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*The Hingir-
Rampur Coal Co.,
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v.

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Wanchoo J.

therefore allow the petition, and declare that the Orissa Mining Areas Development Fund Act, 1952, is beyond the constitutional competence of the Orissa Legislature to pass it. The whole Act must be struck down because there will be very little left in the Act if s. 4 falls as it must. The legislature would never have passed the Act without s. 4.

By COURT. In accordance with the majority Judgment of the Court, the Writ Petition is dismissed with costs.

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November 22.

KANTILAL MANILAL AND ORS.

v.

THE COMMISSIONER OF INCOME-TAX,
BOMBAY

(J. L. KAPUR, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Income-tax—Distribution of new shares at half the market value—If amounts to distribution of dividend—Assessment—Re-opening of—The Indian Income-tax Act, 1922 (II of 1922), ss. 2(6A) (a), 66(1).

The appellants were shareholders of a company known as Navjivan Mills Ltd. which held a large number of shares of the Bank of India. The Bank with the object of increasing their share capital offered some more shares to the Mills for a price including premium which was about half the market value. The Mills purchased a small number of the shares so offered with their own funds and distributed their right to acquire the remaining shares to their shareholders in the proportion of two shares of the Bank for one share held by them. The assessment of the appellant was reopened by the Income Tax Officer under s. 34(1)(a) of the Income-tax Act on the footing that the release of the right to the shares of the Bank of India amounted to distribution of dividend. Appeals against the order of the Income Tax Officer having failed, the High Court at the instance of the appellants framed the following question:—

“Whether on the facts and circumstances of the case, the distribution of the right to apply for the shares of the Bank of India by Navjivan Mills Ltd. in favour of the assessee amounted to a distribution of “dividend”?

The High Court answered the question in the affirmative. On appeal with a certificate of the High Court,

Held, that the view taken by the High Court was correct.

The distribution to the shareholders of the Mills of the right to obtain two shares of the Bank of India for each share held by them at half the market value amounted to distribution of "dividend" which was liable to be taxed.

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 364 of 1957.

Appeal from the judgment and order dated February 22, 1956, of the former Bombay High Court in I.T.R. No. 31/1955.

N. A. Palkhivala and I. N. Shroff, for the Appellants.

A. N. Kripal and D. Gupta, for the Respondent.

1960. November 22. The Judgment of the Court was delivered by

SHAH, J.—This is an appeal by seven appellants with leave granted by the High Court of Judicature at Bombay certifying that it involves a question of importance.

Shah J.

The appellants held 570 out of a total issue of 800 shares of the Navjivan Mills Ltd., Kalol, a public limited company—hereinafter referred to as the Mills. Between the years 1943-47, the Mills purchased 5,000 shares of the Bank of India Ltd. At an extraordinary general meeting of the shareholders of the Bank of India held on May 6, 1948, a resolution was passed increasing the share capital of the Bank and for that purpose offering new shares to the existing shareholders in the proportion of one new share for every three shares held by the shareholders. The face value of the new shares was to be Rs. 50, but the shares were issued at a premium of Rs. 50. The shareholders had to pay Rs. 100 for each new share. The Mills as the holder of 5,000 shares became entitled to receive 1,666 $\frac{2}{3}$ shares of the Bank of India at the rate of Rs. 100 per share. The Bank of India communicated its resolution by letter dated May 25, 1948 and enclosed therewith three forms, form A for acceptance, form

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B for renunciation and form C which may conveniently be called a form for allotment to nominees. On receiving the circular letter, the Directors of the Mills passed the following resolution:

“Resolved that the company having a holding of 5,000 ordinary shares in the capital of the Bank of India Ltd. having now received an intimation from the said Bank that this company is entitled to get 1,666 $\frac{2}{3}$ more ordinary shares on payment of Rs. 50 as capital and Rs. 50 as premium per each share and it is considered proper to invest in the said issue of the said Bank the funds of this company to the extent of 66 shares only and to distribute the right of this company to the remaining 1,600 shares of the said issue amongst the shareholders of this company in the proportion of the shares held by them in this company. IT IS HEREBY RESOLVED that the funds of this company may be invested in the 66 shares out of 1,666 shares offered by the Bank of India Ltd., and the right to the remaining 1,600 shares is hereby distributed among 800 shares of this company in the proportion of right to two shares of the Bank per one ordinary share held in this company.

The Managing Agents may take steps to intimate the shareholders to exercise the right if they like to do so.”

Accordingly, the Mills exercised the right to take over only 66 shares out of the shares offered and resolved that the right to the remaining 1,600 shares be distributed amongst its 800 share holders. The seven appellants as holders of 570 shares of the Mills became entitled to 1,140 shares of the Bank of India. The appellants agreed to the allotment of these shares and ultimately transferred them to a private company—Jesinghbai Investment Co., Ltd.

The assessment of the seven appellants and of other shareholders of the Mills was reopened under s. 34(1)(a) of the Indian Income Tax Act by the Income Tax Officer on the footing that the release by the Mills of the shares of the Bank of India amounted to a distribution of “dividend” and the value of the right released in favour of the shareholders though taxable

under s. 12 of the Act, had escaped tax. The order of the Income Tax Officer reassessing the income of the seven appellants was confirmed in appeal by the Appellate Assistant Commissioner and by the Appellate Tribunal. At the instance of the appellants, the following question was submitted by the Tribunal to the High Court at Bombay under s. 66(1) of the Income Tax Act:

“Whether on the facts and circumstances of the case the distribution of the right to apply for the shares of the Bank of India by Navjivan Mills Ltd. in favour of the assessee amounted to a distribution of “dividend” within the meaning of s. 2(6A) of the Indian Income Tax Act.”

The High Court re-framed the question as follows:

“Whether on the facts and circumstances of the case, the distribution of the right to apply for the shares of the Bank of India by Navjivan Mills Ltd., in favour of the assessee amounted to a distribution of “dividend”?”

and answered it in the affirmative.

The High Court observed that the definition of “dividend” in s. 2(6A) was an inclusive and not an exhaustive definition, and even if the distribution of the right to the shares of the Bank of India could not be regarded as dividend within the extended meaning of that expression in s. 2(6A), it was still dividend within the ordinary meaning of that expression and was taxable as income in the hands of the appellants.

Counsel for the appellants contended that the High Court was not justified, having regard to the form of the question which expressly related to the distribution of the right to the Bank of India shares being dividend within the meaning of the definition in s. 2(6A) of the Income Tax Act, in enlarging the scope of the question and in answering it in the light of its ordinary meaning. There is no substance in this contention. “Dividend” is defined in s. 2(6A) as inclusive of various items and exclusive of certain others which it is not necessary to set out for the purpose of this appeal. “Dividend” in its ordinary meaning is a

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distributive share of the profits or income of a company given to its shareholders. When the Legislature by s. 2(6A) sought to define the expression "dividend" it added to the normal meaning of the expression several other categories of receipts which may not otherwise be included therein. By the definition in s. 2(6A), "dividend" means dividend as normally understood and includes in its connotation several other receipts set out in the definition. The Tribunal had referred the question whether the distribution of the right to apply for the Bank of India shares amounted to distribution of dividend within the meaning of s. 2(6A) and in answering that question, the High Court had to take into account both the normal and the extended meaning of that expression. In the question framed by the Tribunal, there is nothing to indicate that the High Court was called upon to advise on the question whether the receipts by the appellants amounted to dividend only within the extended definition of that expression in s. 2(6A).

It was also urged that in nominating its shareholders to exercise the option to purchase the new issue of the Bank of India, the Mills did not distribute any dividend. The Mills were, it is true, not obliged to accept the offer made by the Bank of India, however advantageous it might have been to the Mills to accept the offer: it was open to the Mills to renounce the offer. The Mills had three options, (1) to accept the shares, (2) to decline to accept the shares, or (3) to surrender them in favour of its nominee. It is undisputed that when the shares were offered by the Bank of India to its shareholders, the right to apply for the shares had a market value of Rs. 100 per share. The face value of the new share was Rs. 50 but the shareholders had to pay a premium of Rs. 50, thus making a total payment of Rs. 100 for acquiring the new share. The new shares were quoted in the market at more than Rs. 200: and the difference between the amount payable for acquiring the shares under the right offered by the Bank of India and the market quotation of the shares was indisputably the value of the right. The Mills could not be compelled to obtain

this benefit if it did not desire to do so: it could accept the shares or decline to accept those shares or exercise the option of surrendering them in favour of its nominees. This last option could be exercised by nominating the persons who were to take over the shares and that is what the Mills did. The Mills requested the Bank of India to allot the shares to its nominees, and the request for allotment to its nominees amounted to transfer of the right. By its resolution, the Mills in truth transferred a right of the value of Rs. 200 for each share held by its shareholders. This was manifestly not distribution of the capital of the Mills. It was open to the Mills to sell the right to the shares of the Bank of India in the market, and to distribute the proceeds among the shareholders. Such a distribution would undoubtedly have been distribution of dividend. If instead of selling the right in the market and then distributing the proceeds, the Mills directly transferred the right, the benefit in the hands of the shareholders was still dividend.

Dividend need not be distributed in money; it may be distributed by delivery of property or right having monetary value. The resolution, it is true, did not purport to distribute the right amongst the shareholders as dividend. It did not also take the form of a resolution for distribution of dividend; it took the form of distribution of a right which had a monetary value. But by the form of the resolution sanctioning the distribution, the true character of the resolution could not be altered. We are therefore of the view that the High Court was right in holding that the distribution of the right to apply for and obtain two shares of the Bank of India (at half their market value) for each share held by the shareholders of the Mills amounted to distribution of dividend.

The appeal fails and is dismissed with costs.

Appeal dismissed.

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