

PETITIONER:
DOYPACK SYSTEMS PVT. LTD. ETC.

Vs.

RESPONDENT:
UNION OF INDIA & ORS., ETC.

DATE OF JUDGMENT 12/02/1988

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
OZA, G.L. (J)

CITATION:
1988 AIR 782 1988 SCR (2) 962
1988 SCC (2) 299 JT 1988 (1) 304
1988 SCALE (1) 273
CITATOR INFO :
F 1988 SC1353 (17)
E&D 1991 SC 772 (18)
R 1991 SC1806 (6)

ACT:
Swadeshi Cotton Mills Company Limited (Acquisition and Transfer of Undertakings) Act, 1986-Whether under section 3 thereof equity shares in Swadeshi Polytex Limited and Swadeshi Mining and Manufacturing Company vest in the Central Govt. and whether the immovable properties have also vested in the Govt. under the said section.

HEADNOTE:

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What fell for consideration in all these matters, viz., (i) SLPs. (civil) Nos. 4826 and 7045 of 1987, (ii) SLP (civil) No. 5240 of 1987, (iii) C.M.Ps. Nos. 12029-31/87 (in CAs Nos. 577-79 of 1987), (iv) C.M.Ps. Nos. 16635 and 16918/87 (in S.L.P. (c) No. 4826/87) and (v) Transferred Cases Nos. 13 and 14 of 1987 (with CMPs. Nos. 16887-89 and 17018/87), was a common question of law-whether equity shares in two companies, i.e. 10,00,000 shares in Swadeshi Polytex Ltd. and 17,18,344 shares in Swadeshi Mining and Manufacturing Company Ltd., held by the Swadeshi Cotton Mills, vested in the Central Government under section 3 of the Swadeshi Cotton Mills Company Ltd. (Acquisition and Transfer of Undertakings) Act, 1986. The other subsidiary question was whether the immovable properties, namely, bungalow No. 1 and Administrative Block, Civil Lines, Kanpur, had also vested in the government.

There were six original proceedings initiated by various parties which gave rise to these civil appeals, special leave petitions and transferred cases before this Court. These were:

On 18th February, 1987, a suit was filed before the Delhi High Court by one Naresh Kumar Barti against Dr. Raja Ram Jaipuria, Swadeshi Polytex and others, for an injunction restraining the company from holding the 17th annual general meeting on the ground that 34% shares in the Swadeshi Polytex vested in the National Textile Corporation (N.T.C.) in view of sections 3 and 4 of the Act. In the suit, an

application was also filed praying that in the event of the annual general meeting of the company being allowed to be held, an independent Chairman should be appointed to conduct the meeting. The High Court

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refused to pass any order (in view of an order already passed by the Allahabad High Court). Against this order of the Delhi High Court, two special leave petitions were filed in this Court one by Doypack Systems Pvt. Ltd. (defendant No. 10 in the Delhi Suit), which came to be registered as Civil Appeal No. 577 of 1987 after the grant of special leave, and the other, by Naresh Kumar Barti, the plaintiff in the Delhi Suit, which came to be registered as Civil Appeal No. 578 of 1987 after the grant of special leave.

On 24th February, 1987, one Bari Prasad Aggarwal filed a suit in the court of the Third Additional Civil Judge, Kanpur praying inter alia that Shri Raja Ram Jaipuria should not preside over the 17th annual general meeting of the company. The application for an interim injunction filed in the suit was dismissed. In the appeal preferred by the plaintiff before the Allahabad High Court, an order was passed by the High Court on 2nd March, 1987, appointing Shri M.P. Wadhawan as the Chairman of the said annual general meeting. Against this order dated 2nd March, 1987, passed by the Allahabad High Court M/s. Doypack System Pvt. Ltd., preferred a special leave petition in this Court, which after the grant of leave, was registered as Civil Appeal No. 577 of 1987. The three special leave petitions were heard together as Civil Appeals Nos. 577, 578 and 579 of 1987 and disposed of by this Court by a common order on 6th March, 1987, appointing Shri Jaswant Singh as the Chairman of the said annual general meeting.

On 26th February, 1987, another suit-Suit No. 506 of 1987-was filed in the Delhi High Court by Mukesh Bhasin for a declaration that Swadeshi Cotton and Swadeshi Mining had no right in respect of 34% of the share-holdings in Swadeshi Polytex and that the said shares were vested in the N.T.C. by virtue of the said Act. By order dated 9th March, 1987, the High Court disposed of that application and granted injunction restraining defendants Nos. 3 and 4 in that suit from exercising any right whatsoever attached to the 34% shares of defendant No. 2 held by them and particularly any voting right in the annual general meeting scheduled to be held on the 9th March, 1987, till the decision of the suit. This order was brought to the notice of this Court by C.M.P. forming part of the Civil Appeals Nos. 577-579 of 1987. On 9th March, 1987, on that C.M.P. this Court passed an order directing that NTC, Swadeshi Cotton and Swadeshi Mining, all shall be entitled to vote at the annual general meeting and the question as to who were the rightful voters would be decided by the Chairman of the meeting, etc. This was the Transferred Case No. 14 of 1987.

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One Mukesh Jasmani, a shareholder in Swadeshi Polytex filed a writ petition in the Allahabad High Court. The High Court by its order dt. 7th March, 1987, dismissed that writ petition, observing that Swadeshi Cotton and Swadeshi Mining would be entitled to vote at the 17th annual general meeting in respect of their shares which, according to N.T.C., had vested in them. Against this order, Doypack Systems preferred the Special Leave Petition (civil) No. 3112 of 1987. This Court passed orders on this petition, directing that the meeting would be held under the chairmanship of Shri Jaswant Singh notwithstanding any order made by any Court. This Court also vacated the operative portion of the

directions contained in the order dated 7th March, 1987 of the Allahabad High Court.

On 6th April, 1987, M/s. Swadeshi Mining and Manufacturing Company filed a civil writ petition-Writ Petition No. 2214 of 1987-in the Allahabad High Court (Lucknow Bench) for stay of the operation of the letters dated 24/30 March, 1987, addressed by NTC to Swadeshi Mining and Manufacturing Company and Swadeshi Cotton Mills Company Limited, calling for an Extraordinary General Meeting of the Shareholders for removal of the Directors of Swadeshi Mining and Manufacturing Company Ltd. The High Court passed an order on the 6th April, 1987, staying the operation of the said letters. Against that order, M/s. Doypack Systems Pvt. Ltd. filed Special Leave Petition No. 4826 of 1987 and NTC also filed a Special Leave Petition No. 5240 of 1987 in this Court. By an order dated 5th May, 1987, this Court directed that Suit No. 506 of 1987 in the Delhi High Court and the Writ Petition No. 2214 of 1987 in the Allahabad High Court be transferred to this Court, which were registered in this Court as Transferred cases Nos. 14 and 13 of 1987 respectively.

NTC filed a civil suit in the District Court Kanpur seeking declaration of its title in respect of the shrubbery property in Kanpur. The court refused any interlocutory injunction in the suit against which an appeal was preferred before the High Court of Allahabad and the same was dismissed. Consequently, NTC filed a Special Leave Petition No. 7045 of 1987 in this Court.

Disposing of the matters, the Court,

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HELD: Swadeshi Mining and Manufacturing Co. Ltd. and Others submitted that the shares in question did not vest in the Central Government. [976B]

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By the Act-Swadeshi Cotton Mills Company Ltd. (Acquisition and Transfer of Undertakings) Act, 1986-on the appointed day "every textile undertaking" and the "right, title and interest of the company in relation to every textile mill of such textile undertakings" were transferred to and vested in the Central Government and such textile undertakings would be deemed to include "all assets". In the context of this provision, the reliance on the decision of this Court in Balkrishnan Gupta and Others v. Swadeshi Polytex Ltd. and Others, [1985] 2 S.C.R. 854, was not appropriate. [978D-E]

It appears from the written statement filed by NTC on 8th February, 1987, in the suit filed by one G.G. Bakshi in Ghaziabad Court, it was claimed that NTC was entitled to take over company's shares and investments. On 24/30th March, 1987, NTC issued notice to the petitioners 1 and 2 stating that they were entitled to shares. It was urged by Shri Nariman, counsel for Swadeshi Mining and Manufacturing Co. Ltd. & Ors., that this belated assertion indicated that the shares were not intended to be taken over. The Court was unable to accept this suggestion or to draw that inference. It did not logically follow. [979G-H; 980A]

Before dealing with the main question, the Court considered an application made by Shri Nariman for the production of certain documents. The petitioner in Transferred Case No. 13 of 1987 had sought production of the documents. It was contended inter alia that the production of those documents was necessary to establish that the shares were never intended to be taken over and these were never considered as part of the textile undertaking, and that the documents were definitely relevant as they would

throw light on the merits of the case. The production of the documents was resisted by the Attorney-General on behalf of the Union of India on the ground that the documents were not relevant and in any event most of them were privileged being part of the documents leading to the tendering of the advice by the Cabinet to the President, as contemplated by Article 74(2) of the Constitution. [989B, C; 990A]

Having considered the facts and circumstances of the case as well as the decisions of this Court in a number of cases, the Court was of the opinion that the documents in question were not relevant, and also that the Cabinet papers are protected from disclosure not by reason of their contents but because of the class to which they belong; the Cabinet papers also include papers brought into existence for the purpose of preparing submission to the Cabinet, and it is the duty of this Court to

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prevent disclosure where Article 74(2) is applicable. The Court was unable to accept the prayer of the petitioner to direct disclosures and production of the documents sought for. [993F-G; 994H]

Coming to the main question involved, reading the provisions of section 3(1), section 4(1) and section 2(k) of the Act, each throwing light on the other, it follows that- (a) under the first limb of section 3(1) of the Act, every textile undertaking; (b) under the second limb of section 3(2), every right, title and interest of the company in relation to every such undertaking, is transferred and vested, (c) the deeming provision of section 4(1) amplifies and enlarges both the limbs of the vesting section, being section 3(1), (d) the definition of the section is read into these provisions, to give a wider meaning and scope to the vesting provision and to what is transferred or vested. [997G-H; 998A]

Sections 7 and 8 of the Act relied upon by the petitioners, being provisions for payment of amounts and for the issue of shares by NTC respectively, will have no bearing on the scope of the vesting provision. As to what properties have vested cannot proceed on the hypothesis that there is a clear numerical or mathematical link between the quantum of compensation and the items of property vested. This correlation with regard to such legislation is not available. [998B]

Section 8 refers to the payments of the amounts by Union of India to the company. It has no bearing either on the vesting section or on section 7 except that the figure of Rs.24 crores 32 lakhs was introduced into section 7. [998C-D]

In this case, a nationalisation statute is concerned. Even with other independent management statutes, in respect of textile undertakings a series of decisions have upheld the view that the shares vest in the Government. See National Textile Corporation Ltd. v. Sitaram Mills, [1986] Supp. S.C.C. 117, Minerva Mills v. Union of India, [1986] 4 S.C.C. 222, Goverdhan Das Narasingh Das Daga v. Union of India, [1986] 4 S.C.C. 276, Vidharba Mills Berar Ltd. v. Union of India, [1986] 4 S.C.C. 248 and Fine Knitting Co. Ltd. v. Union of India, [1986] 4 S.C.C. 276. The above provide the informed basis on which the Court makes construction of sections 3 and 4 of the Act. [998G-H; 999A-B]

The expressions "and all other rights and interest in or arising out of such property, as were immediately before the appointed day, in the ownership, possession, power or control of the company in relation to the said

undertakings", appearing in sub-section (1) of section 4 of the Act indicates that the shares which have been purchased out of the funds of the textile undertakings and which have been held for the benefit of the said textile undertakings, would come within the scope of section 4 of the Act and thus would also vest in the Central Government under section 3. The origin of these shares and their connection with the textile undertakings had been fully corroborated. The textile business was the only business of the Swadeshi Cotton Mills. There was inter-connection and inter-relation between all the six undertakings. Investments in Swadeshi Polytex Limited from the funds of Kanpur undertaking were always made. Investments in Swadeshi Mining and Manufacturing Company Ltd. were always made from the funds of the Kanpur undertaking. Assets/investments held and used for the benefit of the textile business of SCM were carried on in its textile undertakings. [999B-E]

The words in the statute must Prima facie be given their ordinary meaning. Where the grammatical construction is clear and manifest and without doubt, that construction ought to prevail unless there are some strong and obvious reasons to the contrary. Nothing was shown to warrant that literal construction should not be given effect to. See Chandavarkar S.R. Rao v. Asha Lata, [1986] 4 S.C.C. 447 at 476, approving 44 Halsbury's Laws of England, 4th ed. paragraph 856, p. 552, Nokes v. Doncaster Amalgamated Colliery Ltd., [1940] Appeal Cases 1014 at 1022. It must be emphasised that interpretation must be in consonance with the Directive Principles of the State Policy in Articles 39(b) and (c) of the Constitution. [999E-G]

The object of interpretation of a statute is to discover the intention of the Parliament as expressed in the Act. The dominant purpose in constructing a statute is to ascertain the intention of the legislature as expressed in the statute, considering it as a whole and in its context. That intention and, therefore the meaning of the statute are particularly to be sought in the words used in the statute itself, which must, if they are plain and unambiguous, be applied as they stand. In the present case, the words used represented the real intention of the Parliament as the Court found not only from the clear words used but also from the very purpose of the vesting of the shares. If the fact is borne in mind that these shares were acquired from out of the investments made by these two companies and furthermore that the assets of the company as such minus the shares were negative and further the Act in question was passed to give effect to the principles enunciated in clauses (b) and (c) of Article 39 of the Constitution, no doubt was left that the shares vested in the Central Government by operation of sections 3 and 4 of the

Act. See in this connection, the observations of Halsbury's Laws of England, 4th Edition, Volume 44, paragraph 856, p. 522 and the cases noted therein. [999G-H; 1000A-C]

There is no exact correlation between the figure of capital reserve and the figure of investments. That could not be. These could never be equal. The submission of the petitioners failed to take into account the fact the undertakings, other than the Kanpur undertaking, also had capital reserve, even though there was no obligation that these were excluded assets in respect of other undertakings and there were no figures of investments therein. [1000D-E]

Contemporanea Expositio is a well-settled principle or

doctrine which applies only to the construction of ambiguous language in old statutes. Reliance might be placed in this connection on Maxwell, 13th Ed. page 269. It is not applicable to modern statutes. Reference may be made to G.P. Singh, Principles of Statutory Interpretation, 3rd Ed. pages 238, 239. The leading case on *Contemporanea expositio* is *Compell College Belfast v. Commissioner of Valuation for Northern Ireland*, [1964] 1 W.L.R. 912, in which House of Lords made it clear that the doctrine is to be applied only to the construction of ambiguous language in the very old statutes. Lord Watson said in *Clyde Navigation Trustees v. Laird*, [1983] 8 A.C. 658 that *Contemporanea expositio* could have no application to a modern Act. The Court, therefore, rejected the attempt of the petitioners to lead the Court to this forbidden track by referring to various extraneous matters. Furthermore, those external aids sought before the Court did not support the petitioners' approach to this question at all. [1000F-H; 1001A]

Sections 3 and 4 of the Act evolve a legislative policy and set out the parameters within which it has to be implemented. The Court could not find that there was any special intention to exclude the shares in this case, as seen from the existence of at least four other Acquisition Acts which used identical phraseology in sections 3 and 4 and the other sections as well—*Aluminium Corporation of India Ltd. (Acquisition and Transfer of Aluminium Undertakings) Act, 1984*, *Amritsar Oil Works (Acquisition and Transfer of Undertakings) Act, 1982*, *Britannia Engineering Company (Mohmeh Unit) and the Arthur Butler and Company (Muzaffarpore) Ltd. (Acquisition and Transfer of Undertakings) Act, 1978*, and the *Ganesh Flour Mills Company Limited (Acquisition and Transfer of Undertakings) Act, 1984*. [1001E-F]

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It appeared to the Court that the expression "forming part of" appearing in section 27 could not be so read with section 4(1) as would have the effect of restricting or cutting down the scope and ambit of the vesting provisions in section 3(1). The expression "pertaining to" did not mean "forming part of". Even assuming that the expression "pertaining to" appearing in the first limb of section 4(1) means "forming part of", it would mean that only such assets as had a direct nexus with the textile mills, would fall under the first limb of section 4(1). The shares in question would still vest in the Central Government under the second limb of section 4(1) of the Act since the shares were bought out of the income of the textile mills and were held by the company in relation to such mills. The shares would also fall in the second limb of section 3(1) being right and title of the company in relation to the textile mills. [1002C-E]

On the construction of sections 3 and 4, the Court came to the conclusion that the shares vested in the Central Government even if sections 3 and 4 were read in conjunction with sections 7 and 8 of the Act on the well-settled principles. The expression 'in relation to' has been interpreted to be words of the widest amplitude. See *National Textile Corporation Ltd. and Ors. v. Sitaram Mills Ltd.* (supra). Section 4 appears to be an expanding section. It introduces a deeming provision, which is intended to enlarge the meaning of a particular word or include matters which otherwise may or may not fall within the main provisions. It is well-settled that the word 'includes' is an inclusive definition and expands the meaning. [1002F-G]

To leave a company, the net wealth of which was

negative at the time of take-over of the management, with the shares held by it as investment in the other company, was, in the Court's opinion, not only to defeat the principles of Articles 39(b) and (c) of the Constitution, but it would permit the company to reap the fruits of its mismanagement. That would be an absurd situation. It had to be borne in mind that the net wealth of the company at the time of take-over was negative; hence sections 3 and 4 could be meaningfully read if all the assets including the shares were considered to be taken over by the acquisition. That was the only irresistible conclusion that followed from the construction of the documents and the history of the Act, which expressly recites that it was to ensure the principles enunciated in clauses (b) and (c) of Article 39 of the Constitution. The Act must be so read that it further ensures such meaning and secures the ownership and control of the material resources to the community to subserve the common good to see that the operation of the economic system does not result in injustice. [1003F-H; 1004A]

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The shares vested in the Central Government. Accordingly, the shares in question were vested in the N.T.C. and it had right over the said 34 per cent of the share-holdings. [1004B]

The 10,00,000 shares in the Swadeshi Polytex Ltd. and 17,18,344 in the Swadeshi Mining and Manufacturing Company Ltd. held by the Swadeshi Cotton Mills vested in the Central Government under sections 3 and 4 of the Act. [1004B-C]

In view of the amplitude of the language used, the immovable properties, namely, the Bungalow No. 1 and the Administrative Block, Civil Lines, Kanpur, also vested in the NTC. [1004C-D]

In that view of the matter, in Transferred Case No. 13 of 1987, the Writ Petition No. 2214 of 1987 was dismissed. All interim orders were vacated. This would dispose of the various other SLPs and CMPs connected with the Lucknow writ petition, being SLP (Civil) No. 4826 of 1987 filed by Doypack Systems Pvt. Ltd., SLP (Civil) No. 5240 of 1987 filed by NTC. CMPs 16918 and 16919 of 1987 in SLP No. 4826 of 1987 would stand disposed of in the above light. [1004D-F]

In the Transferred Case No. 14 of 1987 (in Suit No. 506 of 1987), the Court held that 10 lakhs and 17 lakhs equity shares and the Swadeshi House at Kanpur and all the rights, title and interest attached therewith, related to the textile undertaking of defendant No. 3 and they vested in NTC with effect from 1st April, 1985, and defendants Nos. 3 and 4 were restrained by a decree of permanent injunction from dealing with them in any manner whatsoever. Defendant No. 2 was restrained by permanent injunction from recognising defendants Nos. 3 and 4 as owners of the aforesaid shares and the Swadeshi House. [1004F-G]

Defendant No. 2 was directed to enter the name of defendant No. 1, namely, NTC in its register of members and to treat the said defendant No. 1 as its share-holder instead of defendants Nos. 3 and 4 in respect of the shares of defendant No. 2 held by them. In view of the provisions of law under section 108 of the Companies Act, as there was transmission of shares by operation of law, rectification was not necessary. [1004H; 1005A-B]

Civil Appeals Nos. 577 to 579 of 1987 were disposed of in the above terms and it was directed that the 17th annual general meeting be held in accordance with law after giving proper notice under the

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Chairmanship of Shri Jaswant Singh. [1005C]

CMPs Nos. 12760 of 1987 in Civil Appeal No. 577 of 1987 would stand disposed of in terms of the orders in the Transferred Case No. 14 of 1987 and it was directed that the Chairman should act in accordance with the aforesaid decision and NTC should be considered to be entitled to vote. CMP 16887 of 1987 was rejected. [1005D]

CMP 16888 of 1987 was an application by Doypack Systems Ltd. to be impleaded as a party-respondent in the Transferred Case No. 13 of 1987. Doypack Systems was permitted to argue and was heard as a party. No further order was necessary. [1005E]

CMPs Nos. 16889 and 17018 of 1987 were allowed. CMP No. 18268 of 1987 was disposed of with the direction that no further documents needed to be inspected. In view of the orders, the other CMPs were no longer necessary to be disposed of. [1005F]

Irrespective of any order passed by any court, the 17th annual general meeting should be held in accordance with law, to be presided over by Shri Jaswant Singh, recognising NTC as the rightful owner of the disputed shares. [1005G]

Balkrishnan Gupta & Ors. v. Swadeshi Polytex Ltd. and Ors., [1985] 2 SCR 854; Swadeshi Cotton Mills v. Union of India, [1981] 2 SCR 533; National Textile Corporation v. Sita Ram Mills, [1986] Suppl. SCC 117; Minerva Mills. v. Union of India, [1986] 4 SCC 222; Goverdhan Das Narasingh Das Daga v. Union of India, [1986] 2 SCC 249; Vidharba Mills Berar Ltd. v. Union of India, [1986] 4 SCC 248; Kumari Sunita Ramachandra v. State of Maharashtra and another, [1986] 1 SCR 697 at 704, c to e; Doctor (Mrs.) Sushma Sharma v. State of Rajasthan, [1985] 3 SCR 243 at 263; Fine Knitting Co. Ltd. v. Union of India, [1986] 4 SCC 276; State of West Bengal v. Union of India, [1964] 1 SCR 371 at 379, 380, 381 and 382; The Central Bank of India v. Their Workmen, [1960] 1 SCR 200 at 217; Babaji Kondaji Garad v. Nasik Merchants Co-operative Bank Ltd., Nasik and Others, [1984] 2 SCC 50, Paragraphs 14 and 15; Sanjeev Coke Manufacturing Company v. Bharat Coking Coal Ltd. & another, [1983] 1 SCR 1000 at 1029; K.P. Verghese v. The Income-tax Officer, Ernakulam and another, [1982] 1 SCR 629; Chern Taong Shang & Another, etc. etc. v. Commander S.D. Baijal & Ors., J.T. 1988 1 S.C. 202; Auckland Jute Co. Ltd. v. Tulsi Chandra Goswami, [1949] F.C.R. 201 at 244; RM AR.AR.R.M.AR. Umayhal Achi v. Lakshmi Achi and Others, [1945]

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F.C.R. 1; Black Clawson International Ltd. v. Papierwerke Waldhof Achaffenburg A.G., [1975] A.C. 591 at 613; S.P. Gupta v. Union of India and others, [1982] 2 S.C.R. 365 at 594; State of U.P. v. Raj Narain, [1975] 3 SCR 333; The Elphinstone Spinning and Weaving Mills Company Ltd. v. Union of India and others, writ petition No. 2401 of 1983; State of Bihar v. Kripalu Shankar, A.I.R. 1987 SC 1554 at 1559; Bachittar Singh v. State of Punjab, [1962] Suppl. 3 SCR 713; Air Canada and others v. Secretary of State and another, [1983] 1 All E.R. 161 at 180; State Wakf Board v. Abdul Aziz, A.I.R. 1968 Madras 79, 81; Nitai Charan Bagchi v. Suresh Chandra Paul, 66 C.W.N. 767; Shyam Lal v. M. Shyamlal A.I.R. 1933 All. 649, 76 Corpus Juris Secundum 621; R.C. Cooper v. Union of India, [1970] 3 SCR 530 at 567, 568, 635; Khajamian Wakf Estates, etc. v. State of Madras & another, [1971] 2 SCR 790, at 796 B-E; Harakchand Ratanchand Banthia and others, etc. v. Union of India and others, [1970] 1 SCR 479 at 496 P & G; Chandavarkar S.R. Rao v. Asha Lata, [1986] 4 SCC 447, 476; 44 Halsbury's Laws of England 4th Ed. paragraph 856 at page 552; Nokes v. Doncaster Amalgamated

Colliery Limited, [1940] Appeal Cases 1014, 1022; Campbell College Belfast v. Commissioner of Valuation for Northern Ireland, [1964] 1 W.L.R. 912; Clyde Navigation Trustees v. Laird, [1933] 8 A.C. 658; The Corporation of the City of Nagpur v. Its Employees, [1960] 2 SCR 942; Vasudev Ramchandra Shelat v. Pranlal Javanand Thakar and others, [1975] 1 SCR 534, Palmer's Company Law 24th Ed. (1987) Page 608; Mahadeo Lal Agarwala and another v. The New Darjeeling Union Tea Co. Ltd. and others, A.I.R. 1952 Cal. 58 and Unity Company Pvt. Ltd. v. Diamond Sugar Mills and others A.I.R. 1971 Cal. 18.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 4826 of 1987 etc.

From the Judgment and order dated 6.4.1987 of the Allahabad High Court in C.M.A. No. 4555 (W) of 1987 in W.P. No. 2214 of 1987.

K. Parasaran, Attorney General, Milon K. Banerjee, Solicitor General, F.S. Nariman, Dr. Y.S. Chitale, H.L. Anand, K.K. Venugopal, A.K. Ganguli, S.N. Kacker, Anil B. Diwan, A.K. Sharma, Harish N. Salve, K.J. John, S. Swarup, T.V.S.N. Chari, Vrinda Grover, Miss A. Subhashini, A. Subba Rao, R.B. Mehrotra, B.B. Sawhney, N.K. Sharma, P.V. Kapur, P.P. Malhotra, Miss Annoradha Dutt, P. Parmeshwaran, Navin Prakash and Naresh K. Sharma for the appearing parties.

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The Judgment of the Court was delivered by
SABYASACHI MUKHARJI, J. What falls for consideration in all these matters is a common question of law, namely, whether equity shares in the two companies i.e. 10,00,000 shares in Swadeshi Polytex Limited and 17,18,344 shares in Swadeshi Mining and Manufacturing Company Limited, held by the Swadeshi Cotton Mills, vest in the Central Government under Section 3 of the Swadeshi Cotton Mills Company Limited (Acquisition and Transfer of Undertakings) Act, 1986 (hereinafter referred to as 'the Act'). The other subsidiary question is whether the immovable properties, namely, the bungalow No. 1 and the Administrative Block, Civil Lines, Kanpur have also vested in the Government. The question as to one more property known as Shrubbery property whether it has been taken over or not is still to be argued and is not covered by this judgment.

In order to appreciate the question in these matters it has to be borne in mind that there were six original proceedings initiated by various parties which gave rise to these civil appeals, special leave petitions and the transferred cases to this Court. These six original proceedings are as follows:

(1) On 18th of February, 1987 Suit No. 418 of 1987 was filed before the Delhi High Court by one Naresh Kumar Parti against Dr. Raja Ram Jaipuria, Swadeshi Polytex and others, praying for an order of injunction restraining the company from holding the 17th annual general meeting on the ground that 34% shares in Swadeshi Polytex have vested in National Textile Corporation (briefly referred to as NTC) in view of sections 3 and 4 of the said Act. In this suit an application for grant of interim injunction was also filed praying that in the event the annual general meeting of the company is allowed to be held, an independent Chairman should be appointed to conduct the meeting. Notice in respect of the said application was served upon the respondents on 20th of February, 1987. On 4th March, 1987

the Delhi High Court refused to pass any order in view of the order already passed by the Allahabad High Court mentioned hereinafter. Against this order of the Delhi High Court, two special leave petitions were filed in this Court one by Doypack Systems Pvt. Ltd., which was defendant No. 10 in the Delhi suit. (Consequent upon grant of leave, the special leave petition came to be registered as Civil Appeal No. 577 of 1987). The other special leave petition was filed by the plaintiff in the Delhi suit, Naresh Kumar Parti. (Consequent upon grant of leave, the special leave petition came to be registered as Civil Appeal

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No. 578 of 1987). On 24th of February, 1987 one Hari Prasad Aggarwal, filed a suit being Case No. 183 of 1987 in the Court of Third Additional Civil Judge, Kanpur praying, inter alia, that Shri Raja Ram Jaipuria should not preside over the 17th annual general meeting of the Company. On 27th of February, 1987, the application for interim injunction filed in the said suit was dismissed by the learned trial Judge. In appeal which is not yet numbered preferred by the plaintiff before the Allahabad High Court an order was passed by the Court on 2nd March, 1987 appointing Shri M.P. Wadhawan as the Chairman of the said annual general meeting. The consenting parties to the said proceedings before the Allahabad High Court were Shri Raja Ram Jaipuria and Swadeshi Polytex Limited. Against this order of 2nd March, 1987 passed by the Allahabad High Court M/s. Doypack Systems Private Limited preferred a special leave petition in this Court. Leave was granted and as mentioned hereinbefore it was registered as Civil Appeal No. 577 of 1987. The three special leave petitions were heard together as Civil Appeals Nos. 577, 578 and 579 of 1987 and were disposed of by a common order on 6th March, 1987 by this Court appointing Shri Jaswant Singh as the Chairman of the said annual general meeting.

On 26th of February, 1987 another suit being Suit No. 506 of 1987, was filed in the Delhi High Court by one Mukesh Bhasin praying, inter alia, for a declaration that Swadeshi Cotton and Swadeshi Mining had no right in respect of 34% of the shareholdings in Swadeshi Polytex and that the said shares were vested in NTC by virtue of the said Act. By an order dated 9th March, 1987 the Delhi High Court disposed of that application. The learned Judge in that case was prima facie satisfied that the plaintiff in that case was entitled to an injunction claimed by him in the meeting to be presided over by Shri Jaswant Singh. He granted injunction restraining the defendants Nos.3 and 4 in that suit from exercising any right whatsoever attached to 34% shares of defendant No.2 held by them and particularly any voting rights in the annual general meeting which was scheduled to be held on 9th of March, 1987 till decision of that suit. This order was brought to the notice of this Court by CMP forming part of Civil Appeal Nos. 577-79 of 1987. On 9th of March, 1987 on that CMP this Court passed an order directing that NTC, Swadeshi Cotton and Swadeshi Mining, all shall be entitled to vote at the annual general meeting and the question as to who were the rightful voters would be decided by the Chairman of the meeting. It was further directed that the Chairman would keep these votes separately. This is the Transferred Case No. 14 of 1987 herein. On 7th of March, 1987 one Mukesh Jasnani a shareholder in Swadeshi

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Polytex filed a writ petition in the Allahabad High Court (Lucknow Bench). The High Court by its order dated 7th of March, 1987 dismissed that writ petition. The High Court in

the said order observed that Swadeshi Cotton and Swadeshi Mining would be entitled to vote at the 17th annual general meeting in respect of their shares which, according to NTC had vested in them. Against this order dated 7th March, 1987, Doypack Systems preferred a special leave petition being SLP (Civil) No. 3112 of 1987. On 9th March, 1987 this Court passed orders in this special leave petition directing that the meeting would be held under the Chairmanship of Shri Jaswant Singh notwithstanding any order made by any court, including the order dated 3rd March, 1987 passed by the Division Bench of the Allahabad High Court. This Court also vacated the operative portion of the directions contained in the order dated 7th March, 1987 passed by the Allahabad High Court.

On 6th of April, 1987 M/s. Swadeshi Mining and Manufacturing Company filed a civil writ petition No. 2214 of 1987 in the Allahabad High Court (Lucknow Bench) praying, inter alia, for stay of the operation of the letters dated 24/30th March, 1987 addressed by NTC to Swadeshi Mining and Manufacturing and Swadeshi Cotton Mills Company Limited, calling for an Extraordinary General Meeting of the shareholders for removal of the Directors of Swadeshi Mining and Manufacturing Company Limited. The Division Bench of the High Court (Lucknow Bench) passed an order on 6th of April, 1987, staying the operation of the said letters addressed by NTC to the companies. Against that order, M/s. Doypack Systems Pvt. Ltd. filed a Special Leave Petition No. 4826 of 1987. NTC also filed a special leave petition against the said order, being SLP No. 5240 of 1987 in this Court. Both these petitions were heard by this Court on 5th May, 1987. By an order passed on 5th May, 1987 this Court directed that Suit No. 506 of 1987 filed in the Delhi High Court and Writ Petition No. 2214 of 1987 pending in the Allahabad High Court (Lucknow Bench) be transferred to this Court, (subsequently, registered as Transferred Cases Nos. 14 and 13 of 1987 respectively). Consequent upon leave granted by this Court by the order dated 21st of January, 1987 NTC filed a civil suit in the District Court at Kanpur seeking a declaration of its title in respect of Shrubbery property in Kanpur. The learned Trial Judge refused any interlocutory injunction in the said suit against which an appeal was preferred before the High Court of Allahabad which was also declined and, consequently, NTC filed Special Leave Petition No. 7045 of 1987 in this Court. This application is still pending and is awaiting disposal. In this background these matters will have to be disposed of.

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Swadeshi Mining and Manufacturing Co. Ltd. and others submitted that these shares did not vest in the Central Government. The main thrust of Shri Nariman's contention, who appeared on their behalf, was that section 3 of the Act provided that every textile undertaking and right, title and interest of the company, i.e. Swadeshi Cotton Mills Company Limited vested in the Central Government. The "textile undertakings" mentioned in section 3 included all assets 'pertaining' to the textile undertaking as per section 4 of the Act. It is common ground that whether a particular asset is part of the textile undertaking and vests under section 3 or not, has to be considered in the context of the Act with reference to the language used in section 4 of the Act. Shri Nariman submitted that there are different modes by which Parliament can resort to nationalisation. These modes, according to him, are:

- (a) acquisition of 100% shares of the Company;
- (b) all assets under the ownership, possession or

control of the company being vested in the Government; (c) only those assets in the ownership, possession or control of the company in relation to the undertakings which are taken over or "all properties pertaining to the undertaking" vest in the Government. According to him, the expressions "pertaining to" or "in relation to" are expressions of limitation and restriction, in the absence of which each and every asset of the company would have vested in the Government. The background and sequence of events leading to the enactment of this Act through which Shri Nariman took us in detail and it is useless to set them up in extenso, he submitted that the shares in question were all along being considered and treated as not comprising part of the textile undertaking.

He referred to the order dated 13th of April, 1978 issued by the Central Government under section 18AA of the Industries (Development and Regulation) Act, 1951 (hereinafter referred to as 'the IDR Act'). This order did not purport to take over those shares held in the two companies by the Swadeshi Cotton Mills Company Limited. He also drew our attention to Volume III pages 53 and 54 of the present volumes before us, which is the reply of the Minister of Law, Justice and Company Affairs. It was clarified to the Parliament that the shares were distinct from the undertakings of the company whose management was taken over. On 27th of March, 1979 in answer to a question 977

the Minister stated that apart from the six undertakings taken over and presently run by the National Textile Corporation Limited, the business of the company comprised of:

- (i) Investments in Swadeshi Polytex Limited, Ghaziabad.
- (ii) Investments in Swadeshi Mining and Manufacturing Company Limited, a subsidiary company.
- (iii) Land development business.

He drew our attention to the letter dated 9th of April, 1979 from the Chairman, Cotton Mills Ltd. in answer to a letter by the Director, Department of Company Affairs, stating that the shares in question and the voting rights in respect thereof continued to vest in the company, i.e. Swadeshi Cotton Mills Limited in spite of the taken over of the management.

Before we proceed further we must deal with the decision of this Court in Balkrishan Gupta and others v. Swadeshi Polytex Ltd. and others, [1985] 2 S.C.R. 854. There it was observed that the fact that 3,50,000 shares had been pledged in favour of the Government of Uttar Pradesh would not make any difference. The contention that was urged on behalf of the appellant therein, namely Balkrishan Gupta related to the effect of an order made by the Central Government on 13th of April, 1978 under section 18AA(1)(a) of the IDR Act taking over the management of Swadeshi Cotton Mills along with five other industrial units belonging to the Company which was the subject matter of dispute in Swadeshi Cotton Mills v. Union of India, [1981] 2 S.C.R. 533 and the order of extension passed by the Central Government on 26th November, 1983 which was the subject matter of dispute in that case before this Court It was urged in Balkrishan v. Swadeshi Polytex (supra) on behalf of the appellants therein that on the passing of the above orders under Section 18AA(1)(a), the Cotton Mills Company lost its voting rights in respect of the shares in question. This Court held that was not so. This Court emphasised that what was taken over was the management of the six industrial

units referred to therein and not all the rights of the Cotton Mills Company. The shares belonged, it was observed, to the company and the orders referred to above could not have any effect on these. In that context, it was observed that the Department of Company Affairs, Government of India rightly expressed its view in the letter written by the Director in the Department of Company Affairs on 9th of April, 1979 to the

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Chairman of the Cotton Mills Company that the voting rights in respect of these shares continued to vest with the Cotton Mills Company and the manner in which those voting rights were to be exercised was to be determined by the Board of Directors of the Cotton Mills Company. Hence the passing of the orders under section 18AA(1)(a) of the IDR Act had no effect on the voting rights of the Cotton Mills Company. It was further observed that the Polytex Company had in that case rightly treated the registered holder i.e. the Cotton Mills Company as the owner of the shares in question and to call the meeting in accordance with the notice issued under section 169 of the Companies Act, 1956. Therefore, a challenge to the validity of the meeting was negatived. As good deal of reliance was placed on behalf of the petitioners on this decision, it must be emphasised that the decision must, however, be understood in the context of the facts and the language used in the order passed under section 18AA of the IDR Act whereby only the management had been taken over and not the rights of the company therein. But by the present Act in question on the appointed day "every textile undertaking" and "the right, title and interest of the company in relation to every textile mill of such textile undertakings" were transferred to and vested in the Central Government and such textile undertakings would be deemed to include "all assets" and so in the context of this provision the reference and the reliance on the decision of the Balkrishan Gupta & others v. Swadeshi Polytex Ltd. and others (supra) is not, in our opinion, appropriate. It is true by the IDR Act only management was taken over, but a further point was sought to be built up on behalf of the petitioners that the Act in question was passed to regularise what was taken over. So because of this decision shares were not taken over by the Act. In view of the significant difference between the objects of taking over of the assets and the taking over of the management this submission has to be stated to be rejected.

Reliance was also placed before us on the decision of the Delhi High Court in Writ Petition No. 408 of 1978. The Delhi High Court held that the shares did not vest in the Government under the order dated 13th of April, 1978 issued under section 18AA of the IDR Act. This judgment of the Delhi High Court was challenged in appeal before this Court. This Court in its judgment in Swadeshi Cotton Mills v. Union of India (supra) set aside the order of take-over dated 13th April, 1978 for violation of the principles of natural justice. But this Court did not give any finding or order with regard to the finding of the High Court that the shares were not included in the take-over order.

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It was further urged before us that this Act was preceded by an ordinance namely, Swadeshi Cotton Mills Company Limited (Acquisition and Transfer of Undertakings) Ordinance, 1986 which was promulgated on 19th of April, 1986. Section 10 of the ordinance entitled, it was submitted, NTC to exercise control over the business of the undertakings taken over. the NTC passed an order to this

effect on 25th April, 1986, but did not purport to take over the shares, according to Shri Nariman. We cannot attach much significance to that fact as Shri Nariman sought us to do.

Shri Nariman referred us to the Statement of Objects and Reasons appended to the Bill and urged that it was not intended that the shares were included in the undertaking. He submitted that the Statement of Objects and Reasons showed that the acquisition of the undertaking had to be resorted to since the order of taking over the management of the company issued under section 18AA of the IDR Act could not be continued any further.

The preamble to the Act, however, reiterated that the Act provided for the acquisition and transfer of textile undertakings and reiterated only the historical facts that the management of the textile undertakings had been taken over by the Central Government under section 18AA of the IDR Act and further that large sums of money had been invested with a view to making the textile undertakings viable and it was necessary to make further investments and also to acquire the said undertakings in order to ensure that interests of general public are served by the continuance of the undertakings. The Act was passed to give effect to the principles specified in clauses (b) and (c) of Article 39 of the Constitution. In our opinion, this was indicative of the fact that shares were intended to be taken over.

Shri Nariman, however, contended that NTC on 17th June, 1986 had issued an order under section 6 of the Ordinance transferring four of the textile undertakings to its subsidiary, the NTC, U.P. Limited. According to him, the shares were not purported to be transferred under this Order. This, however, in our opinion, is non sequitur.

It appears from the written statement filed by NTC on 8th of February, 1987 in the suit filed by one G.G. Bakshi in Ghaziabad Court, it was claimed that NTC was entitled to take over company's shares and investments. On 24/30th March, 1987 NTC issued notice to the petitioners 1 and 2 stating that they were entitled to shares. It was urged by Shri Nariman that this belated assertion indicated that the

shares were not intended to be taken over. We are unable to accept this suggestion or to draw that inference. It does not logically follow.

On the date of the take-over of the undertakings, according to Shri Nariman, 10,00,000 shares in Swadeshi Polytex Limited were attached for recovery of electricity dues of Swadeshi Cotton Mills and 3,50,000 shares were already pledged with the State Government of U.P. for securing the loans and advances made by the State Government for payment of wages. These dues fall in Part II of the Schedule to the Act and are not payable under section 25 of the Act by the Government. Shri Nariman submitted that compensation payable under the Act was not enough to pay all the dues falling in Part I. He drew our attention to the Financial Memorandum of the Bill which showed that the Government would have to pay a further sum of Rs. 15 crores over and above the compensation amount. It could not have been the intention of the Act to discharge these encumbrances, according to him, if they were to vest in the Central Government under section 3 of the Act and the result of which would be that the State of U.P. and the Electricity Board would not get anything towards their large dues. We are unable to accept this submission. This, in our opinion, is not the proper approach to the construction of the Act on the question whether the shares were taken over or not.

Shri Nariman submitted that while applying the rules of

construction of contemporanea expositio, it must be held that the shares in question did not vest in the Central Government under section 3 of the Act. This contention was to be supported from the external aids, namely, the background and history of the legislation. There were internal aids in the Act itself to support this contention. The internal aids, according to Shri Nariman, were-(a) long title of the Act which used the expression "certain textile undertakings" and "ensuring continued manufacture, production and distribution of different varieties of cloth and yarn"; (b) the Preamble to the Act also emphasises, according to Shri Nariman, that the textile undertakings which were taken over under section 18AA should be continued for purposes of manufacture, production and distribution of cloth and yarn; (c) He further submitted that the Objects and Reasons appended to the Bill also supported that view; (d) section 2(k) of the Act enumerated only six textile undertakings which alone were taken over by the order issued under section 18AA; (e) sections 7 and 8 also provided an intrinsic aid to the construction of section 4, according to him. Section 7 provided that an amount equal to the value of the assets which will vest in the NTC, would be deemed to be the Central Government's

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contribution to the equity capital of NTC and NTC shall issue shares to the Government having a face value equal to the amount specified in section 8. The amount equal to the value of the assets was Rs.24.32 crores, which was the share capital of the Government in NTC. This figure of Rs.24.32 crores does not take into account the value of the shares and hence the shares did not vest under sections 3 and 4 of the Act, according to him. (f) the expression "pertaining to" appearing in section 4(1) means "forming part of". Therefore, only those assets which formed part of the textile undertakings could vest in the Central Government, it was submitted by Shri Nariman. It was for this reason that section 25 of the Act, while dealing with penalties, used the expression "assets forming part of" the textile undertakings.

Shri Nariman further submitted that Swadeshi Polytex Limited and Swadeshi Mining and Manufacturing Company Limited were two separate undertakings distinct from the six textile undertakings belonging to Swadeshi Cotton Mills Company Limited. Acquisition of these shares having controlling interests in the said two companies was never intended and could never be said to be within the scope of the Act. The expression "in relation to the six textile undertakings" appearing in sections 3 and 4 of the Act, was an expression of limitation, according to him, indicative of the intention of acquiring of only the textile undertakings and no other. There existed no public purpose, according to Shri Nariman, for acquiring these shares. The public purposes mentioned in the Act with reference to Article 39(b) and (c) related to the acquisition of only the textile undertakings of Swadeshi Cotton Mills and not acquisition of the synthetic fibre undertakings of Swadeshi Polytex or sugar undertakings of Swadeshi Mining and Manufacturing Company Limited.

Dr. Chitale appearing on behalf of Swadeshi Mining and Manufacturing Company Limited (as respondent in SLP (Civil) No. 5240 of 1987 in which NTC is the petitioner) supported Shri Nariman and advanced certain arguments. His main arguments were:

- (1) Swadeshi Polytex Limited and Swadeshi Mining and Manufacturing Company Limited were two distinct

undertakings different from the six textile undertakings belonging to Swadeshi Cotton Mills Company Limited. Section 3 of the Act, therefore, according to him, could not be so construed as to enable the Government to indirectly acquire altogether different undertakings belonging to a different company.

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(2) Swadeshi Mining and Manufacturing Company Limited had also coal-mines. When Coal-mines (Nationalisation) Act, 1973 was passed with reference to sections 3 and 6 thereof, it were the coal-mines belonging to the said company along with the right, title and interest of the owners in relation to the coal-mines which vested in the Central Government by operation of the Act, we were reminded.

(3) Dr. Chitale submitted that the Act with which we are concerned uses the expression "pertaining to" in section 4, which according to him is narrower than the expression "in relation to" used in section 3 of the Coal-mines (Nationalisation) Act, 1973. When the coal-mines were nationalised, the sugar undertakings of Swadeshi Mining were not taken over since these constituted separate undertakings distinct from the coal-mines. He referred to Entries 655, 656 and 657 of the Schedule to the Coal-mines (Nationalisation) Act, 1973.

(4) Dr. Chitale submitted that the expression "investment" may belong to a fund which may be created, the interests of which may be used for payment of gratuity or provident fund to the employees. The expression "investment" cannot be applied in the context of the shareholdings of a separate undertaking, according to him.

Shri S.B. Mukerjee, appearing on behalf of Swadeshi Cotton Mills had relied on the decision of the Delhi High Court, See Volume III pages 64 to 169, which according to him, clearly held that the shares in question were not part of the textile undertakings and, in fact, the said shares were not taken over along with the six textile undertakings belonging to Swadeshi Cotton Mills Limited, which we have discussed. Shri Mukerjee further relied on the clarification given by the Company Law Board which showed that the voting rights in respect of the shares continued to vest in Swadeshi Cotton Mills and not in NTC. He referred to the decision in Balkrishan Gupta and others v. Swadeshi Polytext Ltd. and another (supra), which has also been discussed. The expression "relating to" and "pertaining to" are words of limitation and they cannot be so construed as to take within their fold shares held by Swadeshi Cotton Mills, an independent company doing its business, according to him.

Learned Solicitor General of India appearing on behalf of the National Textile Corporation in all these cases submitted that the facts

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stated by way of background and the sequence of events up to the date of enactment of the Act were not relevant to the decision as to the scope, ambit and effect of the vesting provisions contained in sections 3 and 4 of the Act. The sequence of events narrated by the petitioners prior to the enactment of the Act all related to the order of take-over of the undertakings of Swadeshi Cotton Mills Company issued on 13th April, 1978 by the Central Government in exercise of its powers under section 18AA of the IDR Act. The object and purpose of the said order of take-over of management of the textile undertakings was completely different from the

object and purpose of the Act which related to acquisition and transfer of the undertakings. We agree. The scope of the vesting provisions contained in section 3 of the Act would have to be determined per force of its own language employed by Parliament and not with reference to what transpired either before or after the order of take-over of the management dated 13th April, 1978 passed under section 18AA of the IDR Act. Section 3 of the Act, according to Solicitor General, contained the vesting provisions as was evident from its own language and also from the marginal note appended thereto.

For determining the question involved in these matters, it is necessary to bear in mind the relevant provisions of law. The preamble to the Act in question provided as indicated before that this was an Act for the acquisition and transfer of certain textile undertakings of the Swadeshi Cotton Mills Company Limited with a view to securing the proper management of such undertakings so as to subserve the interests of the general public by ensuring the continued manufacture, production and distribution of different varieties of cloth and yarn. The preamble further reiterated that it was to give effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39 of the Constitution. It reiterated that large sums of money had been invested with a view to making the said textile undertakings viable. It further reiterated that large sums of money were necessary for the purpose of securing the optimum utilisation of the available facilities.

Section 3 of the said Act provides for transfer and vesting of the textile undertakings. The material portions of sections 3 and 4 are as follows:

"3(1) On the appointed day, every textile undertaking and the right, title and interest of the Company in relation to every such textile undertaking shall, by virtue of this Act,

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stand transferred to, and shall vest in the Central Government.

(2) Every such textile undertaking which stands vested in the Central Government by virtue of sub-section (1) shall, immediately after it has so vested, stand transferred to, and vested in the National Textile Corporation.

4.(1) The textile undertakings referred to in section 3 shall be deemed to include all assets, rights, lease-holds, powers, authorities and privileges and all property, movable and immovable, including lands, buildings, workshops, stores, instruments, machinery and equipment, cash balances, cash on hand, reserve funds, investments and book debts pertaining to the textile undertakings and all other rights and interests in, or arising out of such property as were immediately before the appointed day in the ownership, possession, power or control of the Company in relation to the said undertakings, whether within or outside India, and all books of account, registers and all other documents of whatever nature relating thereto.

(2) All property as aforesaid which have vested in the Central Government under sub-section (1) of section 3 shall, by force of such vesting, be freed and discharged from any trust, obligation mortgage, charge, lien and all other encumbrances

affecting it, and any attachment, injunction or decree or order of any court or other authority restricting the use of such property in any manner shall be deemed to have been withdrawn.

(3).....

(4).....

(5).....

(6).....

Section 7 deals with the shares to be issued by the National Textile Corporation for the value of the assets transferred to it by the Central Government. It reads as follows:

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"7. An amount equal to the value of the assets of the textile undertakings transferred to and vested in the National Textile Corporation under sub-section (2) of section 3 shall be deemed to be the contribution made by the Central Government to the equity capital of the National Textile Corporation; and for the contribution so made, the National Textile Corporation shall issue (if necessary after amending its memorandum and articles of association) to the Central Government paid up shares, in its equity capital having a face value equal to the amount specified in section 8."

Section 8 which is material provides as follows:

"8. For the transfer to, and vesting in, the Central Government, under section 3, of the textile undertakings of the Company, and the right, title and interest of the Company in relation to such undertakings, there shall be given by the Central Government to the Company in cash and in the manner specified in Chapter VI, an amount of rupees twenty-four crores and thirty-two lakhs."

Section 10 of the Act deals with the management etc. of the textile undertakings. Section 12 of the Act deals with the provisions relating to the employees of the textile undertakings. Section 24 of the Act provides that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law, other than this Act, or in any decree or order of any court, tribunal or other authority. Section 25 provides for the assumption of liability. It is the true effect and purport of these sections that requires consideration and adjudication.

It appears to us that section 27 of the Act where the expression "forming part of" is used, would have no bearing on the vesting provisions and its wide language. The expression "forming part of" according to the learned Solicitor General is merely descriptive of what is actually vested under the vesting provision. The properties which, on the appointed day, i.e. with effect from 1.4.1985, became part of the taken over properties which might not be dealt with in any manner contrary to the provisions of the Act.

Shri K.K. Venugopal, appearing on behalf of Doypack Systems

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Private Limited in Transferred Case No. 13 of 1987 submitted that the present case is directly covered by several decisions of this Court. He referred to the following decisions National Textile Corporation v. Sita Ram Mills, [1986] Suppl. S.C.C. 117; Minerva Mills v. Union of India,

[1986] 4 S.C.C. 222; Goverdhan Das Narasingh Das Daga v. Union of India, [1986] 4 S.C.C. 249; Vidharba Mills Berar Ltd. v. Union of India, [1986] 4 S.C.C. 248 and Fine Knitting Co. Ltd. v. Union of India, [1986] 4 S.C.C. 276.

It was emphasised that section 3 of the Act provided that in addition to the textile undertaking "the right, title and interest of the company in relation to every such textile undertaking is to vest". Therefore, it was urged by Shri Venugopal that so applying the five decisions cited earlier, if the shares were held for the benefit of and/or utilised for the textile undertakings they would vest in the Government under the provisions of section 3 of the Act itself. He emphasised like others that "pertaining to" would mean "in relation to" in the species of properties mentioned in section 4(1) of the Act. He further submitted that if the amount of compensation declared to be payable to the erstwhile owners of the undertakings acquired, was a test for deciding whether a particular piece of property also stood acquired or not, then it was submitted that it may be open to the erstwhile owners to contend that even what is expressly stated to have been vested in the Government, would not vest in the absence of compensation paid. That was untenable.

In any event as against the clear words, according to Shri Venugopal, of section 3 and section 4 read with section 2(k), the failure to provide for compensation for three out of the six undertakings would not result in three out of six undertakings being not vested in the Government. Shri Venugopal submitted that the antecedent computation of value by the executive is wholly irrelevant for determining the intention of Parliament. Reference was made to Kumari Sunita Ramachandra v. State of Maharashtra and another, [1986] 1 S.C.R. 697 at 704, c to e and Doctor (Mrs.) Sushma Sharma v. State of Rajasthan, [1985] 3 S.C.R. 243 at 263.

Shri Anil B. Diwan on behalf of Mukesh Bhasin, in Suit No. 506 of 1987 (Transferred Case No. 14 of 1987) submitted that the Objects and Reasons of the mover of the Bill are not admissible as aids to construction since it is impossible to contend that the Objects and Reasons in the minds of some officials of the Government before the matter is discussed by the Cabinet, would at all be relevant. Reference

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may be made to State of West Bengal v. Union of India, [1964] 1 S.C.R. 371 at 379, 380, 381, 382; The Central Bank of India v. Their Workmen, [1960] 1 S.C.R. 200 at 217. It was further submitted that subsequent documents and/or views of the officers of the Government are not admissible as legitimate aids to the construction of a statute. Reliance placed by the petitioners on the documents at pages 452-456 of Volume II as an aid to the interpretation or construction of sections 3 and 4 of the Act was totally misconceived. See the observations in Babaji Kondaji Garad v. Nasik Merchants Cooperative Bank Ltd., Nasik and others, [1984] 2 S.C.C. 50 paragraphs 14 and 15 and Dr.(Mrs.) Sushma Sharma and others v. State of Rajasthan and others (supra). It was, therefore, urged that the material not availed by the Parliament could never affect or influence the collective intention of the Parliament. The authentic voice is only that of the Parliament. Reference may be made to the observations in Sanjeev Coke Manufacturing Company v. Bharat Coking Coal Ltd. and another, [1983] 1 S.C.R. 1000 at 1029. It was submitted that the documents which were prepared for the submission to the Cabinet and which related to the inner working of the Government were not admissible and/or

legitimate aids to the construction of statute and therefore not relevant in deciding which assets of SCM vested in the Central Government under sections 3 and 4 of the Act. It was further submitted that etymological and plain meaning of the word "relation" is relation by birth or relation by sacrament like marriage or relation in the form of business connection or dealings. It was further submitted that an asset or investment which is created from the earnings of the undertakings is clearly related to the undertakings by its inception or birth. An asset or investment, according to Shri Anil B. Diwan, which is utilised to preserve and/or give vitality to an undertaking is equally related or pertained to the same.

Shri A.K. Ganguli, counsel appearing on behalf of M/s. Doypack Systems Pvt. Ltd. in SLP (Civil) Nos. 4826 and 7045 of 1987 submitted that even assuming (though not admitting) that the expressions "pertaining to" and "in relation to" appearing in sub-section (1) of section 4 of the Act have limited or restricted meaning, by the plain language of section 3, which is the vesting provision read with sections 2(k) and 4(1), the shares in question would also vest in the Central Government. Under section 3 of the Act what vests in the Central Government on the appointed day are: (i) every textile undertaking; and (ii) the right, title and interest of the company in relation to every such textile undertaking. The meaning, scope and effect of the expression "textile undertaking" appearing in section 3(1) of the Act would

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have to be understood by a combined reading of sections 2(k) and 4(1) of the Act. Section 2(k) while defining the expression "textile undertaking", identifies the textile mills concerned while section 4(1), by adoption of deeming provisions, spells out the properties which vest along with the concerned textile mills by reason of their direct nexus with the mills.

The expression "forming part of" appearing in section 27, according to Shri Ganguly, is merely descriptive of the properties already vested in the Central Government under section 3. Section 1(2) of the Act provided that the provisions of the Act including sections 3 and 4 shall be deemed to have come into force retrospectively with effect from 1.4.1985 and sections 27 and 28 shall come into force at once. Thus the properties which stood vested in the Central Government with effect from 1.4.1985 already "formed part of" the textile undertakings on the date of the Act when section 27 came into force (i.e. w.e.f. 30.5.1986). The properties which already stood vested and formed part of the textile undertakings could not be dealt with in any manner other than those permissible under the Act. Section 27 containing the penalty provisions could, therefore, validly and justifiably be given effect to after it came into force on 30.5.1986 when the Act was enacted. The meaning of the expression "pertaining to" appearing in the first limb of section 4(1), therefore, cannot be gathered from the language employed in section 27.

Shri Ganguli further submitted that the first part of section 7 provided that the amount equal to the value of the assets of the textile undertakings which is vested under section 3 would be the contribution of Central Government made to the equity capital of the National Textile Corporation. The second part of section 7 provided that for the contribution so made by the Central Government, National Textile Corporation shall issue to the Government paid-up shares in its equity capital having a face value equal to

the amount specified in section 8.

If the legislative intention, it was urged by Shri Ganguli, was that the National Textile Corporation shall issue paid-up shares (in its equity capital) to the Central Government of the value equal to the value of the assets, which was deemed to be the contribution of the Central Government, then the language of the second part of this section would have been the same as used in the opening words of section 7 itself.

Shri S.N. Kacker elaborated the submissions of the petitioner

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mentioned hereinbefore and submitted that the shares could not have been intended in view of the facts and circumstances of the case, the language used and the data available to take over by sections 3 and 4 of the Act.

Before we deal with the main question we have to consider the application made by Shri Nariman for production of certain documents. The production of the documents has been resisted by the learned Attorney General on the ground that these are not relevant and in any event most of these documents are privileged being part of the documents leading to the tendering of the advice by the Cabinet to the President as contemplated by Article 74(2) of the Constitution. The petitioner in Transferred Case No. 13 of 1987, has sought production of certain documents enumerated at page 82, para 85 of Vol. IV, which are as follows:

(1) Proposal of the Textile Ministry in respect of Nationalisation of the six textile undertakings including the notes and memorandum specially in respect of calculation and determination of assets and liabilities in respect of six textile undertakings of Petitioner No. 2 in the year 1983-84 and the opinion of the Law Department then obtained.

(2) Proposal of the Textile Ministry in respect of nationalisation of the six textile undertakings in the year 1985-86 including all notes and memorandum in respect thereof.

(3) Opinion of Law Department as rendered to the Textile Ministry.

(4) Proposal of the Textile Ministry in respect of the drafting of the Ordinance and the Act by the Legislative Ministry.

(5) Details of properties taken into consideration for the determination of amount under section 8 of the Ordinance/Act.

(6) Proposal of the Textile Ministry in the form of Cabinet Notes for the approval of the Cabinet in the matter of promulgation of Ordinance/framing of the Act, and

(7) Notes and Memorandum prepared by the Ministry of Textile/Ministry of law at or before framing of the Ordinance/Act and subsequent thereto relating to the acquisition of the textile undertakings.

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It was contended that production of these was necessary to establish that the shares were never intended to be taken over and these were never considered as part of the textile undertaking. It was urged that the shares were not taken into account in computing the figure of compensation amounting to Rs.24.32 crores referred to in section 8 of the Act. It was submitted that these documents are definitely relevant as they would throw light on the merits of the case. They would advance the case of the petitioners and destroy, according to the petitioners, the case of the

respondent. It was submitted that sections 7 and 8 of the said Act, were intrinsic aids to construe section 4. The factual foundation necessary for the argument based on sections 7 and 8 of the said Act, was that the shares etc., were excluded in computing the figures of 24.32 crores. It was submitted that these documents were required to establish this factual foundation. The petitioner alleged that shares had been excluded in the computation of compensation and the petitioner had been so informed by the Hon'ble Minister. In reply the Central Government asserted that compensation has been computed lumpsum and not itemwise. According to the petitioner, the stand of the Government that the compensation was computed lumpsum, was not borne out by the documents. It was, therefore, necessary to seek production of those documents. It was submitted by Shri Nariman that the submissions of the Solicitor General in so far as these dealt with the balance-sheet made it even more important that the Government should be directed to produce these documents. The calculations made by the petitioner had merely been denied by NTC which had in its possession the books of account as also all balance-sheets prior to the balance-sheet as on April 1, 1985. It is wrongly suggested that the calculations are hypothetical. It was urged by the petitioner that the calculations made by the petitioners were not hypothetical. The correctness or otherwise of the said figure, according to the petitioners, would be demonstrated from the said documents.

On behalf of the Union of India, the learned Attorney General submitted that records and documents whose production was sought for, were not relevant for deciding the matters of controversy in the instant case.

In our opinion Sections 3 and 4 of the Act interpreted either on their own language or along with sections 7 and 8, are not ambiguous; so documents are not relevant. It was further urged, that even if to construe the language is not clear and there is need to resort to aids of construction, it is clear that such aids can be either internal or external.

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Internal aids of construction are definitions, exceptions, explanations, fictions, deeming provisions, headings, marginal notes, preamble, provisos, punctuations, saving clauses, non-obstante clauses etc. The notings in the files of various officials do not fall in the category of internal aids for consideration. Dictionaries, earlier acts, history of legislation, Parliamentary history, parliamentary proceedings, state of law as it existed when the Act was passed, the mischief sought to be suppressed and the remedy sought to be advanced by the Act are external aids. Documents which have been required to be produced do not, in our view fall within the category of external aids as indicated. Having considered the facts and circumstances of the case, we are unable to accept the prayer of the petitioner to direct disclosure and production of the documents sought for. In our opinion, the language used in section 4 of the Act, is clear enough read with section 3 of the Act. We have set out the provisions of the said two sections. Section 3 states that "on the appointed day every textile undertaking and the right, title and interest of the Company in relation to every textile undertaking shall stand transferred to and shall vest in the Central Government". Section 4 says that "section 3 shall be deemed to include all assets, leaseholds, powers, authorities, privileges and all properties, movable and immovable ... pertaining to the textile undertakings and all other rights and interests in

or arising out of such property".

Francis Bennion in "Statutory Interpretation 1984 Edition page 526 para 238 states that Hansard reports, and other reports of parliamentary proceedings on the Bill which became the Act in question, are of obvious relevance to its meaning. They are often of doubtful reliability however. (emphasis supplied) The documents in question which are sought for do not relate to the enacting history or any past enactment or the present enactment. The notings made in various Departments at various levels by the officers namely, the Under Secretary, Deputy Secretary, Joint Secretary; Secretary etc., whatever their view might be, is not the view of the Cabinet. The ultimate decision is taken by the Cabinet. So the notings cannot and are not guides as to what decision the Cabinet took. See for example the Task Force report referred to in National Textile Corporation Ltd. v. Sitaram Mills Ltd. & others (supra). This Task Force Report demonstrated the irrelevancy of the documents summoned to be produced. The Task Force Report manifested that certain mills were viable. But from the circumstance under which managements of these mills were taken over, it was clear that the Cabinet had taken the decision contrary to what was contained in the Task Force Report. But it appears

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that the decision of the Cabinet was different from the views of the Officers at various levels. As Bennion has stated at para 261 (page 560 of the same book) that in interpreting an enactment a two stage approach is necessary. Here there is no real doubt on an informed basis as we shall indicate hereafter about the real meaning of the enactment. There is therefore no question of resolving the doubt. The second stage does not arise here.

This Court in Sanjeev Coke Manufacturing Company v. Bharat Coking Coal Ltd. and another (supra) held that no one may speak for the Parliament and Parliament is never before the Court. After the Parliament has said what it intends to say, only the Court may say what the Parliament meant to say. None else. See also in this connection Dr. (Mrs.) Sushma Sharma and others v. State of Rajasthan and others (supra). The objects and purposes of the person who initiated the Bill are not admissible as aids to construction since it is impossible to contend that such purposes in the minds of some officials of the Government before the matter is discussed by the Cabinet, would at all be relevant. See in this connection State of West Bengal v. Union of India (supra) where this Court reiterated that the Statement of Objects and Reasons, accompanying when introduced in the Parliament cannot be used to determine the true meaning and effect of the substantive provisions of the statute. Such statement cannot be used to show that the legislature did not intend to take over any particular property. See also The Central Bank of India v. Their Workmen (supra).

It has to be reiterated, however that the objects and reasons of the Act should be taken into consideration in interpreting the provisions of the statute in case of doubt. This is the effect of the decision of this Court in K.P. Verghese v. The Income tax Officer, Ernakulam and another, [1982] 1 S.C.R. 629, where this Court reiterated that the speech made by the Mover of the Bill explaining the reason for the introduction of the Bill could certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation was enacted. It has been reiterated

that interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible. See in this connection the observations of this Court in *Chern Taong Shang & anr. etc. etc. v. Commander S.D. Baijal & Ors.*, J.T. 1988 1 S.C. 202. The documents now sought for by the petitioner do not fall within this category. It is neither the object and scheme of the enactment nor the language used therein, that is

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sought for in the instant case. It is certainly relevant to know the mischief that was intended to be remedied. But in the documents in question which the petitioner is seeking no such correlation has been established. These are, therefore, not relevant. We reiterate that no officer of the Department can speak for the Parliament even after the Act has been passed. This Court has to interpret the Act on the basis of informed basis by applying external and internal aids if the language is ambiguous. In the words of Lord Scarman "We are to be governed not by Parliament's intentions but by Parliament's enactments". See Cross "Statutory Interpretation" 2nd Edition page 22. Blackstone in his "Commentaries on the Laws of England" (Facsimile of 1st edn. 1765, University of Chicago Press 1979) Vol. 1 at 59 suggests "The fairest and most rational method to interpret the will of the legislator is by exploring his intention at the time when the law was made, by signs most natural and probable. And these signs are the words, the context, the subject matter, the effect and consequence, or the spirit and reason of the law." The documents whose production is sought for are none of these. So in our opinion these are not relevant. We must further reiterate that the Members of Parliament had before them only the Bill. The notings of the various officials in the files were not before the Parliament. Therefore members could not be attributed with the knowledge of the notings in the files. Therefore, the notings made by the officials are not relevant. In this connection reliance may be placed on the principles of interpretation as enunciated by the Federal Court in *Auckland Jute Co. Ltd. v. Tulsi Chandra Goswami*, [1949] F.C.R. 201 at 244. It is trite saying that the interpreter of the statute must take note of the well known historical facts. In conventional language the interpreter must put himself in the arm chair of those who were passing the Act i.e. the Members of the Parliament. It is the collective will of the Parliament with which we are concerned. See in this connection the observations of the Federal Court in *RM.AR.AR.R.M.AR. Umayhal Achi v. Lakshmi Achi and others*, [1945] F.C.R. 1. We are therefore, of the opinion that the documents sought for are not relevant for the purpose for which they were sought for. In this case we are concerned only with the construction of the statute to determine whether the shares vested in the Government or not. As Lord Reid has said in *Black-Clawson International Ltd. v. Papierwerke Waldhof Achaffenburg A G*, [1975] A.C. 591 at 613 "We often say that we are looking for the intention of Parliament, but that is not quite accurate. We are seeking the meaning of the words which Parliament used. We are seeking not what Parliament meant but the true meaning of what they said." See in this connection the discussion in Cross *Statutory Interpretation*-2nd Edition, pages 20-30.

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The next question for consideration is that by assuming that these documents are relevant, whether the Union of India is liable to disclose these documents. Privilege in respect of these documents has been sought for under Article

74(2) of the Constitution on behalf of the Government by learned Attorney General.

Shri Nariman however, submitted on the authority of the decision of this Court in *S.P. Gupta v. Union of India and others*, [1982] 2 S.C.R. 365 at page 594 that the documents sought for herein were not privileged. The context and the nature of the documents sought for in *S.P. Gupta's* case (supra) were entirely different. In this case these documents as we see are part of the preparation of the documents leading to the formation of the advice tendered to the President of India and as such these are privileged under Article 74(2) of the Constitution which provides that the question whether any, and if so what, advice was tendered by Ministers to the President shall not be enquired into in any court. This Court is precluded from asking for production of these documents. In *S.P. Gupta's* case (supra) the question was not actually what advice was tendered to the President on the appointment of Judges. The question was whether there was the factum of effective consultation between the relevant constitutional authorities. In our opinion that is not the problem here. We are conscious that there is no sacrosanct rule about the immunity from production of documents and the privilege should not be allowed in respect of each and every document. We reiterate that the claim of immunity and privilege has to be based on public interest. Learned Attorney General relied on the decision of this Court in the case of *State of U.P. v. Raj Narain*, [1975] 3 S.C.R. 333. The principle or ratio of the same is applicable here. We may however, reiterate that the real damage with which we are concerned would be caused by the publication of the actual documents of the Cabinet for consideration and the minutes recorded in its discussions and its conclusions. It is well settled that the privilege cannot be waived. In this connection, learned Attorney General drew our attention to an unreported decision in *The Elphinstone Spinning and Weaving Mills Company Ltd. v. Union of India and others*, Writ Petition No. 2401 of 1983. This resulted ultimately in *Sitaram Mills's* case (supra). The Bombay High Court held that the Task Force Report was withheld deliberately as it would support the petitioner's case. It is well to remember that in *Sitaram Mills's* (supra) this Court reversed the judgment of the Bombay High Court and upheld the take over. Learned Attorney General submitted that the documents there were not tendered voluntarily. It is well to remember that it is duty of this Court to prevent disclosure where Article 74(2) is applicable. We are

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convinced that the notings of the officials which lead to the Cabinet note leading to the Cabinet decision formed part of the advice tendered to the President as the Act was preceded by an ordinance promulgated by the President.

We respectfully follow the observations in *S.P. Gupta and others v. Union of India and others* (supra) at pages 607, 608 and 609. We may refer to the following observations at page 608 of the report:

"It is settled law and it was so clearly recognised in *Raj Narain's* case (supra) that there may be classes of documents which public interest requires should not be disclosed, no matter what the individual documents in those classes may contain or in other words, the law recognises that there may be classes of documents which in the public interest should be immune from disclosure. There is one such class of documents which for years has been recognised by the law as entitled

in the public interest to be protected against disclosure and that class consists of documents which it is really necessary for the proper functioning of the public service to withhold from disclosure. The documents falling within this class are granted immunity from disclosure not because of their contents but because of the class to which they belong. This class includes cabinet minutes, minutes of discussions between heads of departments, high level inter-departmental communications and despatches from ambassadors abroad (vide *Conway v. Rimmer*, [1969] Appeal Cases 910 at pp. 952, 973, 979, 987 and 993 and *Reg v. Lewes J.K. Ex parte Home Secretary*, [1973] A.C. 388 at 412. Papers brought into existence for the purpose of preparing a submission to cabinet vide *Lanyon Property Ltd. v. Commonwealth*, 129 Commonwealth Law Reports 650 and indeed any documents which relate to the framing of government policy at a high level (vide re. *Grosvenor Hotel, London* [1964] 3 All E.R. 354 (CA)).

Cabinet papers are, therefore, protected from disclosure not by reason of their contents but because of the class to which they belong. It appears to us that Cabinet papers also include papers brought into existence for the purpose of preparing submission to the Cabinet. See *Geoffrey Wilson cases* and *Materials on Constitutional and Administrative Law*, 2nd Edition pages 462 to 464. At page 463 para 187, it was observed:

"The real damage with which we are concerned would be caused by the publication of the actual documents of the Cabinet for consideration and the minutes recording its discussions and its conclusions. Criminal sanctions should apply to the unauthorised communication of these papers."

See in this connection *State of Bihar v. Kripalu Shankar*, A.I.R. 1987 S.C. 1554 at page 1559 and also the decision of *Bachittar Singh v. State of Punjab* [1962] Suppl. 3 S.C.R. 713. Reference may also be made to the observations of Lord Denning in *Air Canada and others v. Secretary of State and another*, [1983] 1 All E.R. 161 at 180.

We therefore, reject the claim for production of these documents.

In view of the language used in the relevant provisions, it appears to us that section 3 has two limbs: (i) textile undertakings; and (ii) right, title and interest of the company in relation to every such textile undertaking. The expression "textile undertaking" has been defined in section 2(k) to mean the six textile undertakings of the company specified therein. The definition of the said expression in section 2(k) is, however, subject to the opening words of the section which provide, "In this Act, unless the context otherwise requires". In the context of the expression "textile undertakings" employed in section 3(1) of the Act, section 4(1) provides that the textile undertakings referred to in section 3 shall be deemed to include all assets, rights, leaseholds, powers, authorities and privileges and all property, movable and immovable, including lands, buildings, workshops, stores investments and book debts pertaining to the textile undertakings and all rights and interests in or arising out of such property as are, immediately before the appointed day, in the ownership, possession, power or control of the

company in relation to all six undertakings. The expressions "pertaining to", "in relation to" and "arising out of", used in the deeming provision, are used in the expansive sense, as per decisions of courts, meanings found in standard 'dictionaries, and the principles of broad and liberal interpretation in consonance with Article 39(b) and (c) of the Constitution.

The words "arising out of" have been used in the sense that it comprises purchase of shares and lands from income arising out of the Kanpur undertaking. We are of the opinion that the words "pertaining to" and "in relation to" have the same wide meaning and have been used interchangeably for among other reasons, which may include

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avoidance of repetition of the same phrase in the same clause or sentence, a method followed in good drafting. The word "pertain" is synonymous with the word "relate", see Corpus Juris Secundum, Volume 17, page 693.

The expression "in relation to" (so also "pertaining to"), is very broad expression which pre-supposes another subject matter. These are words of comprehensiveness which might have both a direct significance as well as an indirect significance depending on the context, see State Wakf Board v. Abdul Aziz, A.I.R. 1968 Madras 79, 81 paragraphs 8 and 10, following and approving Nitai Charan Bagchi v. Suresh Chandra Paul, 66 C.W.N. 767, Shyam Lal v. M. Shayamlal, A.I.R. 1933 All 649 and 76 Corpus Juris Secundum 621. Assuming that the investments in shares and in lands do not form part of the undertakings but are different subject matters, even then these would be brought within the purview of the vesting by reason of the above expressions. In this connection reference may be made to 76 Corpus Juris Secundum at pages 620 and 621 where it is stated that the term "relate" is also defined as meaning to bring into association or connection with. It has been clearly mentioned that "relating to" has been held to be equivalent to or synonymous with as to "concerning with" and "pertaining to". The expression "pertaining to" is an expression of expansion and not of contraction.

As to what an undertaking means, has been clarified in R.C. Cooper v. Union of India, [1970] 3 S.C.R. 530 at pages 567, 568, 635, where the Act of 1969 was challenged. It was held that the meaning of the expression "undertaking" is a going concern as distinct from its assets and liabilities. It was also observed that it covered every corner of property, right, title and interest therein. This Court rejected one of the grounds of challenge as there was no evidence that the named banks held any assets for any distinct non-banking business, which finding gives an idea as to what could have been excluded from the acquisition of the undertaking.

Reading the provisions of section 3(1), section 4(1) and section 2(k) of the Act, each throwing light on the other, it follows that-(a) under the first limb of section 3(1) of the Act every textile undertaking; (b) under the second limb of section 3(2) every right, title and interest of the company in relation to every such undertaking, is transferred and vested. (c) The deeming provision of section 4(1) amplifies and enlarges both the limbs of the vesting section, being section 3(1). (d) The definition of section is read into these provisions, to give a

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wider meaning and scope to the vesting provision and to what is transferred or vested.

Sections 7 and 8 of the Act relied upon by the

petitioners, being provisions for payment of amounts and for the issue of shares by NTC respectively, will have no bearing on the scope of the vesting provision. As to what properties have vested cannot proceed on the hypothesis that there is a clear numerical or mathematical link between the quantum of compensation and the items of property vested. This correlation with regard to such legislation is not available. In this connection reference may be made to the decision of this Court in *Khajamian Wakf Estates etc. v. State of Madras & another*, [1971] 2 S.C.R. 790 at page 796 B-E.

Section 8 refers to payments of amounts by the Union of India to the company. It has no bearing either on the vesting section or on section 7 except that the figure of Rs.24 crores 32 lakhs mentioned therein was introduced into section 7. The provisions of this section are no different from the provisions of the similar sections in the earlier Act of 1974. For example, under section 8 of the Sick Textile Undertakings Nationalisation Act, 1974 (page 59 of Vol. X), the amount mentioned is specified in the first schedule as there are a number of companies involved. This provision cannot be the starting point for investigation as to which amount relates to which property or as a guide to construction.

It appears to us from the Delhi High Court decision (*supra*) and the decision of this Court in *Balkrishnan Gupta's case (supra)* as well as the statement of the Minister in December, 1985 that there were legal difficulties, in respect of taking over, under the 1951 IDR Act. The IDR Act was-(a) concerned with the management of scheduled industries in, inter alia, running of factories, where there was no deeming provision in such wide terms; (b) it was concerned with setting up of machinery for imposing controls on industrial undertakings, see *Harakchand Ratanchand Banthia and others etc. v. Union of India and others*, [1970] 1 S.C.R. 479 at page 496 F and G.

We are further of the opinion that the decision in *Harakchand Ratanchand (supra)* would not be applicable. In this case, the Court is concerned with a nationalisation statute. Even with other independent management statutes, in respect of textile undertakings a series of decisions have upheld the view that the shares vest in the Government. See *National Textile Corporation Ltd. v. Sitaram Mills (supra)*; 999

Minerva Mills Ltd. and others etc. etc. v. Union of India and others (supra); *Govardhandas Narasinghdas Daga and others v. Union of India and others (supra)*; *Fine Knitting Mills Ltd. & Ors. v. Union of India & Ors. (supra)* and *Vidharbha Mills Berar Ltd. v. Union of India (supra)*. The above provide the informed basis on which we make the construction of sections 3 and 4 of the Act.

The expression "and all other rights and interests in or arising out of such property, as were immediately before the appointed day, in the ownership, possession, power or control of the company in relation to the said undertakings", appearing in sub-section (1) of section 4 of the Act indicates that the shares which have been purchased from out of the funds of the textile undertakings and which have been held for the benefit of the said textile undertakings, would come within the scope of section 4 of the Act and thus would also vest in the Central Government under section 3. The origin of these shares and their connection with the textile undertakings have been fully corroborated. The textile business is the only business of *Swadeshi Cotton Mills*. There is inter-connection and inter-

relation between all the six undertakings. Investments in Swadeshi Polytex Limited from the funds of Kanpur undertaking have always been made. Investments in Swadeshi Mining and Manufacturing Company Ltd. were always made from the funds of the Kanpur undertaking. Assets/investments held and used for the benefit of the textile business of SCM, were carried on in its textile undertakings.

The words in the statute must, *prima facie*, be given their ordinary meaning. Where the grammatical construction is clear and manifest and without doubt, that construction ought to prevail unless there are some strong and obvious reasons to the contrary. Nothing has been shown to warrant that literal construction should not be given effect to. See *Chandavarkar S.R. Rao v. Asha Lata*, [1986] 4 S.C.C. 447 at page 476, approving 44 Halsbury's Laws of England, 4th Ed. paragraph 856 at page 552, *Nokes v. Doncaster Amalgamated Colliery Limited*, [1940] Appeal Cases 1014 at 1022. It must be emphasised that interpretation must be in consonance with the Directive Principles of State Policy in Article 39 (b) and (c) of the Constitution.

It has to be reiterated that the object of interpretation of a statute is to discover the intention of the Parliament as expressed in the Act. The dominant purpose in construing a statute is to ascertain the intention of the legislature as expressed in the statute, considering it as a whole and in its context. That intention, and therefore the meaning

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of the statute, is primarily to be sought in the words used in the statute itself, which must, if they are plain and unambiguous, be applied as they stand. In the present case, the words used represent the real intention of the Parliament as we have found not only from the clear words used but also from the very purpose of the vesting of the shares. If we bear in mind the fact that these shares were acquired from out of the investments made by these two companies and furthermore that the assets of the company as such minus the shares were negative and further the Act in question was passed to give effect to the principles enunciated in clauses (b) and (c) of Article 39 of the Constitution, we are left with no doubt that the shares vested in the Central Government by operation of sections 3 and 4 the Act. See in this connection the observations of Halsbury's Laws of England, 4th Edition, Volume 44, paragraph 856 at page 522 and the cases noted therein.

There is no exact correlation between the figure of capital reserve and the figure of investments. That, in our opinion cannot be. These can never be exactly equal. The submission of the petitioner fails to take into account the fact that the undertakings other than the Kanpur undertaking, also have capital reserve, even though there is no allegation that these were excluded assets in respect of other undertakings and there were no figures of investments therein. The covering letter for these documents, page 408 of Volume II, itself stated that the provisional balance-sheet shows investments which included these shares as part of assets. With regard to the figure of Rs. 11 lakhs taken in the calculation filed by the petitioner, we find that the calculations filed by the petitioner were not supportable.

Contemporanea Expositio, is a well-settled principle or doctrine which applies only to the construction of ambiguous language in old statutes. Reliance may be placed in this connection on Maxwell 13th Ed. page 269. It is not applicable to modern statutes. Reference may be made to G.P. Singh, Principles of Statutory Interpretation, 3rd Edn.

pages 238 and 239. As noted in Maxwell on The Interpretation of Statutes, 12th Edition at page 269 that the leading modern case on contemporanea expositio is the case of Campbell College, Belfast v. Commissioner of Valuation for Northern Ireland, [1964] 1 W.L.R. 912 in which House of Lords has made it clear that the doctrine is to be applied only to the construction of ambiguous language in the very old statutes. It is therefore well to remember what Lord Watson said in Clyde Navigation Trustees v. Laird, [1983] 8 A.C. 658 that contemporanea expositio could have no application to a modern Act. We, therefore, reject the attempt on the part of the petitioners to lead us to

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this forbidden track by referring to various extraneous matters which we have indicated before. Furthermore those external aids sought before us do not support the petitioners' approach to this question at all.

It appears that the shares held in SPL themselves were the subject matter of both pledge and attachment to secure loans from the U.P. State Government of about Rs.66 lacs for payment of wages to workers of the Kanpur undertaking and Rs.95 lacs being electricity dues of the Kanpur undertaking owing to the U.P. State Electricity Board. From all these, the acceptance of the petitioner's case, would mean that the State would pump in Rs.15 crores of public money to release the shares from its liabilities and thereafter hand over the shares free from such liability back to the company when the net worth of the company at the time of take over of management was negative and in the teeth of the present financial liabilities built up by the company the shares would inevitably have sold in discharge of its liabilities and in any event the shares stood charged with the very liabilities which related to the undertakings of the company which were taken over by the Government.

It appears to us that sections 3 and 4 of the Act evolve a legislative policy and set out the parameters within which it has to be implemented. We cannot find that there was any special intention to exclude the shares in this case as seen from the existence of at least four other Acquisition Acts which used identical phraseology in sections 3 and 4 and in the other sections as well. Reference was made to the Aluminium Corporation of India Limited (Acquisition and Transfer of Aluminium Undertakings) Act, 1984, the Amritsar Oil Works (Acquisition and Transfer of Undertakings) Act, 1982, the Britannia Engineering Company Limited (Mohameh Unit) and the Arthur Butler and Company (Muzaffarpore) Limited (Acquisition and Transfer of Undertakings) Act, 1978 and the Ganesh Flour Mills Company Limited (Acquisition and Transfer of Undertakings) Act, 1984.

In the present case we are satisfied that the shares in question were held and utilised for the benefit of the undertakings for the reasons that (a) the shares in Swadeshi Polytex Limited were acquired from the income of the Kanpur Unit. Reference may be made to page 23 of Compilation D-III, (b) the shares held in Swadeshi Mining and Manufacturing Company were acquired in 1955. Originally there were four companies and their acquisition has been explained fully in the Compilation D-III with index, (c) the shares held in SPL were pledged

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or attached for running the Kanpur undertaking, for payment of ESI and Provident Fund dues for the workers of the Kanpur undertaking, for wages and for payment of electricity dues of the Kanpur undertaking, (d) the shares held in SMMC were

pledged for raising monies and loans of Rs. 150 lakhs from the Punjab National Bank for running the Kanpur undertaking. These loans fall in category II of Part I of the Schedule which liabilities have been taken over by the Government, (e) the shares held in SPL were offered for sale by SCM from time to time and to utilise the sale proceeds thereof by ploughing them back into the textile business for reviving the textile undertakings acquired under the Act.

It appears to us that the expression "forming part of" appearing in section 27 cannot be so read with section 4(1) as would have the effect of restricting or cutting down the scope and ambit of the vesting provisions in section 3(1). The expression "pertaining to" does not mean "forming part of". Even assuming that the expression "pertaining to" appearing in the first limb of section 4(1) means "forming part of", it would mean that only such assets which have a direct nexus with the textile mills as would fall under the first limb of section 4(1). The shares in question would still vest in the Central Government under the second limb of section 4(1) of the Act since the shares were bought out of the income of the textile mills and were held by the company in relation to such mills. The shares would also fall in the second limb of section 3(1) being right and title of the company in relation to the textile mills.

On the construction of sections 3 and 4 we have come to the conclusion that the shares vest in the Central Government even if we read sections 3 and 4 in conjunction with sections 7 and 8 of the Act on the well settled principles which we have reiterated before. The expression 'in relation to' has been interpreted to be the words of widest amplitude. See *National Textile Corporation Ltd. and others v. Sitaram Mills Ltd.* (supra). Section 4 appears to us to be an expanding section. It introduces a deeming provision. Deeming provision is intended to enlarge the meaning of a particular word or to include matters which otherwise may or may not fall within the main provisions. It is well settled that the word 'includes' is an inclusive definition and expands the meaning. See *The Corporation of the City of Nagpur v. Its Employees*, [1960] 2 S.C.R. 942 and *Vasudev Ramchandra Shelat v. Pramlal Javanand Thakarand others*, [1975] 1 S.C.R. 534. The words 'all other rights and interests' are words of widest amplitude. Section 4 also uses the words "ownership, possession, power or control of the Company

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in relation to the said undertakings". The words 'pertaining to' are not restrictive as mentioned hereinbefore.

Section 8 provides for payment of compensation in lumpsum and the transfer and vesting of whatever is comprised in section 3. As section 4 expands the scope of section 3, the compensation mentioned in section 8 is for the property mentioned in section 3 read with section 4. The compensation provided in section 8 is not calculated as a total of the value of various individual assets in the Act. It is a lumpsum compensation. See in this connection the principles enunciated by this Court in *Khajamian Wakf Estates etc. v. State of Madras* and another (supra). There, it was held that even if it was assumed that no compensation was provided for particular item, the acquisition of the 'inam' is valid. In the instant case section 8 provides for compensation to be paid to the undertakings as a whole and not separately for each of the interests of the company. Therefore, it cannot be said that no compensation was provided for the acquisition of the undertaking as a whole.

Section 7 of the Act, in our opinion, neither controls

sections 3 and 4 of the Act nor creates any ambiguity. It was highlighted before us and in our opinion rightly that this sum of Rs.24.32 crores paid by way of compensation comes out of the public exchequer. The paid-up shares in its equity capital can necessarily have a face value only of the amounts so paid, irrespective of whatever may be contended to be the value of the assets and irrespective of whether any asset or property in relation to the undertakings, was taken into account. After providing for compensation of Rs.24.32 crores to be paid to the Commissioner for payments to discharge part I liabilities, Government has to undertake an additional 15 crores at least for discharging those liabilities. To leave a company, the net wealth of which is negative at the time of take-over of the management, with the shares held by it as investment in other company, in our opinion, is not only to defeat the principles of Articles 39(b) and (c) of the Constitution but it will permit the company to reap the fruits of its mismanagement. That would be an absurd situation. It has to be borne in mind that the net wealth of the company at the time of take-over, was negative, hence sections 3 and 4 can be meaningfully read if all the assets including the shares are considered to be taken over by the acquisition. That is the only irresistible conclusion that follows from the construction of the documents and the history of this Act. We have to bear in mind the Preamble of the Act which expressly recites that it was to ensure the principles enunciated in clauses (b) and (c) of Article 39 of the Constitution. The Act must be so read that it further ensures such meaning and

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secures the ownership and control of the material resources to the community to subserve the common good to see that the operation of economic system does not result in injustice.

We therefore, reiterate that the shares vested in the Central Government. Accordingly the shares in question are vested in NTC and it has right over the said 34 per cent of the shareholdings.

In the aforesaid view of the matter we hold that the 10,00,000 shares in Swadeshi Polytex Limited and 17,18,344 shares in Swadeshi Mining and Manufacturing Company Limited held by the Swadeshi Cotton Mills vested in the Central Government under sections 3 and 4 of the Act.

We are further of the opinion that in view of the amplitude of the language used, the immovable properties, namely, the Bungalow No. 1 and the Administrative Block, Civil Lines, Kanpur have also vested in NTC.

In that view of the matter in Transferred Case No. 13 of 1987, we dismiss the Writ Petition No. 2214 of 1987. All interim orders in the said Writ Petition will stand vacated. This will dispose of the various other SLPs and CMPs connected with the Lucknow Writ Petition being SLP (Civil) No. 4826 of 1987 filed by Doypack Systems Pvt. Ltd., against the order dated 6th April, 1987, SLP(Civil) No. 5240 of 1987 filed by NTC against the same order of 6th April, 1987 in the Lucknow Bench and the order dated 6th April, 1987 in CMP No. 4555(W) of 1987 in the Lucknow Bench of the Allahabad High Court. CMPs Nos. 16918 and 16919 of 1987 being CMPs in SLP No. 4826 of 1987 will stand disposed of in the above light.

In Transferred Case No. 14 of 1987 in Suit No. 506 of 1987, we hold that 10 lakhs and 17 lakhs equity shares mentioned hereinbefore and the Swadeshi House at Kanpur and all the rights, title and interest attached therewith relate to the textile undertaking of defendant No. 3 and they vest in NTC with effect from 1st of April, 1985 and defendant

Nos. 3 and 4 are restrained by a decree of permanent injunction from dealing with them in any manner whatsoever. Defendant No.2 is restrained by permanent injunction from recognising defendant Nos. 3 and 4 as owners of the aforesaid shares and the Swadeshi House.

Defendant No.2's is directed to enter the name of defendant No. 1 namely, NTC in its register of members and to treat the said

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defendant No. 1 as its shareholder instead of defendant Nos. 3 and 4 in respect of the shares of defendant No. 2 held by them. In view of the provisions of law under Section 108 of the Companies Act as there was transmission of shares by operation of law, rectification is not necessary. See in this connection Palmer's Company Law, 24th Ed. (1987) page 608. See also in this connection Sahadeo Lal Agarwala and another v. The New Darjeeling Union Tea Co. Ltd. and others, A.I.R. 1952 Cal. 58 and Unity Company Pvt. Ltd. v. Diamond Sugar Mills and others, A.I.R. 1971 Cal. 18.

Civil Appeals Nos. 577 to 579 of 1987 stand disposed of in the above terms and we direct that the 17th annual general meeting be held in accordance with law after giving proper notice under the Chairmanship of Shri Jaswant Singh.

CMP No. 12760 of 1987 in Civil Appeal No. 577 of 1987, shall stand disposed of in terms of the orders in Transferred Case No. 14 of 1987 and it is directed that the Chairman should act in accordance with the aforesaid decision and NTC should be considered to be entitled to vote. CMP No. 16887 of 1987 is rejected, on the grounds indicated in the judgment.

CMP No. 16888 of 1987 is an application by Doypack Systems Ltd. to be impleaded as a party-respondent in Transferred Case No. 13 of 1987. Doypack Systems has already been permitted to argue and has been heard as a party. No further order is necessary.

CMP No. 16889 of 1987 is allowed and delay condoned. CMP No. 17018 of 1987 is allowed. CMP No. 18268 of 1987 is disposed of by directing that no further documents need be inspected. In view of the orders, the other CMPs are no longer necessary to be disposed of.

We direct that irrespective of any order passed by any court the 17th annual general meeting should be held in accordance with law to be presided over by Shri Jaswant Singh recognising NTC as the rightful owner of the disputed shares.

In all these proceedings National Textile Corporation as well as Union of India wherever they are parties herein will be entitled to their costs from their respective opposite parties. The other parties will pay and bear their own costs in these matters.

S.L.

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