

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

IN THE MATTER OF:

CIVIL APPEAL NO. 4993 OF 2006

Western Coalfields Limited ... Appellant

Versus

State of M.P. & Anr. ... Respondents

AND IN THE MATTER OF:

CIVIL APPEAL NO. 3643 OF 2011

Northern Coalfields Limited ... Appellant

VERSUS

The State of Madhya Pradesh & Ors. ... Respondents

**JOINT WRITTEN SUBMISSIONS ON BEHALF OF WESTERN
COALFIELDS LIMITED & NORTHERN COALFIELDS LIMITED BY MS.
AISHWARYA BHATI, ADDITIONAL SOLICITOR GENERAL.**

I. THE SCOPE AND EXPANSE OF ENTRY 50 LIST II VIS-A-VIS ENTRY 23 & 54 OF LIST-I.

1. The power to levy tax on mineral rights is subject to any limitations imposed by Parliament by law relating to mineral development.

"Entry 50 – Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development."

2. The area of mineral development is squarely covered in the domain of the Union by virtue of Entry 54 of List 1.

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

3. Even the expanse of Entry 23 List II is specifically subject to the provisions of List I with regard to regulation and development under the control of the Union.

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

4. Therefore, the core issue for consideration of this Hon'ble Court is whether the expanse of Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter, referred to as "**MMDR Act**") as amended covers the field directly and entirely, including levy of any fee, cess, royalty or any impost, and if there is any scope for levying any impost on mineral rights by the States.

II. TRUE SCOPE AND PURPORT OF MMDR ACT, 1957, AND RULES MADE THEREUNDER.

5. The Statement of object of the Act, the declaration under Section 2 imbibes the rationale of public interest, which necessitates complete union control and dominance on the regulation of mines and development of minerals in view of its importance for building infrastructure of the nation and the non-uniform distribution of minerals across states.
6. The general restrictions on undertaking prospecting and mining operation under Chapter II and procedure for obtaining mineral concessions in respect of land in which the mineral vest in the government under Chapter III creates a comprehensive architecture by which the union fully occupies the field with regard to mineral rights for all major minerals prescribed in the First Schedule and fully regulates the field.

7. The scheme of the MMDR Act makes it abundantly clear that the State government only acts as '*delegated*' of the Central government. Under the MMDR Act, as specifically enunciated in Section 26 is reproduced hereunder:

"Section 26:

(1) The Central Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act may, in relation to such matters and subject to such conditions, if any, as may be specified in the notification be exercisable also by--

(a) such officer or authority subordinate to the Central Government; or

(b) such State Government or such officer or authority subordinate to a State Government, as may be specified in the notification.

(2) The State Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act may, in relation to such matters and subject to such conditions, if any, as may be specified in the notification, be exercisable also by such officer or authority subordinate to the State Government as may be specified in the notification.

(3) Any rules made by the Central Government under this Act may confer powers and impose duties or authorise the conferring of powers and imposition of duties upon any State Government or any officer or authority subordinate thereto."

8. Under Section 15(g) of the MMDR Act the State govt has been empowered, as a '*delegated*' of the Union government to make rules in respect of minor minerals, inter alia for "*the fixing and collection of rent, royalty, fees, dead rent, fines or other charges and the time within which and the manner in which these shall be payable*".

9. Royalty under Section 9 is an impost / levy which is specifically and fully prescribed under Section 9 read with the Second Schedule (rates of royalty in respect of minerals).
- a. Royalty is levied on the holder of a mining lease upon the removal or consumption of the mineral and is payable to the State Govt. as a delegatee of the Union Government.*
 - b. The powers of Central Govt. are also curtailed in a way that the rate of royalty cannot be enhanced more than once during a period of three years in respect of any mineral.*
 - c. Section 9B and 9C mandate a levy for the purposes of District Mineral Foundation and National Mineral Exploration Trust on the rates specified.*
10. The scope, expanse and contours of the 1957 Act read with the rules make it writ large that the entire architecture is carefully woven together to occupy all aspects of regulation which would impact the development of mineral rights, either positively or negatively. The provisions cover the entire field right from identification of minerals, manner in which lease is to be granted, the kind of levy in the nature of royalty, development funds, even to the extent of specified water charges ceding no room for any further exercise of legislative power by any inferior legislature under the constitution in any manner.
11. It is also pertinent to mention here that, even under the architecture of the Coal Bearing Areas (Acquisition and Development) Act, 1957, as amended in 1971, a provision has been made under Section 18A for payment to the State Government of such '*sum of money*' as would have been payable as royalty by a lessee had such land or rights been granted by the State Government under a mining lease. The same is manifested not only from the express language of the section 18A itself but also from the statement of objects and reasons for introducing section 18A which is reproduced hereunder for ready reference of this Hon'ble court:

"Act 54 of 1971.— The Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) hereinafter referred to

as the Coal Bearing Areas Act provides inter alia for the acquisition by the Central Government of virgin lands, including underground minerals, or rights in or over such lands. Under the Explanation to clause (a) of sub-section (5) of Section 13, which provides that the value of any minerals lying in the land will not be taken into consideration in determining the market value of any land no compensation is payable to the State Governments in respect of the underground minerals which also vest in the Central Government when the land is acquired by the Central Government. The State Government have been representing from time to time that this results in their being deprived of large sums by way of revenue. The Central Government has considered the representations of the State Government and has decided that the State Governments should be paid purely on an ex gratia basis such sums as they would have been entitled to receive by way of royalty, had mining leases been granted in respect of the areas acquired. It is now proposed to amend the Coal Bearing Areas Act to make such payments obligatory."

"Section 18A: *Payment to State Governments in lieu of royalty.—Notwithstanding anything contained in this Act, where any land or any rights in or over land belonging to a State Government (other than the rights under a mining lease granted or deemed to have been granted by the State Government to any person) vest in the Central Government under section 10 or in a Government Company under section 11, the Central Government or the Company, as the case may be, may pay to the State Government such sum of money as would have been payable as royalty by a lessee had such land or rights been under a mining lease granted by the State Government."*

III. THE RATIO OF *INDIA CEMENTS LIMITED v. STATE OF TAMIL NADU & ORS.* [(1990) 1 SCC 12].

12. The Constitution bench of this Hon'ble Court in *India Cement* (supra) specifically examined the entire expanse of the MMDR Act as well as the interplay of Entry 54 of List 1 with Entry 23 and 50 of List II and

came to a well-considered and specific finding that under the scheme of MMDR Act, royalty being a levy/impost having a direct bearing on the regulation of mines and development of minerals is akin to a tax; And that the power of State to levy any further impost / tax / cess on the regulation of mines and development of minerals is completely eclipsed and circumscribed under the scheme of the MMDR Act.

"27...a combined reading of Entries 23 and 50 in List II and Entry 54 of List I, establishes that as long as the Parliament does not make any law in exercise of its power under Entry 54, the powers of the State legislature in Entries 23 and 50 would be exercisable by the State legislature. But when once the Parliament makes a declaration by law that it is expedient in the public interest to make regulation of mines and minerals development under the control of the Union, to the extent to which such regulation and development is undertaken by the law made by the Parliament, the power of the State legislature under Entries 23 and 50 of List II are denuded..."

"30. It seems, therefore, that attention of the court was not invited to the provisions of Mines and Minerals (Development and Regulation) Act, 1957 and Section 9 thereof. Section 9(3) of the Act in terms states that royalties payable under the Second Schedule of the Act shall not be enhanced more than once during a period of four years. It is, therefore, a clear bar on the State legislature taxing royalty so as to in effect amend Second Schedule of the Central Act. In the premises, it cannot be right to say that tax on royalty can be a tax on land, and even if it is a tax, if it falls within Entry 50 will be ultra vires the State legislative power in view of Section 9(3) of the Central Act. In Hingir-Rampur Coal Co. Ltd. v. State of Orissa (1961) 2 SCR 53, Wanchoo, J. in his dissenting judgment has stated that a tax on mineral rights being different from a duty of excise, pertains only to a tax that is leviable for the grant of the right to extract minerals, and is not a tax on minerals as well. On that basis, a tax on royalty would not be a tax on

mineral rights and would therefore in any event be outside the competence of the State legislature."

"33. In any event, royalty is directly relatable only to the minerals extracted and on the principle that the general provision is excluded by the special one, royalty would be relatable to Entries 23 and 50 of List II, and not Entry 49 of List II. But as the fee is covered by the central power under Entry 23 or Entry 50 of List II, the impugned legislation cannot be upheld..."

"34. In the aforesaid view of the matter, we are of the opinion that royalty is a tax, and as such a cess on royalty being a tax on royalty, is beyond the competence of the State legislature because Section 9 of the Central Act covers the field and the State legislature is denuded of its competence under Entry 23 of List II. In any event, we are of the opinion that cess on royalty cannot be sustained under Entry 49 of List II as being a tax on land, Royalty on mineral rights is not a tax on land but a payment for the user of land."

IV. ERROR IN STATE OF WEST BENGAL v. KESORAM INDUSTRIES LTD. AND ORS. [(2004) 10 SCC 201].

13. The Observation of this Hon'ble Court in Kesoram case (*Supra*) that there was a typographical error with respect to the finding of royalty being a tax is itself erroneous. However, the dissenting Judgment by Hon'ble Mr. Justice Sinha in Kesoram makes important observations in this regard which are reproduced as under:

"395. The terms and conditions including the right to receive royalty, the mode, manner and extent thereof, the limitations in relation thereto as well as enhancement in the quantum thereof are fixed by the statutory provisions, and, thus, a State would be denuded of its power to impose any further levy, impost or tax thereupon. Entry 50 of List II is unique in the sense that it is the only entry in all the entries in the three lists (Lists I, II and III) (apart from Entry 37) in

the Seventh Schedule where the taxing power of the State Legislature has been subjected to "any limitation imposed by Parliament by law relating to mineral development". Therefore, the moment Parliament makes any law relating to mineral development, the State Legislatures are denuded of their legislative competence to impose any tax or levy on minerals and/or mineral rights. Entry 50 of List II of the Seventh Schedule of the Constitution of India is subject to law enacted by Parliament in terms of Entry 54 List I of the Constitution of India, and thus we have no doubt in our mind that a power to levy tax on mineral rights or on dispatch of mineral does not exist in the State."

"400. *If the intention of the Constitution-makers was to confer an absolute power upon the State Legislature to levy tax whether on mineral rights or minerals, the same could have been worded differently. There was absolutely no necessity to restrict the power to levy tax on mineral rights in the States and not to permit the levy of tax on minerals, whether extracted or otherwise. Mineral rights, therefore, cannot be construed as a mineral already extracted as contradistinguished from being capable of extraction or otherwise in a state or form when embedded in the earth. The State Legislature, therefore, has no legislative competence to impose tax on minerals. In the present context, in view of the 1957 Act, it has also no legislative competence to levy tax on mineral rights which will have a direct impact on mineral development."*

"Whether royalty is a tax?"

445. *Such a question may not strictly arise for consideration in this case as royalty is a statutory impost. Royalty stricto sensu and in common parlance may not be a tax.*

446. *Whether royalty is a tax or not is required to be deliberated upon only for a limited purpose, namely, as to whether Section 25 of the 1957 Act covers the field of taxation and not for any other purpose. We shall advert to this aspect of the matter at some details a little later.*

447. But having regard to the definition of taxation contained in Clause 28 of Article 366 of the Constitution of India, there may not be any dispute that royalty being a statutory impost would come within the purview thereof."

V. LAND TAX WITH MINERAL AS A MEASURE IS A VEILED TAX ON MINERAL RIGHTS.

14. It is respectfully submitted that the State has enacted laws with nomenclature that indicates that the levy of tax falls on value of mineral bearing land. However, a closer look at the definition clause would reveal that the levy is on the value of mineral excavated out of the land. Thus, the nomenclature is being used as a veil to conceal the real subject of the levy. Such method of levy is contrary to law and undisputedly unconstitutional since Entry 49 of List II does not provide for Taxes on minerals excavated.
15. If tax is to be levied on land it can only be measured with land taken as a unit. The value of mineral produced from land cannot be a measure. To explain this line of reasoning an analogy would be appropriate. Income tax is levied on a salesperson and the unit of measure for such levy is his income. The value of a sale that a person makes or the value of company a person serves are not a measure of the person's income tax, though a person's income has a direct nexus with the value of sales he/she makes and the value of his/her company where he/she serves.
16. This Hon'ble Court in *CCE v. Grasim Industries Ltd [(2018) 7 SCC 233]* observed at Para 6 as follows: *"...The measure of the levy must not be confused with the nature thereof though there must be some nexus between the two. But the measure cannot be controlled by the rigors of the nature...."*
17. In *India Cements* this Hon'ble Court noted as follows:

"23...It appears that in the instant case no tax can be levied or is leviable under the impugned act if no mining activities are carried

on. Hence, it is manifest that it is not related to land as a unit which is the only method of valuation of land under Entry 49 of List II but is relatable to minerals extracted. Royalty is payable on a proportion of the minerals extracted. It may be mentioned that the act does not use dead rent as a basis on which land is to be valued. Hence, there cannot be any doubt that the impugned legislation in its pith and substance is a tax on royalty and not a tax on land.

24...Even though minerals are part of the state list they are treated separately, and therefore the principle that the specific excludes the general, must be applied. See the observations of Waverly Jute Mills Co. Ltd. V. Raymon & Co. (I) Pvt. Ltd (1963) 3 SCR 209, where it was held that land in Entry 49 of List II cannot possibly include minerals.

25...The minerals which are under the earth, can in certain circumstances fall under the expression 'land' but as tax on mineral rights is expressly covered by Entry 50 List II, if it is brought under the head taxes under Entry 49 of List II, it would render Entry 50 of List II redundant. That the entries should not be so construed as to make any one entry redundant. Even in pith substance the tax fell to Entry 50 of List II, it would be controlled by a legislation under Entry 54 of List I."

VI. CONCLUSION

18. The interplay of Entries in List I, II & III, when read together clearly indicate that when mineral rights are decoupled from land then the state legislature cannot impose any further tax/ cess on such land and therefore, once royalty which is akin to a tax is imposed under the MMDR Act upon the mineral rights, it is to be understood that power to

tax by state legislature is eclipsed by parliamentary legislation in relation to development and regulation of minerals. Thus, the field is fully occupied by the Centre.

DRAWN BY:

Mr. Uddyam Mukherjee, AOR.

Mr. Hemendra Sharma, AOR.

Ms. Manisha Chava, Adv.

Mr. Swapnil Pattanayak, Adv.

SETTLED BY:

Ms. Aishwarya Bhati, Ld. ASG.

Filed Through:



[UDDYAM MUKHERJEE]
ADVOCATE-ON-RECORD.

WESTERN COALFIELDS LIMITED (APPELLANT)

DATE: 11.03.2024

PLACE: NEW DELHI.