

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 **TUSHAR MEHTA:** My Lord, so far as the Constitutional scheme emerging from the conjoint
2 reading of Entry 54 List I and Entry 23 and 50 of List II is concerned, Mr. Salve has already
3 taken Your Lordships from *Hingir-Rampur* till *Kesoram* Judgment, which I'll not dwell
4 much upon except for 10 minutes. Just a brief overview, but My Lord, I would...

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

7

8 **TUSHAR MEHTA:** I'm sorry, My Lord. I would like to place before Your Lordships the
9 Government's perspective why the architecture of the MMDR Act is the way it is and how it
10 impacts the power of the State versus power of the Centre. But before I do that, I want to make
11 one thing very, very clear because the impression which is unintentionally gathered is this that
12 this is kind of a federal issue between Centre and the State and who has the legislative
13 competence to levy. At the outset I say that is not the question here. My Lord, here and as I
14 will explain in a little more detail with some facts, figures and statistics.

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

17

18 **TUSHAR MEHTA:** The way MMDRA works, and it is intended to work as a limitation, is
19 this My Lord. It is not a fact in dispute that the mineral rights and the ownership of mineral
20 vests with the states, and therefore, every penny of Royalty goes to the State Government. If
21 Your Lordship would not like to write down, I have the propositions also, My Lord. In the end,
22 My Lord, I can give the propositions.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

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26 **TUSHAR MEHTA:** Just to make it more convenient for Your Lordship.

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

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30 **TUSHAR MEHTA:** Now every penny goes, the State Government grants the lease. The lease
31 deed format is provided in the Central Statute. The State Government collects the Royalty. The
32 Royalty figure is fixed by the Central Government. The State Government appropriates that
33 Royalty amount with other amounts which I will show as a part of its consolidated fund.

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35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

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TUSHAR MEHTA: These are not the facts which are in dispute or which can be in dispute.

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

TUSHAR MEHTA: Now My Lord, why the Centre discharges the function of only fixing the rate of Royalty *qua* each mineral? There are several factors My Lord, which I will show. But broadly, to ensure uniformity in the price structure throughout the Country.

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

TUSHAR MEHTA: And My Lord, our domestic price structure, we'll have to take into consideration, two factors. I'm just giving a broad overview. One, the domestic requirement, which can only be decided at the Central level. And second, since the Royalty has a direct nexus with the price of each mineral, we will have to be very, very careful and conscious about the global market *qua* that mineral. If that mineral is cheaper somewhere else, people would start importing, Indian domestic users and vice versa. So, it directly impacts the import-export. I'll, My Lord, go that... go into the details. Next, and the most important thing. My Lord, as I would show from one report, which is report a prepared every 3 years. Your Lordships are aware Section 9 provides that the Royalty will... the rates of Royalty would be changed every 3 years. There is a report prepared. It was really heartening to know....

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

TUSHAR MEHTA: A classic example of cooperative and collaborative federalism. What the Central Government does? Your Lordship need not write. My Lord, in my note, Your Lordship would find everything. We call for the views from all stakeholders. Stakeholders would mean industries; stakeholder would mean people who are going to be affected by the industries. Because ultimately, we have to protect the environment as well. And essentially, and more importantly the State Governments. I'll show My Lord, from the last report of 2019 that the State very effectively involved in the process. They say that - 'This particular mineral, Bauxite, please increase it by 2%. Because this is our revenue generation. These are the reasons why it should be something more.' Then, I'm sorry My Lord.... Then the subgroup after receiving all these detailed inputs examines 'what are the global scenario?', 'What will be the impact on the export-import?' All these minerals are required for the core industrial sector of the domestic market. That is taken into consideration. The core industrial sector is the heartbeat of any economy. My Lord, that is considered, and I will show that to Your Lordship. And thereafter,

1 with reasons why the State's request is either accepted or not accepted, a price is fixed *qua*
2 each mineral. And thereafter, the Central Government is out of it. Now you collect, you
3 appropriate, you do whatever welfare activities you want to do in your state. The only dispute
4 between the parties, My Lord, in these proceedings is, after having... it is our case, that when
5 we decide the amount of Royalty, the figure of Royalty, that is all inclusive, taking into
6 consideration all your requirements. What the states say that over and above the Royalty, we
7 can independently levy certain amount under various names. What we believe and what My
8 Lord the Act perceives, the objective of the Act is that whatever I am saying My Lord, I'll be
9 able to make good from the record. Suppose iron ore or bauxite. Some amount is fixed, say
10 100 rupee per ton or per whatever pits mouth value, et cetera. That also was argued, but I'll
11 show that's not relevant for this purpose. So, the amount comes to, say, 1000 per ton giving
12 an absolutely hypothetical example. They say that every state will have a power to levy more
13 than 1000. We say no, it is all inclusive. And the reason is this. If every state starts imposing
14 further levy, in some case it would be 1500 per ton, in some state it would be only 1000 per
15 ton. In some state it could be 1100 per ton. The uniformity of the prices will not be maintained.
16 And I want to flag below that issue before I take Your Lordship through this My Lord.

17

18 **JUSTICE HRISHIKESH ROY:** Mr. Solicitor, as you are formulating your thoughts and you
19 have given the example of bauxite and you say that this rate that is determined and you said
20 that this is done after elaborate consultation with the stakeholders, including state. and then
21 you say the state is trying to extract over and above the all-inclusive price that you are
22 suggesting to us.

23

24 **TUSHAR MEHTA:** That's correct.

25

26 **JUSTICE HRISHIKESH ROY:** Now, taking a cue from the example of bauxite have you
27 not boxed in this tape so far as exercise of their power under 50, Entry 50 list (II).

28

29 **TUSHAR MEHTA:** I could not understand the last.

30

31 **JUSTICE HRISHIKESH ROY:** You see, I have said that you have boxed in everything. So
32 where does the state have the power to exercise under Entry 50 their power?

33

34 **TUSHAR MEHTA:** That's my lord. Respectful submission let the entire architecture of
35 MMRDA, under which this box price, inclusive of everything, is fixed, is a limitation on the
36 state's legislative power under 50.

37

1 **JUSTICE HRISHIKESH ROY:** It's totally Denuded you see, the state's power.

2

3 **TUSHAR MEHTA:** That's my respectful submission.

4

5 **JUSTICE HRISHIKESH ROY:** Correct.

6

7 **TUSHAR MEHTA:** But otherwise. I'll just give an example, My Lord, why this creates a
8 problem.

9

10 **JUSTICE HRISHIKESH ROY:** Why should the... of course just asking. You are just at the
11 starting point. Why should the act, the statute, not say that this is what the tax that the union
12 is charging and to that extent the power this denuded or something to that effect? Why are we
13 asked to read this by inference?

14

15 **TUSHAR MEHTA:** My Lord, my legal submission would be different.

16

17 **JUSTICE HRISHIKESH ROY:** We also have the situation of -- I mean I was just discussing
18 Article 265 which will be forthcoming.

19

20 **TUSHAR MEHTA:** It is there. It's there. Invalid tax. It will be unconstitutional. But I'll be
21 able to show that there is an inbuilt statutory mechanism which says that this amount and
22 nothing more. Otherwise, My Lord what happens. Just giving... of course, example would not
23 be the basis for Your Lordships to decide. But I'm just giving an example, the rationale why
24 My Lord this is under the central control. The fixation. Suppose there are two states A and B.
25 A has electricity generation station of a huge capacity. They are using coal as a raw material. B
26 has raw material mines, My Lord. They are namely the coal mines. They say that over and
27 above Rs. 1000, which is the Royalty fixed by the Central Government. I'll give examples. In
28 many states, pre-India **Cements**, other Cess- education Cess, different nomenclatures - was
29 300% Royalty, 500% Royalty, et cetera, et cetera. So that state A having the electricity
30 generation plant will have to either pay more from state B because every state has a different
31 price structures.

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Solicitor, that is implicit in a federal
34 scheme, you, see? Therefore, unless you say that, look when you fix, as you call it, an all-
35 inclusive Royalty that Royalty includes all taxes also that can be levied by state. You have to go
36 as far as to establish that .

37

1 **TUSHAR MEHTA:** Correct.

2

3 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That the fixation of Royalty is itself inclusive
4 of all taxes states [UNCLEAR]

5

6 **TUSHAR MEHTA:** Nothing more.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's one. Second your argument that, well,
9 it's desirable that there should be uniformity of the price of minerals. It may be a desirable. It
10 may be a desirable matter as a matter of policy. The question is whether this will impinge upon
11 the federal distribution of power into the Constitution. Now take another case, there are
12 several taxes the states can levy under the State List. I'll just give you two examples. Entry 53
13 of List II - Taxes on the consumption or sale of electricity, right? Now in various industries,
14 electricity is not just a medium, but it's a raw material. For instance, in the production of steel,
15 iron-steel industry. Electricity itself is a raw material.

16

17 **TUSHAR MEHTA:** It's on the price structure also.

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Right? And now the Constitution contemplates
20 that each individual state can levy a tax on the consumption and sale of electricity. Now
21 different states levying taxes at a different rate on the consumption and sale of electricity will
22 meet with the same argument that you are urging that in Maharashtra may impose it at a
23 different rate, Karnataka may do it as a [UNCLEAR], Solar plant in Rajasthan may do it at a
24 different rate. But that's part of the federal scheme or take Entry 54 - Taxes on sale and sale of
25 petroleum crude, high speed diesel - high speed diesel is crucial for industry - motor spirit,
26 natural gas. So, if you are consuming natural gas from, say, which comes in from Jamnagar,
27 different rate altogether. If you are importing natural gas, which has come in through, say, a
28 crude pipeline, a gas pipeline say in Chennai, completely different rate. That's exactly the
29 scheme of the Constitution and there is nothing *sui generis* about minerals that there should
30 be a uniformity. Now the same logic will apply to electricity, have the same rate of electricity,
31 same taxes for electricity .

32

33 **TUSHAR MEHTA:** That example and I'll give the answer. I'll give the answer. In other
34 entries like electricity or Entry 54 List II. There is no provision like Entry 50 that's subject to
35 limitations placed by the Parliament under 54.

36

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Therefore, there is a safeguard. Suppose, say
2 Jharkhand places taxes at the rate of 500%.

3

4 **TUSHAR MEHTA:** Ignore that example. I'll make it good on other.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Suppose some state levies taxes at the rate of,
7 say, 300%, something disproportionate, which will really affect the industry, and that state is
8 a primary source of that mineral in India. Parliament can certainly regulate the rates. When
9 you are prescribing limitations, you can say that - 'Look rates will not exceed so and so. Rates
10 on this mineral will not exceed so and so.' You can have differing limitations for differing
11 minerals.

12

13 **TUSHAR MEHTA:** My Lords, please ignore that example for the time being.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Union has not thought through. How they can
16 use the limitation power, imposing power to ensure that whether states are not restricted in
17 imposing taxes. The taxation structure in a state does not affect overall the development of the
18 mineral or the development of the industry. Parliament can still do it, but they have to do it in
19 a nuanced case by case, mineral by mineral basis.

20

21 **TUSHAR MEHTA:** That is where My Lord, we would respectfully argue that MMRDA is that
22 restriction what is the Constitution says limitation on. This is *sui generis* for the simple reason.
23 This is the only entry, taxing entry which is made subject to some other entry. There is no other
24 taxing entry. Number one. Number two, in case of...

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It is not made subject to the other entries; it is
27 made subject to limitation in the interest of regulation and development of minerals. So, it's
28 emphasised very carefully. Mr. Solicitor, if you want to sit for a minute?

29

30 **TUSHAR MEHTA:** No. I am okay.

31

32 **JUSTICE B. V. NAGARATHNA:** The limitation is a Constitutional limitation. It is not any
33 kind of limitation. So, a Constitutional limitation has to be read in the context of Article 265
34 of the Constitution.

35

36 **TUSHAR MEHTA:** And that too in public interest.

37

1 **JUSTICE B. V. NAGARATHNA:** Because there can be no taxation except with authority
2 of law. So, a Constitutional limitation to tax juxtapose with Article 265 must be the...

3

4 **TUSHAR MEHTA:** Correct, My Lord. I bow down.

5

6 **JUSTICE B. V. NAGARATHNA:** Interpretation.

7

8 **TUSHAR MEHTA:** I bow down. My Lord, second, as My Lord, I am putting...

9

10 **JUSTICE ABHAY S. OKA:** Mr. Solicitor, you have to answer. You're banking upon the fact
11 that states have say in determining Royalty. There, you may not be right. Under Section 9(3),
12 it is the exclusive power of the Central Government to decide what is the Royalty. States have
13 no power. See Section 9, Sub-section.... It is exclusive domain of the Central Government.
14 States do not have any say in fixing Royalty.

15

16 **TUSHAR MEHTA:** If Your Lordships can, My Lord, consider allowing me to develop
17 further....

18

19 **JUSTICE ABHAY S. OKA:** We are just pointing out so that you can answer it.

20

21 **TUSHAR MEHTA:** Certainly, My Lord. I'm conscious of the fact that the consultation is not
22 statutorily contemplated. That's what My Lords are very rightly putting it to me, but the
23 consultation is read in every provision, that's what I'm going to show. Please take my written
24 submissions, My Lord.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Where do we get them?

27

28 **TUSHAR MEHTA:** Volume II(f). And My Lord, I will ignore whatever is argued or whatever
29 may perhaps not be relevant immediately.

30

31 **JUSTICE B. V. NAGARATHNA:** Volume?

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** II(f).

34

35 **JUSTICE HRISHIKESH ROY:** It should be II(e).

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37 **TUSHAR MEHTA:** It was thereafter changed. There was some mistake. At night, My Lord...

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JUSTICE HRISHIKESH ROY: We should ignore (e)?

TUSHAR MEHTA: Yes. Please ignore. And possible delete it. If it is possible to delete. Annexure was wrong. Instead of 'The report of 2019', 'Report of '90' was annexed. There was nothing to hide in there, but that was no relevance of that.

JUSTICE HRISHIKESH ROY: Got it, page?

TUSHAR MEHTA: Page 5. Page 4, PDF 5. I'm sorry. PDF 4. I'll skip what is not relevant. But what is relevant, please allow me to read. This history relates back to the Industrial Policy. I'm not reading it, but I'll just... I have annexed. My Lords, historically, not immediately, but at some time after independence, we declared our Industrial Policy. First was '48 and thereafter '56. I have annexed it for Your Lordship's reference and record. But I'm not going to read it. But, the intention to place this is this, My Lord, that the nation for the first time decided how our industrial growth will take place, what would be the roadmap. And there, they divided certain sectors in Schedule A, Schedule B, Schedule C, and Schedule D, where core minerals were placed in Schedule A. Because they are directly or indirectly responsible for industrial growth of other industries. That's the purpose. Now please come to PDF 6, My Lord, para 4. PDF 5, My Lord. I'm sorry. PDF 5, para 4. I'm sorry. This is wrong. I'm sorry. PDF 6. I am as usual behind the rest. Para 4, My Lord. 'The Industrial Policy Resolution 1956 put major minerals such as coal, lignite, mineral oil, iron ore, copper, zinc, atomic minerals, et cetera, in Schedule A, which was reserved exclusively for Public Sector. And minor minerals in Schedule B, which the Private Sector, was allowed to participate in mining activities.' Your Lordships can, My Lord, thereafter, come to page 5, para 5. 'The minerals available in the nation, are naturally finite and are perhaps the most valuable resource for the development of the Country. Minerals are the vital raw material for the core sectors of the economy. The exploration, extraction and management of minerals have to be guided by national goals and perspectives to be integrated into an overall strategy of Country's economic development.

The endeavour shall be to promote domestic industry and reduce import dependency which make domestic industry resilient and self-sustainable.' My Lord, this is the difference in other cases, like electricity, et cetera, we don't have to see the global market. That can be, My Lord. And please, My Lord, for the time being, allow me to say please. Don't treat this as a federal issue. There is no State vs Centre it is the State Government which collects everything only for the reasons which will follow. The price figure, Royalty fixation, the quantification is done by the Centre, keeping the global phenomena and the domestic scenario in mind. Then Your

1 Lordships may come to 7, para 8. This is My Lord, more relevant why... To answer the Chief
2 Justice of India's query, why minerals stand on a different footing and why it's fixation...
3 Fixation of everything which is to be extracted from whoever is liable to pay is to be federally
4 governed. If I may use that expression. '(a) The mining sector and extraction of mineral, by
5 the very nature of the subject, requires to be taken up holistically at a national level as its
6 regulation and development shall have to be based upon the following.' My Lord, please see
7 each one of them carefully. 'National landscape for protection, exploration and extraction of
8 mining. Mineral being a national wealth, its distribution for the benefit of every citizen of each
9 state, as per principles of socialism enshrined in the Preamble.' Then, 3) 'Impact of high
10 burden of levy on Indian minerals in comparison to international mining jurisdiction.' This is
11 crucial. My Lord, if high burden is put on each mineral by different states differently, we may
12 not be able to My Lord deal with the global situation. 4) is really crucial My Lord, according to
13 me. I'm sorry. Your Lordships when examines or the interpret the entries or any constitutional
14 principle. Your Lordship would examine, would keep in mind these factors because these are
15 in public interest as administered under 54. But let me proceed rather than... Para 4...

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Parliament can always say that while
18 prescribing limitations, apropos to your submission. We understand the policy issue in the
19 submission. But Parliament can always say that -'Look, the carrying cost of this particular
20 mineral should not exceed a certain amount.' So, then you can indirectly ensure that the tax
21 structure [UNCLEAR] out of hand.

22

23 **TUSHAR MEHTA:** That is said. That is said. I want to show that if Your Lordship can, just
24 bear with me for some time. I'm just giving the justification for it. And this is my answer, that
25 architecture itself is a limitation. Please see My Lord 4. Depends this one is really crucial for
26 the nation. 'Dependence of...'. And for the time being, your Lordships may consider, put below
27 these two entries on the side. Just examine bear a situation, My Lord, which the Country is
28 dealing with. And thereafter, I'll come to two entries and how the law has taken care of.
29 'Dependence of imports for certain minerals and regulation of exports of domestic minerals,
30 use of which is needed for the core domestic industries.' Now, please note this My Lord. 'The
31 import and export is mostly based upon the comparative price fixation in domestic as well as
32 global market and such price fixation shall depend upon the levy of Royalty and other others
33 imposed on each mineral in India.' Meaning thereby, if we overtax a particular mineral or
34 suppose some mineral is available only in two states. It is over taxed, then the domestic
35 industry in rest of the India would go for importing the cheaper mineral from the other
36 countries. This has a direct national impact. Then 5. 'The national concern about growth of
37 mineral sector at a national level so as to ensure that share of mineral industry contributes in

1 the Country's GDP.' When we say that we have a Law for Regulation and Development of
2 Mines and Minerals, we also mean, that we wanted to regulate and developed in such a fashion
3 that it contributes to the GDP as a sector, not state wise. Then 6. 'The fixation of consolidated
4 amount like Royalty, et cetera, at a national level for each mineral will ensure availability of
5 domestic mineral at a reasonable price as compared to international prices. Separate levy
6 regime by mineral restates results into disparity and high cost of domestic production, leading
7 to closure of mines, necessitating import of cheaper mineral from global market. Fixation of
8 the total levy on minerals in such a manner that not only the concern of all mineral rich but
9 the concerns of mineral deficient states are also taken care of.' Because the industries would
10 be situated, core industries which are using these minerals, My Lord in other non-mineral
11 states. So, they get one particular mineral at one particular price, and they don't start
12 importing or if some state decreases the Royalty, they can even start exporting . My Lord, I
13 can face the contention that you remove the... you stop the export. But MMRDA is a one-time
14 solution... one solution that - 'No, we will fix everything.' So, there is no difficulty in domestic
15 production, domestic pricing *vis-a-vis* global price. Then My Lord, 9.

16

17 **JUSTICE B. V. NAGARATHNA:** Just as you are fixing the rate of Royalty, is it not possible,
18 as the learned Chief Justice said, to have a ceiling or fix a rate of tax? The power to tax is with
19 the State.

20

21 **TUSHAR MEHTA:** That is there.

22

23 **JUSTICE B. V. NAGARATHNA:** But you can have a rate of tax or a ceiling on the tax to
24 have uniformity with regard to taxes also.

25

26 **TUSHAR MEHTA:** My Lord, Constitutionally, it's going to be my submission that under
27 Entry 50 it says - 'Tax on mines and minerals subject to limitations imposed.' This is the only
28 entry where taxing power is denuded by the Central Law for Mines and Minerals if it is in
29 public interest. The judicial inquiry would be while examining Entry 50, whether this is a tax
30 by the State -Yes. Whether there is a law made by Parliament under Entry 54 List I for
31 regulation and development of minerals and I'll show all this comes within development and
32 regulation of minerals. And third, whether that law of Parliament is contrary to federal
33 structure or is in public interest. I am showing My Lord public interest, right now. Now 8, My
34 Lord - 'To bring in uniformity in the structure of regulation and development of minerals in
35 other aspects so as to make it an investor friendly regime, incentivizing more investment in
36 that mineral sector while balancing environmental concern as a holistic national level. The
37 development of mineral industry needs uniformity at a national level, failing which,

1 fragmented state wise levy will adversely impact the development of minerals and systemic
2 utilization of minerals in larger public interest.' The moment there is an Act under Entry 54,
3 regulating and providing for development of minerals, that puts a limitation on the taxing
4 power, apart from the specific limitation, which I'll show. But My Lord, my first respectful
5 submission is that the architecture of the MMDRA, the rules framed there under and the
6 formats, statutory formats.... Statutory formats in K. Specimen K.... not specimen. Form K.
7 Mr. Salve read one part of it. But I will read the other part of it, which specifically says, that -
8 'You are being given lease.' What is lease? Mineral is a national resource. It's owned by the
9 people. Government is only a custodian, a trustee. In 5 judge bench, Your Lordships have
10 accepted this principle regarding natural resources, et cetera. What we are giving My Lord, by
11 way of a lease... We mean the 'State'... Right to extract, sell and appropriate the sale proceeds
12 of something which is a national resource. In consideration of that, what is paid, is 'Royalty'.
13 And My Lord, the way, Form K is couched, says that - 'this, this, this and nothing else.' Royalty,
14 rent, dead rent and rent, nothing else. That's My Lord, the Statutory Contract one enters into
15 when one takes the privilege of sharing the national wealth and appropriating it for
16 commercial use, which is also necessary. I'm not opposing that concept. Now, Your Lordships
17 kindly come to, para 12. It means 9. PDF 9, My Lord. I'm skipping what is not necessary, My
18 Lord.

19

20 **JUSTICE J.B. PARDIWALA:** There is one thing, you may not skip, Mr. Solicitor General.
21 Come to para 9.

22

23 **TUSHAR MEHTA:** My Lord.

24

25 **JUSTICE J.B. PARDIWALA:** IV. This seems to be the Sub-stratum, the heart and soul of
26 your...

27

28 **TUSHAR MEHTA:** What Your Lordship means 'answer'.

29

30 **JUSTICE J.B. PARDIWALA:** Right?

31

32 **TUSHAR MEHTA:** Correct.

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34 **JUSTICE J.B. PARDIWALA:** The only contention is, the State's assertion that over and
35 above the amount of Royalty fixed by the Central Government with their active consultation,
36 they can still independently impose levies, exercising its legislative competence under Entry
37 50 List II of the Seventh Schedule. Your principal argument is that every penny of Royalty goes

1 to the State. No problem. My Lord, Justice Oka pointed out Sub-Clause 3 of Section 9 of the
2 Act. Just give us some illustration. One or two. What are... what is the nature of other levies
3 which you are talking about over and above Royalty?

4

5 **TUSHAR MEHTA:** It comes subsequently. My Lord, in pre-India *Cement* era....

6

7 **JUSTICE J.B. PARDIWALA:** So, one clarification.

8

9 **TUSHAR MEHTA:** Yes, My Lord.

10

11 **JUSTICE J.B. PARDIWALA:** Is it your complaint that they are not adhering to Schedule
12 II, which fixes the rate of royalties? They may be strictly adhering to the price fixed in Schedule
13 II. But over and above those, Royalty, they are levying some other taxes.

14

15 **TUSHAR MEHTA:** Yes. And what they do is...

16

17 **JUSTICE J.B. PARDIWALA:** Your argument is that that is not permissible by virtue of
18 Article 54.

19

20 **TUSHAR MEHTA:** Read with 50.

21

22 **JUSTICE J.B. PARDIWALA:** Right? That's your argument. So, what are these other levies,
23 which is impermissible for the State to impose?

24

25 **TUSHAR MEHTA:** Yes, My Lord. Please come to... I'll answer that first and then come back
26 to My Lord, my...

27

28 **JUSTICE J.B. PARDIWALA:** Correct.

29

30 **TUSHAR MEHTA:** Page of 55, My Lord, if Your Lordships can come. 55, My Lords. Please
31 see, My Lord, para 93. Just to immediately answer My Lord's question. My Lord Justice
32 Pardiwala's....

33

34 **JUSTICE J.B. PARDIWALA:** Then you may proceed in your own way.

35

36 **TUSHAR MEHTA:** I'll come back to...

37

1 **JUSTICE J.B. PARDIWALA:** This will give insight.

2

3 **TUSHAR MEHTA:** This is very pertinent question. And I also want to highlight this. This is
4 all which is... It's a bone of contention. it's not an adversarial....

5

6 **JUSTICE J.B. PARDIWALA:** Para 55?

7

8 **TUSHAR MEHTA:** Para 93, My Lord.

9

10 **JUSTICE J.B. PARDIWALA:** Page 55.

11

12 **TUSHAR MEHTA:** Yes. Page 55, yes. Para 93 , My Lord. Your Ladyships get? Your Ladyship
13 gets?

14

15 **JUSTICE J.B. PARDIWALA :** Got it.

16

17 **JUSTICE B.V. NAGARATHNA:** Yes.

18

19 **TUSHAR MEHTA:** I'll read. 'It is submitted that a decision permitting State to impose taxes
20 on minerals, mineral rights, would inevitably lead to a return to the scenario prevalent prior
21 to **India cement** judgment. This would be contrary to public interest, *et cetera.*' Now 94 - 'To
22 get a sense of the scenario prior to **India Cement** one may refer to the rates of Cess, or Tax
23 imposed by States at that time, as derived from the report of the study group on revision of
24 rates of...' - this is the source - 'published in March '90. The rates imposed were these...' For
25 example, the first State, Cess at 25% of Royalty. Then Cess at 37% of Royalty.

26

27 **JUSTICE J.B. PARDIWALA:** So, it's a Royalty plus the Cess at 25%, which, according to
28 you, is objectionable and not permissible.

29

30 **TUSHAR MEHTA:** Yes, and please see further - 'Mineral rights tax on Coal at 300% of
31 Royalty.' My Lord, today I can show after **Kesoram**, it is 500% in one State. I don't want to
32 go into State versus Centre. Then Mineral rights tax on other minerals, 100% of Royalty. Then
33 please see the next State. Cess on Iron ore at 300% of Royalty, then Cess on Limestone and
34 Pyrite at 200% of royalty, Cess on Bauxite, China Clay, Dolomite and Fire Clay at 133.33% of
35 Royalty.

36

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Therefore Mr. Solicitor, now, you have given
2 us the building blocks of your argument by suggesting that -'Look, if the States are left
3 untrammelled to impose taxes, what would be the impact? States will start imposing radically
4 disproportionate taxes, variant taxes, so on.' We've got that point. I think the heart of your
5 matter really is, how do you read the MMDR Act? And you may be right. You can demonstrate
6 that to us, because that's really the crux of the matter, how do you read the MMDR Act as
7 imposing a limitation on the State power to tax under Entry 54.

8

9 **TUSHAR MEHTA:** I get that My Lord. That is the heart of the matter.

10

11 **CHIEF JUSTICE D.Y.CHANDRACHUD:** So, you just spell out now those provisions of
12 the MMDR Act, which can be construed as limitations on the State power to tax, because that
13 they also concede that the entry of the States, entry providing for taxes and Mineral rights is
14 subject to the Union Power to impose limitations. Now, the question is whether you have, in
15 fact, as Parliament imposed a limitation. And which are those limitations? So, you can spell
16 out to us. That really is the core of the matter.

17

18 **TUSHAR MEHTA:** May I come to that answer, My Lord, a little later. 10 minutes later.
19 Before that, I want Your Lordship to see, how Section 9 is understood and how that
20 consultative process has taken place. It would be necessary, My Lord, before you...

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Which page of your submissions?

23

24 **TUSHAR MEHTA:** How Section 9 has worked so far and I would also... Why I'm not
25 immediately answering this question. When MMRDA was enacted, there are Parliamentary
26 debates that -'We want to denuded the States from putting any other thing, any other levy.'
27 Therefore, there is some chronology which I have conceived. Your Lordships can take it from
28 me. There are two types. As I have earlier also said that person who has something to say and
29 person who has to say something. My Lord, I would fall in first category. Your Lordships can
30 rest assured. There is something new which, from the State's perspective, Your Lordships,
31 sitting in this combination must know, that's all.

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

34

35 **JUSTICE B. V. NAGARATHNA:** Is it your argument that Section 9 is exhaustive of all the
36 levies which a State can impose?

37

1 **TUSHAR MEHTA :** Yes.

2

3 **JUSTICE B.V.NAGARATHNA:** On the right to mine.

4

5 **TUSHAR MEHTA:** Yes. Section 9 read with Section 13, the rulemaking power, read with
6 Rule 31, read with Annexure F, the format. And that I will now connect, but before that some
7 history may be necessary, for some facts may be necessary. Please come to see. I earnestly
8 request your Lordships to see the scheme of the Act and the Rules in the context of what I am
9 going to show. Please come to page 112. I have produced report. My Lord, for only this kindly
10 allow me to use the physical copy. There was some confusion at night when I read some other
11 report was annexed therefore my underlining is in the physical copy. I'll revert back to the
12 digital copy, My Lord. It's 113, My Lord. And in this context, after this, showing this, I'll
13 immediately come to the scheme.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Proof for revision of rates.

16

17 **TUSHAR MEHTA:** Immediately I'll come to the scheme. This is a report of the study group
18 for revision of rates. Please mark this My Lord. This exercise happens every three years as per
19 Section 93.

20

21 **JUSTICE HRISHIKESH ROY:** The Solicitor General got away by saying, please permit me
22 to use the hard copy. I do not know whether the Bench Members have that privilege or not.

23

24 **TUSHAR MEHTA:** My Lord, I admit, I am technologically challenged.

25

26 **JUSTICE HRISHIKESH ROY:** No, I put myself in the same footage. And not only you and
27 I, but I'm sure there are others also.

28

29 **TUSHAR MEHTA:** But substantially we have shifted. But what happened was at midnight
30 not midnight, 01:00 when I was, My Lord, marking my notes so that I can give exact
31 paginations, I found that the annexure, this annexure was wrongly put. It was another report
32 which was put so I could not My Lord...

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We have the one by Dr. K. Rajeshwara?

35

36 **TUSHAR MEHTA:** Yes. I had the hard copy so I marked hard copy. Rest My Lord I am on
37 the digital. Please come to page 118. How this is holistically and at a federal level considered

1 and Your Lordship may note, this exercise has taken place every three years after the Act was
2 passed. Section 9, apropos Justice Oka's query. My Lords are right. Textually, it does not
3 provide for consultation. But I must point out, when this Act was enacted, some states in the
4 Parliament said they provide for a consultation, which was opposed by the Government of the
5 day, and consultation was not placed as a Statutory Provision. But it has always been read.
6 And look at the level of consultation which will give.... My Lord, I'm not showing it for
7 nothing.... Which will give the honourable bench, My Lord, the idea, why national level fixation
8 of one price? And what are the considerations which are going into it? Which can never be
9 done if it is fragmented, state wise imposition. That's the purpose of showing this. Please see,
10 My Lord, 118. The first para -'The principles of....'and My Lord, kindly bear with me. I'll go a
11 little slowly. So far as this report is concerned. 'The principles of Royalty rest on an accepted
12 legal and customary base. Minerals are non-renewable assets which once removed, cannot be
13 replenished. As owner of minerals, the state needs to be adequately compensated for the
14 permanent loss of an asset, thus depleted. Royalty, therefore, whether fixed as a share of profit
15 from the mining industry or as a compensation for a depleting asset is a consequence of
16 ownership of an asset, to which, the title is transferred.' My Lord, this is to answer, whether it
17 is a tax or not. Please come to page 119. 'Royalty regime in British India.' It has always been
18 federal dominated. For this reason, My Lord. 'In the British regime, grant of mineral
19 concessions were regulated by Government of India Act 1913. Subsequently, as per the
20 Government of India Act '35, many constitutional changes were brought about under this Act
21 and minerals became provincial subject. As a consequence, then provincial Government of
22 Assam, Bihar, Bombay and United Provinces framed their own rules for granting mining
23 concessions. In 1939, the Government of India framed, 'Mining Concession Rules 39' for
24 regulating the grant of prospecting licenses and mining leases in centrally administered area.
25 The Mining Concession Rules, specified royalties on mica, petroleum and natural gas, oil,
26 shell, gold and silver, iron ore and precious stones. And the rest of the mineral were not
27 specified. The Royalty was based on a specific percentage of the sale value in respect of
28 specified minerals, except oil, shell, iron ore, gold, silver, and so and so.' Now 'Present
29 legislative provisions', Your Lordships can, consider skipping and come to Chapter 2, page
30 121, para 2.4. I have marked it. So that I may not have to read what is not directly relevant'
31 But Your Lordships can go through it at leisure, if required. 2.4, Your Lordships have, My
32 Lord? 121. Or may I read? 'With a view to have comprehensive review of the Royalty rates on
33 all minerals, in terms of its impact on production, mineral based industries, export and the
34 state revenues for the first time in the year 1966 Union Government set up a study group. This
35 study group submitted its report in 1968 and recommended delinking of Royalty rates from
36 the pit's mouth value for most of the minerals and suggested unit of production that is
37 tonnage, as the basis. Because of the difficulties experienced by the states, in administration

1 of charging Royalty as per value of minerals at the pit's mouth, which led to litigations and
2 disputes. Subsequent study groups constituted in the year '73, '78, '84, and '89, retained the
3 tonnage system.' Please see 2.6, My Lord. 'As a result of the adoption of the policy of economic
4 liberalization and also as a sequel to international roundtable conference held in New Delhi in
5 April '94 under the aegis of the UNDP the Ministry of Mines constituted a study group in
6 January '95 with a view to rationalize the rates of Royalty to make them comparable with the
7 international rates.' Please mark this. I am on entire Act being read as a limitation and the Act
8 is in public interest. Please My Lord allow me to proceed further. 'International rates and at
9 the same time ensure rapid development of mining industry and augmentation of revenue
10 earnings of the State Governments.' This is treated as a part of development of mining
11 industry. This national level price fixation is treated as a part of development of mining
12 industry, which is the Act. Therefore, My Lord, I said - 'The Act itself is a limitation.' I'll point
13 out the specific provisions also. And it also says that we want to augment the revenue of the
14 states. So therefore, at the cost of repetition, I'm saying - 'This is not a federal issue. State versus
15 Centre.' Yes, Legislative competence of Parliament versus Legislative competence of State
16 Assembly is an issue, but not a confrontational federal issue. Then 2.9. Ultimately, I'll show
17 that entire Act occupies the field as a limitation to Entry 50 List II. That's one of my attempts.
18 That's why I'm going in a particular chronology. 2.9, My Lord. 'Consequent to the notification
19 of Royalty rates in 2004, a high-level committee was set up under the chairmanship of Sri. so
20 and so, member, Planning Commission to review the National Mineral Policy and recommend
21 possible amendments in the MMDRA. The recommendations of the HLC in respect of Royalty
22 were as under...' Please see only (d) and (e) My Lord. 'A lowering of rates to be considered only
23 for such mineral, for which there is evidence to show that the Royalty rates are inhibiting.
24 Mining operations and mineral production is registering a downward trend.' They have
25 studied and recommended this, and these recommendations are the foundation for
26 subsequent fixation of royalties. 'The Royalty rates of base metals, noble metals, and precious
27 stones in which the Country is grossly deficient needs to be low to encourage exploration for
28 these minerals.' This also cannot be done fragmented way by the respective State Governments
29 and the Act, as I will show the architecture, acts as a limitation on any other taxing power.
30 Then your Lordship, kindly turn the page and just three lines above para 2.11 at PDF 124.

31

32 4 line, My Lord. 'This schedule to the Mines and Mineral Development Act on escalating scale,
33 taking into consideration measures for effective deterrence against the mines. Both the
34 recommendations of this study group the revised rates of the Royalty, *et cetera*.' Then 2.11 -
35 'The period between 2007-2011 witnessed significant development in the Indian mining
36 sector, mineral sector. Based on the recommendations of Hooda Committee, Government of
37 India in consultation with State Governments, replace the National Mineral Policy with new

1 National Mineral Policy on 13th March 2008. The National Mineral Policy provides for a
2 change in the role of the Central Government and the State Governments, particularly in
3 relation to incentivizing the private sector investment in exploration and mining and ensuring
4 level playing field and transparency in the grant of concession, *et cetera*.' Now, please My Lord
5 turn the page over. Chapter 3, PDF 126. My Lord. I'm sorry. There is a global view is examined
6 by the committee, and this is examined every time when there is a revision of Royalty rates
7 takes place. Now come to 129, last 3 lines. These are all factors which would lead credence to
8 my argument subject to My Lord's approval that the Act, architecture of the Act and reading
9 Section 9, the way My Lord Central Government has read, operates as a limitation
10 contemplated under Entry 50.

11

12 Last 4 lines. 'It is evident.' The Lordship gets 129? 'It is evident that prevailing Royalty rates in
13 other countries are much lower than India and mainly in the range of 2.5% to 7.5% on *Ad*
14 *Valorem* basis. For ease of comparison, 15 mineral rich countries have been considered based
15 on significant occurrence of the specific mineral.' This is the examination which My Lord is
16 taking place every time there is a revision in fixation of mineral rates. Then, My Lord kindly
17 come to next, 130. And that is where Government's concern comes and that would possibly
18 persuade Your Lordships to treat the Act itself as a limitation, apart from 3 or 4 specific
19 Sections which I'll show. Because Act is My Lord, please bear in mind, providing for
20 development and regulation of minerals and once the field is occupied by provisions which
21 makes the development possible and regulation possible. My Lord, I will show some of the
22 judgments the regulation would also mean prohibiting taxation.

23

24 **JUSTICE B. V. NAGARATHNA:** It could have been expressly provided under the Act, a
25 prohibition on taxation. But that is not there. [UNCLEAR]

26

27 **TUSHAR MEHTA:** My Lord, I will answer that question straight away. It is not provided.

28

29 **JUSTICE B. V. NAGARATHNA:** It is not provided.

30

31 **TUSHAR MEHTA:** It is not provided but no Statute My Lord, to my knowledge, would
32 provide a negative provision that you, the State Legislature, will not tax it. It occupies the field
33 and the resultant constitutional effect is your power of tax is taken away. I will come to that,
34 My Lord. But I want Your Lordship and My Ladyship to see this, then I am coming to... and
35 I'm aware. Whatever is the extent after Section 2 is the extent of limitations.

36

37 **JUSTICE B. V. NAGARATHNA:** Yes.

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TUSHAR MEHTA: That's... I bow down. That is the correct position. It's not that, it's controlled everything My Lord, under the universe. Whatever is ...

JUSTICE B. V. NAGARATHNA: What is beyond, what is provided, is the question now ?

TUSHAR MEHTA: Correct. To answer that question, I'll have to necessarily go through this chronology.

JUSTICE B. V. NAGARATHNA: Yes.

TUSHAR MEHTA: Whether... It is entirely Your Lordships discretion to accept it or not, but Your Lordships must have the background, in which Your Lordships are examining the question because this is a nine-judge combination and My Lord, the law laid down will have huge impact on the economy of the Nation. Import-export policy of the Nation, and the domestic production industry of the Nation. Because these are all used in core manufacturing and other domestic industries. And therefore, My Lord, this was the position even when the Constitution was free. Therefore, only entry where taxing power is subject to some limitation. I know, I have to answer limitation, frowned where? I'll answer that, but please see My Lord. Section 9 has been the consultation is read into it. Why My Lord, the State needs to impose any further levy for augmenting revenue that is taken into consideration while fixing the Royalty.

To answer Her Ladyship's query. My Lord, again, I'm putting it in a different way. There is no negative provision in the state... in the Act that State Legislature is denuded of the power. Because no legislative drafting would have such a provision. Negative provision is not required. How, My Lord, that negative provision is ensured?

CHIEF JUSTICE D. Y. CHANDRACHUD: That part is implied according to you.

TUSHAR MEHTA: No.

CHIEF JUSTICE D. Y. CHANDRACHUD: It's implied.

TUSHAR MEHTA: By occupying the field. If I am sitting on the chair, Dr. Singhvi cannot sit on this chair, by occupying the...

1 **JUSTICE ABHAY S. OKA:** We don't think that he will do that.

2

3 **JUSTICE B. V. NAGARATHNA:** No, the question is....

4

5 **JUSTICE ABHAY S. OKA:** Mr. Solicitor, we don't think that he will do that. We don't think
6 he will even attempt to do that.

7

8 **TUSHAR MEHTA:** So, My Lord, I don't have to say that - 'No. Dr. Singhvi will not sit in this
9 chair.' I occupy the chair. That's my answer.

10

11 **JUSTICE B. V. NAGARATHNA:** But the question is - 'What is beyond the chair?' The chair
12 is not exhaustive of everything.

13

14 **TUSHAR MEHTA:** That's what I'm...

15

16 **JUSTICE B. V. NAGARATHNA:** There is something beyond the chair, which is not
17 occupied.

18

19 **TUSHAR MEHTA:** I'll show, My Lord. When the fixation takes place, everything beyond the
20 chair is also taken into consideration. It is, My Lord, as the Chief Justice said, "It is a block."
21 It's all inclusive. MMDRA is a complete code in itself. When it provides for fixation of fiscal
22 levy, it exhausts all fiscal levies. That is my respectful submission. Please come to My Lord,
23 para 4.4, that is 131. And this is what would be the problem, if **India Cement** is to be
24 disturbed and **Kesoram** is to be.... I'm not worried about **India Cement** or **Kesoram**. I'm
25 on a larger.... I'm before a larger bench, My Lord. Neither of the judgment binds. I'm sorry.
26 131 para 4.4. This is very crucial. 'Indian mining sector is carrying the burden of highest
27 taxation in the world. The effective tax rate, for example, in case of iron one... iron ore works
28 out to be as high as 64% in case of the mines granted before 12th January '15 and 60% in case
29 of the new mines granted after 11 January.' Your Lordship knows, in 2015, auction regime took
30 place. Otherwise, it used to be first come, first served, et cetera. 'Against this high incidence of
31 taxation prevailing in the Country, the internationally effective tax rate is in the range of 31%
32 to 45% as depicted in the table given at the end of the chapter. The mining sector in India is
33 heavily taxed, and not only in comparison to international level...' Please mark this. 'But also,
34 in comparison to other domestic sectors. The taxation regime for mining in India affects all
35 downstream industries and employment opportunities in the Country. While fuelling the
36 already skewed balance of payment through additional import of minerals here. Hence, there
37 is a need to rationalize the taxation structure....' They do not say mine Royalty. They are

1 rationalizing the taxation structure on minerals. 'Taxation structure for the mining sector, for
2 sustainable development, and deriving long term benefits in terms of sustained raw material
3 security for the industries.'

4 We can't exhaust everything in 10 years. But our structure should be such that, it competes
5 with several factors. Then they have gone to effective tax rate. 'Value of all amounts paid to the
6 Government....' Please, mark this. Kindly underline the word 'all'. 'Value of all amounts paid
7 to the Government and divided by total revenue from mineral sales.' Please My Lord come to
8 the next page. Mainly they have given mineral producing countries and compared with Indian
9 position. Mongolia is 31.30% effective tax rate. Similarly, Canada, *et cetera, et cetera*, last two
10 are India New Mines, that is after 2015, 59.84%. And Old Mines - 63.97%. This is the taxation
11 structure as compared to Global and this includes all, everything which is payable to the
12 Government, including Royalty. So, they are deciding the fiscal structure, not Royalty only,
13 keeping in mind every fiscal levy which is permissible or impermissible except what is quoted
14 at the bottom. 'ETR does not include a number of other payments, such as auction price...'
15 Now after 2015, I have to participate, and I'll have to pay premium. 'Auction price, purchase
16 of land for mining, GST at 18%, 10% tax levied by Supreme Court.' It's a wrong word. Not
17 'levied by the', 'levied under...'

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Under the Order.

20

21 **TUSHAR MEHTA:** Levied under the judgment.

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Judgement. That's right.

24

25 **TUSHAR MEHTA:** Levied under the judgment of the Supreme Court. 'Levied by the
26 Supreme Court in Goa and Karnataka and FDT Levied by Karnataka as well as highest rate of
27 Royalty on iron ore in Odisha.' Because they are imposing their own levies. Odissa and
28 Karnataka are imposing their own levies. That is also considered. That is not considered. Still,
29 still, this is the high level of taxation. 'Net present value in case of survey in forest land...' I'm
30 not going into details. 'Net present value is 4.38 lakhs to 10.43 lakhs per hectare depending on
31 density of forest at the time of grant of lease.' Then compensatory afforestation, *et cetera*.
32 Now, please come to the next page where the total fiscal payment is decided. 'One of the main
33 objectives of the study group as laid down in terms of reference is to review and suggest
34 changes in the Second Schedule to the MMDR Act.' Second Schedule contains the Royalty.
35 'Regarding the Royalty rates keeping in view, the objective of mineral development...' Please
36 see this. This is an exercise in the interest of mineral development, which is a field occupied
37 by the Centre. Because they are not only deciding what amount will get to which state? They

1 are examining how the National development in the sector of minerals will take place. How
2 would we regulate the mineral sector and mining sector in a fashion that it is developed. So,
3 this amount is under the Act providing for development of minerals. Then Your Lordships
4 may kindly see 5.2. 'The study group had a series of meetings on so and so and so at Hyderabad
5 for deliberating the methodology to be adopted. In depth analysis of international and
6 domestic demand supply scenario price trends of principal commodities...' because they use
7 raw material, minerals as raw materials. 'Review of taxation and fiscal regime...' Please mark
8 this. 'And fiscal regime and engagement with all stakeholders to formulate the final
9 recommendations of the study group.' This exercise is undertaken at the cost of repetition
10 every three years or four years, whenever there is a revision. Then Your Lordship, may kindly
11 come to the next page, para 5.5. They prepared questionnaires, two questionnaires, one sent
12 to affected parties, that is, mining industry and second to the State Governments so as to
13 decide how the final figure is to be arrived at. Para 5.5. 'The questionnaires were also circulated
14 for seeking information from the stakeholders with regard to the criteria for fixing rate of
15 Royalty preference for *Ad valorem* basis or tonnage basis for charging Royalty on minerals,
16 periodicity of revision of Royalty, perception of the State Government for the revenue earned
17 for the imposition of Royalty, utilization of Royalty for infrastructure development,
18 environment protection, guidelines on charging of Royalty, guidelines for computing Royalty
19 on minerals on *ad valorem* basis. Separate entry for so and so and so and so. Now, kindly see
20 next page. 'New factors since last revision of Royalty rates and dead rent.'

21
22 Because 2015 regime, that is the auction regime, steps in. 'After the notification of Royalty
23 rates and dead rent in September 2014, there have been major changes in the legal framework
24 by way of effecting the MMRD Act with effect from 12th January '15th as per the amendments,
25 mining leases are to be granted through auction.' Your Lordships can skip that and kindly
26 come to the next page. 'Criteria for determining Royalty rates.' 5.9. Your Lordships gets 5.9?
27 'In determining the Royalty rate for minerals, the study group assessed the following
28 parameters. Grant of concession through auction mechanism and imposition of contribution
29 to DMF plus NMET leading to hefty revenue generated for the States.' Kindly pause here for a
30 minute. Now, there is a new insertion that is 9(c) under which every mining operator will have
31 to pay 30% of the Royalty to the State which is being used, for the purpose of mining affected
32 persons and environment, not for general welfare of the people and My Lord, this national is
33 minimal, but that comes to the Centre. 'Then impact of high burden of taxation, especially in
34 comparison to international mining jurisdictions.' This can never be done at the State level in
35 a fragmented way. It has to be at the federal level. Then 'dependence on imports of minerals'.
36 My Lord, sometimes what happens is, some mining leaseholders, they stop mining, which is
37 required for core industries as a raw material, so the Country is dependent upon the import of

1 the minerals. That is considered that we will have to fix the fiscal structure in such a way that
2 import is minimum and we use the domestic production at the optimum. And My Lord the
3 prices go high. Prices of the end product goes high. If we import the minerals, to be used as a
4 raw material, the end product in the core industry sector will go high. That is the concern
5 which can never be done at the State level. Then, My Lord - 'Sluggish growth of mineral sector
6 and declining trends of its shares in Country's GDP. Trends in domestic production and export
7 quantities and prices of minerals.' This is also considered that you are less incentivized to
8 export your minerals and give it to your domestic users. 'Cost of mineral production, cost of
9 transportation and handling charges, implication of revision of Royalty rates on revenue
10 realization of the State Government and in the industry.' Please see this, My Lord. 'Unused
11 stocks of low grade, et cetera.' Your Lordship can skip. Next page only 2 paras, 5.12. and 5.13.
12 'One of the objectives of the study group is to devise a Royalty regime which is effective,
13 transparent, stable, and is attractive to the investors to invest in the mining sector, particularly
14 for mineral like copper, gold, silver and diamond.' They are using the word revenue... Royalty.
15 But they say that our attempt is to ensure that more and more investors come, and that results
16 in development of mines and minerals. My Lord, that is the scheme, that is the architecture of
17 the Act. Then - 'View of the stakeholders. The study group has tried to obtain the view of
18 stakeholders et cetera.' Now, My Lord may kindly see, I'm just giving My Lord overview of how
19 this exercise progress. Please come to page 138. Now My Lord, they take 1 mineral. 'View of
20 the stakeholders... 'The first stakeholder for this particular mineral is Ministry of Steel. Can
21 never happen if it is fragmented State wise. Please see, 'was of the view that currently India
22 has the highest rate of Royalty on iron ore. That is 15% of average sale value amongst major
23 iron ore producing countries and thereby having highest taxes at 64% of effective tax rate.
24 Ministry of Steel made the following recommendations.' I'm not going into it. Then please see
25 (b) Government of Andhra Pradesh. The main recommendation, please see (b) -'Increase of
26 Royalty rate to 4% from existing 2% on *ad valorem* basis for limonite, colemanite, so and so
27 and so and so.' They take into consideration what fiscal benefit we want to derive out of the
28 mineral wealth which we have in our Country. And therefore, they make a request. And they
29 give justifications. And acceptance and rejection of request are answered in this report, with
30 reasons. Please see, My Lord, then My Lord... Then, please see next page, My Lord.
31 Government of Andhra Pradesh, iron ore. They say this.... please see My Lord... continue.....
32 IV. Your Lordships have IV?

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

35

36 **TUSHAR MEHTA:** 'Continue existing rate of Royalty for iron ore 15% of average sale price
37 on *ad valorem* basis, irrespective of the grade of the ore.' They say, "Our coffers would be

1 enough. If we get this much out of our mineral wealth." Then My Lord, they say that- "To
2 introduce 2 new price [UNCLEAR] for the low-grade iron or etc.' I'm not reading individually.
3 I'm saying that - 'Every state represents, that you are deciding the fiscal receipt which my state
4 will get. Please increase this. Please bifurcate this. Please decrease this et. Cetera, et cetera.'
5 My Lord, (c) is Government of Chhattisgarh. I'm not reading. (d) is Government of Gujarat.
6 They have their own views. I'm not reading. (e) is Government of Jharkhand. I'm not reading.
7 These are just examples, that every state participated, per mineral. My Lords, this is an
8 exercise 'per mineral.' Because every mineral has its own economic parameters, and every
9 mineral will have different stakeholders contributing their suggestions. Then, please see (f)
10 Government of Madhya Pradesh. 'The rate of Royalty on diamond should be increased from
11 11.5% to 15%.' They say that -'We want something more from our diamond deposits.' Because
12 Madhya Pradesh seems to be a diamond-rich state, My Lord. Then Government of Odisha,
13 Government of Telangana.... Then kindly come to... My learned friend wants me to see... show
14 Your Lordships, Telangana. 'It was highlighted by Government of Telangana, that the fixation
15 of Royalty should be based on unit or volume instead of *ad valorem*, mainly for adequacy,
16 administrative efficiency, revenue stability, transparency and simplicity in monitoring Royalty
17 collections and reconciliation.' This is important. 'It was also pointed out, that the present
18 Royalty regime, that is Royalty DMF, that is District Fund and National Fund et cetera imposes
19 higher tax burden on mining sector and is high comparatively with other countries relating to
20 effective tax rate.' They say that -'Decrease this.' Because internationally, there is a low tax
21 regime. We have higher tax. And their concern is, they might lose the industries which are
22 using this particular mineral. So, they have their own concern. Then My Lord, next is FIMI.
23 FIMI is My Lord, Federation of Indian Mining Industries. They have also participated. But I'm
24 not reading it, but this is a stakeholder participation. Now Your Lordships, may go by one or
25 two examples of the minerals. Page 148, para 6.4. This is how the development and regulation
26 of mineral, is taken care of. As a general architecture. 6.4 -'An analysis of the feedback given
27 by the State Government show that, principal mineral producing state perceives Royalty
28 primarily as a source of revenue as well as consideration for permitting exploitation of state
29 mineral resources. These states are also of the view that Royalty is a consideration due to the
30 State Government for allowing exploitation of its mineral resources, beside a tool of source of
31 fund for local area and community development.' They say -'Whatever figures we are
32 suggesting is for our development.' It goes in consolidated funds of India. It's not for growth
33 of mining industry only, it's their revenue generation. It's like Income Tax by the Central
34 Government. It goes in the consolidated fund of India. This goes in the consolidated fund of
35 the State. Then My Lord, the State Governments in general gave priority for increasing the
36 revenue earnings from Royalty as criteria for fixing the rates of Royalty. Further, the State
37 sought to consider optimum utilization of low-grade mineral resources. Fiscal measures for

1 attracting investment please I am sorry. Fiscal measures for attracting investment and mineral
2 conservation as other important criteria for fixing royalty rates. Some states are also of the
3 view that criteria of fixing the Royalty should be to attract improved technology to bring
4 Royalty rates in tune with international rates for encouraging investment in mining sector.'
5 They are saying that this is an all-comprehensive package, which we are deciding. 'FICCI
6 recommends that differential rates of Royalty should be charged on intermediate minerals, *et*
7 *cetera, et cetera.*' We are not concerned. Now, please see My Lord, one example, kindly come
8 to dead rent. And I'll again show why how this is a limitation, how this helps development and
9 regulation. What is dead rent? Let us, see conceptually what is Dead rent? I have a mine. I am
10 not operating the mine, for whatever reason, so I'll have to pay that rent. That is the Dead rent.
11 Why do we charge that as a concept? It's not merely to incentivize them, incentivize the mine
12 owner to continuously mine and produce minerals. There is one more important factor. And
13 that important factor is this. Your Lordships are aware that mineral resources of the Country
14 are limited. They will be depleted and they are to be exploited in a phased manner. When I get
15 the lease, I get the lease with a condition that I would extract minerals over a period of 10 years
16 for sustainable development to ensure that the simultaneously, the Ecology is not harmed *et*
17 *cetera.* Suppose I am greedy, or for whatever reason there are some market forces. The price
18 of that mineral has shot up, instead of 10 years I deploy more manpower, more machinery and
19 more equipment and do everything, if I have to extract 5000 tons, I do it in 3 years. I would
20 be harming the environment; I would be harming the sustainable development. And therefore,
21 for 7 years, my Dead rent would be so high, that I am disincentivized to do in 3 years. This is
22 development of minerals. Therefore, I say the entire Act is a consolidated, self-contained code
23 for every aspect of development and regulation of mineral. This number 2, the example which
24 I have given. I'm sorry.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

27

28 **TUSHAR MEHTA:** Another one. Why Dead rent and how it is directly linked with the
29 development and regulation of mineral? Every section has this theme. Suppose I do something
30 in 3 years which I'm supposed to do in 10 years. It would directly impact the price structure
31 therefore, a provision for Dead rent. Each and every provision has been our ultimate goal of
32 development and regulation. But I am showing this to show, that every state also comes before
33 the Government saying that this is the all in all package for my fiscal benefit, and this is how
34 you decide the package. My Lord, 58. Just giving an example how this exercise is undertaken
35 per Mineral. This is not a general exercise per Mineral Global analysis. Stakeholders are asked.
36 Stakeholders give their details, their desire. Global analysis. Now for Bauxite, after considering
37 each state's request for increase, decrease change, in methodology, *et cetera.* The committee

1 goes into, the Global analysis. 'Aluminium industry is the principal consumer of Bauxite.
2 World production of Aluminium was 58 million tons in 2015. China continued to be the
3 leading producer with a share of about 54%, which is followed by Russia, Canada and UAE
4 and India. 4% each. Global Aluminium demand of so and so and so forth.' I am not reading
5 everything but they examined the Global scenario *qua* Bauxite, keeping in mind the demand,
6 request or desire of every State Government for their generation of fiscal revenue and 163 is
7 the conclusion. Yes, My Lord. Kindly see My Lord. 'Keeping in view the global consumption
8 production trend analysis of Global Royalty rates, increase in production cost, and future
9 domestic demand.' Kindly see the parameters they are considering. This can be considered
10 only at the national level. 'That production cost has gone high. Future domestic demand. The
11 study group recommends that Royalty rate for metallurgical grade Bauxite be reduced to
12 0.45% of LME prices so that net impact, including DMF and NMET remains the same as
13 0.60%.' Please mark, 'Net impact', including two statutory levies under the MMDRA. I hope I
14 am able to make myself clear. These two. DMF is one of the funds created under 9(c) and
15 NMET is a fund created under 9(e), so they say - 'Royalty, DMF and NMET considering that
16 the net impact is only . 6%.' And net impact would mean whatever you wanted is given or not
17 given for a reason. But you cannot levy anything more. Constitutionally, I will answer. How
18 can we say that? But this is how the exercise takes place. We're just by 194, My Lord. I'll not
19 read this. I can assure Your Lordship, I'll not read this. But for Limestone. [NO AUDIO] Cess
20 et cetera. Which is not a tax. And Royalty, in any case is not a tax. That's not the issue I am
21 right now raising. Please see Limestone at page 194. 193. I'm not reading it, My Lord, but every
22 state had different justifications for increase, decrease, increase, decrease, but eventually the
23 committee, after taking into consideration, everything at page 194. My Lord may see the
24 bottom, then I'm through. Then I'm done with this. 'After analysis of data on cement price for
25 the last 2 years impact of Limestone as raw material cost and its significance for
26 infrastructural growth. The study group recommends to adjust Royalty rate of Id grade
27 Limestone to Rs. 70 from Rs. 90 per ton and other grade Limestone to Rs. 60 from 80 per ton.
28 So that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only.'
29 Meaning thereby only three levies are being contemplated. The reason is this, My Lord,
30 Limestone is directly used for manufacturing of cement and cement is required for the core
31 infrastructural growth of the Country. What they say is, we will have to cushion in these two
32 charges, meaning thereby, it's very clear that they are providing for all-inclusive fiscal benefit
33 to each state.

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Are the states told by the study group at any
36 point that -'Look, in lieu of your tax revenue what is it that you require by way of total revenues
37 to be generated. So that we will take Royalty fixed. We will take into account your overall loss

1 of taxing revenues.' Does that exercise happen? We find only that they have said, "Well to
2 cushion the payment of DMF and NMET the reduction of rates of Royalty in certain cases have
3 been recommended. Because after 2015 amendment they have to pay to the National Mineral,
4 the District Mineral Fund and the Exploration Trust.

5

6 **TUSHAR MEHTA:** District Fund.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Right. But is there anything here to indicate
9 that the states are told that - 'Well, what is it that your revenue generation requirements are?
10 Therefore, when we fix the Royalty, we will take into account your loss of tax revenues.'

11

12 **TUSHAR MEHTA:** Page 148. If Your Lordships can come to. There are 6.4.

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You're right. But throughout the study report,
15 the study groups report. They keep on saying that - 'Look, we have to cushion the impact of the
16 DMF and the NMET.' Meaning... Therefore, because of the DMF, the states are getting this
17 additional levy. The investor has to pay extra, so that we will cushion that impact by reducing
18 the rate of Royalty.

19

20 **TUSHAR MEHTA:** Meaning thereby, nothing else. Otherwise, there is no question of
21 cushioning. Even they are going to the extent...

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 'Nothing else' is the key. Where do you get that
24 actually?

25

26 **TUSHAR MEHTA:** I will come to that. Just answering your Lordship's question.

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We saw that. Everywhere they are trying to
29 cushion the impact of DMF, NMET...

30

31 **TUSHAR MEHTA:** My Lord, if Your Lordships are looking at a specific, negatively worded
32 provision, there is none. That, nothing else. These and nothing else. Because Legislature do
33 not use such language, but not for another Legislature. A negative language. They occupy the
34 field and I'll show the field is occupied.

35

36 **JUSTICE B. V. NAGARATHNA:** Only to the extent provided.

37

1 **TUSHAR MEHTA:** Exactly. I'll show the extent. Your Ladyship is right. I'll show to what
2 extent it is providing.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** In fact,... it appears to be, if you compute the
5 effective rate of tax. The effective rate of tax, is the total amount which is paid to the State,
6 divided by way of Royalty and other levies, divided by the total realizations on account of sale.
7 When we see that this effective rate of tax is very high in India, and therefore the Royalty rates
8 have to be so modulated.

9

10 **TUSHAR MEHTA:** That would, in my submission necessarily mean, that if you put any other
11 burden, the balance at the national and international level will be disturbed. That's the only
12 similar... Answering My lord, the Chief Justice's query, My Lord, please come to PDF 136,
13 'Criteria for determining Royalty rates.' Your Lordship gets it, My Lord? Can I read? My Lord,
14 kindly come to (f) and (g). (f). My Lord, I'm not reading the rest.

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** First see (b), for instance, impact of high
17 burden of taxation, especially in comparison to international mining jurisdiction. So does this
18 not really therefore, seem to contemplate that, there is a duty to pay tax to the states. The
19 burden is high...

20

21 **TUSHAR MEHTA:** No, no.

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And therefore, we are fixing the Royalty to
24 modulate the burden of taxation.

25

26 **TUSHAR MEHTA:** No. My Lord, the impact of high burden of taxation would mean, that,
27 as per the global phenomena, our fiscal regime, My Lord, I'll use a general, I'll use a neutral
28 word, that our fiscal regime has high taxation. But, therefore My Lord, I had shown to you
29 Your Lordships, what it includes and what it doesn't include. My Lord, please, for a second,
30 My Lord, just to answer My Lord, come back to My Lord, that high taxation part, value of...

31

32 **JUSTICE ABHAY S. OKA:** Mr. SG, the query of our Chief Justice was...

33

34 **TUSHAR MEHTA:** Yes.

35

1 **JUSTICE ABHAY S. OKA:** The very fact that Clause (b) refers to, high burden of taxation,
2 it itself contemplates that states will continue to levy taxes, and that will be taken into
3 consideration while fixing the Royalty.

4

5 **TUSHAR MEHTA:** My Lord, I am answering that. My Lord, please come to, 132...131. I'm
6 sorry, 131.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** As you rightly said, Royalty, though fixed by
9 the Union is entirely appropriated, levied and appropriated by these states. Right? Now,
10 therefore, when they are fixing Royalty, they are fixing the price, which the states will realize,
11 by the extraction of minerals of which they are owners. Right? That's the whole concept of
12 Royalty. Also, Dead rent, because you don't expect you have to pay Dead rent. Now while fixing
13 the Royalty, which is a realization by the states for the extraction of minerals, the study group
14 looks at what the state is already realizing on account of taxation, and it in fact says, that
15 because there is such a high burden of taxation, which the states are imposing, therefore we
16 will modulate the Royalty accordingly, which postulates again, that taxation is something
17 which the states are imposing. In fact, it's not the other way. But look, we are increasing the
18 rate of Royalty to a level, so that you will exclude all other levies. That's not the approach of
19 the study group.

20

21 **TUSHAR MEHTA:** My Lord, can I answer? My Lord, there is an answer. There are two
22 answers. Please come to, My Lord, page 131 at the foot. 131.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Nor are they fixing Royalty, to compensate for
25 the loss of tax revenues.

26

27 **TUSHAR MEHTA:** It's there, My Lord. I'm showing that...My Lord, Your Lordship, can you
28 just bear with me? Page 131.

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 131?

31

32 **TUSHAR MEHTA:** 131. How, My Lord, the effective tax rate is calculated. 131. bottom. Your
33 Lordship gets?

34

35 **JUSTICE B. V. NAGARATHNA:** Yes.

36

37 **TUSHAR MEHTA:** Value of all amounts paid to the Government by the miner.

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CHIEF JUSTICE D. Y. CHANDRACHUD: Mr. Solicitor, this goes against you. If effective rate, if the numerator in the effective rate of tax, were to be paid... were be the value of all amounts paid to the Government on account of Royalty, then you would be right.

TUSHAR MEHTA: No, no. Kindly....

CHIEF JUSTICE D. Y. CHANDRACHUD: They factored in all payments which are made to the State.

TUSHAR MEHTA: We try and read in that way. But, kindly read it the other way, that everything which the.... One thing is clear.

CHIEF JUSTICE D. Y. CHANDRACHUD: Because the product of this division, the numerator and the denominator is so high, in the case of India, almost 60%. Therefore, they wanted to impose a more realistic Royalty regime by, in fact, reducing the rate of Royalty.

TUSHAR MEHTA: Can I answer that? Can I answer? First and foremost, when this report is prepared, *Kesoram* holds the field and therefore there were levies. There are levies, so that cannot be ignored by the study group, correct, My Lord? After *Kesoram*, the State is imposing levies in some States. It's 500% of that of the Royalty. So, it says, value of all amounts paid to the Government... Please My Lord, now turn the page. That would get the answer of what the Chief Justice hold.

CHIEF JUSTICE D. Y. CHANDRACHUD: India 59 and...

TUSHAR MEHTA: 59 and... That's okay, but note. What it does not include. First, he said - 'Everything which is paid to the Government.' But accept this, My Lord, please see - 'ETR that is Effective Tax Rate does not include a number of other payments, such as auction price, purchase of land for mining, GSTF 18%, 10% tax levied by the Supreme Court, Net present value in case of survey, Net present value, compensatory afforestation, upfront payment at the time of grant of mining lease.'

CHIEF JUSTICE D. Y. CHANDRACHUD: But it therefore does not include... it does not exclude the State Cesses, it includes the State Cesses. You may be right because of the prevalence of *Kesoram* because when the study report came, you were in the *Kesoram* regime. The States can levy Cess. But the fact remains that this study group postulates that the

1 rate of Royalty would be so modulated so that the amount which is realized by the State's
2 towards Royalty is adequately reduced to factoring the higher rate of taxes, which the States
3 are otherwise imposing.

4

5 **TUSHAR MEHTA:** Would Your Lordships come to a two-page thereafter one. 5.9. There are
6 5.9.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Methodologically, the study group is not saying
9 that -'Look, we are now going to give you an adequate realization by way of Royalty, so that
10 you do not impose any other levies.' That's not what they are telling the states.

11

12 **TUSHAR MEHTA:** 136, if Your Lordships come to...

13

14 **JUSTICE B. V. NAGARATHNA:** On the other hand, this exclusion clearly states that there
15 are other types of exactions which the States can do. For example, in Karnataka. Forest
16 Development Tax, or FDT, is levied on forest produce, which also includes mineral resources.

17

18 **TUSHAR MEHTA:** That is the question, My Lord whether it can be levied or not? That's the
19 question whether it can be levied. But that's the question. It is levied. In every State under
20 some name or the other, it is being levied. But, My Lord, my reading of this page 131 is that
21 how tax rate is derived? All, whatever you are supposed to pay, State tax, Royalty, District
22 fund, National fund, everything... multiplied by this, except A, B,C, D, E, which does not
23 include, the exceptions or deductions do not take care of State and apropos Your Lordships
24 query, please come to page 136, whether it is considered or not that, what is your revenue
25 requirement? Point (g). I stopped at 5 (f), My Lord but please see (g) -'Implication of revision
26 of Royalty rates on revenue realization of the State Government and the industry.' This is
27 inclusive....

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** From royalty.

30

31 **TUSHAR MEHTA:** There are always two ways of reading it. But what they say is that what
32 will be the implication on the overall growth of this and how it would impact? I don't wish to
33 take Your Lordships through every mineral- wise discussion what they say is- 'This is the total
34 amount which a miner pay, this mineral is used in abcd industry. This is the position in the
35 global market. And if we do not put the cap of total fiscal payment at particular point, it would
36 be against the development of the mining industry.' That is how they are approaching. The
37 difficulty for me is,.... My Lord, after.... I'll come to the Act immediately.... But apropos this

1 query, My Lord, after **India Cement**, when the State was not permitted to levy anything other
2 than Royalty, they were compensated by the respective study group by increasing Royalty, so
3 it is always considered as 'a composite receipt by the State.' Please, My Lord, come to Volume
4 V. Only one paragraph, page 1569. My Lord, this is that **Mahalakshmi** judgment **State of**
5 **M.P. versus Mahalakshmi Fabrics**. So, when you are not levying the other charges, the
6 compensatory....

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Volume V, right?

9

10 **TUSHAR MEHTA:** Yes, Volume V, page 1569. It starts at 1561 My Lord, but I am pointedly
11 inviting Your Lordship's attention to the relevant part. PDF is 1575. I'm sorry, My Lord. 1575.

12

13 **TUSHAR MEHTA:** Left side PDF page.

14

15 **JUSTICE B. V. NAGARATHNA:** 1567?

16

17 **TUSHAR MEHTA:** Your Lordship gets, My Lord? Left hand side, My Lord, pagination 1575.
18 PDF pagination, My Lord getting that?

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

21

22 **TUSHAR MEHTA:** The first.... 'The controversy ultimately came to be decided by this Court
23 in **Orissa Cement versus State of Orissa**, whereby, such Cess was held to be invalid and
24 beyond the legislative competence of the State Government. It appears that soon after the
25 aforesaid invalidation of the Cess, the coal producing states were faced with problem of
26 refunding the amounts obtained by them that far. They, therefore approached the Central
27 Government for help. In pursuance to the state approach, Parliament passed an Act validating
28 the Cess.' So that, they don't have to repay it to the Government, repay it to the miners. 'We
29 are not concerned. We are not concerned with the said ordinance and subsequent act in the
30 present proceedings. It appears....' please note this, 'that since the State Government had
31 suffered financial losses because of the invalidation of Cess, they also approached the Central
32 Government for help in the matter. As a consequence, thereof, a working group was
33 constituted in this behalf. The said working group suggested an increase in the Royalty to the
34 extent of 17% per ton of coal. The working group also found sufficient justification for
35 compensating the coal producing states to the extent of 100% of the loss caused by the
36 aforesaid judgment of this Court. Since the recommendation was accepted by the Central
37 Government, the impugned notification was issued by the Government, according to the Writ

1 Petitioner before the High Court. The increase in the rates of Royalty pursuant to the
2 notification was to the extent of 4400% to 2000% as compared to the Royalty fixed in 1981
3 on various varieties of coal. It was further contended, etc....' My Lord, the point I'm making
4 is, when they were prevented from taking any levy, that loss was compensated in the fixation
5 of Royalty. And when they are now permitted to levy because of *Kesoram* and subject to what
6 Your Lordship decides, the Royalty is so fixed that, it also takes into account that you are
7 already earning this much. Because thus... this subgroup cannot seek in appeal, whether it is
8 leviable or not. They will have to proceed, that as on date it is leviable. You are earning Rs.
9 100.

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** In other words, the fixation of Royalty is not
12 agnostic to what the states are realizing by way of taxation.

13

14 **TUSHAR MEHTA:** Because of *Kesoram*. Yes. Therefore, My Lord, therefore this reference.

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It's just that the states are entitled to demand
17 something in way of tax, and they adjust the Royalty every three years.

18

19 **TUSHAR MEHTA:** Now, My Lord, what would happen? In practical terms, what would
20 happen? If, Your Lordships, hypothetically were to hold that the State had no jurisdiction,
21 competence, State Legislature had no competence, to levy a particular levy other than Royalty,
22 Dead rent, rent and My Lord...

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The thing that the Government of India will
25 increase Royalties.

26

27 **TUSHAR MEHTA:** Exactly. Because that will, somewhere we will have to have, a national
28 perspective. My Lord, we will have to have national perspective keeping in mind the global
29 scenario, and this exercise cannot be left to, My Lord, the provincial interest. Narrow
30 provincial interest. Narrow, I'm not using it in a bad sense. But when I am deciding for one
31 particular state, My Lord, my examination would be a narrow examination. I would not take a
32 holistic national approach and in any case, I cannot take a global factor into consideration.

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** See, if a State is so foolish, as to tax... imposes
35 at such high rates, obviously the market will provide for greater imports. If there is a greater
36 amount of imports, the States will lose their revenue because there will be no demand for
37 locally produced minerals.

1

2 **TUSHAR MEHTA:** My Lord, the Nation lose this. My Lord, when import increases, that's
3 exactly what My Lord, I'm driving at. That if the domestic production is less because of high
4 taxation, the import starts. That's what we are My Lord, avoiding. We want... only give me a
5 minute.

6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The State will never want to be in a situation
8 where, by overpricing, the overtaxing the products, it will start losing its revenues. Because if
9 it overprices the product, it's also a matter for demand and supply for the State. If it overprices
10 the tax paid, if it overcharges, you know, obviously there'll be a greater incentive to import as
11 you are rightly saying, in which case it will impact upon the State revenues.

12

13 **TUSHAR MEHTA:** My Lord, sometimes suppose they undercharge it, they undercharge it
14 and start exporting. My Lord, the idea is that national levels, on the national level, a holistic
15 decision is taken that our minerals, which are our national resource, are used for domestic
16 production of infrastructure and core industries, and therefore this is one way of controlling
17 import or export.

18

19 **JUSTICE ABHAY S. OKA:** What you are trying to show is, exercise done once.

20

21 **TUSHAR MEHTA:** No. Every three years it's done.

22

23 **JUSTICE ABHAY S. OKA:** No, it is very slightly different.

24

25 **TUSHAR MEHTA:** I'm sorry.

26

27 **JUSTICE ABHAY S. OKA:** We are not considering how the Royalty is being fixed by the
28 Central Government. We are considering only a very simple issue, whether power to impose
29 Royalty is itself sufficient to draw an inference that States are denuded from the power under...

30

31 **TUSHAR MEHTA:** Please come to the Act, My Lord. I know, My Lord, that's the hard...

32

33 **JUSTICE ABHAY S. OKA:** Suppose, in a given case tomorrow, Central Government says
34 that -'We want to impose Royalty of, say, only Rs. 10.' They have a power to impose Royalty
35 of Rs. 10. So can you say that in the states can't levy the tax. In a given fact situation for a
36 particular year, the Government may have undertaken this exercise, of talking to the states,

1 taking their feedback. We are really on the question whether only because there's a power to
2 levy Royalty , that power of State to pay taxes is...

3

4 **TUSHAR MEHTA:** My Lord, I'm answering that immediately. Factually, this is not a one-
5 time exercise. This is an exercise done whenever there is a revision of Royalty , that is every 3
6 years, sometimes, My Lord, for 5 years. So, this is how the Section 9 is read. The consultation
7 is read into Section 9. That is one. Consultation with the State to arrive at a consolidated figure
8 is read into this. Now, please see Section...

9

10 **JUSTICE HRISHIKESH ROY:** Metaphorically, just taking from what Brother Oka was...
11 [NO AUDIO]

12

13 **TUSHAR MEHTA:** My Lord, my respectful submission, taking the example metaphorically,
14 as the Lordships said.

15

16 **JUSTICE HRISHIKESH ROY:** For example.

17

18 **TUSHAR MEHTA:** Yes, My Lord. If my intention is to occupy it exclusively, then he is
19 ousted. Apropos My Lord's concern and a very valid concern that market forces can itself arrive
20 at a particular decision making. For example, Your Lordship said -give me a minute to answer-
21 that State if overcharges, then State would not get the revenue and therefore, market forces
22 would ultimately settle down the issue. That takes a very long time, when we rely upon market
23 forces to settle down an issue, the damage is done, and this is damage about our national
24 resources and damage would be national level. The mistake would be or whatever decision
25 would be of a State, My Lordships are examining this as a federal issue....

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** To use Brother Rishikesh Roy's example, your
28 submission is that because I am occupying my chair. Dr. Singhvi is ousted from occupying his
29 chair.

30

31 **TUSHAR MEHTA:** No. I'm sorry, My Lord. I'm sorry, only a minute. I'm sorry. I would
32 answer. My Lord my submission is, there is only one chair in the room which I am occupying
33 with an intention of ensuring that nobody else, including Dr. Singhvi, occupies the chair. There
34 are no two chairs here. Your Lordships' example pre-supposes two chairs. I am saying, there
35 is Entry 54. 50 says if there is a law under 50, you are out. So, there is a law under 50, the field
36 is occupied, and there is only one field that is mineral development and... regulation and
37 development of mineral. So, my metaphoric example was, when there is only one chair and I

1 occupy the chair with an intention of excluding others, and I am giving My Lord... Why I gave
2 all these because I have to show public interest. It's not just that State, Centre wants to act like
3 a big brother. There is a public interest involved, My Lord as 54, Entry 54 stipulates. My Law
4 is not just for development and regulation, to oust or to be treated as a limitation. It must be
5 in public interest also. That's what I was showing. That why this has to be done at a national
6 level and not at provincial level with some narrow considerations weighing. Your Lordships
7 are right, sometimes a wrong decision by a State to overprice may damage the State, and after
8 3 or 4years, the State may come down. But what happens within that 3-4 years? That's the
9 question My Lord which will have to be asked.

10

11 **JUSTICE B. V. NAGARATHNA:** One other perspective is in the context of Royalty, the
12 Central Act or the Parliament is permitting the States to levy Royalty, but what is the limitation
13 imposed on...

14

15 **TUSHAR MEHTA:** Not levy? No, Parliament doesn't permit me to levy.

16

17 **JUSTICE B. V. NAGARATHNA:** The State is levying the Royalty under the Central Act.
18 It's not Centre which is levying the Royalty.

19

20 **TUSHAR MEHTA:** No. My Lord. I am only fixing the rate.

21

22 **JUSTICE B. V. NAGARATHNA:** Correct. That is the only limitation on the rate.

23

24 **TUSHAR MEHTA:** No. My submission is, now examine that submission. My submission is
25

26

27 **JUSTICE B.V. NAGARATHNA:** [UNCLEAR] Royalty, the States or Centre?

28

29 **TUSHAR MEHTA:** State.

30

31 **JUSTICE B. V. NAGARATHNA:** So, Parliament is enabling the States to collect Royalty?

32

33 **TUSHAR MEHTA:** Yes.

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35 **JUSTICE B.V. NAGARATHNA:** But the limitation is only on the rate of Royalty,

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37 **TUSHAR MEHTA:** Correct.

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JUSTICE B. V. NAGARATHNA: So that is a Constitutional limitation in the context of Entry 50.

TUSHAR MEHTA: That is their submission that the...

JUSTICE B. V. NAGARATHNA: No, no under the Act.

TUSHAR MEHTA: I have to yet to convince Your Ladyship, their submission is that Section 9 is the only limitation. And since Section 9 does not prohibit other levy, we can have law providing for other levy. That submission is wrong. That's the main dispute.

JUSTICE ABHAY S. OKA: You are going to go to the Act now, I suppose?

TUSHAR MEHTA: Kindly come to the statement of objection reasons. 'The differentiation made between petroleum and other minerals in Item 53 and 54 of the Union List has rendered separate enactments for the two necessary. The present bill deals only with minerals other than petroleum. At present, both are dealt with under the Mines and Minerals.....' That is the old Act and My Lord, Your Lordships can skip. Nothing would turn. Come to My Lord the Preamble. 'An Act to provide for....' Provide for what, My Lords? 'Development and Regulation of Mines and Minerals, under the control of the Union.' So, the Act provides that the entire Act take within its control, mine.... the development and regulation. Whatever is necessary for development and regulation of mine is now under our control. Your Lordship is right. Section 2 says -'To the extent below.' I'm conscious of it. 2 - 'Declaration as to expediency of the Union control: It is hereby declared, that, it is expedient in public interest.' To borrow My Lord, expression from Entry 54, 'that Union should take, under its control, the regulation of mines and the development of minerals, to the extent, hereinafter provided.' Now, My Lord, it provides for 3 things. The first, is 'reconnaissance'. I want to show that entire universe, so far as mineral regulation and development is concerned, is now covered by this, and therefore, there is an occupied field. But reconnaissance would mean, without touching the soil, by satellite imaging or whatever, one would first decide whether there is any mineral in the land? Second, would be 'prospecting of mineral'. So, there is a prospecting license regime, where you excavate just to find out, whether there is any mineral? Sometimes you are trying to find out 'A' mineral and you find 'B' mineral. There is a provision made. Then you have to surrender your lease and give it to the Government back. If instead of Uranium, something else is found. And third, is 'actual mining.' All these three. There are two separate chapters under the Act. One, dealing with 'regulation of mines' and another dealing with 'development of mines.' And

1 my respectful submission would be that these two chapters read with other provisions... I have
2 started with the Act My Lord. Can I start after lunch My Lord? It's five minutes. So that with
3 continuity, My Lord, Your Lordships can....

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** How long would you now take, Mr. Solicitor?

6

7 **TUSHAR MEHTA:** One more session. Less than that, My Lord, but I'll...

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We had given one day for everybody to
10 conclude, actually.

11

12 **TUSHAR MEHTA:** We have relied upon Your Lordship's kindness.

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright. But I think....

15

16 **TUSHAR MEHTA:** There is a rule of Estoppel.

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Everybody should conclude by lunch
19 tomorrow, I think. That will be a very fair.... Isn't. It? By lunch tomorrow, everybody now...

20

21 **JUSTICE ABHAY S. OKA:** By tomorrow.

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** By tomorrow. We have to close tomorrow. We
24 have regular...

25

26 **TUSHAR MEHTA:** My Lord, I would say something. We are before a 9-judges bench. Any
27 lacuna on our part in assistance, even for the other side I would request that, if there are 2
28 Counsels, let both give the...

29

30 **DR. ABHISHEK SINGHVI:** And one more thing, My Lord. I am going to.... I'm going to be
31 doing without prejudice, alternative argument. Your Lordship, accept these arguments, matter
32 ends. Your Lordship doesn't accept these arguments.... not going to....

33

34 **TUSHAR MEHTA:** My Lord, what Your Lordships would... give it to me...

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** All right. After now, the Solicitor General
37 concludes, I think everybody can take 20 minutes, 20 minutes each. And then....

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TUSHAR MEHTA: I would invoke....

CHIEF JUSTICE D. Y. CHANDRACHUD: It's more of a good thing, now, I think.

TUSHAR MEHTA: My Lord, I would invoke the Doctrine of Legitimate Expectation and Estoppel. Your Lordship cannot cease to be kind.

TUSHAR MEHTA: Kindly My Lord, take Entry 50 for a minute My Lords. During lunch hours something My Lord to assist Your Lordships and answering the query, very pertinent questions Your Lordships have put. My Lord, this is my respectful submission, Entry 50 'taxes on mineral rights subject to any limitations imposed by Parliament'. Now, this is kindly mark, by law relating to mineral development. What possibly we are reading right now is under a law relating to mineral development. We are searching for a specific section in a law relating to mineral development. In this context, please read it again, My Lord, 'Taxes on mineral rights, subject to any limitations imposed by Parliament by law relating to mineral development'. There is a law relating to mineral development. My Lord, there would not be any negatively worded section prohibiting another legislature from taxing.

CHIEF JUSTICE D. Y. CHANDRACHUD: The word relating to mineral development, do they qualify limitations or law?

TUSHAR MEHTA: Law My Lords. Made by Parliament by law relating to mineral development.

CHIEF JUSTICE D. Y. CHANDRACHUD: Right.

TUSHAR MEHTA: So, limitation will have to be found in the law, not My Lord limitation imposed by a section of the law.

CHIEF JUSTICE D. Y. CHANDRACHUD: But it has to be a limitation in the law.

TUSHAR MEHTA: Correct, My Lords.

CHIEF JUSTICE D. Y. CHANDRACHUD: Limitation has to be there [UNCLEAR] in the law.

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TUSHAR MEHTA: No, no, not in the law. That's where My Lord, I think the other side is wrong.

JUSTICE B. V. NAGARATHNA: By law.

CHIEF JUSTICE D. Y. CHANDRACHUD: By Parliament, by law.

TUSHAR MEHTA: By law. What we are reading is...

CHIEF JUSTICE D. Y. CHANDRACHUD: Who should impose the limitations? Parliament, the source should be Parliament.

TUSHAR MEHTA: Correct.

CHIEF JUSTICE D. Y. CHANDRACHUD: What is the source to be found in? In the law. And what is the law, content of the law relating to mineral development.

TUSHAR MEHTA: Kindly now. Kindly read the way they would like it to be read. According to my understanding imposed by Parliament, in law relating to mineral development. We have a law relating to mineral development. In that law where is the limitation? Which section provides for limitation?

CHIEF JUSTICE D. Y. CHANDRACHUD: So basically, three things, who, how and in what methodology of, who, how and about what? Who? By Parliament. How? By law. About what? Law relating to mineral development.

TUSHAR MEHTA: I am grateful, but not in law. That you have a law relating to mineral development. What is that in law? In that law.

CHIEF JUSTICE D. Y. CHANDRACHUD: No. But that law must really authorize, that law must impose limitations.

TUSHAR MEHTA: Correct My Lords. But not from a particular section, which we are trying to find out.

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's the argument that even if there is no
2 specific limitation, the overall lay of the law so to say...

3

4 **TUSHAR MEHTA:** Architecture of the law...

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Architecture of the law that has been argued.
7 That's the point.

8

9 **TUSHAR MEHTA:** Before I take Your Lordships to the Act.

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And you go one step further. You are saying
12 occupied field. Therefore, even if I don't impose any limitations, I occupy the whole field of
13 limitation. I don't think that you are arguing of...

14

15 **TUSHAR MEHTA:** Which I will show to Your Lordships, that anything and everything
16 concerning mineral regulation and mineral development...

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Is an occupied field.

19

20 **TUSHAR MEHTA:** Is taken into consideration by the Parliament by this law made for
21 development and regulation of minerals. That's my respectful submission.

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now let's see the provision?

24

25 **TUSHAR MEHTA:** Before that, only one answer. Your Lordships, a very pertinent example
26 of, say electricity that some state may enhance the rates of enhance the duty on electricity or
27 levy on electricity. I could not answer on that immediately, but thereafter I thought about it.
28 If one particular state increases the levy on electricity, and the electricity is costlier, only that
29 state will suffer. But if the coal meets with the same treatment -- the coal is required
30 throughout the Country for generation of electricity -- other states will suffer. That is the
31 distinction between minerals and other. Coal is just an example because Your Lordships were
32 pleased to give electricity, but any mineral. If I overprice it in my state, the entire state suffers.
33 Sorry. Entire Country suffers. That's a question of federal balance, and that is how Your
34 Lordships would read an entry, that serves federal balance, public interest vis-a-vis the global
35 phenomena. Now kindly see My Lord the mineral...

36

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Since you have read the statute over and over
2 again, just tell us now which are the provisions of the statute which you want to emphasize.

3

4 **TUSHAR MEHTA:** Yes, yes, My Lord. Section 2 I have read My Lord. Please see My Lord
5 the title of Section 4, the main chapter title, not the section title. Your Lordships may have it
6 in page 5. If possibly we have the same. Page 5. Your Lordships have? General restrictions on
7 undertaking prospecting and mining operations. This chapter deals with restrictions. Correct,
8 My Lord?

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

11

12 **TUSHAR MEHTA:** Now, 4 is prospecting or mining operations to be under license or lease.
13 It is governed covered by the Central Act. You cannot do it. No person shall undertake any
14 reconnaissance prospective....

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's okay. You need not read it. We got the
17 point.

18

19 **TUSHAR MEHTA:** Yes. Now kindly see in this chapter, Section 9. The way My Lord's queries
20 were in the pre-lunch session Your Lordships, may say that, may consider them or may say
21 that there is no restriction. 9 is an enabling provision that you provide for the rates of royalty.
22 But there is no restriction. But my respectful submission is, there would not be any
23 Parliamentary law which would prohibit statute, prohibit an otherwise competent State
24 Legislature from legislating. One has to read from the entries only. If Parliament in the total
25 architecture. My Lord, what is the total architecture? Then I'll come to only 2 sections. Total
26 architecture is mines and minerals. There are two types. Major minerals and minor minerals.

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

29

30 **TUSHAR MEHTA:** Minor minerals are localized products used locally. Its impact is not felt
31 outside the state. The act by statutory enactment leaves it to the state to govern. Kindly My
32 Lord allow me to repeat this, because this is the heart of my submission, the mineral which
33 has no impact outside the state, like mines and mineral, sand, et cetera there are no limitations
34 imposed by this act. In fact, there is a permissive statutory provision that you decide how to
35 deal with it. You grant the lease. You decide how the royalty, the rate of royalty also will be
36 fixed by the State that is permissive statutory provision for minor minerals. And it is done by
37 the Parliament by the law relating to mineral development. Kindly see the distinction. That

1 power conferred upon the State Government regarding minor minerals is not because of
2 Section 50. I mean, Entry 50 or Entry 23. I'm sorry My Lord.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes,

5

6 **TUSHAR MEHTA:** My Lord the power which is conferred upon the states for minor
7 minerals, My Lord their source is not Entry 23 or Entry 25. This Act, which is passed under
8 Entry 54 delegates that or leaves it open to them, that for minor minerals, you deal with it, this
9 act will not deal with it. Now after two minerals, two categories of minerals, so far as...

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But minor minerals will fall within Entry 23 of
12 List II.

13

14 **TUSHAR MEHTA:** Pardon?

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Entry 23 of List II.

17

18 **TUSHAR MEHTA:** I'm saying something else.

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Because minor minerals... because Entry 23 is
21 subject to Entry 50. The law made by the Parliament that the state shall regulate. It allows the
22 states to regulate. Unconceivably, we are not...

23

24 **TUSHAR MEHTA:** I'm saying something slightly different My Lord. I am sorry I was not
25 clear. Out of the two categories of mineral, what the central act ought to deal with all aspects
26 is major minerals and not minor minerals, because minor minerals do not have any intra-state
27 implications.

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Right.

30

31 **TUSHAR MEHTA:** And parliament chose not to occupy the field of minor minerals,

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Right.

34

35 **TUSHAR MEHTA:** Kindly see Section 50. What I'm submitting is. I'm sorry, before Your
36 Lordship reads Section 50. What I am respectfully submitting. Before Your Lordship sees

1 Section 50. Kindly allow me to preface this argument. Entry 23 permits the State Government
2 to make the law. Correct My Lords?

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

5

6 **TUSHAR MEHTA:** Entry 50 permits the State Government means State Legislature to make
7 the law regarding taxation subject to this. Now please see 15. Power of State Government to
8 make rules in respect of minor minerals. The State Government may, by notification in the
9 official gazette make rules for regulating the grant of quarry leases, mining leases or other
10 mineral concessions in respect of minor minerals and for purposes connected there with and
11 in particular. My Lord, please see 1(a)(g). Fixing and collection of rent, royalty fees, dead rent,
12 fines, et cetera, et cetera. The respectful submission which I made was, the field of minerals,
13 both major and minor, is occupied by this act, but by Section 15 this act delegates the powers
14 *qua* minor minerals to the state.

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Right.

17

18 **TUSHAR MEHTA:** So now, if we see the architecture and...I'm sorry.

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

21

22 **TUSHAR MEHTA:** Architecture and structure of the MMRDA. If the Central Government
23 wants to provide for everything concerning major minerals, My Lord what would be the
24 consideration? What are the factors the state government will have to statutorily provide for?
25 (a), All kinds of licenses, reconnaissance, prospecting, actual mining, royalty, et cetera, et
26 cetera. My Lord, every field is occupied by this Act, which is My Lord, undisputably an Act
27 under 54.

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, the field of regulation and development is
30 occupied by this Act?

31

32 **TUSHAR MEHTA:** Yes. Now My Lord, may kindly come to a Section 13, but the title of
33 Section 30. My Lord, please come to Section 13. My Lord, one thing that I consider Your
34 Ladyship is, right to the extent My Lord, that's even if it is not mentioned, the limitation will
35 have to be to the extent of the scheme, according to me, and as per My Lord, other side, one
36 section should be there, that you are prohibited. That's the difference. My Lord, kindly see the
37 title before -- title under which Section 13 is placed. Rules for regulating the grants of

1 prospecting licenses and mining leases. This is how the regulation takes place under the
2 scheme of the act. And please see 13 My Lord, power of Central Government to make rules in
3 respect of minerals. The Central Government may, by notification in the official gazette make
4 rules for regulating the grant of mineral concession in respect of minerals and for purposes
5 connected therewith. Please see My Lord, (e), (f) and (i). (e) utilization of coal or lignite,
6 including mining for sale by a company. The authority by which mineral concession in respect
7 of the land in which the mineral vests in the government. Straight away My Lord, come to (i),
8 fixing and collection of fees for mineral concession surface rent. Please My Lord, note this
9 'surface rent'. It's a separate category, and therefore it can't be a land, or tax on land. Surface
10 rent, security deposit, fines, other fees or charges and the time within which, the manner in
11 which and the manner in which the dead rent or royalty shall be payable. This is all which is
12 leviable and payable, because the act takes care of every aspect of major mineral. That's my
13 respectful submission. Now please come to My Lord, 18...

14

15 **JUSTICE ABHAY S. OKA:** This will apply to all categories of minerals?

16

17 **TUSHAR MEHTA:** No.

18

19 **JUSTICE ABHAY S. OKA:** Why?

20

21 **TUSHAR MEHTA:** No, My Lord, for minor minerals... all major minerals, yes.

22

23 **JUSTICE ABHAY S. OKA:** That's What I said, it applies to all minerals.

24

25 **TUSHAR MEHTA:** Yes, yes.

26

27 **JUSTICE ABHAY S. OKA:** All minerals.

28

29 **TUSHAR MEHTA:** Except minor.

30

31 **JUSTICE ABHAY S. OKA:** In fact, Chapter 2, also applies to all minerals.

32

33 **TUSHAR MEHTA:** Yes. In fact.

34

35 **JUSTICE ABHAY S. OKA:** Only rule making power is left to the state government, under
36 Rule 15.

37

1 **TUSHAR MEHTA:** No, no, no I'm sorry My Lord.

2

3 **JUSTICE ABHAY S. OKA:** Rule making power in respect of minor minerals are left to the
4 state government.

5

6 **TUSHAR MEHTA:** For minor mineral, yes, yes.

7

8 **JUSTICE ABHAY S. OKA:** But all other provisions apply to both the categories of minerals.

9 [UNCLEAR]

10

11 **TUSHAR MEHTA:** Correct, correct.

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** I was just looking at the definition of
14 expression minerals it covers all mineral. Mineral includes all minerals.

15

16 **TUSHAR MEHTA:** Correct My Lord.

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Except mineral oils. So, it's not that mineral
19 includes all minerals except minor minerals. Minerals includes all minerals.

20

21 **TUSHAR MEHTA:** All minerals My Lord. But for rule making power...

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** They can make rules under Section 15.

24

25 **TUSHAR MEHTA:** For minor My Lords, but 13...

26

27 **JUSTICE B. V. NAGARATHNA:** Not only that, under Section 14, it categorically says

28

29 **TUSHAR MEHTA:** Exactly I was coming to 14. I'm obliged.

30

31 **JUSTICE B. V. NAGARATHNA:** They do not apply to minor minerals.

32

33 **JUSTICE ABHAY S. OKA:** Only 4 applies.

34

35 **TUSHAR MEHTA:** Provisions of Section 5 to 13 shall not apply to quarry leases, mining
36 leases or other mineral concession in respect of minor minerals. These sections are not
37 applicable.

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JUSTICE ABHAY S. OKA: 4 is applicable.

TUSHAR MEHTA: 4 is applicable, but the rules will be made. Who will grant lease? How to grant lease? What will be the royalty? What will be the fee? But according to my respectful submission, 13 (i) is an all-inclusive provision which can be subjected to levy. It can be fixing and collection of fees for mineral concession, surface rent, security deposit, fines, other fees or charges, and the time within which, the manner in which the dead rent or royalty shall be payable. This is a statutory provision to be made by the Central Government in exercise of its statutory rulemaking power. Now, please come to 18. I'll just show the title.

JUSTICE ABHAY S. OKA: And only one thing. If you go to Section 15.

TUSHAR MEHTA: Yes.

JUSTICE ABHAY S. OKA: Similar power is conferred on the state also rule making power.

TUSHAR MEHTA: Correct for minor minerals.

JUSTICE ABHAY S. OKA: No, for royalty et cetera, also.

TUSHAR MEHTA: Yes, correct. That's what I was submitting. The legislature was dealing with two categories of minerals.

JUSTICE ABHAY S. OKA: Therefore, if you see Clause number 'G'. It authorizes state to frame rules for even collection of royalty.

TUSHAR MEHTA: Correct but for minor minerals.

JUSTICE ABHAY S. OKA: Yes, minor minerals yes, but that power is conferred.

TUSHAR MEHTA: I'm saying the same thing, that there are two minerals, major and minor, for major the Centre retained its control for minor it is delegated to states except these five sections under Section 14. These rules for minor minerals, the Parliament acquires and then delegates to the state. That's all I am saying. Major minerals only Central Government and only 'I'. These are the entries, it closes. It is all inclusive entry, that this is all you can provide

1 for and you can charge. Now Your Lordships may kindly come to 18. Just the title,
2 'Development of Minerals.'

3

4 **JUSTICE HRISHIKESH ROY:** How do we reconcile your argument with the debates in the
5 Constitution Assembly? When they decided that it should be kept this power of taxation should
6 be kept with the state.

7

8 **TUSHAR MEHTA:** I have the debates also in my note.

9

10 **JUSTICE HRISHIKESH ROY:** It should be brought in the Union List? They specifically
11 said that it should be kept in the state.

12

13 **TUSHAR MEHTA:** Yes, my subject to Union prohibiting it. Correct My Lord. I am not...

14

15 **JUSTICE HRISHIKESH ROY:** By your argument, this particular Act, this is the only Act.
16 Parliament, this is the only Act. Now this Act talks about very many things and in case of minor
17 minerals, it talks about what is being given so far as minor minerals is concerned the power to
18 the state. It could have also said that the power of taxation for minor minerals is given. It's not
19 said so.

20

21 **TUSHAR MEHTA:** Maybe that is derived from 50.

22

23 **JUSTICE HRISHIKESH ROY:** We have to see why it is not said so. The Parliament.

24

25 **TUSHAR MEHTA:** 50. Because of 50. They would tax under 50 because...

26

27 **JUSTICE HRISHIKESH ROY:** Therefore, they have to tax?

28

29 **TUSHAR MEHTA:** Allow me to answer. Allow me to answer. That exactly I think Your
30 Lordships are suggesting my point, inadvertently.

31

32 **JUSTICE HRISHIKESH ROY:** You're smart enough to take my point. Don't keep on ...

33

34 **TUSHAR MEHTA:** 50 says power of taxation subject to the limitation imposed by
35 Parliament by law. Now, this is the law. Now that limitation is lifted for minor minerals. It can
36 tax for minor minerals.

37

1 **JUSTICE ABHAY S. OKA:** So therefore, your argument is power of the state to levy taxes
2 on operations regarding minor minerals, is there. That power is not taken away.

3

4 **TUSHAR MEHTA:** I'm not disputing that. It's nobody's case. They don't have or I am saying
5 that. No, I mean, they say that we haven't...

6

7 **JUSTICE ABHAY S. OKA:** So therefore...

8

9 **TUSHAR MEHTA:** We are on major minerals.

10

11 **JUSTICE ABHAY S. OKA:** So, states can levy taxes.

12

13 **TUSHAR MEHTA:** Of course. Unless My Lord, it is prohibited. It is not prohibited.
14 Tomorrow, Parliament can even prohibit. Legally speaking.

15

16 **JUSTICE B. V. NAGARATHNA:** Why can't this logic apply, even to major minerals. Why
17 can't this logic apply even to major minerals.

18

19 **JUSTICE ABHAY S. OKA:** There's no distinction between the two.

20

21 **JUSTICE B. V. NAGARATHNA:** Yes.

22

23 **JUSTICE ABHAY S. OKA:** If your stand of the Government of India is that...

24

25 **TUSHAR MEHTA:** Your Lordships may not ask me that question. The answer is very simple.
26 The entire act controls major minerals and keeps minor mineral out of it.

27

28 **JUSTICE ABHAY S. OKA:** No, no, no. It is applicable to minor minerals also.

29

30 **TUSHAR MEHTA:** Correct My Lord. So, for the -- what is Section 4? What is section...

31

32 **JUSTICE ABHAY S. OKA:** It says that without license or a lease there can't be any mining
33 operation.

34

35 **TUSHAR MEHTA:** Correct My Lords. And kindly see 15 that what should be the nature of
36 the lease, et cetera, the state will decide. Your Lordships have understood, I hope understood
37 my proposition that 4 provides that without lease and license you will not...Kindly allow me to

1 read. I'll just read first section. Section 4(1). No person shall undertake any reconnaissance,
2 prospecting or mining operations in any area except under and in accordance with the terms
3 and conditions of a reconnaissance permit or prospecting license or as the case may be, of a
4 mining list granted under this act or the rules made thereunder. Now this rule making power
5 for minor mineral is 50. It's delegated power. That's all I am saying. Now please come to 25.

6
7 18 title. Section 18, title, Development of minerals. Your Lordships have seen first chapter
8 regulation of Minerals. Now development of minerals. Only Section 18 I will read. It shall be
9 the duty of the Central Government to take all such steps as may be necessary for the
10 conservation and systematic development of minerals in India. My Lord my power to fix
11 uniform royalty flows from this. Systematic development of minerals in India and for the
12 protection of environment by preventing or controlling any pollution which may be caused by
13 prospecting or mining operations, and for such purposes the Central Government may by
14 notification in the official gazette make such rules as it may think fit. Then there are
15 rulemaking powers. Correct? Now please come to 25. I may read it closely My Lord, a little
16 slowly. The recovery of certain sums as arrears of land revenue. Any rent, royalty, tax or other
17 sum due to the government under this act, please mark the word under this act. The Centre
18 has no taxing power under 54. So far as mines and minerals are concerned State has no taxing
19 power. It can be traced only under 97. This is a future contingency. If for some reason in future
20 it is required to invoke 97, that is residuary entry for the purpose of taxing mineral because it
21 is under this act. Initially, the reaction would be that tax means tax imposed by the State
22 Government. No, it is tax imposed under this Act.

23
24 The rent, royalty, tax fee or other sum due to the government under this Act or the rules made
25 there under or under the terms and conditions of any mineral concession may honour
26 certification of such officer as may be specified by the state government in this behalf by
27 general or special order be recovered in the same manner as in the land revenue. My Lord, it
28 provides, whose taxation is the subject matter, the tax may impost under this Act. And who
29 will exercise the powers, Revenue Officer. Why and whom at whose behest? The state
30 government, because states, in any case, collects the royalty. There is no dispute about that
31 fact. So, My Lord, this again. My Lord show that, tax, if at all or royalty, et cetera, My Lord, is
32 the subject with the Central Government. Now Your Lordships, may kindly come to mineral
33 concession rules? My Lord, please come to Rule 31. Page number is same. My Lord, maybe at
34 page 65. I did not say My Lord, law relating to mineral development would include statutory
35 law, including delegated legislation. The rules also would be law for the purpose of My Lord,
36 that entry. Please Your Ladyship may see Rule 31. Now My Lord, after showing the
37 architecture, I am trying to take Your Lordships' closer to something very specific My Lord,

1 31, lease to be executed within six months, where, on an application for the grant of a mining
2 lease, an order has been made for the grant of such lease, a lease lead in Form K, please mark
3 this My Lord. Form K My Lord, is very, very crucial to answer Your lordships' question, where
4 it is all inclusive. Form K, or in a form as near thereto a circumstance of each case may require
5 shall be executed within six months of the order or within such further period, we are not
6 concerned. If it doesn't, then it lapses. We are not concerned. Now, please come to My Lord,
7 Form K. I don't think, My Lord, in my respectful submission, there can be anything clearer
8 than this My Lord. Now Form K, which My Lord, some part, Mr. Salve had shown My Lord,
9 but I'm showing something else other than what was shown My Lord. So, this is also a part of
10 the statutory scheme. This is a statutory form, annexed to a statutory rule, which is a part of
11 the law made for mineral development and regulation under Entry 54. My Lord, please come
12 to page 122, My Lord, possibly.

13

14 **JUSTICE B. V. NAGARATHNA:** Which part of Form K?

15

16 **TUSHAR MEHTA:** K, K. Form K My Lords.

17

18 **JUSTICE B. V. NAGARATHNA:** 122?

19

20 **TUSHAR MEHTA:** Mineral Concession Rules, Form K. If we have the same My Lord?

21

22 **JUSTICE B. V. NAGARATHNA:** Yes. Page 122.

23

24 **TUSHAR MEHTA:** 122. My Lord, first is, names of the parties. The state would give and the
25 party would... please come to the second recital, witnesseth... Your Lordships are with me My
26 Lords? My Lord, the Chief Justice are with me?

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

29

30 **TUSHAR MEHTA:** Witnesseth, now, please note in consideration of rent and royalties,
31 covenants and agreements by and in these presence and the scheduled here under written,
32 reserved and contained and on the part of the lessee or lessees' to be paid, observed and
33 performed, the state government, with the approval of the Central Government, hereby grants
34 the demised unto lease. What is the consideration? The rents and royalties. Further please see
35 the recital, thereafter, My Lord. But first five lines can be skipped except My Lord, there is one
36 capital 'Except'. My Lord Justice Pardiwala gets it?

37

1 **JUSTICE J.B. PARDIWALA:** Yes.

2

3 **TUSHAR MEHTA:** Except and reserving out of this demise unto the state government the
4 liberties, powers and privileges mentioned in Part-4 of the said Schedule to hold the premises
5 hereby granted in demise unto the lessee, so and so, so and so years. Then next, ensuing
6 yielding and paying therefrom unto the state government the several rents and royalties
7 mentioned in Part-5 of the said schedule at the respective times therein specified, subject to
8 provisions contained in Part 6 of the said schedule and the Lessee. Lessee is hereby covenant
9 with the State Government as in Part 7 of the said schedule is expressed. Part 5, 6, 7 does not
10 provide for anything other than what the lease stipulates, which is what Section 13(i)
11 stipulates. Correct, My Lords? Now kindly turn over the page. Liberties, powers and privileges,
12 to be exercised and enjoyed by the Lessees, subject to the restrictions and conditions in part
13 3. Nothing turns on that. Kindly come to page 127, Part 5. Yes Part 4. Liberties, powers and
14 privileges reserved to the State Government. Does Your Lordship..... This is all that is reserved.
15 It doesn't contain any other power. This is the law relating to mineral development and
16 regulation, and I am reading this as a limitation. Because my submission is, it will have to be
17 carved out, out of the total architecture and not one particular provision. Then Your Lordships
18 may see part 5. I'm not reading entire Part 4 because except this there is nothing left with the
19 State Government. They can enter, et cetera, et cetera, et cetera.

20

21 Then rents and royalties reserved by this lease. Your Lordship has Part 5? To pay dead rent or
22 royalty , whichever is higher. The Lessee shall pay for every year except the first year of the
23 lease, dead rent, as specified in Clause 2 of this part, provided that where the holder of such
24 mining lease becomes liable under Section 9 to pay royalty for any mineral removed or
25 consumed by him or by his agent, manager, employee, contractor or sub lessee from the leased
26 area, he shall be liable to pay either such royalty or the dead rent in respect of that area. Then,
27 My Lord. rate and mode of payment of dead rent. Then rate and mode of payment of royalty.
28 Please see 3. Subject to the provisions of Clause 1 of this part, the Lessee or Lessees shall during
29 the subsistence of the lease pay to the State Government at such times and in such manner as
30 the State Government may prescribe royalty in respect of any mineral or minerals removed by
31 him or them from the leased area at the rate for the time being specified in the 2nd Schedule
32 to the Mines and Minerals Act. It does not say that any other taxes, fees, et cetera, levied by
33 somebody else is covenanted to be paid. Then 4th. The Lessee or Lessee's shall pay rent. There
34 is a specific inclusion, which according to me, also means specific exclusion of anything else
35 other than specific inclusion. The Lessee or Lessees shall pay rent and water rate to the State
36 Government in respect of all parts of the surface of the said length which shall form from time
37 to time be occupied or used by the Lessee or Lessees under the authority of these presence at

1 the rate of so and so. Now kindly see My Lord. Most important is part 7, the covenants of the
2 Lessee or Lessees. Lease to pay rents and royalties, taxes et cetera. This is very, very important
3 this would perhaps answer Your Lordships question and may buttress my submission that
4 whatever is payable, contemplated to be payable and not limited is provided in this. Clause 1
5 of part 7. The Lessee, Lessees shall pay the rent, water rate and royalties reserved by these
6 leases at such times and in manner provided in part 5 and 6 of these presents and shall also
7 pay and discharge, please see My Lord, all taxes, rates, assessment and impositions
8 whatsoever being in the nature of public demands which shall from time to time be
9 charged...so public demands My Lords kindly underline. Assessed by the authority of the
10 Central and State Government upon or in respect of premises and works of the lease or lessees.
11 Property tax, revenue, public demand on the premises. That's the only tax or rate or fee which
12 is permitted. Public demands will have to be read with in respect of premises and works of the
13 lessee in common, My Lord kindly further, with other premises and works of a like nature,
14 except demand for land revenue. If my neighbour is paying property tax, I am under an
15 obligation to pay property tax only. The only levy outside Section 13(i) are these levies. And
16 this, in my respectful submission, is limitation under Entry 50. My Lord only last page 135.
17 The covenants of the State Government. The lessee or lessees paying the rent, water rate and
18 royalties hereby reserved and observing and performing all the covenants and agreements
19 here in contained and on the part of the lessee or lessee's to be observed and performed shall
20 and may quietly hold and enjoy the rights and premises hereby demised for and during the
21 term, et cetera, et cetera. This is all that he's supposed to pay. This can be amended by the
22 Central Government and My Lord liberty can be given or limitation can be lifted. I'll put it that
23 way. Now, in this context...

24

25 **JUSTICE HRISHIKESH ROY:** Solicitor General do have a lip reader also?

26

27 **TUSHAR MEHTA:** I think My Lord, this is working, My Lord, properly.

28

29 **JUSTICE HRISHIKESH ROY:** Oh my God, all the effort to say things silently...

30

31 **TUSHAR MEHTA:** No, no My Lord, Your Lordships were not heard. I was asking my learned
32 friend, this is separate My Lord, I'm diverging, what Justice is so and so is thinking and Your
33 Lordships, asked me the question, I thought that this is loud.

34

35 **JUSTICE HRISHIKESH ROY:** No, no, no.

36

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Solicitor, a form in a statute can't really
2 override either the statute or can nor it furnish an interpretation of a constitutional entry. The
3 classical statement was by Justice Chinnappa Reddy in *LIC vs Escorts*, where the statutory
4 form was shown to the court and say that, look, this is what permission means. It means that
5 prior permission. Justice Chinnappa Reddy put it very well, he says it was always said by a
6 judge of the Andhra High Court in those days that it is that, "Dog which wags the tail and not
7 the tail that wags the dog".

8

9 **TUSHAR MEHTA:** Your Lordships are right. If the form is the only argument I have, but
10 possibly My Lord...

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** There is a very beautiful extract in *LIC vs*
13 *Escorts*, on how to construe a Statutory Form.

14

15 **TUSHAR MEHTA:** My Lord, if form is the only argument, I have...

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** [INAUDIBLE]...Supreme Court 1369

18

19 **TUSHAR MEHTA:** ...possibly, My Lord the form I am reading, with Section 13(i). Section
20 13(i) says that you can make rules for A,B,C,D,E. What they want to levy is F,G,H,I. That's the
21 statute My Lord. 13(i), is obviously a statute rule making power. And the form is not just form
22 used administratively by the government. It is a statutory form. It has a statutory origin. Now,
23 My Lord, I'll read only three or four paragraphs of Justice Sinha's dissent in *Kesoram*. It is a
24 dissent My Lord. And apropos My Lord, Justice Roy's query, I'll read one paragraph. It's in my
25 written submissions. The Constituent Assembly debates on this. Possibly, my reading My
26 Lord, is otherwise subject to My Lord being corrected. I have examined that. My Lords, please
27 come to Volume-V, *Kesoram* My Lord. Page 2211.

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Volume?

30

31 **TUSHAR MEHTA:** V. *Kesoram* dissent. Justice, S.B. Sinha's dissent, My Lord.

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Page?

34

35 **TUSHAR MEHTA:** Page 2211. PDF page 2211. Para 410. Does Your Lordship get My Lord?

36

37 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Which volume?

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TUSHAR MEHTA: My Lord, it's 2211. It starts at 2020 My Lord. I am at 2211. I'm reading relevant paras only so that I may not exceed my time. I know I'm not testing the not patience, but the goodness of Your Lordships.

CHIEF JUSTICE D. Y. CHANDRACHUD: What para Mr. Solicitor?

TUSHAR MEHTA: 410. There are only then few passages from two judgments. Para 410, the expression any limitations in entry 50 of List II should not be given a restricted meaning, as contended by the Appellant. In fact, the rule of interpretation that the language of entries should be given widest scope should equally apply to the interpretation of the said words. So read the limitation, limitations on taxes on mineral rights could be in any form, including occupying the entire field of legislation under Entry 50 of List II by a Parliamentary Legislation and providing for levy of taxes. The MMRDA precisely achieves the said objectives by occupying the entire field of legislation covered by both Entry 23 and 50 of List II. Thereafter, **Orissa Cement** is cited, just the last line. I may read the whole. Section 25 implicitly authorizes the levy of rent, royalty taxes and fees under the Act and the rules. The scope of powers thus conferred is very wide. Read as a whole the purpose of Union control envisaged by Entry 54 of the MMRDA is to provide for proper development of mines and mineral areas and also to bring about uniformity all over the country in regard to the minerals specified in Schedule 1 in the matter of royalties and consequently the prices There is a view taken by Your Lordships that this is a consideration while interpreting the entries also. Then 412 My Lords, this objective would be totally defeated by the impugned levy of cess on coal that has resulted in coal produced in the State of West Bengal, totally unremunerative and uncompetitive. The price of coal, so producing being much higher than the price of coal produced in the adjoining state of Bihar, UP, Odisha, M.P. and Maharashtra as shown in the comparative chart below. Your Lordships may please ignore that chart. 413, the difference in the ultimate price of coal in the state of West Bengal and other states would thus be around 25% of the base price. The submission of Mr. Dwivedi to the effect that the cess imposed is not excessive, therefore, does not appear to be correct. From the aforementioned chart, it is evident that no substantial difference can be culled out so far as the price of coal on dispatch vis-a-vis at the pithead is concerned in as much as by reason of amendment. Then the court discusses.... then kindly come to page 2180.

CHIEF JUSTICE D. Y. CHANDRACHUD: 2180?

1 **TUSHAR MEHTA:** Para 258. On the economic front, the country has to compete with the
2 lead developed countries. Your Lordship gets? Developed countries. Global competition has
3 reached such a stage that, despite adequate production of coal and steel, the same are imported
4 from other countries to India. This case concerns these two minerals only. Countries to India.
5 In the international market also, the quantum of import is going up as compared to export.
6 The manner in which revenue is collected by the Centre and distributed to the states falls for
7 consideration by the appropriate constitutional authorities in terms of provisions of the
8 Constitution. It is not correct to say that while interpreting the legislative field, the Court, in
9 case of conflict, would lean in favour of the state, keeping in view the fact that taxes under
10 different heads are collected by the Centre and a part of revenue is made available to the states
11 from time to time. This Court is not concerned as to whether the Centre consumes the lion's
12 share of the revenue or the same is subject matter of criticism at the hands of state or financial
13 observers. Such an approach would not only run counter to the doctrine of federalism with a
14 strong Centre, but in the long run would prove to be counterproductive. India is a signatory to
15 various international treaties and covenants and being a party to WTO and GATT it is
16 obligated to fulfil its transnational obligations. If, for purpose of giving effect to the
17 international treaties, it in exercise of its powers under Article 253 of the Constitution had
18 taken over the legislative field occupied by List II of the Seventh Schedule of the Constitution,
19 no exception thereto can be taken. While doing so, the Central Government shall give effect to
20 the will of the makers of the Constitution and would not act contrary thereto or an inconsistent
21 therewith. The legislative fields of union and the state vary from country to country depending
22 upon the requirement of the situation in which such provisions are made. Although a lot can
23 be said on the subject, keeping in view the fact that our job is confined to interpretation of
24 legislative entries vis-a-vis the Parliamentary and Legislative Acts. It may not be necessary to
25 do so, but suffice it to, however point out that, when such an approach is adopted, we would
26 be more prone to committing errors. We must proceed on the basis that neither the Union nor
27 the State is supreme in the constitution, as both the Union and the State will have to trace their
28 power from the provisions of the Constitution. We should treat the subject with caution and
29 circumspection. The interpretative principles, whether leaning in favour of union or the state,
30 may, in certain situations depend upon the subject matter of legislation, the importance
31 thereof, and its effect and impact within and outside the country. Both minerals and tea
32 deserve more control only by the Union having regard to their importance in the national
33 economy.

34

35 Then 261. Distribution of taxes by the Central Government in favour of State Government is
36 of no moment in the instant case as the entire royalty fixed by the Central Government in
37 terms of 1957 Act is payable to the states. The Union Government has nothing to do therewith.

1 If the constitution as a living organ is not interpreted having regard to the intention of the
2 constitution makers and in case of conflict in legislative field contained in List I and List II if
3 an interpretation that leans in favour of the state is adopted without a reference to the subject
4 matter thereon or national interest, the same would be subjected to judicial vagaries, which
5 cannot be countenanced. This is all My Lord. Just answering My Lord's query, I'll just show
6 two things. A, the Constituent Assembly debates. This is all I want to say now. Constituent
7 Assembly debates. B, Parliamentary debates when this MMRD Act was introduced, where it is
8 said that we want to denude the state from its power and some propositions, I have quoted the
9 judgments which I'll not read because Your Lordship have...except two judgments. One is
10 **Hind** and another judgment on the question what is the meaning of an ambit in the scope of
11 the term regulation. My respectful submission would be, regulation would also include a
12 prohibition against any levy and there are some judgments on that. If Your Lordships kindly
13 come to my written submissions, which is 2(f). My Lord Justice Pardiwala had 2(e). Kindly
14 ignore 2(e). 2(f) at page 45. That is my reading. Your Lordships reading must be right. But let
15 us read subject to being corrected. First discussion is on 52 that is similarly worded provision
16 that industries which are declared by law to be under the control of the parliament in public
17 interest.

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 52 of Volume 2(f)?

20

21 **TUSHAR MEHTA:** Yes 2(f), page 45.

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's the list of dates?

24

25 **TUSHAR MEHTA:** Yes. I'm not going to read My Lord. I have just given the list of dates; I
26 would request Your Lordships to go through it. My Lord the purpose is to show that historically
27 considering the very nature of minerals, it has always remained in the hands of the Federal
28 Government earlier and Central Government thereafter. Your Lordships have date 31st
29 August, 1949? My Lords have it. The entries in the Union list Entry 52, 53 and 54 in the... I'm
30 sorry My Lords. My Lord, page number 45, 31st August 49. This is Constituent Assembly
31 debates.

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

34

35 **TUSHAR MEHTA:** The entries in the Union List, Entry 52, 53 and 54, in the final
36 constitution, and Entry 64, 65 and 66 in the draft constitution were debated in the Constituent
37 Assembly. The relevant portion of the debate, is as under- Honourable Dr. Ambedkar Sir I

1 move, that Entry 64 of List I, the following entry be substituted. My Lord, this is 52. Present
2 52. Sri Kamath, Mr. President, I move amendment number so and so, of 3rd List, 5th List
3 week, which reads as follows - that in amendment number 35 of List I, in the proposed entry
4 64 of List I, further words the control, the words development and control be substituted. This
5 was not done. Kindly come to the next page. Dr. Ambedkar, My Lord, somewhere in the
6 middle, My Lord, Your Lordships will find.

7

8 **JUSTICE B. V. NAGARATHNA:** That is control of the industry.

9

10 **TUSHAR MEHTA:** My Lord, Justice Roy find that? The Honourable Doctor BR Ambedkar-
11 Sir, the Entry as it stands is perfectly all right, and carries out the intention that the drafting
12 committee has in mind. My submission is that, once, the centre obtains jurisdiction over any
13 particular industry, as provided for in this entry, that industry becomes subject to the
14 jurisdiction of Parliament in all its aspects. My Lord, please note, this is Entry 52. Similarly
15 worded, that industries which are declared, by law made by the Parliament to be in public
16 interest. Similar to 54. And this is what, My Lord, Dr. Ambedkar...

17

18 **JUSTICE B. V. NAGARATHNA:** No. There is one difference between the two. Entry 52
19 and Entry 54.

20

21 **TUSHAR MEHTA:** Yes.

22

23 **JUSTICE B. V. NAGARATHNA:** In Entry 52, it is industries, the control of which, by the
24 Union is declared.

25

26 **TUSHAR MEHTA:** Correct.

27

28 **JUSTICE B. V. NAGARATHNA:** But in Entry 54, regulation of Mines and Mineral
29 Development, to the extent to which such is declared by the power...

30

31 **TUSHAR MEHTA:** To the extent, My Lord, I'm ...

32

33 **JUSTICE B. V. NAGARATHNA:** There is a vital difference...

34

35 **TUSHAR MEHTA:** 54 is vital... wider. Please see. Regulation of Mines and Mineral
36 Development to the extent to which, such regulation and development under the control of the
37 Union is declared. It is, in fact, wider. But they say that whenever there is a control conferred

1 by an Entry, everything falls within that law. That's, My Lord, my reading of not mere, My
2 Lord, kindly see, become subject of the jurisdiction of Parliament, in all its aspects, not merely
3 development, but it may be in other aspects. Consequently, we have thought that the best thing
4 is...

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The control is declared by Union, by the Union,
7 are to be expedient in the public interest. Therefore, the Dr. Ambedkar say that, every aspect
8 of control is then subsumed, in Entry draft Entry 54.

9

10 **TUSHAR MEHTA:** That's all, My Lord, I wanted to say. Now, My Lord, may only allow me
11 to show, My Lord, when this act was enacted.

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Here we are dealing with limitations.

14

15 **TUSHAR MEHTA:** Pardon me?

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Here we are dealing only with limitations, the
18 entirety of the field, once control is...

19

20 **TUSHAR MEHTA:** Again, My Lord, at the cost of repetition, I'll not.....

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** When the Central Government takes over the
23 entire control of the industries. And that control will be all aspects of control. It's absolute.

24

25 **TUSHAR MEHTA:** Certainly. But if we try and find out, My Lord, in my respectful
26 submission, it's a wrong question to ask and therefore we are not getting the answer, that
27 where is that particular limitation? The answer is limitation is put by law, not under the law.
28 By law, the law itself is a limitation. But I have already addressed, My Lord. I'll not trouble
29 Your Lordships with that, My Lord. But now, please, My Lord, in this very Your Lordships are
30 on this, see My Lord, page 23. My Lord, this is parliamentary debate when this MMDRA work
31 was introduced in 57.

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Where do we get that?

34

35 **TUSHAR MEHTA:** Page 23. Same My Lord written submissions 23. My Lord only
36 underlined part My Lord, I have underlined certain portions for the sake of saving the time.

37 **A.D. Malaviya,** would find, only the highlighted part. I agree with him that, left to ourselves

1 we should increase the rates of royalty further. But the rates of royalty cannot go beyond a
2 point. When in international competition, the price element becomes somewhat against us,
3 and this is a factor which we cannot ignore. The moment we increase the royalties beyond a
4 point, it will have its own repercussion on the total price factor and we cannot ignore it. This
5 was the intention to put the entire architecture under the control of the Central Government.
6 Then this shows that at the time of passing State Governments were urged to look beyond
7 narrow considerations because somebody objected, somebody from the state objected. And
8 two, the legislators were cognizant of the impact of royalty on the prices and consequent
9 impact on international market. Please come to page 24. **Rajendra Pratap Singh, Bihar,**
10 page 24. Only the highlighted, black highlighted part. What we are doing in this bill is to
11 denude the state of all their powers and responsibilities not only with respect to the minerals
12 mentioned in Schedule 1, which is very comprehensive, but in some respect, we have even
13 taken away the regulatory powers of the state in respect of all other minerals. This was the
14 intention behind framing 1957 MMDR Act. That is my respectful submission. My Lord kindly
15 see thereafter **Santosh Kumar Basu, West Bengal.** Only the highlighted part. At the
16 same time -- sometimes I wish the lip reading could have been a course in the five-year law.

17

18 **JUSTICE HRISHIKESH ROY:** When they are choosing jury members, they have people
19 observing the body language of the juries, potential juries and depending upon how they are
20 sitting, how they are sort of gesturing they will say alright he is a jury to be selected for my
21 part, in my turn.

22

23 **JUSTICE ABHAY S. OKA:** Just in a lighter vein. Solicitor if you are privy to all the
24 conversation which is happening here for last five days, perhaps the matter would have been
25 over by this time.

26

27 **TUSHAR MEHTA:** That secret keeps us going, it is only that secret with all of us. That keeps
28 us going.

29

30 **JUSTICE ABHAY S. OKA:** There is still hope.

31

32 **TUSHAR MEHTA:** That was a very potent word. Almost divulging, what My Lord Justice...

33

34 **JUSTICE ABHAY S. OKA:** But what I said applies to Mr. Dwivedi also.

35

36 **TUSHAR MEHTA:** I'll not follow that. Kindly My Lord go through it, go through the entire
37 Parliamentary debate. What it says is that we cannot have a narrow state wise understanding

1 of the royalty regime. Whatever is to be done has to be done holistically, nation wise and global
2 wise. That was the intent and purpose. I'll cite two judgments. Page 62.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Of Volume V?

5

6 **TUSHAR MEHTA:** Of the very same. First is *Hind Stone*. I would read that first. It is 63.
7 I'm sorry. Page 62. One minute, I will cite the judgment. On to page 62 Regulation and mineral
8 development and in public interest. I have cited...62. Regulation, mineral development and in
9 public interest. My Lord *State of Tamil Nadu versus Hind Stone*. This is a leading
10 judgment followed till date on regulation. Please see only the underlined highlighted part. We
11 do not think that regulation has the rigidity of meaning as never to take in prohibition much
12 depends on the context in which the expression is used in the statute and the object sought to
13 be achieved by the contemplated legislation. I have shown the object. I have shown the context
14 and in my respectful submission, regulation of mineral would also include prohibition of any
15 other kind of levy by anyone except what is stipulated in the act. Then at the foot. This is again
16 a case on minerals. Therefore, a little closer home.

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

19

20 **TUSHAR MEHTA:** Kindly then come to next *Hind Stone*, which was referred in Quarry
21 Owners Association page 63. It's two or three judge bench. Only underlined part. Only
22 underlined part. The word regulation may have a different meaning in a different context, but
23 considering it in relation to the economic and social activities including the development and
24 excavation of mines, ecological and environmental factors, including state's contribution in
25 developing, manning and controlling such activities, including parting with its wealth, that is
26 the minerals. The fixation of rate of royalties would also be included within its meaning. When
27 the law relating to regulation which is the chapter under which 4 to 9 falls would mean
28 thereafter, My Lord, subsequent. So, in regulating mineral development, the Royalty/Dead
29 Rent is the inherent part of it. The state has thus before it. State means capital S not the state
30 government. The State has thus before it, a number of factors as aforesaid, which would guide
31 it to fix, enhance or modify the rate of Royalty or Dead Rent payable, by a lessee. My Lord,
32 similar are the judgment, My Lord. I'm not duplicating, but kindly treat them as read, My
33 Lord.

34

35 **JUSTICE B. V. NAGARATHNA:** In the name of regulation, can the sovereign function or
36 the sovereign priority to impose a tax be taken away by another sovereign?

37

1 **TUSHAR MEHTA:** If Constitution Entry permits, yes.

2

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

4

5 **TUSHAR MEHTA:** 50 permits then.

6

7 **JUSTICE B. V. NAGARATHNA:** ...intentionally, the word's uses any limitation. It is not
8 any ban or a total prohibition.

9

10 **TUSHAR MEHTA:** Limitation would also include prohibition. Limitation means, I restrict
11 you from doing this. Whether by a specific provision, again, My Lord, repeating, or by the
12 entire architecture. My Lord, limitation can mean even extinguishment, that I limit you, I
13 restrict you. Limitation doesn't mean that don't charge more than one. Limitation is a very
14 wide term with wide connotation, My Lord. Limitation can include, My Lord, I'm not on this
15 matter, otherwise also. Limitation, I don't think, other side also argues that limitation cannot
16 lead to prohibition. It can lead to prohibition. The prohibition is specific, or you have to see
17 the entire architecture, that is the question. Then My Lord, page 67. I'm not reading it, just
18 hurriedly going, taking Your Lordships through. My Lord, *Hingir-Rampur* . My lord, I'm
19 not reading it. Mr. Salve has taken Your Lordships throughout all these judgments, till, page
20 86. Page 85 My Lord, sorry. 86, I'm not reading it. This is my interpretation of judgments from
21 *Hingir-Rampur*. Now My Lord, the last but one point, My Lord, Entry 14, My Lord, I'll just
22 make two propositions, because Dr. Singhvi is arguing on that, My Lord, land at Entry 49, My
23 Lord, anyway the argument was that, if I do not fall under Entry 50 the text, I can always text
24 under Entry 49. Your Lordships would recall that. Please see Entry 49. My Lord, if the
25 argument is true, we will make 50 redundant. That is number one. And number two, when
26 there is a specific entry, general entry can never be resorted. My Lord, please see, 50. My Lord,
27 I'm just giving the propositions, My Lord and not taking Your Lordships time, 50. Taxes on
28 Mineral Rights, subject to any limitations imposed by Parliament, by law relating to Mineral
29 Development. Now, 49 comes if they fail in 50. Their argument is, that if we do not have the
30 competence under 50, then we rely upon 49. Please see 49. Taxes on Lands and Buildings. If
31 we have no...

32

33 **RAKESH DWIVEDI:** I'm sorry to interrupt. But I must clarify. It's not that Entry 50 doesn't
34 apply then 49. It is, Entry 49 and if that doesn't apply and you say because the measure is
35 minerals, there also, My Lord, its 50. That's, it's a reverse. Not what you are saying.

36

1 **TUSHAR MEHTA:** As I have shown My Lord, first of all, as I have shown from, My Lord, the
2 sub-group. My Lord, this so-called artificial distinction between measure of Royalty, namely,
3 in terms of tons or in terms of area, is now blurred, has always been blurred. For some
4 minerals, it is on tonnage basis. For some minerals, it is on the basis of area. So, it doesn't
5 matter, My Lord, whether your mode of taxation is the mineral itself or the land itself, but the
6 land tax on land and buildings is a separate entry, not only separately defined, but the term
7 land would take colour from buildings. What it provides for is property rights or something,
8 which deals with land, not anything below that. Another thing, the very fact that for the
9 purpose of taxing, you have Entry 50 and for regulating that very product Entry 23 and also
10 54 in List I, oust My Lord 49. This is My Lord an argument of desperation. My last-ditch
11 argument that if I do not fall anywhere, anywhere, then I'll fall under 49. Land and building is
12 completely a different subject. There are two Constitution Bench judgments. One is at page 87
13 ***Waverly Jute Mills Co versus Raymon & Company***. I'm not reading it.

14

15 **JUSTICE HRISHIKESH ROY:** Which citation that you said? Page 87?

16

17 **TUSHAR MEHTA:** It's a page 87 citation is also given. Yes. 1963 volume 3, SCR 209. I'm
18 sorry. I thought. The proposition it lays down is one judgment and underlined portion at page
19 88 would be enough. This is ***Waverly Jute Mills***. Please see, it follows from this. Your
20 Lordships get? Underlined portion. My Lord Justice Roy gets?

21

22 **JUSTICE HRISHIKESH ROY:** Yes.

23

24 **TUSHAR MEHTA:** It follows from this that where there are two entries, one general in its
25 character and the other specific the former must be construed as excluding the latter. This is
26 only an application of General Maxim. The *Generalis Specialibus Non Derogant*. It is obvious
27 that if Entry 26 is to be construed as comprehending forward contracts, then future markets
28 in Entry 48 will be rendered useless. Rest are judgments on the same propositions. I am not
29 reading, but I would earnestly request Your Lordships to just glance through them. They're
30 really illuminating paragraphs. But it would be unfair on my part to.... Now page 91, 'Nature
31 of Royalty'. My respectful submission is very categorical and specific and I think we are *ad*
32 *idem* on this both sides for different reasons. Royalty is not a tax. Dr. Singhvi may argue,
33 *arguendo* as an alternative that is, suppose if it is a tax. But our case is royalty is not a tax for
34 the simple reason that for tax you do not need any justification. If the government is taxing
35 me. There need not be any justification, but in case of a royalty the Government is parting with
36 its sole privilege over the natural resources and permitting you to exploit it and sell it, and
37 therefore you are paying consideration. It's not a tax. These are all judgments, which takes the

1 view. There are judgments. These are again occupied field in the lighter vein by the judgment,
2 that royalty is not a tax. But I would say...

3

4 **JUSTICE B. V. NAGARATHNA:** But in *India Cements*, the question was tax on royalty,

5

6 **TUSHAR MEHTA:** Correct.

7

8 **JUSTICE B. V. NAGARATHNA:** Royalty is not tax.

9

10 **TUSHAR MEHTA:** Cess on royalty.

11

12 **JUSTICE B. V. NAGARATHNA:** Cess or tax imposed on royalty.

13

14 **TUSHAR MEHTA:** My answer is, My Lord I'm couching my statement very accurately. For
15 the purpose of section 9, royalty is not a tax. Why I say this? There is a reason. We have filed
16 an affidavit on behalf of Ministry of Petroleum and natural gas, for petroleum and natural gas,
17 which are also minerals there is a separate entry, namely Entry 53 and there is a separate set
18 of acts. There are two acts. There My Lord the concerned public sector undertaking is taking a
19 stand that it is a tax, which it can take because entry is different and the statutory scheme is
20 different. But so far as Section 9 is concerned and the architecture of MMDRA is concerned,
21 the royalty on minerals covered by MMDRA is not a tax. If Your Lordship would like to write
22 it down. Volume III(g) is the affidavit of the MOPNG. My Lord, I must say that initially both
23 minerals and petroleum, that is called mineral oil were under the same regime of 48 Act, but
24 thereafter specifically, even the statement of objects and reasons of MMDRA says that now we
25 are having a separate regime. Therefore, we have filed this affidavit so that the PSUs can take
26 a different stand and that may perhaps be a justifiable stand. These are my respectful
27 submissions. I have prepared propositions. I may revise it and file it by tomorrow, so that Your
28 Lordships may get what are my legal propositions? It is available. I have also uploaded but
29 during the course of the hearing I would like to make some changes for Your Lordship.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Certainly.

32

33 **TUSHAR MEHTA:** Privileged to assist.

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you.

36

1 **HARISH SALVE:** I had also revised a lot of things which in the course of submissions, would
2 Your Lordships would...May I give a written note of finally, as how the matter was presented?

3
4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** If you want to, but we have taken very elaborate
5 notes.

6
7 **HARISH SALVE:** Very Well.

8
9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes Dr. Singhvi. [UNCLEAR]

10

11 **DR. MANU SINGHVI:** I have a written note. It gives the civil appeals where I am appearing.
12 **Kesoram** and others. The numbers are given there. I'll take Your Lordships through it. At the
13 outset, let me say this. The advantage or disadvantage of a nine-judge bench is that, Your
14 Lordship, though not on a tabular rasa are not bound by any landscape. So, whatever Your
15 Lordship does is what is most persuasive or on first principle. So, we will cite cases, but they
16 are only intended to be persuasive this way or that way. Neither seven judges nor five judges...
17 Your Lordships will find some useful reasoning in some cases which is why we will deal with
18 those cases in that sense. Secondly My Lords, almost every argument of mine is without
19 prejudice in the alternative and assuming that the arguments already made do not succeed.
20 Because if they succeed Your Lordship doesn't need to reach many of my arguments. And that's
21 the way it should be done because the nine-judge bench is laying down law for a pretty long
22 time if everyone is going to be reconsidered and Your Lordship should have all the perspectives
23 and should deal with them because you should not really be leaving holes to be discussed again
24 and then again, some new reference comes. Thirdly, My Lords will Your Lordship will always
25 keep in mind a general view, a general question which I want to ask again and again.
26 Ultimately, all this is being done, all these exertions are being done because of **Kesoram**.

27

28 And my humble respectful submission, is my question to myself is that, there has to be
29 something very special about **Kesoram's** correctness. For Your Lordships to go in that
30 direction or adopt that view. Because according to me, **Kesoram**, apart from all that other
31 debate about five judges, touching on seven judges, not referring it to nine judges, but
32 themselves deciding et cetera, that is a separate debate. My Lords, **Kesoram**, what is so wrong
33 with **India Cements**. And conversely, what is so special and right about **Kesoram**, that My
34 Lords, use a phrase, not irreverently, it says- 'the cat amongst the pigeons', on a certain corpus
35 of law, which has been going on and on. And that question, whether I believe is not satisfactory
36 answered, because **Kesoram** really does an *ipse dixit*. Now, My Lords, I have done this, My
37 Lords, the other thing about nine judges by the time we reach the third or the fourth person,

1 we have to take our original written submission and chisel them down, cut off what is covered.
2 So that's what I've done. Because, I've tried to chisel them into six propositions, which remain,
3 and they are mostly in the alternative. They are right on the top of my submissions, which Your
4 Lordships, I'm told gets at Volume II(e), page 305. I'm going to only stick to those six
5 propositions, and everything, My Lords, including case law, My Lord, relevant portions are
6 quoted there. So that, My Lords, speed will be assisted. My Lords, will not have to spend...I'm
7 told, My Lords, is Volume II(e), page 305. It's been loaded.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

10

11 **DR. MANU SINGHVI:** And as I said My Lords, these submissions are not in any manner to
12 detract. They are only to reinforce an alternative view. And I think Your Lordships should
13 have, Your Lordships, in a sense, forget what has gone in the past and now My Lords, kindly
14 see an alternative view, to some extent. The first is, My Lords, Royalty is a tax and/or qualifies
15 as an impost and compulsory exaction under 366(28). In my submissions, I've pinpointed the
16 paras dealing with this, b(1) to b(32) and the page is 21 to 32. So, Your Lordships has exactly
17 where I've dealt with this, with the extracts and the quotations. It just fell as the Mr. Mehta
18 ended fell from My Lord, Justice Nagarathna, *India Cements. India Cements*, My Lords,
19 directly holds it to be a tax. It then says, a cess is also a tax. It's a tax on tax. Para 34, I'll come
20 to that. There's no *India Cements* or *Kesoram* binding, whether it's seven or five. But what
21 is My Lords? We see the intrinsic worth of the reasoning. It's not wrong. So, the first is,
22 whether is, Royalty is a tax and qualifies, and my more consider second part of the sentence,
23 impost compulsory execution, et cetera, and the test of a constitutional article not merely a
24 statute. My second submission as well is, and I don't think enough of this weight has been
25 given to that. A second very important levy. It may be a little less, in quantum term, very
26 important levy. Dead rent, is clearly of course, based on acreage, and being a tax, clearly a tax,
27 is directly occupied by 9(a). Not 9, 9(a). The paras are given b (29) to (32), (31) to (32). This
28 tax is a tax on mineral rights. Unlike my fourth argument, which is a little different, this is a
29 tax on mineral rights. The third, of course, although Your Lordships dealt with it, I'm going to
30 be doing a little addition here. Entry 97 and the reasoning will go, My Lords, If I may just
31 summarize the reasoning. Entry 50 itself recognizes a taxing limitation, by Parliament. Your
32 Lordships, will be looking at the second part of 50. Your Lordships sees the opening word its
33 taxes. The limitation must include limitations of taxation. Has to. Otherwise, the section can't
34 be read properly. I mean, the Entry can't be read properly. I'm just summarizing my point 3,
35 because I'm developing data and just summarizing. So, step one, Entry 50, recognizes taxing
36 power of Parliament itself in its own entry. Second, it recognizes a limitation on that taxing
37 entry on itself, because of a parliamentary superior taxing right. Third, it then says, that

1 therefore My Lords, I'll be excluded, it can only be by combined application, because this tax
2 you're talking about of 54 read with 97. Because taxing is specifically dealt with in 97. Now My
3 Lord's query which I will be dealing with, namely 248(2).

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** [UNCLEAR] tax covered, otherwise not
6 specified any of the two? The moment it is specified...

7

8 **DR. MANU SINGHVI:** 248 (2). No. It's really formulating 248(2). That's the query My lords
9 put. 248(2) is otherwise not specified. Entry 50 specifies a taxing limitation itself.

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But, therefore, such a tax has to fall under
12 Entry 54. It can't fall...

13

14 **MR. MANU SINGHVI:** Read with 97. An entry which has been forgotten, dealt with three
15 of Your Lordships cases.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It cannot ever fall in Entry 97 because it is tax
18 which is specified in one of the decisions.

19

20 **MR. MANU SINGHVI:** Entry 54 and 97 read conjointly, read with the third factor a
21 limitation in 50 itself, recognizing the taxing power of Parliament. The three things add up to
22 create this proposition. That's why I said it's a little different, I've developed it. This is three
23 things. The synergy of three things...

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But if there is a limitation on the taxing power
26 of the state...

27

28 **DR. MANU SINGHVI:** 50.

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That does not mean that the entire subject is
31 transferred to Parliament to levy a tax.

32

33 **DR. MANU SINGHVI:** It is My Lord. If Parliament chooses, as it does in Section 15, to say,
34 for minor minerals, you, the state can do it. It is different otherwise it is entirely with
35 Parliament. Parliament chooses not to say it in Section 13.

36

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Entire field of levy of tax on mineral rights is
2 with the states. That power is subject to limitation, which Parliament may impose by law.

3

4 **DR. MANU SINGHVI:** The word limitation starts with a taxing limitation. See the entry.
5 I'm going ahead of my own story. Just see, the Entry. 50 says taxes on so and so, including
6 limitations. The primary limitation has to be a taxing limitation. It is dealing with -- in fact, 50
7 is a recognition of Parliamentary superiority in taxation, apart from other things.

8

9 **JUSTICE B. V. NAGARATHNA:** But in *HS Dhillon*, this Court has said, if a taxation
10 entry is absent in List I, or List 2, then it can be entry...

11

12 **DR. MANU SINGHVI:** That's exactly what *Mahalakshmi* says. That's exactly what five
13 judgment Your Lordships says.

14

15 **JUSTICE B. V. NAGARATHNA:** But we have all seen from the last two three weeks. We
16 are seeing the taxation entry in Entry 50...

17

18 **DR. MANU SINGHVI:** My Lords, with respect is that private law example very loose
19 example. Wrong example of [UNCLEAR]. It's a circle. Your Lordships know of [UNCLEAR] in
20 private international law. It's a circle. 50, you start with. 50, recognizes the superiority of
21 Parliament, especially in taxation. This last three words have been less emphasized. That
22 superiority of Parliament in taxation then gets completely coalesced and developed by a
23 conjoint reading of 54 with 97 because 50 subordinates itself in taxation. *Qua* Parliamentary
24 taxation.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What Entry 50 recognizes is that the taxes on
27 mineral rights can be imposed only by the State Legislature since it's in the State List. But
28 while doing so, you are subject to a limitation which Parliament may impose by law. That is
29 not to say that the moment Parliament imposes a limitation that whole field is then transferred
30 to the taxing power of the Union.

31

32 **DR. MANU SINGHVI:** That is Mr. Salve's and Mr. Mehta's argument. I'm now doing a
33 totally different, nuanced argument. That first part Your Lordship has, totally occupied, et
34 cetera, I am not dedicating. That they succeed, if Your Lordship holds it this way, that matter
35 ends My Lord, this way or that way, Now, I am saying something in addition. That's why I said
36 this is separate. One is occupation. It clearly does. Actually, the rest of my written submission
37 has the submissions. I'm not giving Your Lordships those submissions at all. My argument is

1 that forget the occupation doctrine. May I do it when I come to the third proposition, rather
2 than do it now. If Your Lordships will read the entry itself, I'll develop it from there. Let me
3 just finish the propositions first. So that's my third proposition, and that is dealt with in para
4 8 to 32, pages 5 to 15. Now the fourth proposition is, of course, I must emphasize, wholly in
5 the alternative. Your Lordship has been dealing till now with mineral rights. Ask a simple
6 question My Lords: regulation and mineral development is the word in 54. If they didn't want
7 the words to be different, why did they use mineral rights in 50? The answer is also answered
8 by Your Lordships. All these cases have not been given meaning and importance by My Lords
9 **Kesoram**, and many of them have been noticed not only Justice Sinha, but in other
10 judgments. Why is it that 50 uses mineral rights whereas 54 uses, if they wanted to give the
11 entire space, the entire universe, they would have used the same words as 54 in 50. Or they
12 would have used the words of 23 in 50. 23 is a mirror image of 54, which is why Your Lordship
13 has always held denudation. They use mineral rights because it's a very narrow area given. So,
14 my fourth submission is, Your Lordship should lay down in this judgment because we don't
15 come to 9 judges again and again. Your Lordship does not want chaos in the law. The difference
16 between tax on minerals versus tax on mineral rights. The two are different. Your Lordship
17 will only lay down guidelines. The division benches will decide whether the impost in question
18 falls this side or that side. But Your Lordship must lay down guidelines because take a simple
19 example, my lease or license to him of 10 years, 15 years, 100 years can be taxed. That's a tax
20 on mineral rights. It is very different from taxing the quantum of mineral extracted on tonnage
21 or sale. That is conceptually different. The language is different. The advisory the constitution
22 uses different language. Please don't equate tax on minerals with tax on mineral rights. That's
23 my fourth proposition.

24

25 My Lord my fifth case, the alternative which is, again not been argued. It is a clarification
26 which is important from nine judges, that today we leave this court after arguing all this tax
27 this way, tax that way. Tomorrow My Lord the States get up and say, that was the case deciding
28 tax. Oh, but I have the power to levy the same thing as similar things on the ground of fee. Now
29 Your Lordship has held very clearly that if 23 is denuded, then the power eclipse...not denuded,
30 eclipsed. Then the power to levy fees on concomitantly in 66 cannot be there because 66
31 operates only if the main power is in 23. That's my fifth proposition. That clarification should
32 be clear that we don't restart the whole litigation on by different names called some fees being
33 levied. If 23 is gone now My Lords why it is important also is, **Kesoram** has a loose paragraph.
34 With great respect I say so, all fiscal levies. Whether all fiscal levies include fees or not Your
35 Lordships should clarify. If there is no 23 powers in List II, there cannot be a 66 power to levy
36 fees. And all states are levying fees relying on that para of **Kesoram**. 110(2) I shall come to all
37 these details. That's my fifth proposition.

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JUSTICE B. V. NAGARATHNA: How much of Entry 23 List II is denuded is the question?

DR. MANU SINGHVI: My Lords fees can't operate,

JUSTICE B. V. NAGARATHNA: No Entry 23 List II.

DR. MANU SINGHVI: Identical language of 54 and 23. The denudation must be completed. And what will happen is... I understand My Lords query. This is more the occupation argument. So, what will happen is, the Parliament, the framers use same language in 54 and 23. Now My Lords Parliament passes a law about a coat, a gown, a band. It is then said that the state can tax the pant and the shoes. My Lords Parliament has evinced an intention that we will tax only the coat and the gown and the band and implied in its Parliament's reticence and hesitation and prohibition on itself not to tax the trousers and the shoes. Your Lordship will not read the Entry 23 in a manner that if it is exercised and you My Lords, the chair example is limited valuables. In lighter vein Mr. Mehta seems to have taken Chief Justice's advice, he moved me one chair further. As he occupied my chair also. I'm worried that he follows Your Lordships advice too literally. But the answer to My Lords Justice Nagarathna's very important query is that the occupation is not that Your Lordship will then encourage piecemeal legislation by Parliament and say that you are not able to occupy because you intended to occupy. Because the intention of Parliament is that we believe in our wisdom that only the coat and gown must be taxed. But the subject matter is the same that can't be disputed. In Entry 66 is one advantage I have something to Your Lordships kind discretion. 66 is entirely dependent on 23. Now 23 and 54, fortunately, have identical or virtually identical language. Then the denudation will not operate. In my coat and trousers example on only how far the taxation has gone. Then it will not. That's my submission. And the last one, is very interesting. I have a self-contained note which I may not read, it is about nine pages. It gives ten fundamental reasons. Three of them, why there is no typo in **India, Cements** as contended by as found by **Kesoram** and seven other patent errors of **Kesoram**.

Your Lordships, will see only two two lines of that. I will read out of those ten pages, one page, one and a half pages. For example, **Kesoram** says that- **India Cements** cites two High Court judgments. But does not follow four other High Courts the other way and therefore, **India Cements** is wrong. Actually, what **India Cements** does is, it cites those two. It cites the other four and says, we prefer these two. A point which **Kesoram** completely misses or My Lords, in fact overlooked it.

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright, Dr. Singhvi, now...

2

3 **DR. MANU SINGHVI:** We can now start one by one.

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We are just at 4:55 now. We'll continue
6 tomorrow.

7

8 **DR. MANU SINGHVI:** I will finish well in time, Mr. Ganguly will get enough time. Don't
9 worry.

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Who follows Dr. Singhvi now?

12

13 **RESPONDENT'S COUNSEL:** Mr. Khambata will...

14

15 **DARIUS KHAMBATA:** I, if Your Lordships permit, I would like to address for an hour or
16 so if Your Lordships permit me?

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, Mr. Khambata, Dr. Singhvi then Mr...

19

20 **DR. MANU SINGHVI:** After me My Lord, Mr. Ganguly is there.

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Ganguly will argue. Mr. Bagaria...

23

24 **RESPONDENT'S COUNSEL:** My Lord, I'll take 15 minutes, My Lord. There is a...

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Everyone has to finish by lunch. Dr. Singhvi
27 we will give 10:30 to...

28

29 **DR. MANU SINGHVI:** 3 o' clock make it. Mr. Dwivedi will get the full of Thursday and some
30 part of tomorrow also.

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Dr. Singhvi, what we'll do is this. We'll give you
33 10:30 to 11:15. We will give Mr Ganguly, 11:15 to 11:45. Mr. Bagaria, 11:45 to 12:15. Mr.
34 Khambata, 12:15 to 12:45 and 15 minutes for you. That's it.

35

36 **MANU SINGHVI:** Only one thing. Seeing the nature. Allow me at least 1 hour. Otherwise, it
37 won't be fair, My Lord, on the submissions.

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ARVIND DATAR: In *Dalmia Cements*, ordered by three judge bench, where they referred six questions and directed it to be tagged along with this. Now My Lord, my submission is I'm going to request Your lordships, those out of the six only one relates to nature of Royalty. The remaining five can be kept separately subsoil right who wants the minerals, et cetera. So, I have made a PowerPoint presentation, and I'll just take eight to ten minutes, about six slides. I have to show to Your Lordships.

CHIEF JUSTICE D. Y. CHANDRACHUD: You want that to be de-tagged with...

ARVIND DATAR: I have to make...

CHIEF JUSTICE D. Y. CHANDRACHUD: ...except on the Royalty.

ARVIND DATAR: On the Royalty issue. [UNCLEAR] I'm not submitting. And to save time, I made a PowerPoint presentation...

RAKESH DWIVEDI: I think that should be de-tagged, My Lords. That should be de-tagged.

TUSHAR MEHTA: I have a similar request.

ARVIND DATAR: No, no, no. Subsoil can be de-tagged? ONGC also de-tagged yeah.

TUSHAR MEHTA: ONGC oil....

CHIEF JUSTICE D. Y. CHANDRACHUD: So, you can tell us which are the matters to be de-tagged. I think on this there should be no dispute. Mr. Dwivedi, Mr. Datar and the learned Solicitor General, please give the Court Master by tomorrow morning, the list of matters which have to be de-tagged. Mr Datar, we will de-tag your matter as well on Royalty since we have heard arguments on what is the nature of Royalty, we can take a small note.

ARVIND DATAR: I've just a submit on Entry 50, as to what is this. What I've made the submission on, My Lord, I've said that the levy in Entry 50 talks of tax on mineral rights. Tax has three components: levy, assessment, collection. Levy is taken away by 9, 9(a), 9(b). So, I've made a chart. So only levy is taken...

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Give us the chart. We have given you the... one
2 second, we've given you the bottom line. All learned counsel have to put their heads together,
3 so that you finish by lunch tomorrow. Absolutely no question of going *ad nauseam*. We will
4 never finish otherwise. This will go on to next week and we have another matter next week.
5

6 **ARVIND DATAR:** The other submission we are made in the context of mining lease. My
7 Lord, mining lease is normally for a particular area, 20 sq kms, 40 sq kms. So, we had drawn
8 a map. Tamil Nadu's goal is Entry 49.
9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright, we'll delink your matters Mr. Datar.
11

12 **ARVIND DATAR:** No, mine only on Royalty. Mining lease is only Entry 50.
13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We'll give you five minutes to hear your
15 arguments on Royalty.
16

17 **DR. MANU SINGHVI:** ... some moment. I'll cut one hour from my argument. Allow me till
18 11:45, Mr. Datar...
19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Dr. Singhvi, we have no difficulty. Anybody
21 who feels that, everybody has to decide now, that well, who's going to take how much time?
22 But no difficulty.... Sorry we will not do that. Whoever remains written submissions. Mr.
23 Dwivedi you start at 2:00 and you conclude at 4:00.
24

25 **DR. MANU SINGHVI:** Give us Thursday My Lords, we will not go beyond Thursday, My
26 Lords.
27

28 **RAKESH DWIVEDI:** Your Lordships, gave me one day, My Lords.
29

30 **ARVIND DATAR:** [UNCLEAR] But it's going to affect all mineral rights.
31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But adding zeros doesn't change the legal
33 principle. The principle is always the same, irrespective of the number of zeros and decimal
34 places added to it.
35

36 **RESPONDENT'S COUNSEL:** My Lords, I have given 15. Can we give five minutes, My
37 Lords. I have counted 32. My name is there in serial number.

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CHIEF JUSTICE D. Y. CHANDRACHUD: If you want *main aap sabko hindi mein samjha sakta hoon. Aap sab shaam ko baith lijiye, tay kar lijiye, do ghante mein, dhai ghante mein, subha aap sabko tay karna hai. Bahas iss taraf.* 02:00 we are putting Mr. Dwivedi in. This will never get over otherwise. Thank you.

END OF DAY'S PROCEEDINGS