

CHIEF JUSTICE'S COURT
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA
HON'BLE MR. JUSTICE UJJAL BHUYAN
HON'BLE MR. JUSTICE SATISH CHANDRA SHARMA
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

COURT NO.1
SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Civil Appeal No. 4056-4064/1999

MINERAL AREA DEVELOPMENT AUTHORITY ETC.
Petitioner(s)

VERSUS

M/S STEEL AUTHORITY OF INDIA & ORS
Respondent(s)

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1 **R. VENKATARAMANI:** It is like what Mr. Parasaran had argued in *India Cements*, I
2 think Attorney General must be consistent in certain respects. I am not following the same line
3 of reasoning because since 1990, a lot of developments have taken place, both in law and in
4 facts. I just want to flag about a couple of issues. I think, we must go beyond the theory in
5 *Kesoram* that *India Cement* is a typographic. You must go beyond that theory. You get
6 stuck to the theory that there is the analytical focus, which also very narrow. So, we must go
7 beyond the theory in *Kesoram*. Second, the Government of India is really concerned with the
8 appropriate reading of Entries 54 in List I and 23 and 50 in List II.

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** What is the second point, Mr. Attorney General?
11 The Union of India is concerned....

12

13 **R. VENKATARAMANI:** The Union of India is concerned only with the appropriate reading
14 of Entries 54, List I and Entries 23 and 50 of List II. I think that's going to be the focus,
15 ultimately as to how the Court is going to resolve that dead lock the *Kesoram* suggested in
16 reading various entries. I call it a dead lock because you use a knowledge of an indigenous way
17 of disagreeing with a precedent. So it's something very important to take note of. Well, I am at
18 that, when I talk about indigenous.....

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** *Kesoram* also says that, correctly interpreted...

21

22 **R. VENKATARAMANI:** After proceeding on a typographical error premise.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** Yeah, if you leave out this typographical error,
25 what *India Cement* really meant was this. And what *India Cement* really rules is this. So
26 are you then arguing that if the interpretation of *India Cement* which is adopted in
27 *Kesoram* is accepted, then *India Cement* is wrong. That we'll have to, that is the logic of....

28

29 **R. VENKATARAMANI:** I don't need to go into that, delve into that aspect at all. I am saying
30 something else.

31

32 **CHIEF JUSTICE DY CHANDRACHUD:** But you will logically have to say that. Because
33 the interpretation of *India Cement* and *Kesoram* then you'll have to say is wrong.

34

1 **R. VENKATARAMANI:** That's right. But as the court goes into the real question of how do
2 you read Entries 23, 54 and 50, perhaps that issue may fade to the background. That may not
3 have any direct significance and relevance. Because, they are used to a very indigenous way of
4 disagreement. Your Lordship knows that in US Constitution, a very interesting metaphor in
5 the context of precedent. So you disagree because a Shipwreck, a standard Shipwreck is used
6 and you call it a derelict in the stream of law, for something which is to be overruled is a derelict
7 in the stream of law. I don't think *India Cement* a derelict in the stream of law. It can't be
8 treated like that. It's a very -- therefore, we say we need special justifications when we disagree
9 with an earlier precedent. The court is very careful about it. The court has crafted lots of
10 doctrines and principles in looking at precedents and how do we look at them, overrule them
11 disagree, particularly where we have a court sitting in benches. So, where it is not is a different
12 principle altogether. We have all those principles of a faulty reasoning, unworkable standards,
13 abandoned doctrines or even outdated factual assumptions. These are well settled principles,
14 when your court can disagree with an earlier precedent and faith for the following reasons. Of
15 course special justifications come in. The only concern why I said about this, the ingenious
16 way of disagreeing is a matter of concern, in the realm of overruling a precedent. I just want
17 to make that point. The court will tread, very carefully when say that, on such, it can't be even
18 a principle, let's say typographical error is a principle, but, I don't want to delve into it beyond
19 a point. So, as I said, Union of India is concerned only with the correct interpretation, reading
20 of Entries, so and so. Having said that, I think the key to understanding Entry 50, is to look at
21 two expressions, which are stated in Entry 50. One is mineral rights and the other is taxes on
22 mineral rights. Both are composite expression, but taxes on mineral rights contains the
23 expression mineral rights. So, unless we unlock the meaning of these two expressions, then
24 probably we'll have a secular reasoning. And that's what happened in *India Cements*. We
25 wanted to have a concept of a tax on mineral rights, and they have an opposing principle,
26 therefore, tax versus tax. So Royalty as a tax. Therefore, the importance is understanding what
27 is mineral rights and what are taxes on mineral rights. It's also important to bear in mind that
28 post-Constitution, the paradigm shift in the whole mineral rights regime ownership,
29 nationalization, so on and so forth. So, when you had only one regime where a private owner
30 can exploit a mineral right, on any terms whatsoever, and the State entering in and saying that
31 I will nationalize. So, all those things are very important for the purpose of understanding a
32 post-constitutional Entry 50 construction. Because I find thereabout in the past 20 years,
33 almost 110 nations, I have placed one record, a World Bank study, on mineral rights, taxation
34 on mineral rights, et cetera, across the globe. I'm not going to read that in extenso. I just want
35 to flag a couple of things which are present in this study. Because the word tax is also used
36 interchangeably with Royalty. For about 110 nations have replayed their Mining Law, or
37 altered their Mining Law or brought in a new Mining Law. And today, in a globalized situation,

1 when a lot of mining operations take place across the globe, it is not merely no longer a local
2 domestic mining industry engagement. Therefore, the fiscal impositions, which a central law
3 may conceive of and devise and how it can probably occupy a field available, to states to
4 legislate. So, if you get stuck to a fossilized state, namely, the mineral rights could be neither
5 the ownership on minerals or activities on minerals and taxes on mineral rights, must have a
6 certain meaning, which can never be altered in context and circumstances, would be probably
7 an opposite way of looking at the whole constitutional scheme. It is in that context, I think we
8 need to look at whether the State owned minerals or a private party owned minerals, in the
9 right to part with in any manner, the right to part with in any manner and to deal with
10 minerals.

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** What is the formulation Mr. ...

13

14 **R. VENKATARAMANI:** I have my written submission, but I'm trying to just give a bullet
15 points so I try to before, I read my written submission I have. So, the right to part with in any
16 manner and to deal with minerals, or the subject...

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** If you see Entry 23 of List II, and Entry 50 of List
19 II. Then we'll go to List I. Let's see the distinction between Entry 23 of List II, and Entry 50 of
20 list II.

21

22 **R. VENKATARAMANI:** Your Lordship, please.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** Entry 23, says Regulation of Mines and Mineral
25 Development.

26

27 **R. VENKATARAMANI:** Yes.

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** Subject to the provisions of List I, with respect
30 to 'regulation and development under the control'.

31

32 **R. VENKATARAMANI:** ...and development under the control of the Union.

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** Now, let's see 50 for a moment.

35

36 **R. VENKATARAMANI:** 54?

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** Sorry 50.

2

3 **R. VENKATARAMANI:** 50.

4

5 **CHIEF JUSTICE DY CHANDRACHUD:** 50 of the same list.

6

7 **R. VENKATARAMANI:** Taxes on mineral rights. Subject to any limitations imposed by
8 Parliament by law relating to mineral development.

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** So, there are two critical differences 50 speaks of
11 limitations. So, there has to be limitations. Second, the limitations have to be under a law
12 enacted by Parliament. Third, the law must relate to mineral development. Now look at Entry
13 23, on the other hand. The field of Parliament is much broader in rules in Entry 23 than in
14 Entry 50. Just now, let's see Entry 23 again. It says, regulation of 'mines and mineral
15 development'. Now, it doesn't say subject to the provisions of a law. It says subject to the
16 provisions of List I, right? Then it says List I, with respect to what? Unlike Entry 50, which
17 says, by law relating to mineral development, it says with respect to regulation and
18 development under the control of the Union. One option would be is to say that that part with
19 respect to regulation and development by the Union must be also confined to mines, right? It
20 may not be so. The field for Parliament under Entry 23 is much broader. Now, if you go, for
21 instance, to List I...

22

23 **R. VENKATARAMANI:** Entry 50, 54 of List I.

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** Right.

26

27 **R. VENKATARAMANI:** The parliamentary field.

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** Right. Parliamentary.

30

31 **R. VENKATARAMANI:** Yes, yes that's the point.

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** See point is 53. 54 says regulation of mines and
34 mineral development to the extent to which such regulation and development under the
35 control of the Union is declared by Parliament by law to be expedient in the public interest.
36 So, what is contemplate, what is brought in in Entry 50 imposed by Parliament, by law. The
37 reference to Parliamentary Law in the case of entry is found in Entry 54.

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R. VENKATARAMANI: That's right.

CHIEF JUSTICE DY CHANDRACHUD: It is not provided by Entry 23. Entry 23 merely says the provision of List I, with respect to regulation and development under control of the Union. This may include Entry 53. It may also include 54. Not just 54, because 53 says regulation and development of oil fields and mineral resources, petroleum and petroleum products, other liquid substances declared by law to be inflammable. So, Entry 53, does not merely comprehend Entry 54 of List I. Entry 23 of List II, does not only comprehend Entry 54 of List I, but it may comprehend other entries in List I. That's one aspect. Second, more importantly, for our purposes, Entry 50 of List II uses the expression "subject to such limitations". Unlike Entry 23 of List II, Entry 23, the entirety is made subject to List I with respect to regulation and development. Entry 50 does not subordinate the taxing power of the State with respect to Mineral Rights to the entirety of List I. It subordinates only if and to the extent there are limitations which are imposed by Parliament. So whereas, in the case of regulation and development of mines, the entire area of regulation and development of mines is subject to the provisions of List I pertaining to regulation and developments, but subordination of the taxing power of the States in relation to mineral rights is much less. That subordination arises only when there is a law enacted by Parliament, and that Law describes limitations. That's the distinction.

R. VENKATARAMANI: We will try to look at it. That is a very important question.

CHIEF JUSTICE DY CHANDRACHUD: And Sister Justice Nagarathna says very correctly, that that law has to be relating to mineral development. In 23, it's law relating to regulation and development.

R. VENKATARAMANI: Let me try to look at it like this My Lord.

CHIEF JUSTICE DY CHANDRACHUD: As will be covered by the latter part of Entry 50 namely a law relating to mineral development.

R. VENKATARAMANI: One way of looking at it is, to look at all these Entries as one family, one composite family the underlying thrust is regulation of Mines and Mineral Development. So if that underlying thrust, that area, that domain, is made over to Parliament under Entries 53 and 54, probably we will not nibble out one part of it, and therefore say that small area alone or aspect alone will be a limitation. The moment we do that kind of a dissection, then

1 the Parliamentary scope of Parliamentary Legislation, Entry 53 and 54, then one can ask a
2 question, why is it that Entry 50 is subject to a certain limitation? So, if it is simply taxes on
3 Mineral Rights, it would have been a free area for the States to legislate. The moment it is
4 subject to certain other aspect or a domain or a regime, then will it be possible for the Court
5 or somebody to argue that we will look at it very narrowly. While the Federal Structure issue
6 is important, certainly, yes, but what is important is the Parliamentary domain in regulating
7 Mineral Development in the larger public interest. Therefore, the larger public interest today
8 is to be seen in a globalized situation. It can't be, in a very domestic sense, pre-1948 era.
9 Therefore before I go through my written submission...

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** You know Mr. Attorney General, what happens
12 is this. Once Parliament makes a declaration under Entry 54 of List I, in respect of the area
13 covered by that declaration, it is completely then abstracted, as Mr. Dwivedi said, or excluded
14 from the State list.

15

16 **R. VENKATARAMANI:** He said that. Yes.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** The moment Parliament makes a declaration
19 under Entry 54 of List I, that area goes out of the Legislative field of the State. But that is not
20 in relation to the taxing power which is given to the State under Entry.... The taxing field, not
21 the power, because power is Article 245. That is not in respect to the taxing field which is given
22 to the States under Entry 23 because it's a limitation on the taxing power. It's not an exclusion
23 of the taxing power. Unlike 23. Unlike 23 of List II, the moment Parliament makes a
24 declaration by law under Entry 54 of List I, to that extent, it is excluded from the power of the
25 States, right? In respect of its taxing power which is given or recognized in Entry 53 sorry, 50
26 of List II, what Parliament can do is impose restraints. But Parliament can't say that well, "we
27 have the power to impose the tax. You don't have the power to impose the tax". The power to
28 impose a tax is not given to Parliament at all. It is only given to the state. But in the interest of
29 mineral development, Parliament can say, "You will not tax in this manner." For instance,
30 you'll not... tax should not... Just an example. It should not exceed 20%. Because if you put
31 the tax in a certain way, it might impede mineral development. But the taxing power always
32 remains with the state in relation to mineral rights. That critical distinction we have to
33 understand, that this is not a power given to the Union at all. And one more reason, the areas
34 where the Union, where the states have taxing powers, is very limited under our Constitution.
35 Most of the taxes are given to the Union. The states have very few areas of taxation. And, liquor
36 for instance. Therefore, those areas we must not dilute. That's of course, one more reason.

37

1 **R. VENKATARAMANI:** I quite see all that. It is a very important aspect. Dots which will
2 probably connect with the final understanding of "How do you look at the entry?" I certainly
3 agree with that. Let's suppose... I look at it from two points. Two alternate theories, I'll look
4 at Entry 50. Before I come to that, I thought, let me quickly make a few, 2 or 3 points in this
5 context and come back to addressing this issue. I thought all activities in relation to minerals
6 will form part of minerals. Because we are looking at Entry 50....

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** All activities? I didn't get the point.

9

10 **R. VENKATARAMANI:** All activities in relation to minerals...

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

13

14 **R. VENKATARAMANI:** Will form part of mineral rights. And these are from the birth and
15 completion of mineral activities. I'm not looking at the ownership of mineral rights per se. I'm
16 not looking at it for the time being. Anyway, with ownership embedded, unexploited, nothing
17 follows from that. It remains as part of the land. But if mineral wealth, I think is expected to
18 be exploited. I don't keep a gold mine without exploiting it. So, it has to be exploited. Therefore,
19 unexploited mineral wealth probably will make no sense relevant in the context of any one of
20 the entries. So, from the birth and completion of all mineral activities, will be the conspectus
21 of mineral rights. Bullet points I have, just hand it over. But before I read my written
22 submission...

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** We'll see how you've formulated. I think that'll
25 help...

26

27 **R. VENKATARAMANI:** I thought, before I read them, kind of a summary of those
28 submissions... you would like to...

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** Impose a tax on mineral rights.

31

32 **R. VENKATARAMANI:** Probably more than one way of looking at it, will give an answer.

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** It has to be yes or no. I mean, are you contending
35 that Parliament can impose a tax on mineral rights?

36

1 **R. VENKATARAMANI:** What did the Constitution makers conceive and talk of taxes on
2 mineral rights? So, we have to answer that question. It must be in relation to mineral activities.

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** But if Parliament can impose a tax on mineral
5 rights....

6

7 **R. VENKATARAMANI:** I'll answer that.

8

9 **CHIEF JUSTICE DY CHANDRACHUD:**then which is the source? Which is the
10 legislate?...

11

12 **R. VENKATARAMANI:** The Parliament by a literal reading of Entry 50, does not have the
13 power to tax mineral right. By literal reading. But unless we understand, why mineral rights
14 and the competent tax mineral rights form part of an entry? Unless we understand that...

15

16 **JUSTICE ABHAY S. OKA:** So, we take it that, it is your case that Union Legislature can
17 frame a law imposing taxes on the area covered by Item 50. Is that your case?

18

19 **R. VENKATARAMANI:** Let me try to expand that. I'm trying to build a foundation for
20 explaining why Entry 50 may need entirely different way of looking at it.

21

22 **JUSTICE HRISHIKESH ROY:** We are looking at List II, and we are seeing that the state is
23 empowered under List II, to impose tax, for you to say that, I do not know, whether that's what
24 you are trying to say, that the Union will have the power there on tax element? We're not
25 talking about mineral development. It's a little difficult for us, unless you are able to sort of
26 tell us why it is, to be understood in that fashion.

27

28 **R. VENKATARAMANI:** Well, let me try to proceed a little further. I mean, when I was trying
29 to look at what will this Entry 50 look at it today? How will it look at it today?

30

31 **JUSTICE B.V. NAGARATHNA:** One way of looking at it is, if the state wants to impose a
32 tax on mineral rights, then first it has to see whether there is any central law regarding a
33 limitation on mineral development, not on anything else. It has to look to the central law.

34

35 **R. VENKATARAMANI:** That's right.

36

1 **JUSTICE B.V. NAGARATHNA:** If there is a limitation made by the Parliament on the
2 particular aspect of mineral development, keeping that in mind, the state will have to impose
3 a tax or an impost. So, that is the way it, because the second part of Entry 50 is subject to any
4 law made by Parliament which acts as a limitation in the context of mineral development. And
5 in all these three entries, whether it is Entry 54 of List I, Entry 23 of List II, or Entry 50 of List
6 II, mineral development is common.

7

8 **R. VENKATARAMANI:** That's right.

9

10 **JUSTICE B.V. NAGARATHNA:** Which is actually a subject made over to the Parliament,
11 in the interest of uniformity and development for a national law of its public interest. So, that
12 should be the way in which a state should proceed before imposing any tax on mineral develop
13 on mineral rights.

14

15 **R. VENKATARAMANI:** I'm thankful for that. We are looking at it. So, I asked quickly the
16 question again. If on a literal reading Parliament has got the power to tax mineral rights, how
17 do you read the second part of Entry 50? Limitations on such taxing powers. So, it is a non-
18 taxing power limitation. That would not make any sense. So it has to be a power which is
19 equivalent to it, or comes closer to saying whatever authority you may have to impose a
20 particular tax in the context of mineral rights activities, if Parliament has occupied that field
21 and any charge, any levy, any impost, which Parliament would therefore engraft into that law,
22 would be a limitation. One way of looking at it.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** Legislative field of Parliament cannot be traced
25 to an Entry in List II. A legislative field for Parliament has to be only founded in an entry in
26 List I.

27

28 **R. VENKATARAMANI:** That is true. But then therefore, I said 54, 23, 50. In a way, look at
29 them as one family of entries. If you look at them in isolation and unconnected entries,
30 because, forgetting for a minute they are in List I, List II. Therefore, if Entry 50, the second
31 part of Entry 50, must receive a relevant meaning.

32

33 **JUSTICE ABHAY S. OKA:** You have repeatedly said that entries in List I and II form part
34 of the same family. Is that really correct?

35

36 **R. VENKATARAMANI:** I want to advance.

37

1 **JUSTICE ABHAY S. OKA:** Dividing lines.

2

3 **R. VENKATARAMANI:** In a way it would be correct because...

4

5 **JUSTICE ABHAY S. OKA:** It is mutually exclusive also, what you said.

6

7 **R. VENKATARAMANI:** We can't where there is several entries in the constitution,
8 particularly in List II, it says subject to. That's very standard way of putting it. But here it's not
9 merely subject to. So, it says limitations that a parliamentary law can bring in and if we say
10 that the Parliament will not have any power to include into a taxing domain of the legislature
11 at all, state at all. Then this is written off. This part of the entry is virtually written off. So,
12 therefore you may have to..... It is not like any other copies of entries in the 7th Schedule. We
13 have the education rights Entry 64, 65 subject to, etc. We have certain other entries subject to
14 list, entries in List I. They all stand under different footing. So therefore, when I say it's a family
15 of entries, for the purpose of understanding Entry 50, you have to look at it. Not that one Entry
16 53, 54 will probably take away some power under Entry 50 or 23 in List II. I'm not suggesting
17 that, but if you read Entry 50 in its plenitude, it suggests that parliament in its domain of
18 mineral development law, whichever way you look at it, it could be a regulatory law, it could
19 be a law only relating to mineral development. In its parliamentary wisdom, it can have any
20 such law. It suggests such a law can be made. If that can be made what kind of limitation?

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** But, yes exactly. Law for what?

23

24 **R. VENKATARAMANI:** I'll come to that. So, if the law in relation to mineral development
25 is not like saying, how will you lay your mining plan or where can you extract your minerals?
26 We have several legislations in relation to mining today. So it's not related to mineral
27 development in that physical sense. It's in the larger sense of national public interest or
28 conserva... That's why Section 18 or the MMRD Act talks about mineral development, whereas
29 one can look at it little beyond that also. So, if the law relating to mineral development, which
30 means mineral activities, insofar as it says I would require people who participate in mineral
31 rights activities to be subject to the following regime or stipulations. That is only one set of
32 limitations. That's why I thought when looking at 50 from more historical point of view and
33 also protecting the federal principle, the balance, etc., I think some riddle that has to be opened
34 here. So it can't be opened on a mere literal reading of any other entries. What troubled me
35 while reading Entry 50 also was, if that if at that point of time when the constitution was
36 enacted, if you still talked about taxes on mineral rights. I tried to look at where did, in
37 Government of India Act 1935, you have the same entry. So what is the origin of all this mineral

1 rights? I couldn't really locate even from an English precedent or any statute. But in 1900s,
2 England had something called a duty on mineral rights. That's where I find an isolated
3 reference to mineral rights. But for our purposes, under Indian legal framework MMRD Act
4 and 1948 legislation, it's the state which dictates how will you undertake a mineral
5 development activity? How you deal with your mineral wealth? Who will deal with, in what
6 manner? Subject to what conditions? So lease is one principle, a well settled principle, but
7 engrafted into a statute. So these are those principles which go into both Entry 53 and 54 law
8 in relation to mineral development. If you keep all those broad features in mind and then jump
9 into Entry 50 and you find if somebody were to read it saying, limitations on mineral
10 developments will have a very narrow scope in the sense and the first time I would rule out by
11 a literal reading that Parliament does not have a right to tax minerals at all, or minerals rights.
12 Sorry, My Lord.

13

14 **JUSTICE HRISHIKESH ROY:** See, I mean, you are speaking for the Union.

15

16 **R. VENKATARAMANI:** I am speaking for the Union.

17

18 **JUSTICE HRISHIKESH ROY:** Your views are very crucial.

19

20 **R. VENKATARAMANI:** Yes.

21

22 **JUSTICE HRISHIKESH ROY:** Now, we have a situation of the State under List II, having
23 the power to impose taxes on mineral rights, subject to what is there in List 154, right? Now,
24 can there be, we are giving in a... we are trying to test it on an extreme basis. Can the Union of
25 India make a law that the state will not tax mineral rights?

26

27 **R. VENKATARAMANI:** It can in a given law... It can.

28

29 **JUSTICE HRISHIKESH ROY:** So your answer is that [UNCLEAR] can make the law?

30

31 **R. VENKATARAMANI:** It can in a way... That's why, therefore...

32

33 **JUSTICE HRISHIKESH ROY:** No, no. It's a very extreme thing. Suppose such a law is
34 made, then what happens to... one of the practically very few sources of revenue to be earned
35 by the state, and they are expected to also discharge certain obligations in the federal...

36

1 **R. VENKATARAMANI:** That concern is actually an important concern. I mean, it can't be
2 just relegated to... that is important. But if that logic were to be pressed into service, for the
3 purpose of understanding Entry 50, we directly encounter a problem. Which means that the
4 domain of states to earn revenues, Entry 56 is one such domain. There are other domains.
5 Today, for instance, even under Section 9B or the MMRD Act all District Development Mining
6 Fund, it goes to the states. More than 60,000 crores goes to the states today.

7

8 **JUSTICE HRISHIKESH ROY:** No. The Union will extract them, then pass it on to state is
9 one thing. And state imposing the tax itself...

10

11 **R. VENKATARAMANI:** That's what... Your Lordship is right. That's what... When the Union
12 does what the state can otherwise do, the state need not worry about it. The state need not say,
13 "my power is being taken away." Your worry will be when....

14

15 **JUSTICE HRISHIKESH ROY:** What happens to the concept of federalism, which is very
16 fundamental feature of our.... ?

17

18 **R. VENKATARAMANI:** Entry 50 is also part of the federal structure. If Entry 50, then the
19 second part of Entry 50 will be scissored off. Then we are... we are... We are looking at Entry
20 53 and 54. They're significant. They're important about mineral development from a larger
21 national perspective. That becomes a little narrowly tailored. It's very important. I'm not trying
22 to belittle and say, "Look here, just read down the State's Legislative Authority to levy or
23 import taxes, et cetera." I'm not saying that. But it's a general principle. One can say in a
24 different context yes. But in the context of Entry 50, it takes a different connotation altogether.

25

26 **JUSTICE ABHAY S. OKA:** So, your contention is that limitations will include prohibition.
27 That's your contention?

28

29 **R. VENKATARAMANI:** No. I'll come there. In several situations for instance, under Article
30 19(2) to (6), restrictions will not include prohibitions. Regulation can also include
31 prohibitions. But instead of going to that very difficult area, let me put it like this. Because the
32 Court will need to balance everything. Union says "regulation includes prohibition."
33 Sometimes it can be problematic. I understand that. But I am trying to navigate a slight middle
34 path, saying, "shall we not give Entry 50 that meaning, which the Constitution makers thought
35 it must have?" Now, as we move in point of time with mineral development, and mineral
36 development be the key to looking at 53, 54, 23, and ultimately Entry 50. So, the Court will
37 keep that in mind. So, if we.... I'm sorry.

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JUSTICE B.V. NAGARATHNA: If we say, in terms of an example, let us say the Central Government wants to encourage development of granite. So, they will say, from... instead of a 20 year lease at a time, we will grant 30 years. So, that is an aspect in the interest of mineral development. And the states want to tax on granite. They will say, since we have given now, in the interest of mineral development, from 20 years to 30 years, to encourage granite as a mineral, we will, say for the first 5 years of the lease period, there shall be no tax on granite. So that will be a limitation on the state's power to tax on granite.

R. VENKATARAMANI: That's true. In a way, *Hind Stone*....

JUSTICE B.V. NAGARATHNA: Because, it is in the interest of mineral development. So that is a limitation which the Parliament can make and then the state cannot tax for the first 5 years of the lease.

R. VENKATARAMANI: That's right.

JUSTICE B.V. NAGARATHNA: And it is in the interest of [UNCLEAR].

R. VENKATARAMANI: Absolutely.

JUSTICE B.V. NAGARATHNA: But the power of the state to tax doesn't get whittled down.

R. VENKATARAMANI: No, no I'm not saying it will be whittled down. It will be... I don't say to write it off completely. I'm not saying that. In *Hind Stone*, this Court came closer saying regulation means what? "Prohibition." I'll place that judgment. But I don't want to suggest that the doors of the taxing power of states should be completely closed. Entry 50 itself doesn't suggest that.

JUSTICE HRISHIKESH ROY: Mr. Attorney General. There are many actors here. Mr. Dwivedi, Mr. Salve, the Solicitor. But you are the protagonist. You are speaking for the Union as the Attorney General.

R. VENKATARAMANI: That is true.

CHIEF JUSTICE DY CHANDRACHUD: So, we expect you to sort of whatever you are saying, obviously with a sense of responsibility, you are saying.

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R. VENKATARAMANI: Absolutely.

JUSTICE HRISHIKESH ROY: But we are trying to test the proposition that you are canvassing before us. Are you by virtue of what you are trying to say, diluting or taking away the power of the state to tax?

R. VENKATARAMANI: No I'm not suggesting that at all.

JUSTICE HRISHIKESH ROY: Sorry?

HARISH SALVE: It's a diluted power already.

JUSTICE HRISHIKESH ROY: No. It's diluted certainly.

R. VENKATARAMANI: I say Entry 50, itself is a dilution. So I'm not saying that -- one was to look at the law. We're not talking in the abstract. I'm saying basic, certain abstract principles. Then let us look at the law. If the law occupies a field, it's a limitation. Then a quote on a factual or evaluation analysis of a law will reach conclusions either way. I am not trying to look at any of the legislations now. My job is only to present a broader constitutional picture. I am not getting into that at all. Because I see many of the legislations, I think the Madhya Pradesh and the Chhattisgarh legislation talk about a particular percentage of value of the mineral wealth extracted. So, that's a different issue altogether. But we are only looking at entries. I mean, why did Constitution makers thought -- what is this mineral right, we are talking about and, what kind of taxes? So, let me now take My Lordships, through my written submission. But what is troubling is, if you look at the word tax from a very conventional point of view, that's why I think in *India Cement*, the only way of resolving it was tax versus tax. So, I don't think that would be one way of resolving this issue. So, the taxes on mineral rights will have to be given a contemporary mineral industry development perspective, per taxes on minerals rights. We have to get higher contemporary meaning and that will be essentially linked with mineral development. So, if it is merely a levy or a charge on a land, piece of land owning mineral wealth, then it will be directly on the land question.

CHIEF JUSTICE DY CHANDRACHUD: Mr. Attorney General, before you read your submission I was just doing this over the last five minutes. If you look at List II. List II, uses different *mantras*. I've actually identified 1,2,3,4,5,6,7,...8 different mantras with List II, uses.

1 The first *mantra* is subject to list. An entry in List II, says 'it is subject to an entry in List I'.
2 That's the first *mantra*.

3

4 **R. VENKATARAMANI:** Right.

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** And you can take down the entries.

7

8 **R. VENKATARAMANI:** Yes, yes.

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10 **CHIEF JUSTICE DY CHANDRACHUD:** Entries 11 earlier Entry 11, 17, 22, 24 and 60.

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12 **R. VENKATARAMANI:** That's right. These are subjective.

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** It is subject to an entry in List I.

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16 **R. VENKATARAMANI:** List I.

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18 **CHIEF JUSTICE DY CHANDRACHUD:** That's the first *mantra*. Just to give you again.
19 11, 17, 22, 24 and 60. Right? So clear subordination of a List II entry to a List I, entry. Second,
20 the second *mantra* which List II uses is, 'other than'.

21

22 **R. VENKATARAMANI:** That is Entry 32.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** Now there are three. Entry 12.

25

26 **R. VENKATARAMANI:** Yes.

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28 **CHIEF JUSTICE DY CHANDRACHUD:** 32 and 63. What is the meaning of 'other than'?
29 Completely taken out of the state list. All right? Abstract it, that's the second *mantra*. The third
30 is subject to List I, and List III. Entry is in List I, and List III. There's only one entry like that,
31 Entry 13. Entry 13, subject to List I, and List III, entries. That is Entry 13. The fourth *mantra*
32 is subject to a List III entry, subject to List III entries, and there are three items in that, Entry
33 26, 27 and 57. The fifth, is subject to a particular field, not a particular entry. That is Entry 23
34 of List II. Entry 23 of List II doesn't refer to any particular entry in List I, but it refers to a field
35 of regulation and development of mine.

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37 **R. VENKATARAMANI:** That's right.

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CHIEF JUSTICE DY CHANDRACHUD: That's number five. 6, subject to the provisions of any law made by Parliament, any law made by Parliament. Look at Entry 37 for a moment of List... It's a standalone Entry. 'Elections to the legislature or the state, subject to the provisions of any law made by Parliament. That's the sixth *mantra* which has been used in List II. The 7th is subject to the limitations imposed by Parliament by law relating to mineral development. This is our entry, Entry 50, that's the seventh. And the final *mantra* is not including, which is used by Entry 54 now, as it stands. Entry 54 was substituted after the GST amendment took place.

R. VENKATARAMANI: That's right.

CHIEF JUSTICE DY CHANDRACHUD: And now it says, but not including sale in the course of interstate trade on commerce. So 'other than' and 'not including' would have broadly the same meaning. When I use the word 'other than' or 'not including' means that is outside the fold. So these are basically the 8 - 1, 2, 3, 4, 5, 6, 7, 8... 8 formulations which this two has made. Now where the, where Parliament wanted a subordination of the state power completely, it has subordinated by saying 'subject to'. If it wanted an exclusion of the state power on a particular area, they have used specific words "other than", "not including." Where the Parliament wanted the power of the state to be restricted, we found that that restriction is, where it is subject to a particular field, that is Entry 23. Where Parliament contemplated a restriction, a limitation that is entry, that is Entry 50. So when in the same list the framers of the Constitution adopted different formulations and phases, we cannot attribute to the use of the phrase in Entry 50 limitations imposed by law, a meaning which would amount to 'subject to' or 'other than' or 'excluding'. So we have to be careful that while interpreting Entry 50, we don't attribute to Parliament what would otherwise be achieved by words such as "subject to", "other than", "excluding". The Constitution could have used those phrases here in Entry 50. But it yet used no, subject to what? Limitations imposed by law. If they had said, 'other than', when conceivably Parliament could have taxed mineral rights under which entry? Entry 97.

R. VENKATARAMANI: Your Lordship's right.

CHIEF JUSTICE DY CHANDRACHUD: Because then mineral rights say in respect to major minerals, if they had said taxes on mineral rights excepting major minerals, and there was no specific Entry in List I. Parliament could then tax under Entry 97. Right?

R. VENKATARAMANI: I agree.

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CHIEF JUSTICE DY CHANDRACHUD: But they have not done that. They have given the entirety area of taxation of mineral rights exclusively to the state.

JUSTICE B.V. NAGARATHNA: Taxation cannot be in two subjects.

CHIEF JUSTICE DY CHANDRACHUD: Taxation cannot, yes, right.

JUSTICE B.V. NAGARATHNA: Taxation cannot be in two lists. See, in addition to what Honourable Chief Justice?

R. VENKATARAMANI: I feel indebted to Your Lordship's...

JUSTICE B.V. NAGARATHNA: Please see Entry.

R. VENKATARAMANI: Let me try to connect. I'm sorry. Let me try to connect. But all this distribution of Entry, the way they overlap, or they don't, exclude it, etc., will ultimately depend on the competence Principle 1. So what is Parliament competent to do? What is a state legislature competent to do? That principle is an underlying principle. And when it says subject to so and so, the competent principle is assumed. Now, laws made by Parliament is also assumed, that Parliament cannot make a law, which it is not otherwise competent to make a law in List I. So that competent principle is an underlying thread. So if that is the underlying thread the degrees of exclusion, nature of exclusion, what kind of exclusion can take place, are all found in these differing methods of the ways Parliamentary lists have been sought to be related to. I think that's how we want to look at it. But having said that, if we remove the word limitations in Entry 50. So we are trying to look at in a scientific, like a laboratory experiment. We remove the word, you know, "limitations." So tax on mineral rights subject to law paid by Parliament in mineral development. So it means Parliament could have made any law, touching upon taxes, which legislature is a state can be. See if there is an added significance with the word "limitation" can lend to Entry 50, so, if that added significance can go in the context of 'taxes.' So, therefore a subject of taxes, namely a charge or a levy, which may otherwise form part of a Parliamentary law, will be treated as a limitation on the taxing power of the State Legislature. Therefore, it implies two things. Parliament has a competence under 53 and 54, and that law can also have something to say about the taxing power. If it is not, the limitation does not make any sense.

1 **JUSTICE B.V. NAGARATHNA:** No. Then they could have said subject to Entry 54, List I,
2 straight away. But they don't say that.

3

4 **R. VENKATARAMANI:** They need not say.

5

6 **JUSTICE B.V. NAGARATHNA:** Subject to any limitations.

7

8 **R. VENKATARAMANI:** Your Lordships is correct. 53 and 54 need not say that at all.
9 Therefore, when that competence, that overarching competence...

10

11 **JUSTICE B.V. NAGARATHNA:** [INAUDIBLE] in a taxing entry.

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13 **R. VENKATARAMANI:** We are trying to....

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15 **JUSTICE B.V. NAGARATHNA:** 3.

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17 **R. VENKATARAMANI:** Yes.

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19 **JUSTICE B.V. NAGARATHNA:** The subject, education is in Entry 25, List III. It says,
20 "subject to List... Entry 66, List I....

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22 **CHIEF JUSTICE DY CHANDRACHUD:** 63, 64, 65, 66.

23

24 **JUSTICE B.V. NAGARATHNA:** Therefore, the field is, if it is occupied under List I, then,
25 under List III, the state is denuded of its power.. [INAUDIBLE] entry.

26

27 **R. VENKATARAMANI:** That's very true. Very true. That's what....

28

29 **JUSTICE B.V. NAGARATHNA:** There is use of the expression "subject to entry...."

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31 **R. VENKATARAMANI:** That's why. Because we have to now look at how Parliament will
32 enact the current law. I'm sorry.

33

34 **JUSTICE HRISHIKESH ROY:** You see, power of taxation has to be [INAUDIBLE]. That
35 you interpret the entry in a particular.... Of course, it's a very broad field. You interpret the
36 entry in a specific manner and also confer the power of taxation.

37

1 **R. VENKATARAMANI:** Very true.

2

3 **JUSTICE HRISHIKESH ROY:** The power of taxation has to be conferred [UNCLEAR]. It
4 can't be the matter of interpretation.

5

6 **R. VENKATARAMANI:** I'm not suggesting anything which runs aground of all these
7 principles. I'm not suggesting anything.

8

9 **JUSTICE HRISHIKESH ROY:** No. Your submission. I was just looking at your written
10 submission. You talk about the proper and correct interpretation of these entries. Now, if we
11 are looking at proper and correct interpretation, of these entries, these entries, so far as the
12 Union is concerned, in the mineral development field, it does not confer a power of taxation.

13

14 **R. VENKATARAMANI:** It need not. It need not. Let me put it in more... Therefore, the
15 moment it says it is brought into entry.

16

17 **JUSTICE HRISHIKESH ROY:** We have disturbed you too much, I think. You should be
18 permitting that. I'm sorry.

19

20 **R. VENKATARAMANI:** No, no.

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** I think, what we'll do Mr. AG is, we can first look
23 at your seven propositions and then we look at your written submission.

24

25 **R. VENKATARAMANI:** Yes, yes. Before that.....

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** So, we just run through 7 proposition so that we
28 can... we'll understand your proposition.

29

30 **R. VENKATARAMANI:** My written submissions?

31

32 **CHIEF JUSTICE DY CHANDRACHUD:** No. These 7 propositions.

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34 **R. VENKATARAMANI:** Yes.

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36 **CHIEF JUSTICE DY CHANDRACHUD:** Because we haven't completed reading that. We
37 can read with item, serial, number 1 also, because....

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R. VENKATARAMANI: I just flagged it.

CHIEF JUSTICE DY CHANDRACHUD: Should we read it together?

R. VENKATARAMANI: I'm not spending my time on that item.

CHIEF JUSTICE DY CHANDRACHUD: Should we just read through it together, Mr. AG? Should we read through it together, the 7 propositions? So that you will....

R. VENKATARAMANI: I was at proposition number 5. All activities in relation to minerals will form part of mineral rights and these are from the birth and completion of mineral activities. Then 6. Any levies or demands or exactions, in relation to these activities are taxes on mineral rights. The word 'tax' here, does not connote, any other special meaning. It means any charge. Last, to the extent MMRD Act provides in respect of all or any of the mineral rights activities and also in relation to charges or demands in respect thereof, it covers the field of taxes on mineral rights, keeping in mind proposition number 6 stated above. Because, we have something like an ID fixed. 'Tax'. Therefore, in *India Cement*, we had that clashes of tax principle. So unless I say royalty is a tax, I'm not getting to... getting into a point. So, I don't want to spend time on *India Cement* how it got resolved.

CHIEF JUSTICE DY CHANDRACHUD: Apart from royalty, does the MMDR impose any other tax?

R. VENKATARAMANI: No. There is... for instance, under Section 9B. Now there is a district development, mining development fund, and there is also 9C. There's a [UNCLEAR] mineral trust. So, there's a lot of ways and means by which Parliament looks into generation of revenues which are shared.

TUSHAR MEHTA: It entirely goes to the states, GST share.

CHIEF JUSTICE DY CHANDRACHUD: [UNCLEAR] Your written submissions?

R. VENKATARAMANI: Yes My Lord, it is Volume II(d). I don't propose to engage in reading *India Cement* and *Kesoram*. Before I take Your Lordship, with that, in fact, yesterday question fell about impost. What does it mean, et cetera? I placed on record in Volume IV(g), an interesting article on the historical...it is Volume 4(g).

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JUSTICE HRISHIKESH ROY: If you'd like to sort of take us through your submissions, then we'll try and understand it.

R. VENKATARAMANI: I'll do that.

CHIEF JUSTICE DY CHANDRACHUD: The following core issues...

R. VENKATARAMANI: The following core issues arise for consideration in the light of the questions which have been referred by the reference code in so and so. What is the true construction of Entry 50, List II, in the company of Entry 54 List I? Having regard to the special and peculiar features of the mines and minerals industry, where the words and expressions used in Entry 354 List I, and Entry 50 List II, will receive their special meaning as maybe in consonance, with the conjunction of the above said entries. B, for the purpose of understanding and arriving at a true construction of Entry 50, we need to look at the words and expressions occurring in Entry 50. Their technical connotation and their logical nexus. The laws relating to mines and mineral development, whether the Mines and Mineral Development Regulation Act 48 or 57 are based on long established principles and understandings. The grant of permission to undertake any activity in relation to a mineral is a core aspect. The grant of such permission, called the lease or license is always based on certain terms and conditions. The consideration for the grant of such permission, traditionally known as royalty, is, in essence a demand for parting with a privilege of working the mineral. Such a consideration is also, in essence, the price to be paid by the recipient of the permission for working the mineral. Working the mineral includes several activities such as exploring, winning, producing, processing, transportation/despatch and sale, as the case may be. All these activities, either under a lease or otherwise, will be mineral rights activities. The bundle of mineral rights will come into being on a grant of such a permission of parting with a privilege. Mere ownership of a land with mineral wealth by any person is not by itself a mineral right, which is the meaning of Entry 50 List II. Consequently, any and all levies, charges, impose or demands that can be imposed on or demanded from, constitute taxes on mineral rights. It may also be seen that MMDR Act 1957 has enacted in Section 19 the prospecting licenses and the mining leases to be void, if in contravention of the MMDR Act 1957. This would mean that all mineral rights activity will be regulated under the MMDR Act of '57. The regulatory scope of MMDR Act is wide. In a connected context in the state of *Tamil Nadu v Hind Stone*, this Honourable Court has proposed the word 'regulation' in relation this law will be read widely. Next, the interplay between 54 and 50. But the correct term of Entry 50, List II, the word taxes need not be seen from the point of views, Conventional connotation.

1 For the purpose of Entry 50, List II, taxes shall be taken to mean any compulsory extraction,
2 levy, charge, imposed or demand that may be charged in relation to or in respect of mineral
3 rights. It has to be in relation to or in respect of mineral rights. Now, next, both Entry 54, List
4 I and Entry 50, List II constitute as a family of entries. Both the entries have in mind the
5 principle of mineral development and all attendant and related activities that will connect to
6 mineral development and in promotion of mineral development. Taxes on mineral rights must
7 be understood as such as levies, charges, impositions, or demand that are related to mineral
8 development and not otherwise. So, we have presence of a mineral wealth and not mineral
9 rights. Rights in relation to the exploitation or working of mines or minerals are minerals right.
10 The concept of mineral rights as understood in England in so and so, as evidenced by the
11 finance at 1910 where, under Section 20 thereof, a duty on mineral rights is imposed on the
12 rights to work minerals. I said beyond that, I was not able to locate anything else. Taxes and
13 mineral rights cannot be any levy, charge, impose or demand unrelated to mineral
14 development or only with reference to the ideal. Sorry. It should be idle existence and
15 availability of mineral wealth. Please correct it there. So. In other words, the Entry 50, List II
16 cannot be the source of authority for imposing any levy, charge, imposed or demand, which is
17 either unconnected with mineral development or in relation to any other alien purpose, such
18 as an Education Cess. Entry 50, List II is not an entry conferring competence in the state
19 legislature to convert it into a general taxing purpose entry. Entry 54, List I contemplates
20 complete legislation in relation to the regulation of mines under mineral development and all
21 incidence of mineral development. The concept of regulation occurring in Entry 54, List I is a
22 comprehensive concept. Mineral development means it includes all activities and transactions
23 in relation to the availability and the working of mines. Consequently, the processes and the
24 procedures that will be required for providing in respect of such activities and transactions
25 would be an essential part of such a law. As stated above, the process by which the right to win
26 or extract at work minerals is on the basis of a lease or a license, as the case may be. All matters
27 relating to such leases and licenses would form part of such a regulatory law. Further, the
28 charge which can be demanded or the consideration to be parted with in relation to the grant
29 of leases or licenses would also be part of such a law. In other words, all matters relating to
30 mineral rights and mineral development will fall within the scope of Entry 54 so and so,
31 providing in regard to mineral development, I'm talking about Section 18. I'll come back to it
32 a little later.

33 Then next paragraph. A levy or a charge imposed or demand parts or parting with the right to
34 win, extract work, etc. always carries the expression 'royalty.' As already stated above, since a
35 mere ownership of mineral cannot be the reason for imposition of any levy, charge imposed
36 or demand, any imposition in the hands of the state has to be in relation to mineral rights. It
37 is in this context that the expression "taxes" occurring in Entry 50, List II will have to be

1 understood. This expression shall be taken to mean any levy, charge, imposition or demand
2 that can have a nexus with mineral rights activities. Beyond this, the word taxes in Entry 50,
3 List II cannot have any other general meaning or connotation. Since Entry 54, List I law being
4 a regulatory law, insofar as such a law deals with all matters or levies, charges, imposed or
5 demand that can be legitimately provided for having an nexus with a mineral right, such
6 matters of levies, charges imposed, or demands will be treated as limitations on the power of
7 the state to demand as impose similar levies, charges, imposed or demand of the same nature.
8 I think that's the crux of Entry 50. Once the word 'tax' is occurring in Entry 50, List II, it seems
9 with ever perspective, there'll be no further need to inquire as to whether Entry 54 law is a law
10 under a taxing entry or not? To reiterate, merely because, the word tax is used in entry 50, List
11 II, the law relating to mineral development in order to be considered a limitation with the
12 meaning of Entry 50, List II need not be necessarily a law under any taxing entry. So,
13 comparison with general and taxing entries in the general scheme of the 7th Schedule may
14 therefore be opposite. The [UNCLEAR] played in *M. P. V. Sundararamier* is also opposite
15 in that context. Then attempt has been made in *India Cement* to suggest that a cess in
16 question under the Section 150 in the Madras Village Panchayat Act cannot be a levy in relation
17 to land. And if it is the nature of a tax falling under Entry 50, List II, it'll fall out of MMDR Act
18 1957, which provides in relation to Royalty. It was in that context, the proposition that,
19 "Royalty is the tax" was [UNCLEAR] to exclude from Entry 50, List II, to the quest, the cess in
20 question. It is submitted that the understanding has arisen out of a misconception the word
21 Entry 54, List I, Entry 50, List II. That's one way of looking at *India Cements*. Then it's
22 submitted that for the purpose of delineating, the limitations on tax on mineral rights in Entry
23 50, List II, it is not, one, that the taxes which can be levied by the state under Entry 50, List II,
24 will be under other than levies, charges, imposed or demand falling outside the well
25 understood category of levies, charges imposed or demand in relation to mineral development.
26 Two, the taxes which can be so levied need not partake their character as features of Royalty
27 and such related demands. Three, that any levied charge or imposed demand that may form
28 part of the law relating to mineral development, if and insofar their relation to mineral rights
29 will be limitation, notice Entry 50 List II. Further, in the above, reviewed matter, it's
30 immaterial that the Royalty is designated as a tax or not as long as taxes and mineral rights by
31 whatever name called, namely levied charge, imposed or demand, can be only in relation to
32 mineral development or mineral rights facilitation. Mineral rights facilitation. Similarly, the
33 charged, imposed a demand it had provided for and enacted in Entry 54, List Law I, that will
34 be relevant for the purpose of Entry 50, List II. The light of these submissions, *Kesoram*
35 *Industries* needs to be clarified. Therefore, there is no need for the Court to embark an
36 inquiry as to whether *India Cement* suffers from a typographical error?

37

1 Then, next paragraph. Any levied, charged, imposed demand with reference to the value of a
2 mineral produced from a mineral bearing land or with reference to any other aspect of the
3 mineral, will be treated as a levied charged, imposed a demand in relation to mineral rights
4 activities. They cannot be taxes falling under Entry 49, List II. In consonants with a principle
5 that taxing entry cannot be enlarged, lands and buildings occurring in Entry 49, List II, cannot
6 include any matter in relation to mineral rights activities. It reiterated that Entry 54, List I,
7 enables a Parliament to enact in all comprehensive legislation in relation to mineral
8 development. Mineral development, as stated above will necessarily include and relate the
9 mineral rights. Matters relating to the grant of mineral rights would thus include a levy,
10 charge, impose a demand that can be imposed in relation to exercise to mineral right. The
11 Constitution makers did not contemplate that a law under Entry 54, List I, will not deal with
12 matters relating to levied, charged, imposed or demand in relation to the exercise of mineral
13 rights. A law minor these aspects will be neither a regulatory law nor a law in relation to
14 mineral development in all its aspects. Consequently, the Constitution did not envisage the
15 need for a separate entry in List I under which a law relating to levies, charges, imposed or
16 demands can be enacted. A law under Entry 54, List I, enacted with all such elements and
17 providing in regard to all such aspects will not only be a law that will impinge on the Entry 23,
18 List II, but also be a law that can be treated as a limitation under Entry 50, List II. On the Entry
19 54, List I, law being a complete code. See paragraphs so and so in ***Monnet Ispat*** and ***Sandur***
20 ***Manganese***.

21

22 The predecessor legislation, or the Andhra Pradesh Mining Mineral Bearing Lands Act 2005,
23 namely the AP Act of 1975 was struck down by the Andhra Pradesh High Court in ***KCP***
24 ***Limited***. The High Court has considered both ***India Cement*** and ***Kesoram***. The 2005 Act
25 is a virtual re-enactment of 1973 Act and stands re-enacted as centre of ***Kesoram***. I'm not
26 getting into those aspects, I just want to flag it, that's all. For Your Lordships' information that
27 as an appendix we have placed both judgments and dictionary meanings of these...

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** Let's run through it, Mr Attorney General.

30

31 **R. VENKATARAMANI:** Very well, very well.

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** These two pages.

34

35 **R. VENKATARAMANI:** Page 11, 'Levy means to realize or to collect only necessary
36 condition, proceeding for realization of the fine must be commenced within stipulated period.
37 Levy includes proceedings for assessment. It not only include', number 8, 'not only includes,

1 not only the imposition of the charge, but also the whole process after the raising of the
2 demand. The term'... next, 'the term levy is wider in its import than the term assessment. It
3 may include both imposition as well as assessment.' Then, 10 'levy can also mean the act of
4 raising money or men.' 11, 'the term levy is held as an expression of wide import. It includes
5 both imposition of a tax as well as its quantification and assessment.' Then 12. 'The term levy
6 appears to be wider in its import as the term assessment. It may include both, imposition of a
7 tax as well as an assessment. The term imposition is generally used for the levy of a tax or duty
8 by a legislative provisions indicating the subject matter of the tax and the rates that fixed to
9 be taxed. The term assessment sources generally in the country when the actual procedure
10 adopted such thing, the liability to pay a tax.' Then number 13. 'The expression levy includes
11 both the process of taxation as well as the determination the amount of tax or duty, collection
12 refers to actual collection, et cetera.' Then impost. 'Impost means a compulsory levy', taxes in
13 wider sense includes all impost, and it can be vice a versa. So, 'impost means, a compulsory
14 levy, the well-known and well settled characteristic of tax in the wider sense includes impost.
15 Impost in the context of following characteristics. The power to tax is an incident of
16 sovereignty. Law in the context of Article 265 means an act of legislature. Then three, tax under
17 the Article 365, read with 366(28), includes impost of every kind namely a tax, duties, sales or
18 fees. And four, as an incident of sovereignty, and in the nature of compulsory exaction, a
19 liability founded on principle of contract cannot be a 'tax', it's technical sense as an impost
20 general, local, special. Then 16 impost means any tax or a tribute imposed by any authority,
21 particularly by a tax or a duty laid by Government on goods imported. Duty, duty means a duty
22 of Customs. That's where, in several foreign customs, you take the impost carries a particular
23 special meaning. Then I don't think any trouble Your Lordships further by reading the duty....

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** Actually Mr. Attorney General Para 17 and 20 of
26 your submissions, they really are the key to the soul of the submission. Let's just see paras 17
27 again, and 20.

28

29 **R. VENKATARAMANI:** My written submission?

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

32

33 **R. VENKATARAMANI:** I'll come.

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** Para 17 at page 8. Duty is okay, I mean, you know.
36 In the above view of the matter, it is immaterial that royalty is designated as a tax or not, as
37 long as taxes on mineral rights by whatever name called, namely levy, charge impost or

1 demand, can be only in relation to mineral development or mineral rights facilitation. Now
2 what follows is important. Similar levy, charge impost or demand has provided for....

3

4 **R. VENKATARAMANI:** .. in Entry 54 List IV for Law. That will be relevant for the purpose
5 of Entry.

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** You are really reading the power to tax and Entry
8 54 of List I itself. And second is a para 20, where you again...let's see para 20 for a second.

9

10 **R. VENKATARAMANI:** Yes. 'It's reiterated that Entry 54, List I, enables the Parliament to
11 enact on all comprehensive legislation, in relation to mineral development. And mineral
12 development as stated above, will necessary include and lead to the mineral rights. Matter
13 relating to the grant of mineral rights would thus include a levy or a charge or impost or a
14 demand, that can be imposed in relation to the exercise of minerals rights. The Constitution
15 makers did not contemplate that a law under Entry 54 List I, will not deal with matters relating
16 to levy charge, impose the demand in relation to the exercise of minerals rights. A law minus
17 these aspects need not be a regulatory law, not a law in relation to minerals... in all it's aspects.

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you so much. We've got the submission.

20

21 **R. VENKATARAMANI:** Only one... In the timeline for argument, it is there that Attorney
22 will take 2 days. I think that's a typographical error.

23

24 **JUSTICE HRISHIKESH ROY:** Where everybody will agree.

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** That's well put. That's really well put. Thank you,
27 Mr. Attorney.

28

29 **R. VENKATARAMANI:** I'm grateful.

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Salve?

32

33 **HARISH SALVE:** Picking up where the learned Attorney left us. Two important questions.
34 Your Lordships are pleased to [INAUDIBLE].

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36 **CHIEF JUSTICE DY CHANDRACHUD:** Let's just show the Volume (II) (D), no? I just
37 forgot to make....

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HARISH SALVE: I just digress from where I was....

CHIEF JUSTICE DY CHANDRACHUD: *Nahi. II (D) hai.*

HARISH SALVE:... and address one very important question which has been troubling the Court. Because that's really the heart of the matter. The Attorney has submitted, Your Lordships pleased to notice, that the Union has, in a larger sense, of the word, "taxing power" under Entry 54. I leave that to one side My Lord.

CHIEF JUSTICE DY CHANDRACHUD: You are appearing for?

HARISH SALVE: I appear for.... Eastern Zone Mining Association for Tatas... I'll give My Lord, the numbers. CA 1883 of 2006.

CHIEF JUSTICE DY CHANDRACHUD: 18...?

HARISH SALVE: 1883 of 2006. I want to start my or pick up the thread, flagging two important points. Our founding fathers knew that in the 1935 Act, it was not in the Devolution List of 1919, but in the 1935 Act, if notion of taxes of mineral rights had been created and it had similarly been made subject to limitations, and I'll be showing all this. Let me just tell My Lord what I'm driving at. Our founding fathers knew that there is a thick black line between taxing powers and regulatory powers. And *Sundararamier* has never been doubted it. And as My Lord the Chief Justice, in fact, on one reading picked up, there are so many different models, but let's look at the model in 50 itself and that is why in my submission, this is *sui generis*. There's nothing else like this. And there has been some, if I may say so with great respect, perhaps misunderstanding of what our position is. There is no denudation of power in 50. Let's be clear. Denudation is of the regulatory power of 23, because of the declaration in the MMDR Act.

CHIEF JUSTICE DY CHANDRACHUD: Can you just take that again? The denudation....

HARISH SALVE: Is My Lord, in Entry 23 power or the field.

CHIEF JUSTICE DY CHANDRACHUD: Right.

JUSTICE B.V. NAGARATHNA: Yes.

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HARISH SALVE: There is no overlapping tax power in our two entries. My Lords, we once came very close to this, in the 'luxury tax cases', as they were called, the hotel receipts tax case, where the aspect theory got injected, and fortunately, it was given a healthy barrier in the *Godfrey Philips* case.

Unlike the Canadian Constitution, we divided our legislative fields neatly, cleanly. Acknowledged where there is overlap. And that is why 246(1) says notwithstanding and 246(3) says subject to. And tax entries were compartmentalized. And a very good example of that is Entry 84, the Excise Duty. Union List, Excise Duty and everything other than alcohol for human consumption, State lists originally Excise Duty on alcohol for human consumption. So our tax lists are neatly divided. Knowing all this, the founding fathers said, a tax on mineral rights subject to limitations imposed by Parliament, first of all. It's the only Entry in which Parliament limits its taxing power of the State. And those words have to be given a meaning. And how are these limitations to be found? Imposed by Parliament, by law relating to Mineral Development. My Lord, respectfully adopting what the Attorney General has argued, this phrase, law relating to Mineral Development must like all Legislative Entries be construed in its plenitude. A rather narrow view of this saying, there must be a section in the MMRD Act, say you will not impose a tax, or you will not impose a tax more than so much is perhaps too narrow a view of the Constitution. So we do not need to say, if something goes out of 50, where does it land in Entry in Lease Fund. No, it doesn't. And why was this done? My Lord, those very important point, My Lord was pleased to ask, was, Mr. Palkhivala used a very interesting expression in this courtroom, the tax, the resources of a State are niggardly compared to that of the Union, when we were arguing that the Union Tax on hotel receipts was unconstitutional, the State Tax was valued. I have never forgotten the expression, niggardly resources of the State. But there was one problem with mineral rights. And this was a serious problem in the Federation. Our mineral resources are not evenly endowed. Some States are much richer in mineral resources than others. And yet the economic development of each State has compelling need for minerals. North India, so rich in other things doesn't have minerals. Central India and Maharashtra, we don't have, used to have coal to a small extent, near my hometown not much. Now look at Orissa. Look at West Bengal. God has been, they have abundant resources. Karnataka great amount. You go further down to Kerala, you find nothing. Nature, when God created land My Lord, he didn't draw the boundaries. You have drawn these lines. So not all States are equal in resources and this, in the past My Lord has been the cause of great friction between kingdoms. So the Framers right from 1935 when the Government of India Act first recognized this, it said Provincial Government may impose Mineral Tax subject to limitations imposed by the Federal Government. This has been a matter of grave concern always. And this whole matter has to be viewed in that context. As I said

1 yesterday, ultimately, it's a question of seeing the balance between Entry 50, Entry 23 and
2 Entry 51. And as far as 23 and 54 is concerned, I don't have to reinvent the wheel. Right from
3 **Hingir-Rampur, Baijnath Kedia**, talak. They have all explained how these 2 laws sit with
4 each other and I will be My Lord, taking Your Lordships to focus on these.

5
6 And as I had, My Lord, in my opening indicated yesterday. What did we argue in **India**
7 **Cements**? And this has troubled the court, be it the **Patna judgment**, be it the **Mysore**
8 **judgment**. If you have excessive royalty. One state is rich in a particular resource, it has a
9 very high rate of royalty. There are industries in another state which require mineral, you are
10 creating economic stress. The Parliament says you will not have more than so much royalty.
11 And very interesting, my learned friend argued yesterday, the Parliament can't use up the
12 power, you're right. 9, doesn't use up the power to royalty. 9 says, you the State recover this
13 royalty but not more than so much. So, the resource remains with the State. It doesn't become
14 a union resource. Now, if Parliament says, you should not have more than Rs 50 per ton. I'm
15 just taking an arbitrary figure, of royalty, of Rs. 5000 a ton of royalty on let's say Iron Ore. You
16 say, all right, I have Rs. 5000 a ton on royalty and then I have 300% tax on mineral rights, to
17 extract that royalty. Limitation in 9 is meaningless. And that's one of the crucial passages in
18 **India Cement**, about, are you not indirectly increasing royalty? You are negating the
19 limitation imposed by Parliament on royalty. And some of the laws I'll show Your Lordships
20 straight.

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** By doing what?

23

24 **HARISH SALVE:** Suppose you say 300% tax on royalty pay, you say 30%, you say 300%,
25 you say whatever percent. So I am allowed royalty of Rs. 1000 a ton, I'll take that and then I
26 have 300% tax on that. So Rs. 3000 by way of tax.

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** But Parliament can still enact a law. That your
29 rate of taxation shall not include this cap.

30

31 **HARISH SALVE:** My Lord, is 9 not that law, is the point. And that is what **India Cement**
32 looked at. When you see the concept.

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** Actually is not a restraint on tax because royalty
35 is not taxed. I think we have all...

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37 **HARISH SALVE:** It doesn't need to be.

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CHIEF JUSTICE DY CHANDRACHUD: Royalty is not tax.

HARISH SALVE: My Lord...

CHIEF JUSTICE DY CHANDRACHUD: In which case, the cap which Parliament imposes under 9 is a cap on royalty and not a cap on tax.

HARISH SALVE: I'm sorry.

CHIEF JUSTICE DY CHANDRACHUD: Today, even today, Parliament can come out with a law saying that, look, we don't want any state to have taxation of more than say, 12% or 28% on royalty. It can absolutely do it as...

HARISH SALVE: Of course, it does not 9 fulfils, is the point which Your Lordship....

CHIEF JUSTICE DY CHANDRACHUD: That's the heart of it, really.

HARISH SALVE: And I'll tell My Lord. There's a whole analysis which is underlying this submission. Yes, *prima facie* does look that Parliament should say you can't have so much tax. But there are so many different models of tax. So if Parliament fixes an exaction, is not royalty an exaction? I'm not using the word tax. Because the basic difference which came in India is because of how the English altered land tenures in India.

CHIEF JUSTICE DY CHANDRACHUD: Section 9, which provides for royalty rates or cap, is an exaction which has been imposed.

HARISH SALVE: It is an exaction. And tax on mineral right is also an exaction, *albeit* in the form of a tax. The difference on tax on mineral rights and royalty will be, and I make goal to say so. Where the State is not the owner of the mineral, and we still have some small areas where some minor minerals don't belong to the State. The State has nothing to do with the minor mineral or the mineral. Mr. A, a private person is exploiting the mineral. He's not even giving a lease. He digging up his own ground and taking out minerals. He says, all right, I will tax you on all of these, on your exercising on mineral rights to extract, or A gives the lease to B. As we have so many cases, decided by Your Lordship, decided by High Courts. Committee can, State can say I'm not exacting anything. I'm imposing a tax on mineral rights. Now where the State itself is the owner of the resource vested in for public good. We have now long

1 abandoned the theory that, 'the State is like any private owner.' That ship sailed a long ago.
2 Your Lordship similar in **RNRL and Reliance** has gone to the extent and said, these are
3 all.... all these, the mineral wealth is held in Trust and that is why these elaborate provisions.
4 And once Your Lordship sees, My Lord, the current trend of the legislation on how auctions
5 are held, how prices are fixed. It's a complete fit, now.

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Salve, you are saying, whether State is the
8 owner of resource...

9

10 **HARISH SALVE:** Owner of the mineral.

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** ...vested for public good.

13

14 **HARISH SALVE:** Vested for public good, it is all.... royalty itself becomes the exaction. And
15 if you say, no more than this, then you can't sidestep that. Then that itself is the limitation.
16 And this is never going to happen to major minerals, but maybe in minor minerals. We have
17 seen, some of the minor minerals are decontrolled, the State says, all right, let the private
18 people deal with that. The moment that happens, the legal character changes. And Parliament
19 may, may not want to limit that. If Parliament says no more than this much tax then public or
20 private, that tax is frozen. Because, My Lords, please see what a question which My Lords have
21 asked 3 times and the answer lies in the question. It has to be as a facet of mineral developed.
22 The limitation must not be, I don't like your face, I don't want you to burden industrialist. It
23 has to be at the facet of mineral developed. That's very important. That's in 50 itself. You can't
24 generally limit as a resource limitation. It has to come as an integral part of a law which limits
25 mineral development. How will that come? If at all, My Lord, a general.... In fact, as My Lord
26 the Chief Justice pointed out, some entries are subject to a law made by Parliament. Not any
27 kind of law, but Parliament can make any law and knock you off. But, when 50, says, by law
28 relating to mineral development, that means the limitation must be an integral aspect of
29 mineral development. So, when we see all this,...

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

32

33 **HARISH SALVE:** That is how Your Lordships will have to look at it. So, My Lord, to get to
34 this, and that is what, now My Lord, how our submissions are treated in judgment is another
35 matter. It's put in two sentences in **India cement**, you cannot do indirectly increase royalty.
36 This was the submission. And the submission, actually, since I have only less time, today, let
37 me just digress it. The submission about the contradiction, as I said yesterday, had nothing to

1 do, the judgment is dealing with two completely different points. Justice Wanchoo's dissent in
2 **Hingir**, and I'm going to read that to Your Lordships. The majority, and if I may say so, the
3 humility, was clearly right. They said, a tax on mineral produced,... the quantity of mineral
4 produces a measure, the tax is on mineral rights. He said, No, the moment you put it with
5 reference to mineral produced, it becomes an excise duty. So, its un-constitutional. And the
6 next sentence, he says that royalty can be a tax on mineral rights. But royalty itself is with
7 reference to mineral produced. What it was saying is that is, if that so, then royalty is not a tax
8 on mineral rights. If something with reference to mineral produced is an excise duty, it doesn't
9 metamorphosize when you call it royalty. It's either excise... It's wrong to say it's excise. Great
10 respect. The majority didn't accept that. And nobody has ever even ventured that line of
11 resilient. But you can't, in a one breath say, if a state imposes a tax on production, it's an excise,
12 but a royalty on production is the tax on mineral rights. That was the little mismatch. And that
13 is why in that sentence they say, previous para and this, 'Therefore tax is not a royalty.' But
14 what was the view which they accepted. The **Mysore** judgment said royalty is an exaction.
15 And that clearly is, and I'm going to show My Lord the provisions of the Act. Royalties is an
16 exaction, and it has become more so, if I may say so with respect, after the 2015 Amendments.
17 The auction rules and this and that. How the whole MMDR Act now works, after Your
18 Lordship's judgment in the coal matters and all, saying please, these are national resources,
19 their mode of disposal has to be completely transparent, and maximum revenue for the State.
20 Now, when you make a law for maximum revenue from the State and the State auctions and
21 gets as much as it can out of this resource, and which is what is good because that money is
22 going to go back into the coffers for public good. And then you say, now you can ramp it up
23 more through mineral rights, is not going to work. Because there is a limitation. Private rights,
24 yes, please tax them. Your own Public rights. When there is an elaborate mechanism created
25 for you to harness these rights, you cannot go beyond. That is really the principle. So that was
26 the **Mysore** test. That was the **Patna** test. This is an exaction already, in that sense, royalty
27 is akin to a test. Now that becomes, the shorthand becomes royalty is a tax. And the moment
28 you say royalty is a tax, you say hold on a minute, royalty is the price of the mineral, it is not
29 a tax. And then you say, oh, somebody got it really wrong. But if you look at it this way, in its
30 larger context, that royalty is an exaction of, by the State in respect of its mineral wealth, and
31 when Parliament has come up with a complete code on how that wealth is to be harnessed, is
32 that not a limitation on the tax and mineral rights? That's the real issue. Your Lordship will
33 say yes, Your Lordship will say no. But let's be clear, that's the issue.

34

35 **JUSTICE HRISHIKESH ROY:** Mr. Salve you talked about mineral wealth and how it is
36 unevenly distributed all across various states in the country. You also talked about perhaps
37 hinting at the generational exploitation aspect, meaning thereby, the limitation on the

1 exploitation of mineral wealth. If this generation exhausts, extract the entire thing, a particular
2 State is going about whatever is available it extracts, to put a cap on the quantum. We talked
3 about only the price element, to put a cap on the quantum, that could be a limitation.

4

5 **HARISH SALVE:** Also.

6

7 **JUSTICE HRISHIKESH ROY:** Pertaining to mineral rights.

8

9 **HARISH SALVE:** Entry 23.

10

11 **JUSTICE HRISHIKESH ROY:** Entry 23. But of course, you have said it in your opening,
12 you cannot denude the right of the State.

13

14 **HARISH SALVE:** We are not denuding. As I said the trouble is we try to fit this in a
15 pigeonhole. 50 stands by itself. Denudation, Occupied Field and Repugnancy, these are three
16 well known constitutional concepts, but vita, we should not try and squeeze 50 into any one of
17 these. It can be a different type. There is no My Lord as the Chief Justice pointed out. There is
18 no other Entry like this, subject to limitations imposed by Parliament. This Entry stands on its
19 own. So, to say that therefore this is a kind of denudation, why do we need to put a label on it?
20 This is not a denudation. You have the power. My Lord tomorrow, if there is a private lease
21 and if you're going to decentralize or de nationalize minor minerals, the power comes back in
22 its plenitude. If you take it out of the MMDR Act. So that power is not taken away it's a specific
23 pinpointed limitation by Parliament. What I am saying, and the only point of difference really
24 is, I say when the phrase is by a law relating to Mineral Development, anything which is
25 integral to Mineral Development becomes a cap on a taxing power. Why? Because the
26 Constitution says so. No use going back to *Sundararamier*. *Sundararamier* was not
27 dealing with an Entry like this.

28

29 In fact, I'll be again respectfully borrowing some of the Attorney said, this is a peculiar family,
30 mineral rights. And it has its history. It's rooted in history. And he says perhaps instructed and
31 it will be of assistance to Your Lordships to see that history. How did this evolve? The
32 legislative history of this starts with the Government of India Act. The first one, the 1915 Act.
33 And My Lord, they are all on Your Lordships bundles. Let me get on quickly. Volume IV(A).
34 Actually, I forgot to mention, Solicitor was to follow, but very kindly I requested him, and he
35 allowed me. I wanted to finish by Wednesday.

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37 **JUSTICE HRISHIKESH ROY:** Very quietly slipped into your timeline also, Mr. Salve.

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HARISH SALVE: My Lord, yesterday itself. I had said I need two days. Yesterday, I got about half an hour. Today speaking up the threads. Once back in the day, we were not so pressed for time. Somebody asked Mr. R. K. Garg, late redoubtable R. K. Garg, how long will you take? He says, depends how long you take to understand. He was known for his repartee.

CHIEF JUSTICE DY CHANDRACHUD: Unique ability. He would speak and then he would look at the back as well. He would make a point and then look around...

HARISH SALVE: Look around, whether it had had the requisite impact.

CHIEF JUSTICE DY CHANDRACHUD: Permittable impact ahead of him and behind him as well.

HARISH SALVE: I think once, I think it was Mr. Justice Hidayatullah, one of the judges got very, who didn't like his brusque style, Mr. Garg was a very staunch leftist and he got arrested for some protest or something and he was brought, and then next day he came into court. As he got up, the lights went out, the angry judge said, "Mr. Garg, it is very difficult when you argue. You don't throw light but today you're throwing darkness." If Your Lordship turns to Volume IV(A), page 27. I won't read it, but...

CHIEF JUSTICE DY CHANDRACHUD: IV(A), 27, is that history of Prof. C. L. Anand's book, right?

HARISH SALVE: Yes, sir. It begins at page 28. I won't read it, tempting as it is because it's a very romantic start to how all this started, the preamble. The way it worked, Section 45.

CHIEF JUSTICE DY CHANDRACHUD: Where will we get Section 45?

HARISH SALVE: It's page 44. Yes. And if Your Lordship is pleased to see, just to get the link. So relations... I'm sorry. This is the relations of local government to Governor General in Council. So there was clear subordinate. It was subordinated. It'll have some relevance when I come to it later, and the division is in 45(a). 'First of all, provision may be made under the rules for the classification of subjects in relation to the functions of the Government as Central and provincial subjects for the purpose of distinguishing the functions of local government and local legislatures and from the functions of the Governor General in Council.'

1 And then 65, Section 65 in the page.... Actually, I'm sorry, My Lord, please see first 52, the
2 Indian Legislature it speaks of the 2 chambers. In fact, it's interesting, the two expressions
3 used. Council of States and Legislative Assembly. We now have borrowed the expression. We'll
4 use them differently. Then 63(b), is Legislative Assembly. And 65, is powers of the Indian
5 Legislature. Page 55. It went more on the basis of Indian Legislature has powers to make laws
6 for all persons, all courts, all places, things within, so and so and for all subjects of his
7 magistrate, et cetera, et cetera. And the actual split came through the Rules, because they said,
8 by rules you might do it. And we had the Devolution Rules. Which came under the earlier
9 provision, I was... I showed 45(a). And the Devolution Rules, is in Volume IV(A), a sorry. IV(F),
10 page 14. Your Lordships have bundle IV(F)? Rule 3 said, "for the purpose of distinguishing
11 functions of local governments, local legislature and from the functions of the Governor
12 General in Council in Indian Legislature, subjects shall be classified in relation to function as
13 central and provincial subjects in accordance with the list in Schedule 1." This is the first time
14 where we started dividing legislative fields. And page 24. I'm sorry, page...

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** They were mutually exclusive. So, they were
17 included in province subjects set out in Part 2, it shall, to the extent to such inclusion, the
18 excluded from any such central subjects.

19

20 **HARISH SALVE:** Correct. This is the first experiment with defining legislative fields. And
21 the legislative fields Your Lordships get at page 24. One, these are very short list. 19 was
22 somewhat similar to our Industry's List and 20 .

23

24 **JUSTICE HRISHIKESH ROY:** Section 4 talks about settlement of doubts there itself.

25

26 **HARISH SALVE:** There is a Governor General. He's the boss. Whatever he said would
27 prevail. Page 25, if Your Lordship is pleased to see? There are 2 important entries. This is the
28 genesis of this "declare by law." That was declared by Governor General in Council. Entry 20.
29 "Development of industries in cases, where such development by a central authority is
30 declared by order of the Governor General in Council, expedient in public interest." And our
31 mining entry is 25. And please see, the language was much narrower. "Control of mineral
32 development insofar as such control is reserved to the Governor General in Council under rule
33 made, of sanction by the Secretary of State and regulation of mines." And then the residuary,
34 was 45. All other matters except, express others than expressly accepted and all, not including.
35 In the provincial subjects, Entry 8 was Land Revenue, so that was a taxing Entry. Then Entry
36 16 at page 28. Excise, that is to say, control over production, manufacture, transport, et cetera,
37 et cetera. 24, is very interesting. Development of mineral resources which are Government

1 property. Why it came this way? I will not take time now, because when I read the two or three
2 judgments on Land Tenures. How the Land Tenures evolved is discussed in those cases. So we
3 have Entry 24, development of mineral resources and 25, subject to rules made or sanctioned
4 by the Secretary of State, but not including regulation of mines. And then Industrial matters,
5 including the following heads, that's one of the Industries. Then Entry 47, was provision of
6 sources of Provincial Revenue not included in previous heads, whether taxes included in
7 Schedule, Scheduled Taxes, Schedule not including the Schedule, et cetera. So this was My
8 Lord the spread.

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** There were no separate Taxing Entries?

11

12 **HARISH SALVE:** No it was more like resources.

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

15

16 **HARISH SALVE:** Page 39. In the Scheduled Taxes under Section 88, which came later page
17 38, if Your Lordship has it here? For the first time, they inserted this. Your Lordship has page
18 38? Foot of the page. Scheduled Taxes Rules. Because this was separately given to the States
19 by the Governor General in Council. And Your Lordship sees, again this was done in two days,
20 the Legislative Council of a province without the previous sanction taken to, 1, consideration
21 tax imposing so and so. And Council of a... Legislative Council may without the previous
22 sanction take into consideration law imposing authorizing local authority to impose taxing. 2,
23 then the Governor General in Council may, by order, in addition to those in 1 and 2, to these
24 rules, and nothing will be affect the rule of a local authority. Now My Lord, Schedule 1, please
25 mark Item 1 My Lord, a tax on land put to uses other than agriculture. And in Schedule 2, we
26 have a tax on land and land values.

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** Where do we get that? Land and land values. Yes.

29

30 **HARISH SALVE:** And perhaps the reason was, because at that time My Lord, this is 1919,
31 we had multiple Land Tenures in play. There were large areas of mines which were privately
32 owned. And that's the problem with the *Murthy* Judgement. If land includes minerals as I
33 indicated yesterday, there are two arguments which Your Lordship will have to consider. One
34 is the pure Legislative argument, saying if there is a specific tax on a species of land, can you
35 also read it into another Entry which is not subject to limitations.

36

1 That's one thing which is wrong with *Murthy judgment*. But the second is also wrong. Post
2 1950, in any event, after the entire *Zamindari* abolition happened. Invariably in all the land
3 reform laws, mineral rights were given to the State. Now, if I do not have the rights to a
4 mineral, how can it be taxed? How can the value of that mineral be a legitimate measure for
5 taxing me on land? If you have a tax on vehicles, and I don't own a car, can you say the annual
6 value of... the value of a car will be the tax you pay on a scooter? That won't be a legitimate
7 measure. The way *Murthy* looked at it is, mineral rights are only a measure. You can't have
8 a measure unrelated to the subject of the tax. Now, if mineral rights are part, one can
9 understand saying, okay, I'm taxing a part of the land. But if mineral rights are not there, there
10 can't be a measure. And that is why, because by the time our Constitution, 35 Act itself started
11 making these differences, because by which time a lot of the mineral wealth... partly as Your
12 Lordship will find in the judgment because when the British started granting *Zamindari*
13 rights, World War I, World War II times, they realize we need coal, the war machine needed
14 coal, they needed Iron Ore. So, they started taking the mineral rights away. So 35 Act recast
15 this completely. The 35 Act, I'll try and finish that today, is in Volume (IV). This is in Volume
16 (IV), page 545. There are various provisions, which gives a broad idea. I've put them in my
17 submissions, but let me come straight to the one which is relevant. Page 593. Section 99.
18 'Subject to the provisions of this Act, the federal legislature may make laws, including laws
19 having extraterritorial operation for the whole or any part of the dominion and a provincial
20 legislature may make laws for the province, or any part thereof.' Subsection 2. 'Without
21 prejudice to the generality of the past conferred in the preceding subsection, no federal Law
22 shall on the ground that it will have extraterritorial.' Then we leave that. 100, is where we have
23 R-240... 246 comes from 100. Notwithstanding anything, the next two subsections, the federal
24 legislature and a provincial legislature has not power to make laws with respect to any other
25 matters enumerated in List I of the 7th Schedule of this Act, hereinafter called the Federal
26 Legislative List. Then II is the Concurrent List. 'Notwithstanding anything in the next, the
27 federal legislature and subject to the preceding subsection, a provisional legislator shall have
28 power to make laws with respect to the matters enumerated in List III and subject to the
29 preceding subsections, the provincial legislature has and the federal legislature has not the
30 power to make laws for a province or any part thereof in the matters enumerated in so and so.
31 The federal legislature has power to make laws with respect to matters enumerated in the
32 provincial legislature list, except for any province or part thereof'. The Section 100 divide was
33 in the 7th Schedule. There also it was the 7th schedule and that Your Lordships find at 735.

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** Page, 735?

36

1 **HARISH SALVE:** Yes, My Lord. In the first List, at 737, we have Entry 36. Language almost
2 similar, because we have now removed oil fields and put it in a separate entry. Regulation of
3 mines and oil fields and mineral development.

4

5 **JUSTICE HRISHIKESH ROY:** Mr. Salve, which is the Entry that you are reading?

6

7 **HARISH SALVE:** I'm so sorry. 36, My Lord. 737.

8

9 **JUSTICE HRISHIKESH ROY:** Yes.

10

11 **HARISH SALVE:** Regulation of mines and oil fields. My Lords, we now, have removed oil
12 fields and put it in Entry 53 of List I. Because there is no equivalent in the State. Oil field is
13 completely taken out now. Regulation of mines and oil fields and mineral development. In
14 fact, if one was to run a blue pencil through the word "and oil fields," then the words would be
15 exactly the same as now. Regulation of mines and mineral development to which such
16 regulation and development, under the Dominion control is declared by federal law to be
17 expedient in the public interest. The words there were, to which such regulation and
18 development under the dominion control is declared. We have used language which would
19 have almost the same effect. The State Lists, and again, there's no taxing entry in List I on
20 mineral rights. List II begins at page 738. And the relevant entry is Entry 23, 739. "Regulation
21 of mines and oil fields and mineral development subject to the control, subject to the provision
22 of List I with respect to regulation and development under Dominion control." So, this is
23 echoed in our 23. Language which is almost the same. And finally, page 740. The 3 entries.
24 And I can close there today. 39, Land Revenue. 42, Tax on land and buildings, huts and
25 windows. Very interesting. Thank God, we dropped huts and windows, otherwise we'd have
26 gone the Dutch way. And 44. Taxes on mineral rights. Subject to any limitations by any act to
27 the federal legislature relating to mineral development. I'm sorry, 747. So, there is no taxing
28 entry in List I but List II has a limitation. Now, with this history, I will place for Your Lordship's
29 consideration, certain relevant provisions. My friend Mr. Dwivedi has very helpfully showed
30 most of them, of the MMDR Act and then cite the four cases, so that we don't need to reinvent
31 the wheel. A lot of this law is already settled by Constitutional Benches. We'll continue on
32 Tuesday.

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Salve, we will find complete your
35 submissions by Tuesday itself?

36

37 **HARISH SALVE:** Tuesday won't be, because there's a lot of ground to cover.

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CHIEF JUSTICE DY CHANDRACHUD: We are thinking that between Tuesday and Wednesday, at least this side should be completed.

HARISH SALVE: I think that we should be. I'll try and finish. Solicitor has yet....

CHIEF JUSTICE DY CHANDRACHUD: Solicitor has to argue. So if you can conclude, maybe in an hour and Tuesday and Wednesday, because we don't have, because Thursday is a miscellaneous. So if this side can conclude in the two days.

TUSHAR MEHTA: It will not be possible. Very realistically.

HARISH SALVE: The point is of such.....

VIJAY HANSARIA: Point is such that we haven't started. Our Entry is different. Our Legislation is different.

HARISH SALVE: I think the Attorney is also there. There is one intervention about whether GST can be charged on royalty. That's a step completely separate.....

TUSHAR MEHTA: There are different jurisprudence...

CHIEF JUSTICE DY CHANDRACHUD: That is not the subject matter there.

HARISH SALVE: The whole jurisprudence is different.

TUSHAR MEHTA: It would be different.

RAKESH DWIVEDI: One small, different or not will only be seen when the matter comes up.

R. VENKATARAMANI: I just want to make a note of it. Volume (III)(D), because Union has filed an affidavit, where it gives the information about the mineral rights available in various states and the royalty which is.....

TUSHAR MEHTA: I have a separate set of arguments. Not that I will be repeating it. Except some inevitable...

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CHIEF JUSTICE DY CHANDRACHUD: We will resume on Tuesday.

END OF DAY'S PROCEEDINGS