitution that subject was left to the States, a power was carved out by entry 54 in List I for the exclusive exercise of it by the Centre. The consequence was the enactment of Act 67 of 1957 which was brought into operation from June 1, 1958.

F The purpose of passing that Act is clearly seen from the declaration required under entry 54, List I, in sec. 2, namely, that it was necessary for the Union to take under its control regulation of mines and the development of minerals. In pursuance of that object the Act made provisions with regard to the persons to whom prospecting licences and mining leases should be granted (ss. 4 G and 5), the maximum area for which such licences and leases should be granted (s. 6), and the period for which a mining lease should be granted (s. 8). In order that uniformity in leases granted before and after the commencement of the Act could be attained, power was also conferred to bring all mining leases granted before October 25, 1949 into conformity with the provi- H sions of the Act and the Rules made thereunder. (ss. 16, 17 and 18). As regards royalty payable by the lessees under diverse kinds of leases for different minerals granted before October 25, 1949 uniformity was sought to be brought about sec. 9(1).

In the 1948 Act the Central Government had the power to make rules for regulating the grant of mining leases, or for prohibiting the grant of such leases in respect of any mineral including the power to make rules as regards the terms upon which and the conditions subject to which such leases would be granted. (s. 5) Under sec. 7 of that Act, the Central Government also could make rules for modifying or altering the terms and conditions of leases granted before the commencement of that Act, that is, before October 25, 1949. In pursuance of the power under sec. 5, the Central Government framed the Mineral Concession Rules, 1949 and provided by r. 41 thereof read with the First Schedule thereto that the rate of royalty chargeable under a lease in respect of coal would be 5% of the f.o.r. price per ton. No rules, however, were made under sec. 7, and therefore, the rate of royalty provided by r. 41 did not govern pre-1949 leases, with the result that the lessees thereunder continued to pay royalty provided in their respective leases.

Such diversity in the rates of royalty was sought to be done away with by prescribing uniform rates of royalty in respect of each mineral through sec. 9. Item 1 in the Second Schedule prescribed, in respect of coal, the rate of royalty at 5% of the f.o.r. price subject to a minimum of fifty naye paise per ton. The result of s. 9 and item 1 in the Second Schedule was that all lessees whether their leases were granted before or after the commencement of the Act became liable to pay royalty at the uniform rate of 5% in respect of coal. Since under the 1948 Act the lessees, whose leases were granted on and after the commencement of that Act, were liable to pay royalty at 5% under r. 41 of the 1949 Concession Rules, sec. 9 did not make any difference to them as it prescribed the same rate. But so far as lessees under the pre-1949 leases were concerned, the new rate affected them, inasmuch as those, who, under their leases were paying at a lesser rate became liable to pay royalty at 5%, while those who were paying at a higher rate had to pay at the lower rate of 5% only. Besides, the change in the rate of royalty under sec. 9, pre-1949 leases were liable to be modified in respect of the area and the period under sec. 16 and the rules made under secs. 13 and 18.

Even before the new Act was brought into force, consequences of enforcing such uniformity and the resultant automatic spurt in the rate of royalty, especially in respect of coal, had been realised. The Central Government, therefore, itself sponsored the insertion of sec. 30A by sec. 2 of the Amendment Act, 15 of 1958, with retrospective effect. The consequences flowing from the attempted uniformity were set out in the Statement of Objects and Reasons(1) for amending the Act. The statement acknowledged

(1) Gazette of India, Extra., Part 2, Sec. 2, Jan.-July, 1958, p. 507.

A that coal, as the basic fuel, occupied a unique position in the country's economy and had always, therefore, been treated differently from other minerals. It also acknowledged that operation of secs. 9 and 16 would have "numerous desirable consequences" such as unsettling coal industry as a whole and retarding the programme of coal production estimated in the Second Five Year B Plan on account of the sudden and automatic rise in the royalty payable by lessees, who under their leases granted before October 25, 1949 generally had to pay royalty "much below the rate" prescribed under the Second Schedule. A similar anxiety was also expressed during the passage of the Amendment Bill by the concerned Minister stating that if the automatic enhancement C under sec. 9(1) in the rate of royalty at 5% were to be implemented, the results would be unfortunate. For, besides affecting the rate of production of coal, it would also adversely affect the price structure in other industries, such as cement, steel and other similar industries, and that for that reason "by this Amending Bill that mistake is sought to be rectified". "Instead of giving those D increases automatically power will not be taken to phase them in such a way that the upward revision is not pushed up to the maximum limit (*i.e.* five per cent.) with one jerk, but it is so phased that it does not cause any upset in the coal production programme and in the economy of the country as a whole".(1). The mischief which the Amending Act, 1958 sought to avoid was thus to prevent enhancement of royalty at one stroke to 5%.

E

As aforesaid, sec. 30A suspended the application of secs. 9(1) and 16(1) in relation to pre-1949 leases and authorised the Central Government to direct that all or any of the said provisions (including rules made under secs. 13 and 18) shall apply to or in F relation to such leases subject to such exceptions and modifications, if any, as may be specified in a notification. As a result of the suspension of Sec. 9(1), lessees under pre-1949 leases were relegated to the original position under which they were liable to pay royalty at rates agreed to in those leases whether the rate was over or below 5% provided by sec. 9(1). As and when the Cent- G ral Government issued the notification envisaged by the second part, such lessees would be obliged to pay royalty at the rate of 5% as prescribed for the time being in the Second Schedule, and even if the Government were, in the meantime, to enhance the rate as authorised by sec. 9(3) upto the maximum rate of 20% at such rate but never more than 20%. The second part thus contemplated payment of royalty, on sec. 9(1) being made appli- H cable, at the most at the rate of 5% only, as no increase had till then been made under sec. 9(3).

(1) Rajya Sabha Proceedings, dated November 19, 1957.

On December 29, 1961, the Central Govrnment "in exercise of the powers conferred by sec. 30A" issued the notification directing that the provisions of sub-sec. (1) of sec. 9 of the said Act shall apply with immediate effect to or in relation to pre-1949 coal mining leases, subject to the modification that such lessees shall pay royalty at the rate specified in the agreements between the lessees and the lessors or at 2½% of f.o.r. price, whichever was higher, "in lieu of the rate of royalty specified in respect of coal in the Second Schedule to the said Act".

The argument urged on behalf of the State both before the High Court and before us was that the notification clearly envisaged payment of royalty at the rate agreed to between the lessor and the lessee or at 2½% whichever was higher. Since, the agreement in the present case provided for royalty at graded rates which were higher than 2½%, the company had to pay royalty at such agreed rates. The argument, in our opinion, is untenable as it is not borne out by the language of the notification itself and of sec. 30A and was therefore rightly repelled by the High Court.

The notification was issued, as it recites, in exercise of the powers conferred by sec. 30A. That power was to apply, by issuing a notification thereunder, secs. 9(1) and 16(1) and the rules made under secs. 13 and 18. The notification in terms directed the application of sec. 9(1) which meant that on and from December 29, 1961 the company would have to pay royalty as prescribed under that sub-section read with the Second Schedule, that is, at 5%. The notification, however, applied sec. 9(1) subject to one modification, namely, that lessees under the pre-1949 leases were to pay royalty at the rate provided in their leases or at 2½% whichever was higher. The modification was to the rate applicable under sec. 9(1) and the Second Schedule, that is, to the rate of 5%. Considering the object with which sec. 30A was enacted, *viz.*, to phase the rate of 5%, and not to impose it at one stroke, the modification could not mean recovery at a rate inconsistent with sec. 9(1) and the Second Schedule, that is, at the rate higher than 5% provided thereunder.

Such a modification, if it were to be construed as meaning payment at a rate higher than 5% would be in excess of the power under sec. 30A and also in contravention of the language of sec. 9(1) and the Second Schedule. A modification, if any, would be for charging royalty at a rate lesser than the one provided under sec. 9(1) and the Second Schedule, and not at a rate higher than such rate. A construction to the contrary would mean exercise of power in excess of that conferred by the section and would affect the validity of the notification. A literal meaning which the State canvassed for can, therefore, be accepted only at the cost of invalidating the notification.

A The rule of construction that a court construing a provision of law must presume that the intention of the authority making it was not to exceed its power and to enact it validly is well-settled. Where, therefore, two constructions are possible, the one which sustains its validity must be preferred. On a plain reading of the notification, however, it is clear that what it meant was that instead B of the rate flowing from the application of sec. 9(1) and the Second Schedule, a modified rate should be applied, that is, "in lieu of the rate of royalty" specified in the Second Schedule, royalty at the agreed rate should be charged if it was lower than 5%, or at 2½% minimum, whichever was higher. The notification, thus, did not empower the State Government to recover C royalty at a rate higher than 5% in lieu of the rate chargeable under sec. 9(1) and the Second Schedule which provided 5% only.

It appears that the State Government itself understood such a construction as proper, for, if it had understood otherwise, it would not have issued its order dated September 23, 1963 direct- D ing the Collector to recover royalty at 5% pursuant to the correspondence which had ensued between the company, the Central Government and the State Government. If it had understood the notification in the manner now urged by its counsel, it would have at once pointed out both to the company and the Central Government in that correspondence that it was entitled to recover E royalty at the rates agreed to in the lease instead of at 5%. It was only in 1965 that it changed its mind and cancelled its previous order. On the construction placed by us on sec. 30A and the said notification, it was not entitled so to do. The High Court, in our view, was right in quashing that order as also the demand notices issued in pursuance of that order.

F In view of our decision on the question of construction of the notification and sec. 30A, it becomes unnecessary to consider the second contention raised by the company's counsel that the order of 1963 amounted to a modification of the terms of the lease, and that therefore, the State Government could not unilaterally supersede such modification by issuing a subsequent order in G 1965. For the reasons aforesaid, we are in agreement with the High Court's conclusions.

Civil Appeal No. 168 of 1968 involves the same question and our decision in that appeal, must, therefore, be governed by the decision in this appeal.

Both the appeals, therefore, fail and are dismissed with costs. H There will, however, be one set of hearing costs as the arguments in both the appeals have been common.

G.C. *Appeals dismissed.*